

IN THE CIRCUIT COURT OF THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

OLD SECOND NATIONAL BANK)
)
Plaintiff,) No.: 19 ED 001
)
vs)
)
CITY OF SANDWICH, TOM THOMAS,)
RALPH WEBB, GERTRUD WEBB,)
CHARLES BOHNSTEDT, and KAREN)
BOHNSTEDT,)
)
Defendants,)

**PLAINTIFF'S RESPONSE TO CITY OF SANDWICH'S COMBINED MOTION TO
DISMISS COUNTS I AND II OF PLAINTIFF'S FIRST AMENDED COMPLAINT
PURSUANT TO 735 ILCS 5/2-619.1**

NOW COMES the Plaintiff, OLD SECOND NATIONAL BANK, by and through its attorneys, AMONI LAW OFFICES, P.C, and responds to Defendant, CITY OF SANDWICH'S 735 ILCS 512-619.1 Motion as follows:

FACT STATEMENT

Old Second's multi-count Complaint, attached hereto as **Exhibit A**, alleges both an impermissible taking of its property and fraud. As the two Counts against Sandwich contain 80 paragraphs, including the subparagraphs, it is a relatively complex fact pattern. However, to break out the facts that thwart Sandwich's attempt to dismiss, Old Second submits:

- The property at issue is Lot 7, Phase I of Sandwich Commons.
- Old Second made a good faith loan secured by Lot 7 in the amount of \$390,074.03.
- In 2011, Old Second later acquired the title to Lot 7 through a Deed in Lien of Foreclosure Agreement.

- Lot 6 of Sandwich Commons was, and is, the location of the storm water detention pond for the development.
- Sandwich's agent, City Engineer Thomas Horak admits in his deposition, attached as **Exhibit B**, that the lot 6 pond is woefully inadequate to serve Sandwich Commons.
- Expanding the Lot 6 pond to include Lot 7 is, to a reasonable degree of engineering certainty, the only realistic way to address the flooding problem.
- At Mr. Horak's deposition in November 21, 2019, Old Second learned that the flooding was not a simple engineering mistake.
- Rather, Mr. Horak told then-Mayor Thomas that the engineering calculations were incomplete and Lot 7 would be needed for water retention. Mr. Horak was told to keep quiet and threatened with job loss if he did not remain silent.
- One of the persons that profited from this conspiratorial fraud was Mayor Thomas' friend, Co-Defendant, Webb.

2-615 ARGUMENT

The Illinois Constitution provides:

"[P]rivate property shall not be taken *or damaged* for public use without just compensation." Ill. Const. 197, art. I, §15. (Emphasis added).

In further support of Old Second's position, both the Illinois Supreme Court and the United States Supreme Court have made it clear that a temporary flooding may constitute a taking. Hampton v. Metropolitan Water Reclamation District of Greater Chicago, 2016 IL 119861, ¶ 22; Arkansas Game & Fish Commu'n v. United States, 568 U.S. 23, 38-39 (2012).

The actions and inactions of Sandwich concerning this property and the surrounding property are, to put it charitably, unusual. Sandwich should have instituted condemnation

proceedings for taking of the Property but, as alleged and must be taken as true for purposes of this motion (Tzakis v. Berger Excavating Contractors, Inc. 2019 IL App (1st) 170859, ¶ 18), has not yet done so. (Plaintiff's Complaint, pg. 4, par. 26). However, Sandwich has foreclosed any possibility of the Property being sold because it tells prospective purchasers that the Property *will be* eventually taken for detention (Complaint, pg.3, par. 22 [d]).

There are multiple reasons why Sandwich's argument that its actions are not a matter of public use fails. First, Sandwich treated the property as if it had instituted condemnation proceedings. For example, it hired an outside engineer, Thomas Duttlinger, to assess the flooding problem and the engineer from the City of Sandwich found the plan to be acceptable. That plan requires a detention pond on Lot 7, thereby rendering the property unbuildable. Old Second has very clearly alleged this in Paragraph 26, page 4 of its Complaint. Therefore, Sandwich played an integral role in creating the flooding; Sandwich recognizes that it has to do something about that; Sandwich hired the engineering done which makes it clear that Sandwich needs the property for the requisite detention pond; and Sandwich has informed prospective purchasers that they will be taking the property.

Second, Sandwich's own City Engineer testified (Ex. B, P. 71) that the proper way to fix the flooding problem is to expand the detention pond to encompass Lot 7. Obviously, Sandwich has to acquire Lot 7 from Old Second in order to fix the mess it created.

Third, it is a specious argument on the part of Sandwich to claim that the SSA ordinance and Declarations/Covenants are private matters. How are developers or an Association going to expand a pond to Lot 7 when they do not own it? Mr. Horak provides an answer:

Q. "The plan to increase the capacity entails putting the pond on
(Lot) 7, but you are not suggesting that there is no ability for the developers

or any association that would be a form just to go and do that? They would have to buy the lot from the owner of (Lot) 7, right?”

A. “I would assume that would be the case.” (Ex. B, P. 88)

Therefore, the SSA and related documents submitted in Sandwich’s 2-615 are irrelevant and misconstrued by Sandwich. All the developers and any future Association are required by these documents to do is to maintain the aesthetics of Lot 6 and fix whatever might break on Lot 6. (Ex. B, P. 58). That is the private matter Sandwich is arguing.

Anything dealing with Lot 7 and the flooding issue *must* be a public undertaking because Sandwich has to take Lot 7 to expand the detention pond. (Ex. B, P. 27, lines 14-22). This is vital because, as Mr. Horak testified in answer as to how Sandwich Commons could comply with its own ordinance (2005-19), the way to do it is:

Q. “To get 1, 2, Avery (this refers to Phase I, II and III, a/k/a Avery of Sandwich Commons) to be compliant, we still need Lot 7, right?”

A. “To get 1, 2 and A to the standard of the 2005-19 ordinance, yes.” (Ex. B, P. 78).

So, there are only two choices: 1) Sandwich takes *and pays for* Lot 7, or 2) the conditions created by the fraud of Sandwich as alleged by Old Second will continue to damage Old Second’s property in direct violation of the Illinois Constitution each and every day that Sandwich allows the development of Sandwich Commons to exist with inadequate detention and inadequate engineering plans (Ex. B, P. 39, lines 13-21).

MANDAMUS DOES NOT APPLY

The procedural significance of the actions of Sandwich is that it has damaged the Old Second's property but has not yet actually taken it. As a result, Sandwich's reliance on Herget National Bank of Peakon v. Kenney, 105 Ill.2d. 405, 411-12 (1985) is misplaced because Sandwich fails to draw the necessary distinction that the Illinois Supreme Court has drawn between physically taking property and damaging property. Patzner v. Baise, 133 Ill.2d. 540, 546-47 (1990). Where no part of the land is taken, a property owner cannot, by any mandamus, compel proceedings under eminent domain. *Id.* at 547. This principle is also recognized by Sorrells v. City of Macomb, 2015 IL App (3d) 140763 cited by Sandwich. However, what an aggrieved land owner can do is file an action for damages for the property that was damaged by a governmental unit but not taken by the governmental unit. Again, the very case primarily relied upon by Sandwich, Sorrells, holds:

"Thus, the requirement within the Illinois Constitution that the government pay just compensation for the property that has been either taken or damaged is satisfied with an action at law for damages for the property that was damaged for public use but no part of the property was taken." *Id.* at ¶ 29.

Our Supreme Court has emphasized that the character of the pleading should be determined from its content, not its label. In re Parentage of Scarlett Z. D., 2015 IL 117904 ¶ 64. Therefore, while Old Second's property has clearly been damaged by the acts of Sandwich, should this Court view the remedy differently, Old Second would amend its prayer for relief to include mandamus as a 2-615 motion is only to be granted if it clearly appears that the Plaintiff can prove no set of facts that will entitle it to relief. Board of Directors of Bloomfield Recreation Ass'n v. The Hoffman Group, Inc., 186 Ill.2d 419, 424 (1999).

SANDWICH MISAPPREHENDS SORRELS

Sandwich seeks to avoid its accountability for the damage it inflicted on Old Second's property by claiming that the development at issue is private and not for public use. To support its position, Sandwich relies on Sorrells.

The Plaintiffs in Sorrells failed because they did not allege the water draining from the development at issue onto their land "was the intended or foreseeable result, in all or in part, of the City's actions rather than that of the development" (Sorrells, 2015 IL App. (3d) 140763, ¶ 32). As Old Second has alleged, the conspiracy involving Sandwich and the developer was fraudulent and the flooding was not only an intended or foreseeable result, but a result Sandwich knew would occur. The conduct of Sandwich through its chief executive officer is simply a case of actions speaking much louder than words. It may say that the flooding is a result of a private developer but its actions clearly show that Sandwich was deeply involved in causing the ongoing damages to Old Second's property.

The situation present in the case at bar is not analogous to Sorrells. Rather, the facts are more analogous to the situation in Tzakis v. Berger Excavating Contractors, Inc. 2019 IL App (1st) 170859, ¶ 85 although Old Second's facts are far more compelling. In Tzakis, the court found that the Defendant's 2-615 Motion to Dismiss should be denied because the Plaintiff alleged much more hands-on involvement and ongoing responsibility from the Defendants. Specifically, the court in Tzakis based its decision on the Plaintiff's allegation of a history of flooding prior to the flood at issue which indicated the Defendants knew of the increased risk of flooding. Plaintiff also pointed to numerous areas in which Defendants were allegedly negligent, including through the use of undersized drains. In similar fashion, Old Second has alleged that:

- Sandwich approved the Sandwich Commons subdivision despite being aware of the drainage problems (Par. 17) and intentionally ignored the advice of its own engineer in approving the plans (Par. 18)
- Sandwich Commons subdivision was approved by Sandwich even though Sandwich knew it lacked adequate storm water detention/drainage; that it lacked complete engineering calculations for water retention/detention; it lacked complete engineering plans for piping; and it even violated the National Oceanic and Atmospheric Agency design criteria (Par. 19)
- The only way the Sandwich Commons flooding gets fixed is to use Old Second's property for a drainage pond. Not only is this the opinion of the City Engineer for Sandwich but also the recommendation of an outside engineer, Thomas Duttlinger (Par. 26).

As Plaintiff has alleged, Sandwich continues to this day to be involved with the Property. Sandwich has taken the position that any prospective purchaser for the Property would be informed that the Property would be used for detention purposes (paragraph 27 [e]). Up until very recently, Sandwich engaged in discussions with Old Second representatives to purchase the Property (Par. 23). The reason for Sandwich's continued involvement is Sandwich knows it is violating its own ordinance (Ex. B, P. 79), so it should, obviously, seek to be in compliance by acquiring Lot 7. Therefore, this is a public matter.

II. ARGUMENT AS TO STATUTE OF LIMITATIONS

Sandwich's claim that Old Second's fraud count is barred by the statute of limitations imposed by the Local Governmental Employees Tort Immunity Act (745 ILCS 10-1 *et seq.*) contains multiple fatal flaws. They are as follows.

A. Old Second was, and is, the victim of repeated injury.

In Urban v. Village of Inverness, 176 Ill.App.3d 1 (1st Dist. 1988) the land owner brought an action against various local governmental entities for property flooding. One of the property purchasers became aware of the accumulation of water on the property in 1972. The property again flooded in 1978 and 1979. The Defendants claim that the cause of action accrued in 1972 and was barred by the statute of limitations. In ruling for the Plaintiffs on the issue of the statute of limitations, the court held that:

"where a tort involves repeated injury, the statute of limitations begins to run from the date of the last injury or when the tortious acts cease." Citing Starcevich v City of Farmington, 110 Ill.App.3d 1074, 1079 (3rd Dist. 1982).

Therefore, the statute of limitations has yet to even begin to run, much less expire, given that the flooding on the subject property has yet to have been resolved (Ex. B, P. 28). The next rainfall of any significance will give rise to the next injury to the property. Continued development of Sandwich Commons will also cause the next injury to the property (Ex. B, P. 25, lines 22-24; P. 24, lines 14-22).

In Starcevich, the court not only held that multiple incidents of flooding constitute repeated injuries as a general rule, but the rule should not be restricted in its application against local governmental units because

"... the rule is particularly applicable to suits brought under the Tort Immunity Act inasmuch as the Act is in derogation of common law and must be strictly construed against the local public entity."

Therefore, because the flooding continues, Old Second's suit is not barred by any statute of limitations.

B. Statute Tolloed by Fraudulent Concealment

It is axiomatic that, when an action arises from fraud, any statute of limitations will not begin to run until the fraud is discovered or until such time as the fraud could have been discovered by the exercise of reasonable diligence. Bashton v. Ritko, 164 Ill.App.3d 37, 517 N.E.2d 707, 710 (3rd Dist. 1987); Henderson Square Condominium Ass'n v. LAB Townhomes, LLC., 2015 IL 118139 ¶ 36. In addition to citing no authority to support its position, the problem with Sandwich's argument is that it attacks Old Second's Count II but completely misses the fact the Count II is based upon fraud. Specifically, Sandwich writes on page 6 of its Motion that "... Plaintiff was aware of the alleged issues on the Property, that the City Engineer had allegedly advised against the development of the Property and that there was discussion that the Property would have to be used for additional drainage in January of 2017." "Plaintiff was aware of the alleged issues" is a conclusion. Additionally, even if a general allegation of awareness of the "issues" (presumably flooding) is decided to be a factual allegation, it is quite a leap to assume that the issue/flooding was caused by fraud. Issues such as flooding can be caused by any number of factors including, but by no means limited to, mistake, negligence, a change in property conditions or even a change in weather patterns. As is clearly alleged in Count II of Plaintiff's Complaint, the fraud was not discovered until the deposition of Tom Horak, the city engineer, was taken on November 21, 2019. (Paragraph 26, Count II). Remarkably, it was learned for the first time at Mr. Horak's deposition that this was not a case of "alleged issues"; or advice "against the development of the Property"; or a "discussion that the property would have to be used for additional drainage", as Sandwich writes. Rather, it was a fraudulent concealment of the plan by former Sandwich Mayor, Tom Thomas, and the Co-Defendants herein to cover up the engineering and applicable standards violation alleged by Old Second in paragraph 21 of Count II so that Mr. Webb could profit from the development.

Mr. Horak states in his deposition (Pages 38, 39, 43 & 45):

Page 38, Lines 11-13:

Q: “In a perfect world with no repercussions, would you not have approved it (Sandwich Commons)?”

A: “I would not have.”

Page 39, Lines 13-21:

Q: “So the question I asked you, for Phase 1 your professional engineering advice was or would have been to not allow the development of Phase 1 as planned for more than one reason, the inadequate detention we discussed, plus inadequate engineering plans for piping—more than one thing?”

A: “Yes.”

Q: “All concerning drainage or water detention?”

A: “Correct.”

Page 43, Lines 11-15; Lines 19-24:

Q: “So, the only reason you could give me as to why your advice seemingly was ignored concerning these issues was you were just told you have to be a team player? I am paraphrasing.”

A: “That is what I was told.”

A: “Yes, that is all I was told. I wasn’t given any other direction for it.”

Q: “If you are not a team player, your longevity as the city engineer is questionable?”

A: “That is the way I would interpret it.”

Q: "Is that it? That is the only explanation you ever got?"

A: From the former mayor, yes.

Page 46, Lines 15-21:

Q: "Did Tom Thomas or any of his family members or friends have any financial interest in the development of Sandwich Commons?"

A: "I am going to believe that Ralph Webb was a good friend of Tom Thomas, that would be a yes."

The remarkable candor by Mr. Horak marks the first time fraud—not negligence; not mistake; not conjuncture or possibilities—was revealed.

WHEREFORE, Plaintiff, Old Second, prays Sandwich's 2-619.1 Motion be denied and for such other relief the Court deems appropriate.

Respectfully submitted:



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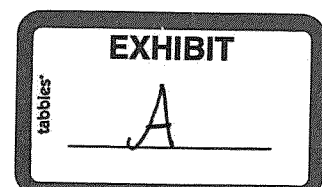
FIRST AMENDED COMPLAINT

NOW COMES the Plaintiff, OLD SECOND NATIONAL BANK, by and through its attorneys, AMONI LAW OFFICES, P.C., and for its First Amended Complaint against the Defendants, CITY OF SANDWICH ("Sandwich"); MAYOR TOM THOMAS and RALPH WEBB ("Webb"), states as follows:

COUNT I

OLD SECOND v. SANDWICH

1. The property at issue is commonly known as Lot 7, Phase I, Sandwich Commons, Sandwich, Illinois ("Property"). The legal description of the Property is attached as **Exhibit 1**.
2. Prior to on or about October 7, 2011, the Property was owned by SCR Ventures, LLC ("SCR").
3. The Property was subject to a mortgage in the initial amount of \$390,074.03 ("Mortgage").
4. The Mortgage was recorded in the Kendall County Recorder's Office on November 17, 2006 as Document No. 200600037494.
5. At all times material hereto, the Mortgage was guaranteed by Guy Scardina and



Deborah Scardina.

6. The Mortgage was granted in favor of Heritage Bank as mortgagee.
7. On January 8, 2008, the Controller of the Currency approved the merger of Heritage Bank with and into Old Second National Bank ("OSNB") under the charter and title of OSNB.
8. Pursuant to the aforesaid merger, OSNB acquired ownership of the Mortgage on February 8, 2008.
9. On or about October 7, 2011, SCR and the Scardina's entered into a Deed in Lieu of Foreclosure Agreement with OSNB with OSNB acquiring ownership of the Property on October 7, 2011.
10. At the time of the execution of the Mortgage in 2006, the Property was appraised at \$500,000.
11. At the time the Property was mortgaged and at the time OSNB acquired ownership of the Property, it was zoned by Sandwich as B-3 Service Automotive and Wholesale District.
12. The Property was part of Phase I of Sandwich Commons. A storm water pond is located to the south of the Property on Lot 6.
13. The Sandwich Commons development expanded to a Phase II and Phase III, (Phase III is also known as "Avery") consisting of 19 additional lots.
14. Neither Phase II nor Phase III contain a storm water pond.
15. The Sandwich Commons subdivision has inadequate drainage.
16. Sandwich is aware and recognizes that Sandwich Commons has a drainage problem.
17. Sandwich approved the Sandwich Commons Subdivision despite being aware of the drainage problems.
18. Not only did Sandwich approve the Sandwich Commons with drainage problems,

it did so contrary to the advice of its own engineer.

19. The advice of the City Engineer ignored by Sandwich was to not approve the Sandwich Commons Subdivision as submitted because it lacked adequate storm water detention/drainage; lacked complete engineering calculations for water retention/detention; lacked complete engineering plans for piping; and violated the National Oceanic and Atmospheric Agency design criteria.

20. Upon the information and belief of OSNB, the findings of the city engineer were never made public and neither OSNB nor its predecessors in interest were made aware of the City Engineer's findings concerning the Property.

21. On or about January of 2017, James Angelotti of CBRE Brokerage, acting on behalf of OSNB, met with the Mayor of Sandwich, Sandwich's Economic Development Director and the City Engineer at the Property ("Meeting").

22. At the Meeting, Sandwich, through its agents, admitted that:

- (a) Sandwich Commons was allowed to be developed without appropriate storm water detention/drainage;
- (b) For the above reason and other reasons set forth above, the City Engineer advised against the development of Sandwich Commons;
- (c) The Property was supposed to be the location of additional detention;
- (d) Presently, any potential purchaser of the Property would now be informed that the Property would be used for detention;
- (e) Sandwich knew solving the detention problem was its responsibility.

23. At various times in 2018, Sandwich and OSNB had in-person, email and telephone negotiations relative to the sale of the Property to Sandwich.

24. On June 27, 2018, Sandwich, through its attorney, informed OSNB that the

Property has not yet been formally declared “unbuildable”.

25. On or about April 4, 2019, OSNB, through its attorney, was informed that Sandwich would not be purchasing the Property and that Sandwich Commons detention/drainage issue would remain in its current state.

26. To date, Sandwich has not instituted condemnation proceedings for a taking of the Property. However, an outside engineer, Thomas Duttlinger, formulated a plan on or about November 5, 2014 that Sandwich’s City Engineer later found to be acceptable that requires the detention pond on Lot 6 to be expanded to the Property, thereby rendering the Property unbuildable.

27. As a result, Sandwich has radically curtailed OSNB’s use of the property and its value so as to have taken the Property by inverse condemnation by one or more of the following acts or omissions:

- (a) ignored engineering recommendations so as to create a severe detention/drainage issue at Sandwich Commons;
- (b) at all times material hereto, Sandwich and other municipalities in northern Illinois adopted standards for storm water retention. At the time the Sandwich Commons development commenced, the National Oceanic and Atmospheric Agency (“NOAA”) promulgated design criteria for detention basins that required a basin that would accommodate 7.5 inches of rain in a 24-hour period. Phase I did not, and still does not, meet NOAA standards. Current NOAA standards are 8.5 inches of rainfall in a 24-hour period.
- (c) refused to take any remedial action to correct said drainage/detention issue;
- (d) rendered the Property unsuitable for building any structure as otherwise would be allowed by the Property’s zoning;

(e) taken the position that any prospective purchaser for the Property would now be informed that the Property would ultimately be used for detention purposes;

(f) refused to purchase the Property.

28. As a result of the foregoing acts or omissions on the part of Sandwich, OSNB has been denied any economically viable use of the Property. The Property cannot be sold and it cannot be built upon.

WHEREFORE, the Plaintiff, OLD SECOND NATIONAL BANK, prays for the following relief:

- a) That the Court declare that Sandwich has inversely condemned the Property;
- b) That OSNB be awarded damages to be set by the Court for loss of the economic viability of the Property;
- c) For such other relief as the Court deems appropriate.

COUNT II

FRAUDULENT CONCEALMENT v. SANDWICH

1. The property at issue is commonly known as Lot 7, Phase I, Sandwich Commons, Sandwich, Illinois ("Property"). The legal description of the Property is attached as **Exhibit 1.**

2. Prior to on or about October 7, 2011, the Property was owned by SCR Ventures, LLC ("SCR").

3. The Property was subject to a mortgage in the initial amount of \$390,074.03 ("Mortgage").

4. The Mortgage was recorded in the Kendall County Recorder's Office on November 17, 2006 as Document No. 200600037494.
5. At all times material hereto, the Mortgage was guaranteed by Guy Scardina and Deborah Scardina.
6. The Mortgage was granted in favor of Heritage Bank as mortgagee.
7. In January 8, 2008, the Controller of the Currency approved the merger of Heritage Bank with and into Old Second National Bank ("OSNB") under the charter and title of OSNB.
8. Pursuant to the aforesaid merger, OSNB acquired ownership of the Mortgage on February 8, 2008.
9. On or about October 7, 2011, SCR and the Scardina's entered into a Deed in Lieu of Foreclosure Agreement with OSNB with OSNB acquiring ownership of the Property on October 7, 2011.
10. At the time of the execution of the Mortgage in 2006, the Property was appraised at \$500,000.
11. At the time the Property was mortgaged and at the time OSNB acquired ownership of the Property, it was zoned by Sandwich as B-3 Service Automotive and Wholesale District.
12. The Property was part of Phase I of Sandwich Commons. A storm water pond is located to the south of the Property on Lot 6.
13. The Sandwich Commons development encompassed about 66 acres and expanded to a Phase II and Phase III (Phase III is also known as "Avery") consisting of 19 additional lots.
14. Neither Phase II nor Phase III contain a storm water pond.
15. The Sandwich Commons subdivision has overall drainage issues and problems.

16. At all times material hereto, Sandwich was, and is, aware and recognizes that Sandwich Commons has inadequate drainage/detention.

17. The land before the development of Sandwich Commons was zoned agricultural. The general process to commence the Sandwich Commons project was a preliminary discussion with Mayor Thomas concerning engineering issues. Thereafter, the plan went to the Planning Commission. Finally, the Plan went to the Sandwich Counsel for the approval of the final plat.

18. Sandwich approved the Sandwich Commons Subdivision despite being aware of the drainage problems as set forth herein.

19. Not only did Sandwich approve the Sandwich Commons with the drainage problems set forth herein, it did so contrary to the advice of its own engineer, Tom Horak.

20. The advice of the City Engineer ignored by Sandwich was to not approve the Sandwich Commons Subdivision as submitted because it lacked adequate storm water detention/drainage as described below.

21. Specifically, Phase I of Sandwich Commons should not have been approved for development and re-zoning because a) engineering calculations for water retention/detention were incomplete; b) engineering plans for piping were incomplete; c) at all times material hereto, Sandwich and other municipalities in northern Illinois adopted standards for storm water retention. At the time the Sandwich Commons development commenced, the National Oceanic and Atmospheric Agency ("NOAA") promulgated design criteria for detention basins that required a basin that would accommodate 7.5 inches of rain in a 24-hour period. Phase I did not, and still does not, meet NOAA standards. Current NOAA standards are 8.5 inches of rainfall in a 24-hour period.

22. Sandwich knowingly concealed from and/or withheld from the plaintiff and the

public that Sandwich Commons did not receive engineering recommendation because of inadequate storm water detention/drainage as described in Paragraph 21 above.

23. The concealed and/or withheld facts as stated above were material facts because inadequate storm water detention/drainage very materially and negatively diminished what the plaintiff believed the market value of the Property to be at the time the mortgage was made.

24. To illustrate the dramatic diminution in market value, at the time plaintiff provided a mortgage for the Property, the Property was appraised at \$500,000. In 2020, with the drainage/water retention issues now publicly known Sandwich offered the plaintiff the sum of \$10,000 for the Property.

25. Sandwich concealed and/or withheld the facts of the inadequate storm water detention/drainage and lack of engineering approval with the intent to deceive the plaintiff and to induce the plaintiff to make its mortgage so that Webb and Bohnstedt could sell the Property to SCR Ventures, LLC and Guy Scardina and Deborah Scardina and allow then Mayor Tom Thomas' friend, Ralph Webb, to realize a profit by the sale of the Property.

26. Sandwich's plan to conceal and cover up the aforescribed drainage/detention issues affecting the property and Sandwich Commons as a whole was such that when the City Engineer, Tom Horak, attempted to honorably do his duty in advising his superiors of these issues, Mr. Horak was threatened with the loss of his position if he would not be a "team player" and "bend some rules".

27. As a result of the foregoing, Sandwich approved Sandwich Commons for development without Mr. Horak's approval and the lots of Sandwich Commons, including the Property were marketed to the public with the knowledge of the storm water/detention problems and lack of engineering approval intentionally having been suppressed, concealed and withheld by the defendant. The plaintiff made the mortgage on the property in good faith and acting in

justifiable reliance on the facts as it then believed them to be at the time of the mortgage and continuing through on or about August, 2018 for one or more of the following reasons:

- a. the plaintiff performed its customary and banking industry accepted due diligence concerning the Property before making the mortgage loan;
- b. the plaintiff, as did other members of the public, had every right to rely upon Sandwich as a local governmental entity, presumably doing its job before approving Sandwich Commons for development;
- c. prior to making the mortgage, plaintiff or its customer employed an appraiser; title and insurance companies; and surveyor, none of whom were aware of the drainage, retention and engineering issues attendant to the Property even though each performed its duties within acceptable customs and practices within their respective industries.

28. Had the plaintiff known of the aforescribed concealed facts concerning Sandwich Commons and the property, it would never have made the loan on the Property.

29. At all times material to this complaint, Sandwich was an aldermanic form of local government with the Mayor as the chief executive. Mr. Horak was the only licensed engineer in Sandwich's Engineering Department.

30. At all times material to this complaint, the then Mayor, Tom Thomas, was the agent of Sandwich for one or more of the following reasons:

- a. Mayor Tom Thomas was a managerial employee, and in fact, the chief executive officer, and acting in the scope of his employment;
- b. Sandwich, through its management, approved the Sandwich Commons development and B-3 zoning for the Property.

31. As a direct and proximate result of one or more of the above described acts of

fraudulent concealment by Sandwich, the plaintiff suffered damages including, but not limited to, the loss of the money it lent on the Property; payment of real estate taxes for the Property; payment of insurance premiums related to the Property; its attorney's fees and costs herein, all in the aggregate in excess of \$400,000.

WHEREFORE, plaintiff, OSNB, prays for damages against Sandwich, in an amount in excess of \$400,000 plus its costs of suit and attorney's fees incurred herein.

COUNT III

FRAUDULENT CONCEALMENT v. THOMAS

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13. The Sandwich Commons development encompassed about 66 acres and expanded to a Phase II and Phase III (Phase III is also known as "Avery") consisting of 19 additional lots.

14. Neither Phase II nor Phase III contain a storm water pond.

15. The Sandwich Commons subdivision had, and has, overall drainage/detention issues and problems.

16. At all times material hereto, Sandwich was, and is, aware and recognizes that Sandwich Commons has drainage/detention problems.

17. At all times material hereto, this defendant, Tom Thomas, was the Mayor of Sandwich.

18. The land before the development of Sandwich Commons was zoned agricultural. The general process to commence the Sandwich Commons project was a preliminary discussion with Mayor Thomas concerning engineering issues. Thereafter, the plan went to the Planning Commission. Finally, the Plan went to the Sandwich Counsel for the approval of the final plat.

19. Sandwich approved the Sandwich Commons Subdivision despite being aware of the drainage problems as set forth herein.

20. Not only did Mayor Thomas and Sandwich approve the Sandwich Commons with drainage/detention problems, it did so contrary to the advice of its own engineer, Tom Horak.

21. The advice of the City Engineer ignored by Sandwich was to not approve the Sandwich Commons Subdivision as submitted because it lacked adequate storm water detention/drainage as described below.

22. Specifically, Phase I of Sandwich Commons should not have been approved for development and re-zoning because a) engineering calculations for water retention/detention were incomplete; b) engineering plans for piping were incomplete; c) at all times material hereto, Sandwich and other municipalities in northern Illinois adopted standards for storm water retention. At the time the Sandwich Commons development commenced, the National Oceanic and Atmospheric Agency ("NOAA") promulgated design criteria for detention basins that required a basin that would accommodate 7.5 inches of rain in a 24-hour period. Phase I did not, and still does not, meet NOAA standards. Current NOAA standards are 8.5 inches of rainfall in a 24-hour period.

23. Sandwich and Mayor Thomas knowingly concealed from and/or withheld from the plaintiff and the public that Sandwich Commons did not receive engineering recommendation because of inadequate storm water detention/drainage as described in Paragraph 22 above.

24. The concealed and/or withheld facts as stated above were material facts because inadequate storm water detention/drainage very materially and negatively diminished what the plaintiff believed the market value of the Property to be at the time the mortgage was made.

25. To illustrate the dramatic diminution in market value, at the time plaintiff provided

a mortgage for the Property, the Property was appraised at \$500,000. In 2020, with the drainage/water retention issues now publicly known Sandwich offered the plaintiff the sum of \$10,000 for the Property.

26. Sandwich and Mayor Thomas concealed and/or withheld the facts of the inadequate storm water detention/drainage and lack of engineering approval with the intent to deceive the plaintiff and to induce the plaintiff to make its mortgage so that Webb and Bohnstedt could sell the Property to SCR Ventures, LLC and Guy Scardina and Deborah Scardina and allow then Mayor Tom Thomas' friend, Ralph Webb, to realize a profit by the sale of the Property.

27. Sandwich's and Mayor Thomas' plan to conceal and cover up the aforescribed drainage/detention issues affecting the property and Sandwich Commons as a whole was such that when the City Engineer, Tom Horak, attempted to honorably do his duty in advising his superiors of these issues, Mr. Horak was threatened with the loss of his position if he would not be a "team player" and "bend some rules".

28. As a result of the foregoing, Sandwich approved Sandwich Commons for development without Mr. Horak's approval and the lots of Sandwich Commons, including the Property were marketed to the public with the knowledge of the storm water/detention problems and lack of engineering approval intentionally having been suppressed, concealed and withheld by the defendant. The plaintiff made the mortgage on the property in good faith and acting in justifiable reliance on the facts as it then believed them to be at the time of the mortgage and continuing through on or about August, 2018 for one or more of the following reasons:

- a. the plaintiff performed its customary and banking industry accepted due diligence concerning the Property before making the mortgage loan;

- b. the plaintiff, as did other members of the public, had every right to rely upon Sandwich as a local governmental entity, presumably doing its job before approving Sandwich Commons for development;
- c. prior to making the mortgage, plaintiff or its customer employed an appraiser; title and insurance companies; and surveyor, none of whom were aware of the drainage, retention and engineering issues attendant to the Property even though each performed its duties within acceptable customs and practices within their respective industries.

29. Had the plaintiff known of the aforescribed concealed facts concerning Sandwich Commons and the property, it would never have made the loan on the Property.

30. As a direct and proximate result of one or more of the above described acts of fraudulent concealment by Sandwich and Mayor Thomas, the plaintiff suffered damages including, but not limited to, the loss of the money it lent on the Property; payment of real estate taxes for the Property; payment of insurance premiums related to the Property; its attorney's fees and costs herein, all in the aggregate in excess of \$400,000.

WHEREFORE, plaintiff, OSNB, prays for damages against Tom Thomas, in an amount in excess of \$400,000 plus its costs of suit and attorney's fees incurred herein.

COUNT IV

FRAUDULENT CONCEALMENT v. WEBB

1. The property at issue is commonly known as Lot 7, Phase I, Sandwich Commons, Sandwich, Illinois ("Property"). The legal description of the Property is attached as Exhibit 1.

2. Prior to on or about October 7, 2011, the Property was owned by SCR Ventures,

LLC ("SCR").

3. The Property was subject to a mortgage in the initial amount of \$390,074.03 ("Mortgage").

4. The Mortgage was recorded in the Kendall County Recorder's Office on November 17, 2006 as Document No. 200600037494.

5. At all times material hereto, the Mortgage was guaranteed by Guy Scardina and Deborah Scardina.

6. The Mortgage was granted in favor of Heritage Bank as mortgagee.

7. In January 8, 2008, the Controller of the Currency approved the merger of Heritage Bank with and into Old Second National Bank ("OSNB") under the charter and title of OSNB.

8. Pursuant to the aforesaid merger, OSNB acquired ownership of the Mortgage on February 8, 2008.

9. On or about October 7, 2011, SCR and the Scardina's entered into a Deed in Lieu of Foreclosure Agreement with OSNB with OSNB acquiring ownership of the Property on October 7, 2011.

10. At the time of the execution of the Mortgage in 2006, the Property was appraised at \$500,000.

11. At the time the Property was mortgaged and at the time OSNB acquired ownership of the Property, it was zoned by Sandwich as B-3 Service Automotive and Wholesale District.

12. The Property was part of Phase I of Sandwich Commons. A storm water pond is located to the south of the Property on Lot 6.

13. The Sandwich Commons development encompassed about 66 acres and expanded

to a Phase II and Phase III (Phase III is also known as “Avery”) consisting of 19 additional lots.

14. Neither Phase II nor Phase III contain a storm water pond.

15. The Sandwich Commons subdivision has overall drainage/detention issues.

16. At all times material hereto, Sandwich were, and are, aware and recognizes that Sandwich Commons has a serious drainage problem.

17. The land before the development of Sandwich Commons was zoned agricultural.

The general process to commence the Sandwich Commons project would be a preliminary discussion with Mayor Thomas concerning engineering issues. Thereafter, the plan went to the Planning Commission. Finally, the Plan went to the Sandwich Counsel for the approval of the final plat.

18. Sandwich approved the Sandwich Commons Subdivision despite being aware of the drainage/detention problems.

19. Not only did Sandwich approve the Sandwich Commons with drainage/detention problems, it did so contrary to the advice of its own engineer, Tom Horak.

20. The advice of the City Engineer ignored by Sandwich and Webb was to not approve the Sandwich Commons Subdivision as submitted because it lacked adequate storm water detention/drainage as described below.

21. Specifically, Phase I of Sandwich Commons should not have been approved for development and re-zoning because a) engineering calculations for water retention/detention were incomplete; b) engineering plans for piping were incomplete; c) at all times material hereto, Sandwich and other municipalities in northern Illinois adopted standards for storm water retention. At the time the Sandwich Commons development commenced, the National Oceanic and Atmospheric Agency (“NOAA”) promulgated design criteria for detention basins that required a basin that would accommodate 7.5 inches of rain in a 24-hour period. Phase I did not,

and still does not, meet NOAA standards. Current NOAA standards are 8.5 inches of rainfall in a 24-hour period.

22. Webb and Sandwich knowingly concealed from and/or withheld from the plaintiff and the public that Sandwich Commons did not receive engineering recommendation because of inadequate storm water detention/drainage as described in Paragraph 21 above.

23. The concealed and/or withheld facts as stated above were material facts because inadequate storm water detention/drainage very materially and negatively diminished what the plaintiff believed the market value of the Property to be at the time the mortgage was made.

24. To illustrate the dramatic diminution in market value, at the time plaintiff provided a mortgage for the Property, the Property was appraised at \$500,000. In 2020, with the drainage/water retention issues now known Sandwich offered the plaintiff the sum of \$10,000 for the Property.

25. Webb and Sandwich concealed and/or withheld the facts of the inadequate storm water detention/drainage and lack of engineering approval with the intent to deceive the plaintiff and to induce the plaintiff to make its mortgage so that Webb could sell the Property to SCR Ventures, LLC and Guy Scardina and Deborah Scardina and allow then Mayor Tom Thomas' friend, Webb, could realize a profit by the sale of the Property.

26. Webb's and Sandwich's plan to conceal and cover up the aforescribed drainage/detention issues affecting the property and Sandwich Commons as a whole was such that when the City Engineer, Tom Horak, attempted to honorably do his duty in advising his superiors of these issues, Mr. Horak was threatened with the loss of his position if he would not be a "team player" and "bend some rules".

27. As a result of the foregoing, Sandwich approved Sandwich Commons as submitted

by Webb for development without Mr. Horak's approval and the lots of Sandwich Commons, including the Property were marketed to the public with the knowledge of the storm water/detention problems and lack of engineering approval intentionally having been suppressed, concealed and withheld by the defendant. The plaintiff made the mortgage on the property in good faith and acting in justifiable reliance on the facts as it then believed them to be at the time of the mortgage and continuing through on or about August, 2018 for one or more of the following reasons:

- a. the plaintiff performed its customary and banking industry accepted due diligence concerning the Property before making the mortgage loan;
- b. the plaintiff, as did other members of the public, had every right to rely upon Sandwich and Webb not conspiring to approve Sandwich Commons for development even though the project was not approved as consistent with applicable engineering standards;
- c. prior to making the mortgage, plaintiff or its customer employed an appraiser; title and insurance companies; and surveyor, none of whom were aware of the drainage, retention and engineering issues attendant to the Property even though each performed its duties within acceptable customs and practices within their respective industries.

28. Had the plaintiff known of the aforescribed concealed facts concerning Sandwich Commons and the property, it would never have made the loan on the Property.

29. At all times material to this complaint, Sandwich was an aldermanic form of local government with the Mayor as the chief executive. Mr. Horak was the only licensed engineer in Sandwich's Engineering Department.

30. At all times material to this complaint, the then Mayor, Tom Thomas, was the

agent of Sandwich for one or more of the following reasons:

- a. Mayor Tom Thomas was a managerial employee, and in fact, the chief executive officer, and acting in the scope of his employment;
- b. Sandwich, through its management, approved the Sandwich Commons development and B-3 zoning for the Property.

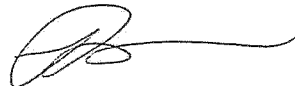
31. As a direct and proximate result of one or more of the above described acts of fraudulent concealment done in concert by Webb and Sandwich, the plaintiff suffered damages including, but not limited to, the loss of the money it lent on the Property; payment of real estate taxes for the Property; payment of insurance premiums related to the Property; its attorney's fees and costs herein, all in the aggregate in excess of \$400,000.

WHEREFORE, plaintiff, OSNB, prays for compensatory damage against this defendant, Webb, in an amount in excess of \$400,000 plus its costs of suit and attorney's fees incurred herein plus punitive damages.

Respectfully Submitted,

AMONI LAW OFFICES, P.C.

BY: _____



Larry M. Amoni

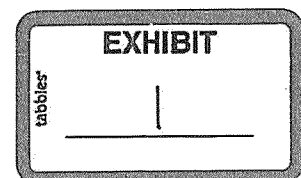
AMONI LAW OFFICES, P.C.
1975 W. Downer Pl., Suite 301
Aurora, IL. 60506
Tel: 630/264-2020; Fax: 630-264-2220
ARDC # 0043419
amonilaw@aol.com

LOT 7 IN BOHNSTEDT ADDITION TO THE CITY OF SANDWICH, KENDALL COUNTY, ILLINOIS AS PER THE FINAL PLAT OF BOHNSTEDT ADDITION RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF KENDALL COUNTY, ILLINOIS, ON OCTOBER 1, 2004 AS DOCUMENT NO. 200400027436, SITUATED IN THE CITY OF SANDWICH, KENDALL COUNTY, ILLINOIS.

FOR INFORMATION ONLY: 01-29-378-005

LOT 7 BOHNSTEDT, SANDWICH IL 60548

PLEASE NOTE: THE PROPERTY ADDRESS AND ZIP CODE ARE PROVIDED FOR CONVENIENCE ONLY AND ARE NOT INSURED.



STATE OF ILLINOIS)
) SS.
COUNTY OF KENDALL)

IN THE CIRCUIT COURT FOR THE 23rd JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS

OLD SECOND NATIONAL BANK,)
)
Plaintiff;)
)
vs.) 2019 ED
)
CITY OF SANDWICH,)
)
)
Defendant.)

THE DISCOVERY DEPOSITION OF

THOMAS HORAK

November 21st, 2019

1:30 p.m.

Called as a witness by the Plaintiff
herein, pursuant to the provisions of the Code of
Civil Procedure of the State of Illinois and the
Rules of the Supreme Court thereof pertaining to the
taking of depositions for the purpose of discovery,
before SHANA E. MARGEWICH, C.S.R. for the State of
Illinois, taken at City Hall, 144 East Railroad
Street, Sandwich, Illinois.

Page 2

1 PRESENT:
2
3 MR. LARRY M. AMONI, BY
4 AMONI LAW OFFICES, PC
5 1975 West Downer Place
6 Suite 301
7 Aurora, Illinois 60506,
8 E-mail: Amonilaw@aol.com
9 appeared on behalf of the Plaintiff;
10
11 MR. TAIT J. LUNDGREN, by
12 FOSTER BUICK
13 2040 Aberdeen Court
14 Sycamore, Illinois 60178
15 E-mail: Tlundgren@fosterbuick.com
16 appeared on behalf of the Defendant.
17
18
19
20
21
22
23
24

Page 3

1 INDEX
2
3 WITNESS: THOMAS HORAK
4 Page No.
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6 Mr. Lundgren 84
7 Mr. Amoni 88
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9 EXHIBITS
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11 Page No.
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13 Exhibit No. 2 60
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20 Exhibit No. 10 81
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1 (Witness sworn.)
2 WHEREUPON:
3 THOMAS HORAK,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:
6 EXAMINATION
7 BY MR. AMONI:
8 Q. Would state your name for the record, please.
9 A. My name is Thomas Richard Horak.
10 MR. AMONI: Let the record reflect this is the
11 discovery deposition of Thomas Richard -- What is your
12 last name?
13 THE WITNESS: Horak, H-O-R-A-K.
14 MR. AMONI: Thank you. Taken pursuant to notice
15 and set for this place and date by agreement. It's
16 taken pursuant to the applicable rules of the Illinois
17 Supreme Court and the local rules of the Circuit Court
18 of the 23rd Circuit.
19 BY MR. AMONI:
20 Q. I am Larry Amoni. I think we met before. Can
21 I call you Tom?
22 A. Yes, sir.
23 Q. I'm sure it has been explained to you, but for
24 the record, we are going to take your deposition here

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1 today. Have you ever given one before?
2 A. Yes, I have.
3 Q. How many?
4 A. Three or four.
5 Q. Just so you know and we can get through this
6 fairly efficiently, you see our court reporter to your
7 right; she is going to take down all of the questions
8 and answers. The significance of that is we have to use
9 words. If you don't, I will tell you, but that is why.
10 A. Okay.
11 Q. Secondly, it is much easier for her if you let
12 me finish my question and then answer, and I will do
13 likewise for your answer, fair enough?
14 A. Fair enough.
15 Q. Most importantly, I don't want you to
16 speculate or guess or answer any question that you don't
17 understand or that you didn't hear. If I ask a question
18 that you don't hear or understand, will you tell me?
19 A. Yes.
20 Q. Lastly, I am not here to make you
21 uncomfortable. If you need a break, just tell me.
22 A. Okay.
23 Q. I will try to get through this as quickly as I
24 can. I am going to ask you some questions obviously

<p style="text-align: right;">Page 6</p> <p>1 about Bohnstedt?</p> <p>2 A. Bohnstedt.</p> <p>3 Q. Also Sandwich Commons?</p> <p>4 A. We can use that name; that is fine.</p> <p>5 Q. We will go with Sandwich Commons for the time</p> <p>6 being anyway. In order to do that, because some of the</p> <p>7 questions are going to do with engineering concepts and</p> <p>8 principles, will you tell me your professional</p> <p>9 background starting with your education post</p> <p>10 high school?</p> <p>11 A. I went to Waubensee Community College for</p> <p>12 about three years. After that, I went to the University</p> <p>13 of Illinois and got my bachelor's of science in civil</p> <p>14 engineering. From then -- I guess that is my education.</p> <p>15 From then I worked with Chicago Bridge and Iron, and I</p> <p>16 started here at the City of Sandwich in 2001.</p> <p>17 Q. Are you licensed?</p> <p>18 A. I am.</p> <p>19 Q. What is the designation?</p> <p>20 A. Professional engineer.</p> <p>21 Q. You have held that license continuously from?</p> <p>22 A. 2004.</p> <p>23 Q. So when you started for the City of Sandwich</p> <p>24 in 2001, what was your job title?</p>	<p style="text-align: right;">Page 8</p> <p>1 plats, and they had the hotel piece and other outlets.</p> <p>2 Q. Okay. And in general, from an engineering</p> <p>3 perspective -- So what is your role in the development</p> <p>4 of a piece of property like that? First of all, when</p> <p>5 they decided to do this, was it agricultural property?</p> <p>6 A. Yes.</p> <p>7 Q. So they needed a zoning change to, I think,</p> <p>8 ultimately B3; is that right?</p> <p>9 A. Yes. I believe the zoning changed -- sorry.</p> <p>10 Q. I know what your lawyer told you.</p> <p>11 MR. LUNDGREN: I didn't tell him that one. Well</p> <p>12 done.</p> <p>13 BY MR. AMONI:</p> <p>14 Q. Tell me -- I am not trying to get to specifics</p> <p>15 yet. Tell me, in general terms, what is the role of the</p> <p>16 city engineer for a project like this?</p> <p>17 A. Traditionally with the City of Sandwich, a</p> <p>18 developer would come in, meet with the mayor, go through</p> <p>19 different options on a property. I would get involved,</p> <p>20 and we would talk about some of the engineering issues</p> <p>21 that could come up. Then from that standpoint, the</p> <p>22 process usually goes through a planning process to the</p> <p>23 Plan Commission. And then through that, the final</p> <p>24 engineering is approved and so it goes to the council</p>
<p style="text-align: right;">Page 7</p> <p>1 A. City engineer.</p> <p>2 Q. Okay. Have you been the city engineer all</p> <p>3 this time?</p> <p>4 A. Yes, I have.</p> <p>5 Q. Through today's date?</p> <p>6 A. Correct.</p> <p>7 Q. Is the department of city engineer you or are</p> <p>8 there are other people involved?</p> <p>9 A. There is only one engineer, that is myself.</p> <p>10 The engineering department consists of myself and the</p> <p>11 building official.</p> <p>12 Q. I looked through a lot of documents that I</p> <p>13 have in front of me. I certainly am not going to go</p> <p>14 over page by page, but I thought, let's break this up</p> <p>15 into categories. Historically, Sandwich Commons started</p> <p>16 what, around early 2000s?</p> <p>17 A. Yes.</p> <p>18 Q. The plan was for the Webbs and Bohnstedt to</p> <p>19 develop around 40 acres?</p> <p>20 A. I was going to say 66 acres, I believe, is the</p> <p>21 number.</p> <p>22 Q. Fine. What was their plan? What did they</p> <p>23 ultimately want the finished product to be?</p> <p>24 A. I guess what they submitted was the final</p>	<p style="text-align: right;">Page 9</p> <p>1 for approval of the final plat.</p> <p>2 From then, when the construction begins, I get</p> <p>3 involved in the site inspections and usually the</p> <p>4 approval of the subdivision improvements.</p> <p>5 Q. I see. So you're very involved in the process</p> <p>6 from an engineering standpoint?</p> <p>7 A. Yes, sir.</p> <p>8 Q. For the preliminary engineering</p> <p>9 considerations, in general, can you give me some feel</p> <p>10 for what type of things you're looking at or reviewing?</p> <p>11 A. At that point in time?</p> <p>12 Q. Sure.</p> <p>13 A. A lot of zoning-type issues, lot coverage,</p> <p>14 setbacks. Do they have a parking plan, initial</p> <p>15 stormwater management, they have a basin, they have some</p> <p>16 pipes shown on a plan for water and sewer. Roadways are</p> <p>17 shown. The concepts and trying to get people into the</p> <p>18 ordinance requirements.</p> <p>19 Q. Now, concerning water management, what is your</p> <p>20 involvement in that particular subset of your duties?</p> <p>21 A. With the stormwater management?</p> <p>22 Q. Yes.</p> <p>23 A. The drainage?</p> <p>24 Q. Yes.</p>

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1 A. Typically the developer creates a stormwater
2 management plan, the detention basin calculations, the
3 storm sewer calculations, and they would submit those
4 for approval.
5 Q. To you?
6 A. To me. Then usually I would review them or in
7 some instances, I would sub them out and get review
8 letters back.
9 Q. This may be a dumb question, but there is
10 actually a point to it. How do you know how to do what
11 you do? Is it part of your University of Illinois
12 training concerning the water detention?
13 A. Stormwater management, I had no formal
14 training in college. So what I do is I typically go
15 through the calculation submittal, compare it to our
16 ordinance, and from there it is kind of see what will
17 work with it.
18 At that point in time, the former city
19 engineer was involved with the approval of the grading
20 plans so I had asked him some things to look for on the
21 stormwater management plans. He gave me some basic
22 things that he used to do when he reviewed them.
23 Q. Why was the former city engineer involved?
24 A. I believe at that time because the mayor had

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1 asked him to take a look at the plan, the approval of
2 the hotel plan. The initial grading plan of that.
3 Q. This is after 2001, correct?
4 A. Correct.
5 Q. Was the former city engineer some type of
6 consultant?
7 A. I believe he was for us and I believe he did
8 some work for the drainage district, so he was still
9 around.
10 Q. What is that individual's name?
11 A. Darrell Lohmeier.
12 Q. Can you spell the last name?
13 A. L-O-H-M-E-I-E-R.
14 Q. Is Mr. Lohmeier still around, do you know?
15 A. I haven't seen him in awhile. I believe he
16 was in the Lisle area.
17 Q. Now, Tom, submitted to you are calculations
18 and plans concerning stormwater retention from the
19 developer's engineer; is that how it works?
20 A. Yes.
21 Q. And who did those initial plans and
22 calculations?
23 A. I'm drawing a blank. I can picture it. They
24 are out of Oglesby. It is on a document somewhere.

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1 Q. If it comes to you, blurt it out.
2 A. Okay.
3 Q. You will lose me, but just generally, when we
4 are talking about calculations relative to stormwater
5 retention, what are you calculating?
6 A. The amount of rain that is falling, the
7 intensity, and duration of it, and how it gets conveyed
8 to an area where you want it to be stored so it gets
9 released under the City's limits. You're just -- it is
10 a modeling type of thing, where water comes down, we
11 estimate what that maximum flow is going to be in the
12 pipes, and we design the pipes for those sizes.
13 For the 24-hour 100-year storm, that volume
14 and that timing gets calculated to size or basin. So
15 the volume of that basin is based on that 24-hour,
16 100-year event.
17 (A short break was had.)
18 BY MR. AMONI:
19 Q. You came up with the name?
20 A. The name of the individual is Ken Giordano.
21 Q. How do you spell it?
22 A. G-I-O-R-D-A-N-O. I believe he worked with a
23 gentleman, Bill, and I don't remember his last name off
24 the top of my head.

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1 MR. LUNDGREN: For my clarifications, this is the
2 developer's engineer.
3 THE WITNESS: Correct.
4 BY MR. AMONI:
5 Q. Initially, were there any problems or concerns
6 of concerning the stormwater retention?
7 A. Yes.
8 Q. What were they?
9 A. That it wasn't complete, that some of the
10 calculations were missing.
11 Q. Let me see, so when you say "complete, not
12 complete, or missing calculations," are you talking
13 about there was an expectation of what you were going to
14 receive from the developer's engineers and didn't?
15 A. Yes.
16 Q. Did they correct that?
17 A. I believe they corrected some of it; I don't
18 know that they corrected all of it.
19 Q. Okay. So concerning the stormwater detention,
20 did that remain an issue throughout the construction?
21 A. Yes.
22 Q. And we will get into specifics, but in
23 general, what were your concerns as an engineer?
24 A. I believe at the time, the plans didn't cover

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1 all of the concerns that I had raised, and I believe
 2 that it was probably explained to me that we would cover
 3 it at the time of the as-built, but we would get the
 4 revised calculations that would cover all the concerns
 5 that I had.
 6 Q. Okay. Can you give me some more specifics,
 7 what your concerns were?
 8 A. That all the grading was going to work, that I
 9 believe the volume of the basin was going to be
 10 accurate, and that is -- I just ...
 11 Q. When you said, "grading going to work," I
 12 understand maybe you're probably way outside of our
 13 background and training. Is this all based on this
 14 100-year storm, is that what we start with to get what
 15 we are trying to handle?
 16 A. That is part of it. Specifically, I think
 17 when I talk about the grading, there is a contractor
 18 doing the balance of material, moving dirt from one spot
 19 to another spot, digging out the detention basin area,
 20 so that was a local contractor who wasn't following the
 21 plans as the plans were drawn.
 22 So at the time, then, it was okay, everything
 23 will work once they are done with their grading work and
 24 then I would get the as-built corrections at that time.

Page 15

1 Q. Tom, would you actually go out to the site
 2 from time to time?
 3 A. From time to time, yes.
 4 Q. And what would you do if you did not like
 5 something that was happening in terms of grading or
 6 whatever?
 7 A. I would notify the individual on-site and if
 8 there was another issue, I would tell the engineer. If
 9 I didn't get anywhere there, I would tell the developer.
 10 If I didn't get anywhere there, I would go to the mayor.
 11 Q. In an extreme case, would the mayor stop the
 12 construction work?
 13 A. I believe so.
 14 Q. All right. So that helps get us started to
 15 what is going on here. Before I leave that general
 16 area, what was the general plan of -- Was it the hotel,
 17 water park, what did they want to do there?
 18 A. At the time, it was the hotel.
 19 Q. Anything else?
 20 A. I wasn't aware of any other development at
 21 that initial stage. If I remember right, the main focus
 22 was the hotel property and they had thrown a design in
 23 for a restaurant -- a sit-down restaurant and some other
 24 facilities, but I hadn't heard anything concrete on

Page 16

1 those matters.
 2 Q. Car dealerships, I seem to see that?
 3 A. I don't recall.
 4 Q. Just so I have some idea because it keeps
 5 coming up. When we are talking about accommodating a
 6 100-year rain, can you tell me what that means? Is that
 7 a worst-case rain in a hundred-year time frame and to be
 8 able to deal with that much water; is that kind of what
 9 we are talking about?
 10 A. Traditionally the design criteria was based --
 11 for detention basin is based on that volume of water.
 12 For this particular area of Northern Illinois, it is
 13 7.58 inches in a 24-hour period. So that volume is what
 14 our ordinance calls for in the construction and design
 15 of a detention basin.
 16 More recently -- So that is the 1 percent
 17 chance each year for that storm. More recently that
 18 number now is elevated to 8 and a half, I believe,
 19 because of more data being collected and I guess climate
 20 change, so that volume now is even greater.
 21 Q. Where does that number come from? Is that a
 22 federal government number, state of Illinois number?
 23 A. I guess you could say it is a state of
 24 Illinois number, but there is some federal analysis that

Page 17

1 goes into it too, I believe. NOAA has a Bulletin 14
 2 that they use, and I believe this is the Bulletin 70
 3 number for the state of Illinois, so it's more regional
 4 for us.
 5 Q. I see. Any particular reason for the change
 6 in the number, just better data?
 7 A. Better data.
 8 Q. Okay. Now, we are going to go over some
 9 things in no particular order. You sent some
 10 interrogatories; do you recall those in this case? I
 11 want to ask you some of the questions about that and one
 12 you already answered. Kenneth Giordano, that is the
 13 gentleman you couldn't remember. I know what his role
 14 is. How about Thomas Duttlinger, D-U-T-T-L-I-N-G-E-R?
 15 A. Tom Duttlinger was a consultant for Etscheid
 16 Duttlinger & Associates that the City has used over the
 17 years. He got involved in this specific project once
 18 the Avery subdivision came into play and we had the
 19 stormwater challenges at the time.
 20 He became the City's consultant to help us
 21 work with the developer's consultant to come up with a
 22 plan to finalize that drainage.
 23 Q. Let's go back to that. To add to our
 24 historical snapshot, there was a Phase 1 to Sandwich

<p style="text-align: right;">Page 18</p> <p>1 Commons, a Phase 2, and then Avery Subdivision, so there 2 were three separate parcels, I guess?</p> <p>3 A. Phases. I would say that. And just for 4 clarification, as part of the Phase 1, there is an 5 outside property that was allowed to discharge into that 6 system, the Sharp Commercial Property; that is in the 7 City of Plano. There should be correspondence to that.</p> <p>8 Q. Thank you. I was wondering about that. Let's 9 just jump over to that. Sharp is some kind of 10 commercial enterprise; is that right?</p> <p>11 A. A developer, yes.</p> <p>12 Q. And it's adjacent to this property, the 13 Sandwich Commons?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. There is some agreement between Plano 16 and Sandwich where the Sharp Commercial Property can tie 17 into -- What are they tying into?</p> <p>18 A. Storm sewer.</p> <p>19 Q. Is that what happened?</p> <p>20 A. Correct.</p> <p>21 Q. How did that come about? It was vacant land 22 when this all started, so how does it come about that 23 Sharp gets to use it?</p> <p>24 A. I believe Ralph Webb, the developer, had been</p>	<p style="text-align: right;">Page 20</p> <p>1 background?</p> <p>2 A. I ...</p> <p>3 Q. That would surprise you?</p> <p>4 A. It would surprise me.</p> <p>5 Q. Then the Sandwich City Council and Plan 6 Commission -- When this started, the Plan Commission was 7 how many people?</p> <p>8 A. Seven or eight. I think it's seven.</p> <p>9 Q. Okay. And would it be fair to describe you 10 as, in part at least of your duties, as liaison between 11 the developer and the planning commission? Do you bring 12 the technical issues to them?</p> <p>13 A. I do.</p> <p>14 Q. Now, I ask a question in these interrogatories 15 about what would be allowed, if anything, to be built on 16 Lot 7 -- we are talking about Lot 7 -- in both Bohnstedt 17 or Sandwich Commons, right?</p> <p>18 A. Yes.</p> <p>19 Q. And let me see if I understood this answer. 20 You're telling me that the answer would depend on many 21 factors such as what kind of building, let's start with 22 that one. But that would be the case in any 23 construction development project, right?</p> <p>24 A. Correct.</p>
<p style="text-align: right;">Page 19</p> <p>1 in contact with Sharp, and as part of their stormwater 2 management plan, they put the Sharp -- discharge from 3 Sharp's detention basin into that pipe, so that pipe 4 then connected to the Bohnstedt/Sandwich Commons, Lot 6 5 detention area.</p> <p>6 Q. Got it. Tom Thomas?</p> <p>7 A. Former mayor of the City of Sandwich.</p> <p>8 Q. Rick Olson?</p> <p>9 A. Former mayor of the city of Sandwich.</p> <p>10 Q. Denise -- is that I-I?</p> <p>11 A. Correct. E-E.</p> <p>12 Q. Who is Denise?</p> <p>13 A. She is the city clerk.</p> <p>14 Q. Would her involvement in this whole Bohnstedt 15 Addition, Sandwich Commons, be basically processing 16 paperwork and that type of thing?</p> <p>17 A. I would say, yes, probably. I don't believe 18 she was a city clerk in the early 2000s.</p> <p>19 Q. Okay.</p> <p>20 A. I don't recall when she started. I don't know 21 how involved she is in this matter.</p> <p>22 Q. Let me ask it this way. This isn't some weird 23 situation where just coincidentally she also happens to 24 have an engineering or construction development</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. So there is nothing unusual or unique to the 2 Sandwich Common property about that requirement?</p> <p>3 A. Correct.</p> <p>4 Q. And how it is constructed, same thing, that 5 would apply to anything within Sandwich boundaries that 6 is being considered for new construction, right?</p> <p>7 A. Correct.</p> <p>8 Q. Subdivision plans, compliance; again, required 9 of any property being constructed in the town limits?</p> <p>10 A. Correct.</p> <p>11 Q. And building and municipal codes, also 12 required of any property -- In other words, nothing 13 unique to Sandwich Commons for new construction?</p> <p>14 A. Correct.</p> <p>15 Q. Swales, how about that one? Is that the same 16 or is that different depending on the property?</p> <p>17 A. Depends on the property.</p> <p>18 Q. And specifically what about swales would be 19 required by Sandwich in order for Lot 7 to be used to 20 build something?</p> <p>21 A. As part of the stormwater management plan, 22 there were swales on the west side and, I believe, the 23 south side of the property that were part of the overall 24 development, there should be stormwater easements for</p>

Page 22

1 those.

2 Q. When you say west and south side of the

3 property, we are talking specifically about Lot 7?

4 A. Correct.

5 Q. And I guess those are in the form of an

6 easement on those two sides of the property that you're

7 telling me about?

8 A. Yes.

9 Q. How wide? What are we talking about?

10 A. To the best of my recollection, 20, 30 feet.

11 Q. Each?

12 A. I would say, yes.

13 Q. So assuming the things that would apply to any

14 developed property plus the swales -- so those are all

15 good. Take those out of the equation. Okay. Would the

16 current owner of Lot 7 be allowed to build a building on

17 it?

18 A. Can you please repeat the question.

19 Q. Removing the variables that we just talked

20 about --

21 A. Okay.

22 Q. -- assume for me those are complied with

23 including the swales -- In other words, no issue. Okay.

24 Starting tomorrow, assuming the proper permits and all

Page 23

1 that. If I own that property, Lot 7, can I start

2 building something as long as it fits the B3 zoning?

3 A. I would assume so.

4 Q. Between 2001 and today's date, would that have

5 ever been an issue to start building on Lot 7?

6 A. Can you please repeat the question?

7 Q. You told me you assume so that it would be

8 okay to commence building, I am asking you now to expand

9 the answer by asking you, would that also be the case

10 from any time during the time you were city engineer?

11 A. I would think so.

12 Q. So you're assuming so and you think so, does

13 that mean you're not sure?

14 A. Based on the information that we talked about,

15 if someone submitted plans, taking the other variables

16 out, the answer would be yes.

17 Q. Okay. What could I put up there so I got an

18 example? Car dealership? It does say car dealership in

19 the zoning?

20 A. I would anticipate a car dealership would not

21 fit on the site based on the parking spaces, you would

22 probably run into a problem with that. Maybe like a

23 small restaurant.

24 Q. We will use that. If I build my small

Page 24

1 restaurant and I follow the rules and regulations I have

2 to follow. What would that do to the drainage at

3 Sandwich Commons?

4 A. Is that assuming that that is the only thing

5 that gets built between now and the next ten years?

6 Q. Interesting. Okay. Well, let's do it both

7 ways. Let's assume, yes.

8 A. If that is the only structure that goes up,

9 the stormwater in that area, assuming that the swales

10 were put in as directed, then that water is going to

11 continue to go to the basin, then there probably won't

12 be an observable issue with any sort of stormwater

13 management or detention basin storage at that time.

14 Once the other lots develop, maybe ten years

15 from now, then that runoff -- because it is not just

16 grass anymore, it is hard pavement or whatnot. The

17 water is going to get to that basin faster, and so that

18 basin's outlet is still sized the way it is now, and

19 that water is going to get there faster and that basin

20 is going to overtop more regularly.

21 Q. That is something you don't want?

22 A. I don't think so.

23 Q. To your point then -- Let's go back. Okay. I

24 drove in getting here and there is a hotel and water

Page 25

1 park, I guess, is that it in Sandwich Commons?

2 A. The water park isn't really there anymore. It

3 is just a parking lot. There is an AB Exteriors, they

4 are a roofing company, siding company. There is

5 Anytime Fitness.

6 Q. Okay.

7 A. And that Anytime Fitness is in front of the

8 hotel.

9 Q. If we take the development as it exists, the

10 Sandwich Commons, and you talk about building down the

11 road, how many buildable lots are in the development?

12 A. I believe the total at the time was 25, but I

13 think 25 included parking lots, so maybe a couple of

14 dozen. Off the top of my head, I don't recall the exact

15 number.

16 Q. Between 20 and 25 for our purposes are

17 reasonable?

18 A. Okay.

19 Q. First, one thing you said is ten years down

20 the road. There is no prohibition for these other lots

21 to start developing or is there?

22 A. There is no prohibition.

23 Q. So ten years down the road is just arbitrary;

24 it can all start tomorrow?

Page 26

1 A. Correct.

2 Q. In other words, between 20 and 25, whatever the

3 exact number is, I am not trying to hold you to that,

4 owners of the lots can come in with their building plans

5 and submit them?

6 A. Correct.

7 Q. Okay. What would you do about the problem

8 that the additional parking lots would cause concerning

9 stormwater detention?

10 A. I would talk to the mayor.

11 Q. What would you tell the mayor insofar as, how

12 would you identify the property? Walk in, "Mr. Mayor,

13 with this much development, here is what I see

14 concerning stormwater runoff?"

15 MR. LUNDGREN: For the record, I am going to object

16 because I think the question calls for speculation, but

17 if you know what you would tell the mayor, you can

18 answer.

19 BY THE WITNESS:

20 A. I believe what I would tell the mayor, is,

21 Mayor, we have an issue with the development at the

22 Bohnstedt Addition. As we know, there was a concern

23 with the stormwater management based on the size of the

24 existing basin. Therefore, we need to look at options

Page 27

1 on how to increase the capacity of the stormwater

2 detention basin in the Bohnstedt Addition, Sandwich

3 Commons.

4 Q. Okay. So you're aware of this? You thought

5 about it, right?

6 A. "It," being?

7 Q. When development starts, there is going to be

8 a problem that has to be addressed concerning water?

9 A. Correct.

10 Q. Did you come up with any solutions?

11 A. I think in 2014 we put together a plan to

12 utilize Lot 7 as an alternative for additional storage

13 capacity.

14 Q. By that you would be acquiring enough

15 additional land, along with 6, Lot 6 is the lot now?

16 A. That exists as the detention basin.

17 Q. So you cannot build on 6?

18 A. Correct.

19 Q. So with my layman's overly simplistic terms,

20 with the acquisition of 7, you could expand the pond, is

21 that what it is?

22 A. Correct. The volume of detention storage.

23 Q. So now you can accommodate more runoff water

24 from parking lots?

Page 28

1 A. Correct.

2 Q. Why Lot 7? Is that just because it is

3 adjacent to 6?

4 A. That is my opinion, yes.

5 Q. How about any of the other lots, 5 or 4 or 8

6 or whatever is around it?

7 A. I think we could look at alternatives for

8 other lots. The disadvantage, meaning we are going to

9 lose volume in the side slopes, so Lot 7 is adjacent, we

10 only have three sides basically we have to worry about.

11 We have that area between them that gives us additional

12 volume over other lots.

13 Q. So based upon a reasonable degree of

14 engineering certainty, it is your opinion that Lot 7

15 would be the most logical lot to add to the capacity to

16 solve the problem or at least address the problem you

17 described for me if there were further development?

18 A. Correct.

19 Q. This might be a tough question if you could

20 give me a reasonable estimate, you said that if we had,

21 like, ten more businesses -- What is the tipping point?

22 If there are two parking lots, three, do you know?

23 A. I don't have that.

24 Q. Has anybody ever done a study on that to

Page 29

1 figure that out?

2 A. No.

3 Q. So some number of development in those 20 to

4 25 lots is going to do, but you just don't know how

5 many, fair?

6 A. Yes.

7 Q. So would this be a known future problem?

8 Would there be any information given to a prospective

9 purchaser of any lots in Sandwich Commons about this

10 potential problem?

11 A. I don't -- I guess, I don't know. That is my

12 answer to the question.

13 Q. Fine. How about if we expand that question to

14 other areas. I mean, if it had happened in your

15 tenure -- If the City knows that there is something out

16 there or down the road that is going to create an issue,

17 like if you don't have expanded capacity, that there is

18 going to be stormwater that is inadequately managed,

19 would you alert some prospective person who wanted to

20 buy and develop that land?

21 A. I don't know that I would know who that

22 prospective buyer is. I typically don't get that. I

23 would say on other areas where we have stormwater

24 issues, we tend to come up with a plan and we try and

Page 30

1 perceive to see if we can get property.
 2 Q. Okay. But while that is happening, while
 3 you're trying to get or take property and while you're
 4 developing your plan, if someone that would be affected
 5 by the excess water runoff, would you let that person
 6 know?
 7 A. I don't know that I would.
 8 Q. Fair enough. Would there be someone in the
 9 City of Sandwich that would, if you know?
 10 A. I don't know.
 11 Q. You're not an attorney and I'm not asking for
 12 a legal opinion, but would it ethnically bother you to
 13 have someone buy a lot knowing that that problem likely
 14 would develop in the future?
 15 A. Yes.
 16 Q. Because you have given this some thought,
 17 let's say you acquired Lot 7 and -- what do you? It
 18 just becomes a pond?
 19 A. We dig out the dirt, find a place to put the
 20 dirt, and it would be additional storage capacity for
 21 the runoff.
 22 Q. For getting acquisition and all of that. Can
 23 you give me a ballpark -- What does it cost to do what
 24 you just said, general ballpark?

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1 MR. LUNDGREN: If you know.
 2 BY THE WITNESS:
 3 A. I don't know.
 4 Q. In Interrogatory 5, I asked you a question
 5 about compliance, which you answered except I asked
 6 about any complaints made to the City of Sandwich
 7 concerning drainage issues at Sandwich Commons and you
 8 answered yourself, Tom Thomas, and Rick Olson?
 9 A. Can you please repeat the question?
 10 Q. I just asked you to identify by full name,
 11 address, last known name employer, et cetera, the
 12 persons you claimed to be most knowledgeable
 13 concerning -- in one of those subparagraphs was any
 14 complaints made to Sandwich concerning drainage issues
 15 at SC?
 16 A. Okay.
 17 Q. Then you listed those three guys?
 18 A. Yes.
 19 Q. What kind of complaints?
 20 A. I know that Dr. Vyas has indicated
 21 stormwater issues to --
 22 Q. Let me interrupt you there. Dr. V-I-A-S?
 23 A. V-Y-A-S.
 24 Q. And he is the hotel owner?

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1 A. Current hotel owner.
 2 Q. Go ahead.
 3 A. He has expressed his concerns with stormwater
 4 to Rick Olson. I had expressed concerns with stormwater
 5 to Tom Thomas. I have expressed concerns with
 6 stormwater to Rick Olson.
 7 Q. So for the hotel and the Anytime Fitness that
 8 you described that is currently up and running, are they
 9 having problems with water?
 10 A. Not that I have seen.
 11 Q. Okay. What was he complaining about,
 12 Dr. Vyas?
 13 A. Dr. Vyas has indicated that all the water from
 14 Route 34 floods his property.
 15 Q. Okay. That is interesting. I am trying to
 16 think how to phrase it. Water runoff from the paved
 17 roadway is -- Is that going to add to the water that
 18 would be runoff from future parking lots?
 19 A. It would if that water made it into that
 20 subdivision.
 21 Q. Would it?
 22 A. From my point of view, I would say it does
 23 not. I believe that water gets captured by the ditch
 24 along the south side of Route 34, runs westerly to

Page 33

1 Little Rock Creek, from Little Rock Creek, it is
 2 adjacent to his parking lot, but I guess that is a creek
 3 component then.
 4 Q. Do you think he is wrong about the source of
 5 water that he claims is coming onto his property?
 6 A. I would not agree with what he says.
 7 Q. Do you have another source in mind for where
 8 the water could be coming from or are you disagreeing it
 9 is happening at all?
 10 A. I don't believe it is happening in the manner
 11 he described it.
 12 Q. How has he described it? Like massive?
 13 A. All of the water from Route 34 comes and
 14 floods his property.
 15 Q. Other than complaining I assume verbally?
 16 A. I wouldn't say complaining. I've had
 17 conversations with him over the years.
 18 Q. Has he done anything more formally?
 19 A. Not to my knowledge. I've asked him for that.
 20 Q. What have you asked him for? Like engineering
 21 support?
 22 A. Yes.
 23 Q. Now, we got sidetracked. My recollection is
 24 you made complaints about the water situation for

Page 34

1 Sandwich Commons as well?

2 A. Yes.

3 Q. Okay. And I'm sorry, was that to Tom Thomas

4 and Rick Olson?

5 A. Both former mayors.

6 Q. When did you start making the complaints?

7 A. I would assume that shortly after receiving

8 the plans and spending some time reviewing them at the

9 initial submittal of the drainage from Ken Giordano,

10 that I would have mentioned my concerns to the major,

11 right off the bat.

12 Q. That is the beginning?

13 A. Yes.

14 Q. If we kind of were doing a timeline from that

15 beginning point to right now, have those concerns of

16 yours come up again?

17 A. They came up when Rick Olson became mayor.

18 Q. What specifically were the concerns you

19 expressed to Mayor Olson?

20 A. That we had some issues with the capacity of

21 the stormwater detention area on Lot 6, and we should

22 look at alternatives to expand that capacity.

23 Q. When this conversation took place between you

24 and Mayor Olson, is the hotel up?

Page 35

1 A. Yes.

2 Q. Okay. Is it developed as it is now or a few

3 more things get added?

4 A. I think it was probably as it was.

5 Q. Okay. And was the problem you told them

6 already what you told me, when we get more parking lots

7 the runoff is going to exceed the capacity of Lot 6?

8 A. Correct.

9 Q. Anything else or is that the problem you had

10 with water?

11 A. Yes.

12 Q. What did Mayor Olson say?

13 A. Okay. Basically what do we need to do. That

14 is why I ended up talking Tom Duttlinger about providing

15 the drawing and the calculations for what it would look

16 like to develop Lot 7 as a detention area.

17 Q. Is there any alternative solution out there

18 other than ...

19 A. Is there?

20 Q. Yes.

21 A. We can look at other lots and dig them out.

22 Q. And you already told me the relative

23 advantages and disadvantages to Lot 7. Other than doing

24 the same thing but on a different lot, is there anything

Page 36

1 else that you could do to address the problem that

2 you're aware of?

3 A. I don't believe so.

4 Q. As far as what you suggested to both mayors,

5 it was acquisition of Lot 7 and digging what you told me

6 for a pond?

7 A. Correct.

8 Q. So -- But that is not the first time. So

9 Mayor Thomas is before Mayor Olson?

10 A. Correct.

11 Q. And you told the same thing to Mayor Tom

12 Thomas?

13 A. He was aware of it, yes.

14 Q. Through you?

15 A. Through me and -- Yes.

16 Q. Now -- And whom?

17 A. I can assume others.

18 Q. Okay. So when that occurred, when he

19 became -- when Mayor Thomas became aware of it, what is

20 the state of the building? Is the hotel up?

21 A. I don't recall exactly when that would

22 have -- As I mentioned earlier, Mayor Thomas was aware

23 of my concerns with stormwater from the initial

24 submittal.

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1 Q. So before there is building. When you

2 communicated before any ground was turned or we started

3 to build anything, what did he say in response to your

4 concern?

5 A. At one point his comment was that I needed to

6 learn how to bend the rules or it was going to be a

7 problem come appointment time.

8 Q. Okay. So I guess, did you interpret that to

9 be quite concerning, this issue for job preservation?

10 I don't blame you if you did, I am not being critical.

11 I just ...

12 A. I took it to mean that I had to figure out a

13 different way.

14 Q. And by different way, that would mean

15 something other than the acquisition of Lot 7 or any

16 other lot to increase your capacity?

17 A. I would say, at that time, talking to Mayor

18 Thomas, I don't know if it was specific to the capacity

19 of Lot 6 being deficient as it was some of the pipes in

20 the ground at that time.

21 Q. Okay.

22 A. And overall deficiency in the calculations,

23 not just the capacity of Lot 6.

24 Q. All right. And then -- I guess what I am most

Page 38

1 curious about, you've acknowledged that you made
 2 recommendations -- Is it not to let Sandwich Commons
 3 develop as submitted?
 4 A. Recommendations? Can you explain that
 5 further.
 6 Q. Sure. At some point in time, you've got to
 7 approve, from an engineering standpoint, certain parts
 8 of the development, which would include stormwater
 9 retention?
 10 A. Correct.
 11 Q. In a perfect world with no repercussions,
 12 would you not have approved it?
 13 A. I would not have.
 14 Q. Okay. Would that be because of the stormwater
 15 detention problem that we've already talked about?
 16 A. I am going to say all of it. So there was the
 17 Phase 1, there is Phase 2, and then there is Avery.
 18 When Phase 1 is done, I had the deficient stormwater
 19 management. I get another crack at it in Phase 2; and
 20 then knowing that that isn't working, I get another
 21 crack at it at Avery.
 22 Avery was at least where we got some things
 23 modified; where we got some pipes increased in size. I
 24 believe we even got an additional pipe added to convey

Page 39

1 stormwater. I figured I had a couple of different shots
 2 of getting this resolved.
 3 Q. There is a lot packed into that. Tell me if I
 4 got any of this wrong. Phase 1, you were of the
 5 opinion, as a professional with a reasonable degree of
 6 certainty, that the water detention issue was not
 7 adequately dealt with to proceed?
 8 A. I am going to correct you if I may.
 9 Q. Sure.
 10 A. At Phase 1 at that time, it wasn't specific to
 11 just Lot 6. It was the design itself. Remember I
 12 didn't get all of the components in the initial design.
 13 Q. Okay. So the question I asked you, for Phase
 14 1 your professional engineering advice was or would have
 15 been to not allow the development of Phase 1 as planned
 16 for more than one reason, the inadequate detention we
 17 discussed, plus inadequate engineering plans for
 18 piping -- more than one thing?
 19 A. Yes.
 20 Q. All concerning drainage or water detention?
 21 A. Correct.
 22 Q. What is the best way to refer -- Is it
 23 detention, retention, drainage, how do you?
 24 A. Drainage works in this case. Lot 6 is a

Page 40

1 detention basin. It detains water, slows it down.
 2 Retention means the water isn't released from that. It
 3 is retained.
 4 Q. I am going to continue to mix them up then.
 5 All right. Along comes Phase 2 and my
 6 simplistic way of thinking about that is it is a
 7 potential for more water and that makes the problem even
 8 worse?
 9 A. I would disagree with saying it that way
 10 because the idea was Phase 1 -- When you do the
 11 stormwater for Phase 1, you take into account as much of
 12 the property as you know. When it -- So that work is
 13 done. When you get to Phase 2, you probably tweak some
 14 of that initial plan and you change the roadway, make it
 15 shorter, or adjust it a little bit. I don't know if it
 16 is adding more stormwater as it is honing in on what is
 17 actually going to be developed in Phase 2.
 18 Q. Okay. How about this. There is nothing about
 19 the way Phase 2 was planned that removed your concerns
 20 that you just told me about concerning water drainage
 21 for Phase 1?
 22 A. Correct.
 23 Q. Then along -- So you would still be of the
 24 mind that this shouldn't happen until these problems are

Page 41

1 addressed concerning drainage and retention and
 2 detention?
 3 A. Correct.
 4 Q. Along comes Avery, which is the third part.
 5 So now you're not getting your increased capacity on
 6 detention, but you're getting bigger pipes?
 7 A. Bigger storm sewers.
 8 Q. What does that do?
 9 A. It allows some storage in those pipes. It
 10 allows water to be conveyed through the pipes and not
 11 over land, swales, and whatnot.
 12 Q. It is not enough to solve the entire issue we
 13 have been discussing; is that right?
 14 A. Correct.
 15 Q. Helps somewhat, but it is no solution?
 16 A. Correct.
 17 Q. Avery, what year are we at?
 18 A. To the best of my recollection, about 2008.
 19 Q. I asked you, "Why was your advice concerning
 20 shutting this down to retention/detention and drainage
 21 issues not followed?" And your answer was, "That would
 22 call for speculation," right?
 23 A. Yes, sir.
 24 Q. Okay.

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1 MR. LUNDGREN: Can I ask, did you ever advise
2 someone this should be shut down?
3 THE WITNESS: Shut down?
4 BY MR. AMONI:
5 Q. Not approved, is what I should have said.
6 A. Correct. I guess -- Please repeat the
7 question.
8 Q. Sorry. That is a distinction I will accept.
9 I am trying to get reasons, if you're aware of anything,
10 as to why your professional opinion to not approve Phase
11 1 and 2, as submitted, concerning Sandwich Commons due
12 to drainage detention and retention issues. Okay?
13 A. Okay.
14 Q. Is that a better way to put it, don't approve
15 what is submitted?
16 A. That can work. I don't have any an answer as
17 to why.
18 Q. Okay. I haven't gotten to that yet. I think
19 Tait's point was, you know, like it's going and you come
20 in and you throw everybody off. Let's modify that to
21 approval of proceeding so we don't ever get to the point
22 of shutting it down; is that a better way to say it?
23 A. At what point of the process are we, Phase 1,
24 Phase 2, Avery?

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1 Q. If I -- Certainly Phase 1?
2 A. Okay.
3 Q. Phase 2?
4 A. Okay. I would agree with that.
5 Q. Did you change your mind on Avery?
6 A. Change my mind, no. What I did with Avery was
7 I asked to get Tom Duttlinger involved to help me go
8 against the other side.
9 Q. The mayor?
10 A. The other side.
11 Q. I will accept that. So the only reason you
12 could give me as to why your advice seemingly was
13 ignored concerning these issue was you were just told
14 you have to be a team player? I am paraphrasing.
15 A. That is what I was told.
16 Q. Okay.
17 A. Yes, that is all I was told. I wasn't given
18 any other direction for it.
19 Q. If you're not a team player, your longevity as
20 the city engineer is questionable?
21 A. That is the way I would interpret it.
22 Q. Is that it? That is the only explanation you
23 ever got?
24 A. From the former mayor, yes.

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1 Q. From anyone other than your attorney?
2 MR. AMONI: You're taking the position you're
3 representing him, right?
4 MR. LUNDGREN: Correct.
5 BY MR. AMONI:
6 Q. Other than your attorney?
7 A. Please restate the question.
8 MR. LUNDGREN: I didn't know what the question was.
9 We certainly haven't weighed in on our thoughts whether
10 anything should be approved.
11 MR. AMONI: If you want to, I promise I will
12 listen.
13 BY MR. AMONI:
14 Q. You said -- You ask me if my question was
15 limited to the mayor, and it is not. If -- have you
16 heard from any other source other than lawyers that have
17 represented you?
18 A. Can you give me a little more. I think I have
19 an answer if I get a little more of the question.
20 Q. Sure. Let me give a little more. I take it
21 when you were told that about you have to kind of not
22 bring these objections forth, did that surprise you?
23 A. At that time, yes.
24 Q. You have been here 18 years?

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1 A. Correct.
2 Q. Ever happened to you since?
3 A. Yes.
4 Q. Okay. How many times?
5 A. I would say probably one more time at about
6 the same time.
7 Q. Okay. Other than Sandwich Commons and the
8 other time that's close in terms of time, those are the
9 two times you were kind of ignored?
10 A. No. I have been ignored many times.
11 Q. Okay. What was different about the second one
12 you added that you were told to mind your own business
13 kind of thing?
14 A. That one was a subdivision development as well
15 where basically it was, don't worry about it, we have
16 this.
17 Q. The mayor is telling you this?
18 A. Yes.
19 Q. This is Tom Thomas. Is he an engineer?
20 A. He is not.
21 Q. To the best of your knowledge, he has no
22 technical expertise in any of these issues that you and
23 I have been talking about?
24 A. I don't know that he does.

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1 Q. All right. I know I told you I didn't want
2 you to speculate and I am not going back on that, but is
3 there any witness, document, anything you can point me
4 to that would answer the question -- because I am taking
5 it as kind of unusual to not heed the advice of a paid
6 professional -- that would answer that question for me?
7 A. I don't know of any document that would say
8 that.
9 Q. Okay. Any other person that could add
10 information?
11 A. Not anyone else that is already in that list.
12 Q. Who on that list specifically?
13 A. You would have Tom Thomas, Rick Olson, I think
14 that would be it.
15 Q. Did Tom Thomas or any of his family members or
16 friends have a financial interest in the development of
17 Sandwich Commons?
18 MR. LUNDGREN: If you know.
19 BY THE WITNESS:
20 A. I am going to believe that Ralph Webb was a
21 good friend of Tom Thomas, that would be a yes.
22 MR. LUNDGREN: Listen to the question. He asked
23 you if there was a financial interest, not if they knew
24 anybody.

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1 THE WITNESS: Gotcha, question.
2 BY THE WITNESS:
3 A. Can you repeat the question.
4 Q. Are you aware of any person with a connection,
5 be it family or business-wise, to Mayor Thomas that
6 would have benefited financially from Sandwich Commons
7 going through as planned?
8 A. Please repeat the question.
9 Q. Let me just change it. I am not trying to --
10 I had a meeting with Rick Olson -- the last mayor before
11 that one?
12 A. Yes.
13 Q. He said the words to the effect that this went
14 through because somebody, either the mayor himself or
15 someone in his orbit, made some money off of it. Do you
16 know anything about it?
17 A. If you're saying his orbit is Ralph Webb, then
18 Ralph Webb, as the developer, I would assume would be
19 making money off of the development, I guess.
20 Q. Because Webb and --
21 A. Bohnstedt. Webb and Bohnstedt were the
22 developers.
23 Q. But they were friends of Mayor Thomas?
24 A. Webb is a friend of Mayor Thomas, yes. Sorry

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1 if I screwed that up.
2 Q. I don't know. I am trying to -- I don't know.
3 I am just trying to find out. Any other connection of
4 that type that would at least offer an explanation, in
5 part, as to why your professional advice was not
6 followed?
7 A. I don't know of any.
8 Q. All right. I just -- to go quickly through
9 these. Dr. Vyas, he had most of his meetings with Rick
10 Olson?
11 A. Yes.
12 Q. You were at one or two?
13 A. I've had meetings with Dr. Vyas. I actually
14 went down to St. Louis to meet with him about the
15 development where we talked about stormwater.
16 Q. Did you talk about anything concerning the
17 solution?
18 A. Yes.
19 Q. Which one?
20 A. The potential for obtaining Lot 7, putting in
21 fountains, rain gardens.
22 Q. Was he on board with that?
23 A. He was the one that suggested the fountains
24 and rain gardens.

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1 Q. Okay. All right. We are almost through the
2 interrogatories. I will promise I will go more quickly.
3 I also asked you about persons that supported the denial
4 of an answer that was filed for Sandwich -- I am going
5 to tell you exactly. But I, on behalf of my client, the
6 bank, made some allegations that included the following:
7 Ignored engineering recommendations so as to create a
8 severe detention drainage issue at Sandwich Commons. Is
9 that true based upon what we said or are you taking
10 issue with the word severe?
11 A. I think I am taking an issue with the word
12 severe.
13 Q. If we take out severe, is that a true
14 statement?
15 A. Please read without severe.
16 Q. "It would be: Ignored engineering
17 recommendations so as to create a detention drainage
18 issue at Sandwich Commons?"
19 A. I think I would agree with that.
20 Q. Just -- So I can tell you where I am coming
21 from. I do a lot of work in the field of medicine and
22 they actually have, like, categories moderate, severe, a
23 lot of times Grade 1, 2, 3. Are you using severe as a
24 term of art with engineering or is that just a commonly

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1 accepted term?

2 A. I think I am using it from a standpoint what

3 would happen with the smaller volume if the water is

4 going to keep coming over at the lesser storms. I think

5 the idea is it is going to go to the same spot, it is

6 just the frequency has increased. I wouldn't necessarily

7 categorize that as severe, as just not working

8 correctly.

9 Q. Okay. In medicine, we will continue with that

10 analogy, a lot of times they break it down into mild,

11 moderate, severe.

12 A. Okay.

13 Q. What is the best term you would put?

14 A. I don't know I would put any really. I would

15 say more frequent.

16 Q. Okay. Refused to take any remedial action to

17 correct said drainage, detention issue. Is the remedial

18 action taken what you told me about when Avery Phase

19 came along, the bigger pipe? You know what? Let me ask

20 it a different way. I will withdraw the question. Tell

21 me what, if any, remedial action was taken to address

22 this issue of drainage?

23 A. By the City?

24 Q. Good question. Yes, let's start there.

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1 A. Well, I guess the City hasn't constructed

2 anything additional in the Bohnstedt Addition to improve

3 the detention -- the detention shortage, I should say.

4 Does that answer your question?

5 Q. I think so. Basically, if we limit the

6 question to the City, nothing?

7 A. Okay.

8 Q. Other entities or people, have they done

9 anything?

10 A. Not that I'm aware of.

11 Q. Okay. You seem to be a nice guy. I'm really

12 helping you out here, but to me -- How about what you

13 told me -- Avery with the bigger pipes -- did that

14 address the drainage/retention issue?

15 A. The retention, no. I guess -- Maybe I can

16 explain a little more. You have the Bohnstedt Addition

17 that didn't have all the calcs [sic]. We had the

18 Bohnstedt Phase 2, that was supposed to address the

19 on-site grading, the as-built grading, that was done.

20 Then we get to the Avery Subdivision where they are

21 trying to put even more water because that became a

22 paved area, a large paved area, instead of smaller

23 pieces, and so now they are trying to push more water

24 into Lot 6, the base of Lot 6.

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1 Basically that is when I got Tom Duttlinger

2 involved to help with the drainage plan for Avery

3 because they were unable to get the water from the Avery

4 Subdivision successfully into the pond. So that is when

5 the developer, his engineer, Ken Giordano -- who I guess

6 is a licensed surveyor -- they actually got a different

7 engineer involved, Brian Brown. So Brian Brown along

8 with Ken Giordano, along with Tom Duttlinger, all tried

9 to get something to work for that subdivision to accept

10 the Avery Subdivision drainage into that Lot 6 basin.

11 I believe that between the two, we either

12 added another storm sewer pipe or enlarged the one that

13 was there. Off the top of my head, I don't know what

14 one it was.

15 From that standpoint, the plans were approved.

16 I didn't approve them, specifically, that is when the

17 mayor got involved with that portion of it as far as the

18 meetings with the developer and whatnot.

19 Q. So the mayor overruled you and approved the

20 plans?

21 A. At that point I basically kept myself out of

22 it. I let Tom Duttlinger be the one who approved those

23 plans.

24 Q. Okay.

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1 A. So then when those plans got done, they were

2 approved.

3 Q. But you wouldn't have?

4 A. I wouldn't have.

5 Q. Okay.

6 A. So then after that is when then Mayor Thomas

7 got voted out.

8 Q. Okay.

9 A. And then I went to Rick Olson and said, we

10 still have an issue over there to deal with.

11 Q. I see. And Olson didn't give you anything

12 similar to ignore it?

13 A. Not at all.

14 Q. So there is a lot in there. One of the

15 takeaways I think I caught from that is when we get to

16 Avery, you certainly wouldn't want Avery land or from

17 the Avery part of the development adding to Lot 6

18 retention, right, that would make it worse?

19 A. It has to discharge there. It is just, on

20 Avery, you have to detain that water and hold it there

21 so that rush doesn't come to Lot 6 too.

22 Q. So the problem was you couldn't even get from

23 Avery to Lot 6?

24 A. Correct.

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1 Q. And that is what the piping addressed?
 2 A. Correct.
 3 Q. And from an engineering standpoint, it seems
 4 to be so you already have too much water and you're
 5 adding water from Avery, so do these pipes somehow slow
 6 down the water getting into the pond on 6?
 7 A. The Avery subdivision was required to provide
 8 its own detention basin.
 9 Q. I see.
 10 A. That water drained into those detention
 11 basins, got held back, and was released at a slower rate
 12 to get to the Lot 6 basin.
 13 Q. Got it. Kind of like if I have multiple cups
 14 and I siphon some off?
 15 A. Right.
 16 Q. All right. Very helpful to my understanding
 17 at least. You know this is the part I struggle with to
 18 try to do it efficiently. This is your attorney's
 19 fault. He gave me a bunch of documents.
 20 What I tried to do -- My pile is bigger than
 21 your pile. I tried to go to the actual pages so I can
 22 let you look at language because I want to be fair to
 23 you.
 24 A. Thank you.

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1 Q. I have some questions about some of these
 2 documents and I will go through them as quickly as I
 3 can.
 4 MR. LUNDGREN: For the record, can we identify the
 5 complete document that you're handing him?
 6 MR. AMONI: Yes. I am going to.
 7 BY MR. AMONI:
 8 Q. So my first document is the declaration of
 9 covenants for Bohnstedt and this is recorded 3/20 of
 10 '06 -- March 20th, '06. Okay?
 11 A. Okay.
 12 Q. It is dated March 17 of 2006?
 13 MR. LUNDGREN: This is Bohnstedt 1? It just says
 14 Bohnstedt.
 15 MR. AMONI: It just says Bohnstedt.
 16 BY MR. AMONI:
 17 Q. I'll mark it as Exhibit 1, of November 21st,
 18 2019.
 19 Now, the first page you have is page 4 and
 20 most of these are real simple questions. As you can
 21 see, Tom, right at the bottom they are talking about
 22 selling 70 percent of lots and there is going to be a
 23 property owner association, right?
 24 A. Yes.

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1 Q. Did that ever happen?
 2 A. Not to my knowledge.
 3 Q. So through today, there has never been and
 4 isn't, to best of your knowledge, a property owner or
 5 similar entity association?
 6 A. I am unaware of any property owner for the
 7 Bohnstedt Addition.
 8 Q. Then I also gave you page 5 of Exhibit 1,
 9 which is just -- it just carries on. There is no
 10 association, no governing body, anything that you're
 11 aware of that came into being at any time through
 12 today's date for Bohnstedt that is in the form of
 13 association or whatever you want to call it?
 14 A. I don't know of any.
 15 Q. Okay. Page 11 of Exhibit 1, Section 2, now,
 16 this talks about -- and you can -- If you want to read
 17 the first paragraph. I want to be fair to you. Section
 18 2 what I am talking about.
 19 (Witness complying.)
 20 BY MR. AMONI:
 21 Q. So this is something that either the developer
 22 or the association, when it came into being, was to do
 23 and that is to maintain Lot 6?
 24 A. Yes.

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1 Q. Okay. And by maintaining, what would that
 2 include? What does that mean to you?
 3 A. The maintaining of Lot 6 as a detention basin
 4 that maintenance would include mowing the lot, removing
 5 trees if any trees end up in that lot, cleaning out the
 6 pipes that enter into that, cleaning out the flared end
 7 sections and the grates that are there, making sure that
 8 it conveys stormwater.
 9 Q. Okay. It is not creating the improvements
 10 that, if you will, are on Lot 6 to address drainage and
 11 retention, it is maintaining them so that they're both
 12 functional and aesthetic, I assume.
 13 A. That is what it says, maintaining.
 14 Q. I am going skip some of these because you have
 15 already answered them. Again, on page 14, article Roman
 16 Numeral VI. I am still on Exhibit 1. I will tell you
 17 if I change.
 18 Again, kind of a repeat of the obligation,
 19 whatever obligation, created by this document for the
 20 association to maintain landscaping and caring for the
 21 detention area, which would be Lot 6, right?
 22 A. Is it all of section one?
 23 Q. It is.
 24 A. Would you mind if I read it?

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1 Q. No, not at all.
2 (Witness viewing document.)
3 BY THE WITNESS:
4 A. I would agree it is for the maintenance of
5 Lot 6.
6 Q. Again, the same thing, you're just keeping it
7 looking good and keeping what is there functional?
8 A. Correct.
9 Q. You don't want the grass to grow to 3 feet,
10 you don't want garbage thrown in the pond, that kind of
11 stuff.
12 A. Correct. "In addition to easement across each
13 lot for such purpose to clearance their successors
14 assignees including the association, shall have an
15 easement and a corresponding right of access over and
16 across each lot for the purpose of gaining access to the
17 easement."
18 Q. Sure. If I wanted to get a tractor to mow,
19 there was an easement to get the tractor there, right?
20 A. Right.
21 Q. Then if the City didn't like what was
22 happening, the City had the right to get a landscaping
23 service and charge it back to the developers or the
24 association if there was one; is that how it was

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1 supposed to work?
2 A. Is that in Section 2?
3 Q. That is the last sentence.
4 A. "The association shall have the right to
5 retain a professional landscaping service."
6 Q. The association. You're right. If the lot
7 owners were not doing it, the association could get a
8 professional and charge it back?
9 MR. LUNDGREN: I am going to allege an objection.
10 This is a document, an agreement, that the City not a
11 party to, so if you have an opinion or an interpretation
12 of it, that is fine, but this is probably outside the
13 scope of his expertise.
14 BY MR. AMONI:
15 Q. When you're doing your job as the city
16 engineer, covenants and easements and that, that is part
17 and parcel of what you do because it would affect things
18 like drainage and retention, right? You're familiar
19 with these kinds of documents?
20 A. I am familiar with covenants. Usually what I
21 would do is give them to our attorney to deal with. The
22 easement, as far as stormwater, that would be handled
23 through the final plat and our easement language on the
24 final plat. I have reviewed covenants before. I have

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1 offered opinions at the time of development.
2 Q. From an engineering perspective, you've
3 offered opinions?
4 A. Yes.
5 Q. Put Exhibit 1 to the side.
6 MR. LUNDGREN: There is a reference to another
7 section in there. I want to see what that says.
8 MR. AMONI: Would you like me to set this aside?
9 MR. LUNDGREN: I want to make sure I didn't imagine
10 having read something that I didn't actually read.
11 BY MR. AMONI:
12 Q. So and -- I guess I will mark this as
13 Exhibit 2 with today's date. This is, I believe, is
14 Phase 2 because it says so and nothing gets by me.
15 There is -- Basically it is the same obligations
16 concerning what we are interested in that Phase 1 has;
17 is that at least a general accurate statement?
18 A. I would agree.
19 Q. So I think -- I know you already answered it,
20 but there is language on page 3 that talks about -- of
21 Exhibit 2 -- the balance of Lot 6 and not being used for
22 detention. But Lot 6 is not buildable; that is true,
23 right? There is not some section where you can put up a
24 building or is there?

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1 A. I guess I don't recall reading this part.
2 Q. Okay.
3 A. I guess that is why they put the volleyball
4 court there.
5 Q. There is something on Lot 6?
6 A. Mm-hmm.
7 Q. A volleyball court?
8 A. Yes.
9 Q. Like what is the volleyball court made out of?
10 A. Sand volleyball court on the west side of
11 Lot 6, south of the hotel.
12 Q. From your considerable experience in the City
13 of Sandwich, what kind of approval or what do you have
14 to get to get a volleyball court on Lot 6?
15 A. Typically, a person would submit plans to the
16 building official, the building official would review it
17 for conformance to our codes, and issue a permit. I
18 don't recall being involved in the volleyball permit
19 process if there was one.
20 Q. If anything happened, it didn't cross your
21 city engineering desk?
22 A. Correct.
23 Q. Who combs the volleyball court, if you know?
24 A. I have no idea.

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1 Q. All right.

2 MR. LUNDGREN: I want to look at one specific

3 section to make sure I am not crazy witch is an issue of

4 some debate.

5 BY MR. AMONI:

6 Q. I am going to show you an ordinance, which is

7 marked as Exhibit 3, bearing today's date. Again, it

8 came from your attorney, so I am guessing you might be

9 somewhat familiar with it?

10 MR. LUNDGREN: Which ordinance is this?

11 THE WITNESS: 48. Okay.

12 BY MR. AMONI:

13 Q. All right. I am going to make a confession.

14 I do not do real estate. I am a trial attorney. This

15 is a special service assessment?

16 A. Special service area.

17 Q. See. I already don't know what I am talking

18 about. Tell me generally how that works?

19 A. The City of Sandwich, I guess, since I started

20 here, began putting backup special service areas in

21 place for subdivision developments, and what that is

22 supposed to do is it is supposed to give the City the

23 ability to make whatever repairs or improvements that

24 are necessary if the City has to take over some portion

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1 of that property.

2 I guess Bohnstedt Addition, Avery subdivision,

3 one of the things it has is the private roadway, so that

4 could fall under the special service area. The

5 detention basin, maintenance would fall under that. I

6 don't know if there is anything else that would or not.

7 Q. All right. So for the last whereas on the

8 first page of Exhibit 3, "The area will benefit

9 specifically from the municipal services to be provided

10 and the services are unique. In addition, to the

11 municipal services provided the City as all." What does

12 that mean? What services are being provided? To

13 Bohnstedt, is that even right?

14 A. I guess. I will say, I don't know. Can you

15 rephrase the question.

16 Q. I can't because I was trying to figure out

17 what the language meant. The language is the language.

18 If you go to page 4, Section 4, that is pretty similar.

19 So establishing special service area Number 5; that is

20 the official title. That is a special service area that

21 deals with Bohnstedt 1 and 2, and Avery ultimately?

22 A. I believe that there should be a third --

23 Sorry. There should be a revised special service area

24 Number 5, which would incorporate Bohnstedt 1, Bohnstedt

Page 64

1 2, and Avery.

2 Q. I think you are right. All right. If you

3 want the take a minute and look at Section 4.

4 (Witness viewing document.)

5 BY THE WITNESS:

6 A. Okay.

7 Q. So I'm reading that as a definition of what is

8 encompassed as to these special municipal services; is

9 that your understanding?

10 A. I would agree with that.

11 Q. Is this a backup if the association doesn't do

12 it?

13 A. That is usually the way it is set up, yes.

14 Q. Are you aware -- First of all, were any funds

15 collected for special service area 5?

16 A. I don't believe so.

17 Q. So it is dormant?

18 A. Yes.

19 Q. There is also provisions in there about

20 notices that Sandwich can send to either the developer

21 or association, but I am going to leave association out,

22 because we don't think there is one. Did that ever

23 happen? Did Sandwich ever send any notices that you're

24 not doing what you're supposed to do?

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1 A. Not that I'm aware of.

2 Q. Where would they come from? The City?

3 A. Usually the mayor, slash, city clerk, I would

4 assume.

5 Q. Okay. Then do you have the diagram?

6 A. Yes.

7 Q. So that doesn't have the page number, but it

8 will be right after page 5 there is a diagram, that is

9 the title, Special Service Area Number 5, City of

10 Sandwich, Kendall County, Illinois. Is that whole area

11 Bohnstedt?

12 A. The whole area identified by this page 5, is

13 the Bohnstedt 1 phase.

14 Q. That is just 1?

15 A. Yes.

16 Q. What is that rectangle on the bottom?

17 A. That is, I believe, Lot 12. That is the

18 residentially zoned portion of the subdivision.

19 Q. I read about that. They carved out a lot for

20 a house?

21 A. You can see it on the map behind you, the red

22 box.

23 Q. Okay. Where would Lot 6 and 7 be on this

24 diagram?

<p style="text-align: right;">Page 66</p> <p>1 A. I would say about in the center.</p> <p>2 Q. Okay. Then I think what I am going to mark as</p> <p>3 Exhibit 4 with today's date is just what you talked</p> <p>4 about expanding the Area 5 to include Phase 2 and Avery;</p> <p>5 is that right?</p> <p>6 A. That it expanded, yes.</p> <p>7 Q. That is all basically that document does,</p> <p>8 takes in more land?</p> <p>9 MR. LUNDGREN: We are marking but you're not going</p> <p>10 to go through ordinance 2006-14?</p> <p>11 MR. AMONI: What is the number again?</p> <p>12 MR. LUNDGREN: You just marked it as 4?</p> <p>13 MR. AMONI: Okay. I am not planning on it unless</p> <p>14 you tell me it does more than --</p> <p>15 MR. LUNDGREN: I am trying to keep my notes</p> <p>16 straight.</p> <p>17 BY MR. AMONI:</p> <p>18 Q. Is that your understanding? It is just</p> <p>19 expanding an area?</p> <p>20 A. That is my understanding.</p> <p>21 Q. It does mentioned there is a new entity WB,</p> <p>22 those are the initials, Holdings LLC; do you know who</p> <p>23 that is?</p> <p>24 A. My understanding WB, W is the Webbs and B is</p>	<p style="text-align: right;">Page 68</p> <p>1 it to see what it is, Tom.</p> <p>2 BY MR. AMONI:</p> <p>3 Q. It says Lot 7. I am trying to find out what</p> <p>4 it is. Obviously you know?</p> <p>5 A. This document or this sheet is part of a</p> <p>6 document that I provided to the mayor and the city</p> <p>7 attorney near the time this subdivision was going for</p> <p>8 acceptance. I went through and listed all of the lots</p> <p>9 and all the things that were not done or things I saw as</p> <p>10 issues with the lots.</p> <p>11 Q. Got it. And all of those were summarily</p> <p>12 ignored; is that right?</p> <p>13 A. I guess I can't answer that.</p> <p>14 Q. Well, did you know of any of the issues?</p> <p>15 A. I don't know if they all were.</p> <p>16 Q. Are you aware of anything that was followed</p> <p>17 that you put in concerning Lot 6 and 7?</p> <p>18 A. Do you have the other portion of Lot 6?</p> <p>19 Q. I guess that would be more fair. Is there a</p> <p>20 page number on the bottom of that?</p> <p>21 A. There is not.</p> <p>22 Q. I did but -- it is -- All right. Here.</p> <p>23 (Witness viewing document.)</p> <p>24 BY THE WITNESS:</p>
<p style="text-align: right;">Page 67</p> <p>1 the Bohnstedts; so it would be Ralph and Gertrude Webb</p> <p>2 and Charlie and Karen Bohnstedt.</p> <p>3 Q. Somewhere in this chain or time line we have</p> <p>4 been talking about, they developed an LLC?</p> <p>5 A. Sounds like it.</p> <p>6 Q. There have been appraisals of Lot 7, is that</p> <p>7 anything you get involved in?</p> <p>8 A. Sometimes. I was with this one.</p> <p>9 Q. I have an appraisal on October 26, 2006,</p> <p>10 showing a fair market value of 7 of about \$500,000. Do</p> <p>11 you have any reason to dispute that?</p> <p>12 A. I don't.</p> <p>13 Q. It also shows that about 1.06 accurate; does</p> <p>14 that sound about right?</p> <p>15 A. I think so.</p> <p>16 Q. I am going to mark this as Exhibit 5 with</p> <p>17 today's date. I just don't know what it is, so I am</p> <p>18 going hand it to you.</p> <p>19 A. I can tell you what it is.</p> <p>20 Q. You can tell already?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. While I am getting ready, you start</p> <p>23 talking.</p> <p>24 MR. LUNDGREN: I would prefer you actually look at</p>	<p style="text-align: right;">Page 69</p> <p>1 A. I believe that the City received easements for</p> <p>2 the water main for Lot 6.</p> <p>3 Q. Okay. That is something you think got done?</p> <p>4 A. I do.</p> <p>5 Q. Anything else?</p> <p>6 A. I don't recall if they also provided the</p> <p>7 drainage easement along the north property line of</p> <p>8 Lot 6.</p> <p>9 Q. So we will put maybe on that. Anything else?</p> <p>10 A. Not that I am aware of.</p> <p>11 Q. Can you find that (indicating) in your page</p> <p>12 there?</p> <p>13 MR. LUNDGREN: It is the back of something?</p> <p>14 MR. AMONI: They were in order. As I always do, I</p> <p>15 skip around.</p> <p>16 MR. LUNDGREN: I am asking, is it a single page in</p> <p>17 here?</p> <p>18 MR. AMONI: It should be.</p> <p>19 MR. LUNDGREN: I don't think I have a single page.</p> <p>20 MR. AMONI: I will mark mine as Exhibit 6.</p> <p>21 BY MR. AMONI:</p> <p>22 Q. I will slide mine over and I will mark mine as</p> <p>23 Exhibit 6. What is that?</p> <p>24 A. Exhibit 6 looks like one of the plans that the</p>

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1 City had actually Duttlinger put together to address
 2 extending the stormwater basin to the north into Lot 7.
 3 Q. It is really small. What date is that? I
 4 can't tell.
 5 A. November 5th, 2014.
 6 Q. Okay. This isn't what exists; it is a plan?
 7 A. This is basically a stormwater analysis. This
 8 is what could be done to increase the storage volume of
 9 the subdivision drainage.
 10 Q. Right in the center, is that Lot 7?
 11 A. Lot 7 is basically -- probably (indicating)
 12 here to the north.
 13 Q. Okay. If you wouldn't mind, put a circle
 14 around it. I know that's a generalization.
 15 A. (Witness complying.)
 16 Q. What is drawn in there? Is that a pond?
 17 A. Contour lines.
 18 Q. Okay.
 19 A. As if the City contractor or whatever dug it
 20 out, this would be the lowest point and this would slope
 21 up, basically to what is there now, the curb line.
 22 Q. If they look at that as a ladder, you're
 23 pointing to the bottom rung as the lower point and it
 24 goes up from there like shelves?

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1 A. Slope.
 2 Q. Okay. This never happened?
 3 A. Correct.
 4 Q. In order for it to happen, Sandwich has to
 5 acquire Lot 7?
 6 A. Correct.
 7 Q. Is this your plan on Exhibit 6?
 8 A. Did I draw it?
 9 Q. Not physically draw it, but who came up with
 10 this as a solution for the drainage detention we have
 11 been talking about it?
 12 A. Tom Duttlinger's firm, Etscheid Duttlinger &
 13 Associates.
 14 Q. Do you agree, from an engineering point of
 15 view within a reasonably certain degree, that this is a
 16 plan that would likely be successful?
 17 A. Yes.
 18 Q. So you would like to see this happen?
 19 A. I would like to see the problem solved, yes.
 20 Q. This would do it?
 21 A. Yes.
 22 Q. All right. James Angelotti,
 23 A-N-G-E-L-O-T-T-I; do you know who he is?
 24 A. Yes.

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1 Q. What is your recollection as to how
 2 Mr. Angelotti fits into all of this?
 3 A. I believe he was maybe a real estate agent.
 4 He was marketing the property for Old Second, to my
 5 understanding.
 6 Q. And you communicated both in person and
 7 through e-mails, phone, whatnot, with Mr. Angelotti from
 8 time to time; is that right?
 9 A. Yes.
 10 Q. On January 13th, 2017, I know it's a specific
 11 date, but I am going to ask you. Mr. Angelotti wrote
 12 that he met with the mayor, economic development
 13 director, which I think is a guy named Paul Borick
 14 (phonetic)?
 15 A. I believe -- At that time it might have been.
 16 In 2017, no. In 2017, it would have been
 17 Jim Teckenbrock.
 18 Q. You're probably -- she would appreciate a
 19 spelling?
 20 A. Jim Teckenbrock is T-E-C-K-E-N-B-R-O-C-K.
 21 Q. All right. I assume the engineer is you, but
 22 maybe not. Do you recall meeting between the mayor, the
 23 economic director, and the engineer on the site in 2017?
 24 A. I don't.

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1 Q. All right. The e-mail goes on to say, this is
 2 what Mr. Angelotti is trying to piece together. That
 3 the previous administration allowed this development to
 4 proceed without the appropriate amount of detention.
 5 You would agree with that?
 6 A. Yes.
 7 Q. This was against the advice of the engineer;
 8 do you agree with that?
 9 A. Yes.
 10 Q. And that the City reached out before with
 11 regard to your site, meaning Lot 7, telling me -- Jim
 12 Angelotti -- that its location for where the additional
 13 detention was supposed to be. Are you aware of anyone
 14 from the City of Sandwich reaching out to Mr. Angelotti
 15 for that purpose on Lot 7?
 16 A. Reaching out?
 17 Q. It is available, how much, anything like that?
 18 A. Yes.
 19 Q. Okay. Who did that?
 20 A. I remember receiving an e-mail from, I
 21 believe, Scott Trammell.
 22 Q. Do I know -- Have we mentioned him?
 23 A. Not yet.
 24 Q. Who is he?

<p style="text-align: right;">Page 74</p> <p>1 A. I believe he is a developer, slash, real 2 estate individual from Plano maybe. 3 Q. Okay. 4 A. The e-mail was basically asking about Lot 7, 5 and that is the best I can recall. It is probably in 6 there somewhere. 7 Q. Okay. Any other involvement, even if you were 8 not participating but present, for discussions about 9 Sandwich requiring Lot 7? 10 A. With Angelotti or just anyone? 11 Q. Well, did you deal with anyone concerning the 12 marketing of the property other than Angelotti for 13 Lot 7? 14 A. I don't believe so. 15 Q. Okay. Limit it to Angelotti because I don't 16 think anybody else was involved. 17 A. I believe I had a couple of phone calls with 18 Angelotti. I believe I had a couple of e-mails with him 19 and I believe I met him in the mayor's office. 20 Q. Can you give me the substance of those 21 conversations? 22 A. Honestly, without looking at some of the 23 documents, no. 24 Q. Okay. And these would be the documents you</p>	<p style="text-align: right;">Page 76</p> <p>1 make attempts to mitigate stormwater management problems 2 in the area, which is Sandwich Commons." I assume, 3 first of all, the city engineer would be you? 4 A. Correct. 5 Q. Have we covered all of your attempts to 6 mitigate or is there anything else we missed? 7 A. I don't know of anything else. 8 Q. Okay. Which is primarily the easiest, based 9 upon location adjacent to Lot 6, take Lot 7, build a 10 pond and that will increase your ability to hold the 11 water? 12 A. Correct. 13 Q. Now, I don't know if I want these, but there 14 is an e-mail Angelotti is talking about a host of 15 calculations for the property used for stormwater 16 management. Those are the calculations you made or saw? 17 A. Can I see that? 18 Q. Sure. It's February 26th, 2019. 19 A. That is my recollection of dealing with 20 Angelotti, that I gave him the calculations and the 21 exhibit that showed the detention with the slope and the 22 side wall of Lot 7. 23 Q. The one we already looked at? 24 A. Yes.</p>
<p style="text-align: right;">Page 75</p> <p>1 went through and produced? 2 A. Correct. 3 Q. Do you recollect Jim Angelotti saying either 4 to you or while you were present anything along the 5 lines that he can't market the property because 6 prospective buyers are being scared away by drainage/ 7 detention issue? 8 A. I don't recall that. I believe -- I don't 9 recall that. 10 Q. Okay. Did Mr. Angelotti ever express to you 11 concern that someone from Sandwich was scaring away, if 12 you will, buyers or potential buyers for the same 13 reason? In other words, if you buy Lot 7, you're going 14 to be subject to some detention/retention drainage 15 issues? 16 A. I'm not aware. 17 Q. But any buyer would, in fact, would have had 18 to have dealt with the drainage and retention issues? 19 A. I would assume so. They would submit plans 20 and be involved in that. 21 Q. I went through all the documents and there is 22 a letter from Kevin Buick, an attorney, to me that 23 says -- this is not privileged. He is just telling me, 24 "The City engineer has been working for some time to</p>	<p style="text-align: right;">Page 77</p> <p>1 Q. The calculations are just the numbers about 2 the 7-point-whatever inches and that is now 8-whatever 3 inches, that kind of stuff? 4 A. Yes. 5 Q. I thought so. 6 A. Yes. 7 Q. I am not going to mark it since I refreshed 8 your recollection. What else do we have here? Because 9 you have answered a lot of questions, I am going to 10 probably -- there are other documents but they probably 11 have already been answered, so let me go through them 12 quickly. Okay. I better mark this. 13 This is a page out of a group of documents 14 that I think you already were able to identify from 15 across the room. I will call it Exhibit 8 and today's 16 date. I highlighted it, so that should make it easier. 17 What is that talking about? Help me out. 18 A. The drainage of Bohnstedt Addition, Bohnstedt 19 Addition-Phase 2, and the Avery Subdivision property has 20 been modified due to the inadequate design of the 21 original facilities. The December 2007 design corrects 22 the original deficiencies. A floodplain boundary study 23 was required to be performed for the lots adjacent to 24 Little Rock Creek, Lots 1 and 10. Permits should have</p>

<p style="text-align: right;">Page 78</p> <p>1 been obtained for the construction of the parking lot on 2 Lot 10 within or adjacent to wetlands and/or floodplain. 3 Alternatively, the parking lot area and any buildings 4 should be removed from the floodplain through a map 5 amendment. 6 Q. Is that accurate or do you take issue with any 7 part of that? 8 A. I think at the time, I would accept this. 9 This is what ... 10 Q. Okay. At the time it was written? 11 A. Yes. 12 Q. As of today, do you have a different take on 13 that or would you still accept it? 14 A. I think what I would say is that based on 15 conversations I had with Tom Duttlinger and then the 16 difference in the ordinances, the stormwater ordinances, 17 the 2014 plan was what would get the whole subdivision, 18 Bohnstedt 1, Bohnstedt 2, and Avery, to be compliant. 19 That is what I would say. 20 Q. To get 1, 2, Avery to be compliant, we still 21 need Lot 7, right? 22 A. To get 1, 2 and A to the standard of the 23 2005, dash, 19 ordinance, yes. It is probably worth 24 mentioning that Phase 1 of the Bohnstedt Addition was</p>	<p style="text-align: right;">Page 80</p> <p>1 less water than the Phase 2 improvements. The pipes. 2 Q. Okay. Let me try it this way. Did the 3 second -- Strike that. 4 I assume the second ordinance in time did not 5 relax the requirements of the first? 6 A. Correct. 7 Q. Okay. They were not lesser requirements? 8 A. Correct. 9 Q. That is what I thought. Just want to make 10 sure. I am going to show you some pictures. If you 11 want to leaf through those pictures if it helps you -- 12 This is what I was talking about, to get a visual. 13 A. Okay. 14 MR. LUNDGREN: Do we have those or no? 15 MR. AMONI: I don't know any more. 16 (Witness complying.) 17 BY MR. AMONI: 18 Q. Anything you want to say, that helps my 19 testimony or visualizes it? If not, I don't care. 20 A. There is nothing in there that -- I guess. 21 Q. How about the same for this group. They are 22 labeled, so I guess this is showing us at least Lot 6 23 and 7? 24 (Witness viewing document.)</p>
<p style="text-align: right;">Page 79</p> <p>1 under the old stormwater management ordinance, which I 2 believe is 88-26A, and that permitted a five-year storm 3 event for the storm sewer pipes, so a smaller amount. 4 Q. Okay. 5 A. The 2005, dash, 19 ordinance requires a 6 ten-year amount so a larger volume of water, larger 7 flow. In order to get Avery to flow into the Phase 2 8 improvement then to flow into the Lot 6 from Phase 1, we 9 used the designs that were pertinent at the time. 10 I would say that to get everything to work 11 really well together and to make sure that the 100-year 12 event is contained in that basin, that is why we went 13 through and looked at the 2014 to get that Lot 7 added 14 to it. 15 Q. Okay. The second, if you will, end time 16 ordinance -- Actually at least as I understood it, 17 requires greater capacity to hold the water, which means 18 you need lots of it? 19 A. In the storm sewer. Part of the conveyance of 20 the water using a five-year storm sewer versus a 21 ten-year storm sewer is the water that is in excess of 22 the five-year event gets conveyed over other land. 23 Q. Go ahead. 24 A. So then the Phase 1 improvements would handle</p>	<p style="text-align: right;">Page 81</p> <p>1 BY MR. AMONI: 2 Q. If you could just pull out one that shows 6 3 and 7, if there is one. 4 A. This one shows 6 and 7. 5 Q. Put Exhibit 9 on the back of it. 6 A. This is taken from Drew Avenue facing south. 7 It shows the Lot 7 closest to the roadway with the for 8 sale sign and then farther south behind it, is the Lot 6 9 detention basin. 10 Q. Okay. Thank you. 11 A. Do you want me to put it back in here. 12 Q. No. I am making a pile of exhibits. 13 Ultimately, they will get attached to the transcript. 14 Now, I have Exhibit 10 and today's date. This 15 looks official so I am going ask you what it is. 16 MR. LUNDGREN: Did I miss nine? I have it. 17 BY THE WITNESS: 18 A. This looks like the drainage area map showing 19 the as-built detention acre-feet. 20 Q. As-built means as it exists now? 21 A. As it would have existed in 2007, that would 22 be my guess. It is dated October 23rd, 2007. 23 Q. Okay. One simple question, but unfortunately 24 I am going have to mark it Exhibit 11.</p>

<p style="text-align: right;">Page 82</p> <p>1 I am not sure what this is, other than it does 2 reference Lot 7 and it shows it to be 1.06 acres and its 3 area to detention is 100 percent. Does that mean the 4 whole lot would be used? 5 A. What this means is that 100 percent of the 6 area of Lot 7 runoff goes to the detention basin Lot 6. 7 Q. Okay. So just from -- I know there are 8 schematics of it. To implement what you told me, as the 9 best or most practical and workable solution to the 10 problems we've been discussing -- How big would that 11 pond be on Lot 7? Would it be right up to the easement 12 basically? 13 A. I believe it would include that easement area. 14 The one to the south, on the south side of Lot 7 would 15 go away because that would be part of the basin itself. 16 Probably just continue the side walls of Lot 6 to the 17 north. 18 Q. Okay. Obviously no building on 7? 19 A. Correct. 20 Q. Exhibit 12 purports to be -- well I am marking 21 it. An e-mail from Richard Olson to you. This man -- 22 help me out. What is the subject matter of that? 23 A. Okay. I don't know who the man is, but there 24 should be -- okay. Isn't Angelotti the man?</p>	<p style="text-align: right;">Page 84</p> <p>1 BY THE WITNESS: 2 A. Can you please repeat the question for that. 3 Q. Sorry. Can you read the question back, 4 please. 5 (Record read as requested.) 6 BY THE WITNESS: 7 A. Yes. 8 MR. LUNDGREN: For the record, I think this should 9 be Number 13 because I am looking at Number 12 here. 10 MR. AMONI: What if I am superstitious. 11 MR. LUNDGREN: Then make it 14. 12 MR. AMONI: Well, Tom, I think we are done. 13 Thanks. 14 THE WITNESS: Thanks. 15 EXAMINATION 16 BY MR. LUNDGREN: 17 Q. I am going to show you Exhibit 1, again. I 18 think Mr. Amoni asked you to give him some general 19 definitions of what is meant in the section here that 20 talks about maintenance, do you remember those 21 questions? Maintenance, specific to the detention basin 22 on Lot 6? 23 A. Yes. 24 Q. In that same section, it's a reference to</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. I couldn't -- 2 MR. LUNDGREN: You don't get to ask him questions. 3 BY THE WITNESS: 4 A. I believe it is Jim Angelotti. 5 Q. Okay. Can I see that? 6 A. Yes. 7 MR. LUNDGREN: What is the date of this e-mail? 8 BY MR. AMONI: 9 Q. Richard Olson wants Lot 7 to be donated; is 10 that what this e-mail is talking about? 11 A. I am inclined to ask the same question, you 12 should donate the property to the City. I agree that 13 that is what it says. 14 Q. On 12 there is an e-mail that purports to be 15 from you and dated January 5th, 2017. I think we've 16 covered this so I am going to hand it to you and just 17 ask you if Exhibit 12, barring today's date, is a 18 summary of how Lot 7, according to you or in your 19 opinion, would solve the issues we have been talking 20 about. Or saying basically this is a synopsis of what 21 you already told us and explaining it? 22 (Witness viewing documents.) 23 MR. LUNDGREN: This should be 13. 24</p>	<p style="text-align: right;">Page 85</p> <p>1 Article 3 -- I'm sorry. Article 8 -- Article 3, Section 2 8, which I will find for you there. That is entitled, 3 the power and duties of the board of directors. And in 4 section -- Subsection A, it talks about the management 5 of improvement, maintenance repairs, rehabilitation of 6 all common areas including signage, landscape, entrance, 7 landscape islands, specifically the stormwater detention 8 delineated and to be constructed and maintained on 9 Lot 6. What would -- in your mind -- in your -- Strike 10 that. 11 What is included in improvement and management 12 and specific to the detention pond on Lot 6? 13 A. I would say the management would be the 14 ability of the detention basin to convey the water 15 through there to manage the stormwater of the 16 subdivision, and improvement would be anything added to 17 the stormwater management facilities to make the systems 18 better. 19 Q. Would improvement include enlarging the 20 stormwater detention area? 21 A. Yes. 22 Q. With regard to Number 3, which is the 23 ordinance 2004, dash, 48, the special service ordinance. 24 Section 4, which it talks about, I guess, the specifics</p>

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1 of what the special services tax, for a lack of a better
 2 way to put it, would be used for cost of operation,
 3 upkeep, maintenance, repair, replacement,
 4 reconstruction, alteration, and again this is relative
 5 to all the common areas, but also specifically including
 6 the Lot 6 water detention and/or retention area. What
 7 would be meant by reconstruction alteration -- First of
 8 all, should there be a comma? Are those two separate
 9 things or is reconstruction alteration one concept?
 10 A. I would assume a comma would be used there.
 11 Q. So let's say first, reconstruction, what does
 12 that mean?
 13 A. If part of the facility was damaged, it wasn't
 14 maintaining the same shape or function, then it would be
 15 reconstructed to get it back to where it was and
 16 alteration would be an expansion of the facility. A
 17 change in maybe the pipe that enters it. Something
 18 different than what is already there.
 19 Q. To the best of your knowledge, is Lot 6
 20 privately owned or has that been dedicated to the City.
 21 Does the City own Lot 6?
 22 A. To the best of my knowledge, the City does not
 23 own Lot 6.
 24 Q. You talked about having a conversation with

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1 Dr. Vyas about possible expansion of Lot 7 to include
 2 fountains and water gardens?
 3 A. Yes.
 4 Q. Would fountains and water gardens have any
 5 detention or retention benefit at all?
 6 A. Detention or retention, no.
 7 Q. Okay. Would it potentially have a negative
 8 effect on the water drainage issue out there?
 9 A. Yes.
 10 Q. Why is that?
 11 A. A wet basin would decrease the capacity in the
 12 basin by keeping that storage area full of water.
 13 Q. The water garden and fountain would
 14 conceivably have an aesthetic benefit to Dr. Vyas's
 15 property, correct?
 16 A. Correct.
 17 Q. Did that conversation ever go any further?
 18 A. No.
 19 Q. Did you have any conversation with him if he
 20 conceivably were going to put in fountains, water
 21 gardens, things of that nature, there would also be some
 22 set aside for actual detention or retention?
 23 A. I believe I mentioned that to him.
 24 Q. But you guys never had another conversation

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1 after that?
 2 A. No.
 3 MR. LUNDGREN: I don't think I have anything else.
 4 FURTHER EXAMINATION
 5 BY MR. AMONI:
 6 Q. Certainly not going to reiterate. The plan to
 7 increase the capacity entails putting the pond on 7, but
 8 you are not suggesting that there is no ability for the
 9 developers or any association that would be a form just
 10 to go and do that? They would have to buy the lot from
 11 the owner of 7, right?
 12 A. I would assume that would be the case.
 13 Q. Or City of Sandwich, assuming they follow the
 14 rules, could take it, Lot 7?
 15 A. I don't know what rules.
 16 Q. You have seen the City acquire property for
 17 public purposes in your tenure, right? You have a
 18 general view.
 19 A. Yes.
 20 Q. That is all I am talking about. Those are the
 21 only two ways either the homeowners have to get --
 22 Sorry. The owners association has to buy Lot 7 or the
 23 City has to take it?
 24 A. I guess. Can you rephrase the question.

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1 Q. Can you think of any other way we can get a
 2 pond lawfully?
 3 A. Onto Lot 7?
 4 Q. Yes.
 5 A. No.
 6 Q. Okay.
 7 MR. AMONI: That is all.
 8 MR. LUNDGREN: We will reserve signature because of
 9 the engineering concepts and things. I want Tom to be
 10 able to make sure that everything says what it says. I
 11 am always worried I am going to get things thrown at me
 12 when I say I want to reserve signature.
 13 (Witness excused.)
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1 STATE OF ILLINOIS)
) SS.
 2 COUNTY OF KENDALL)
 3
 4 I, SHANA E. MARGWICH, C.S.R., in and for the County
 5 of DuPage, State of Illinois do hereby certify that
 6 THOMAS HORAK was first duly sworn by me to testify the
 7 truth; that the above deposition was recorded
 8 stenographically and reduced to typewriting by me; that
 9 the deposition is a true, correct and complete
 10 transcript of the entire testimony given by the said
 11 witness at the time and place hereinabove set forth, and
 12 that signature is hereby reserved by said witness.
 13 I further certify that I am not counsel for nor
 14 in any way related to any of the parties to this suit,
 15 nor am I in any way interested in the outcome thereof.
 16 In witness hereof, I have hereunto set my hand this
 17 4th day of December, A.D., 2019.
 18
 SHANA E. MARGEWICH
 19 CSR License #084-004586
 20
 21
 22
 23
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1 _____
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 ^ WITNESS
 7
 8 STATE OF ILLINOIS)
 9 COUNTY OF _____)
 10 SUBSCRIBED AND SWORN TO
 before me this _____ day _____
 Notary Public
 11 of _____ A.D., 2019.
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1 SIGNATURE PAGE/ERRATA SHEET
 2 I, THOMAS HORAK have read the fore- going
 3 transcript of my deposition taken on ^ 21st of November,
 4 and except for any corrections noted below, it is a true
 5 and correct transcript of my deposition given on the
 6 date aforesaid.
 7 CORRECTIONS BASED ON ERRORS IN
 8 REPORTING OR TRANSCRIPTION
 9 PAGE LINE
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