

BEFORE THE STATE OF WISCONSIN
DIVISION OF HEARING AND APPEALS

In the Matter of Manual Code 3565.1
for the Approval Authorizing the
Department of Natural Resources to
Grade More Than 10,000 Square Feet
On the Bank of North Lake, Install
A Boat Launch Structure and Two Case No. IP-SE-2009-68
Outfall Structures on the Bed of -05745, -05746, -0547,
North Lake, Install Four Culvert -05748, -05749, -05750
Crossings Over Wetlands, and Fill
Up to 0.16 Acres of Wetland For
Construction of a Public Boat
Launch on North Lake and Adjacent
Property Located in the Town of Merton,
Waukesha County, Wisconsin

Examination of PETER WOOD, taken at the
instance of Reddelien Road Neighborhood Association,
under and pursuant to all applicable rules, before
JESSICA R. WAACK, Registered Merit Reporter, Certified
Realtime Reporter, Registered Diplomate Reporter and
Notary Public in and for the State of Wisconsin, at
Quarles & Brady, 411 East Wisconsin Avenue, Milwaukee,
Wisconsin, on Friday, August 26, 2011, commencing at
10:07 a.m. and concluding at 12:19 p.m.

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I N D E X

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Exhibit Identified:	Page
No. 16 - Four-Page Document of Elevations From Kapur & Associates.....	16
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Disposition Of Original Exhibit/s:

Exhibit No. 16 was returned to Mr. Gleisner. Exhibit No. 110 was returned to Mr. Gallo. A copy of the original exhibits was included in the original transcript.

1 Also, we're trying to make -- it
2 benefits both of us if we have a clean, clear
3 record. So if we're dealing with exhibits, we
4 want to be sure that we are talking the same
5 language. We want to be sure that we're referring
6 to the same information on an exhibit.

7 So I'm sure your counsel has gone over
8 with you the other fine points of a deposition.
9 Now, how are you employed, Mr. Wood?

10 A I'm a storm water engineer with the Department of
11 Natural Resources, and I work out of our office in
12 Sturtevant.

13 Q And how long have you been employed with the DNR?

14 A Just over 20 years.

15 Q What's your educational background?

16 A I went to a couple colleges on the East Coast. I
17 grew up in Connecticut. So I went to a small
18 school in Upstate New York, Paul Smith College. I
19 have an associate's degree in ecology from Paul
20 Smith. Then I went to State New York School,
21 SUNY-ESF in Syracuse, where I have a forest
22 engineering degree.

23 Q And you are an engineer, and it says water
24 resource engineer. Is that a civil -- type of
25 civil engineer?

1 A Yes. I think it would be considered in that
2 category, yes.

3 Q Your counsel has prepared -- I'm showing you now
4 what has been marked yesterday as Exhibit No. 1-A.
5 Your counsel has prepared a statement of what you
6 will be testifying to. I wonder if you could read
7 that into the record so that we can set the
8 parameters of this deposition, please.

9 A "Mr. Wood may be called to testify to issues
10 related to this matter of which he has knowledge
11 including his analysis of information regarding
12 elevations of various locations on the DNR,
13 formerly Kraus, property, adjacent wetland complex
14 and outlet channel and North Lake and his
15 interpretation and engineering opinion regarding
16 the preferred flow paths that service water
17 along and across the DNR, formerly Kraus,
18 property."

19 Q Thank you very much, sir. So you would have been
20 responsible for any topos that would have been
21 prepared?

22 A No, I was not responsible for that.

23 Q Okay. What was your role then at the Kraus site?

24 A My role was to be on site with Lynette Check from
25 DNR and also the surveyor, the registered land

1 surveyor from -- employed by Kapur & Associates.

2 I believe that was done -- I'm a little
3 fuzzy on the actual date. My recollection, it was
4 last fall. I think it was the spring.

5 You could probably -- someone could
6 probably help me with the exact days, but I was
7 on-site with Lynette Check and the surveyor from
8 Kapur & Associates observing him survey.

9 At that point in time, it was the
10 different cross-sections of the channel located on
11 the north side of the DNR property.

12 Q And so you were basically overseeing the shooting
13 of elevations?

14 A I would not say I was overseeing. I would say I
15 was just observing.

16 Q Do you have a good understanding of the
17 elevations?

18 A I have a good understanding of the elevations that
19 were put on a map by Kapur & Associates.

20 Q Well, let's start with Exhibit No. 3. That --
21 now, I'm going to assume --

22 MS. KAVANAUGH: Yes.

23 MR. GLEISNER: Counsel, you've got your
24 exhibits --

25 MS. KAVANAUGH: Yes.

1 MR. GLEISNER: -- from yesterday?

2 BY MR. GLEISNER:

3 Q That is an exhibit which is actually the final
4 plans of the DNR. I wonder if you could go to --
5 let's start with C114 in that exhibit.

6 Now, that appears to be a survey
7 complete with elevations on it, would you agree
8 with that? You have to -- by the way, you have to
9 say yes or no.

10 A No, no.

11 Q She cannot take -- this young lady here, we have
12 to be good to her --

13 A Yes.

14 Q -- or we don't get a good record. You have to
15 speak so she can take down what you're saying --

16 A Yep, got it.

17 Q -- yes or no. Is that the latest -- to your
18 knowledge, is that the latest survey that has
19 elevations on it?

20 A The survey that I observed being done included
21 more data points, particularly to the north of the
22 data points that are located on this plan sheet.

23 Q When you say -- let's take a look at -- now I am a
24 little confused. Looking at the sheet that is
25 here in front of us, are you saying that you went

1 north of what is marked as the property line on
2 the far top or northern portion of C114?

3 MS. KAVANAUGH: I'd object. He said
4 nothing to that effect. He said there were more
5 data points.

6 MR. GLEISNER: Okay. And I asked where
7 those --

8 MS. KAVANAUGH: No.

9 MR. GLEISNER: Not at all. I'm asking
10 where the data points --

11 MS. KAVANAUGH: No, that's not what you
12 asked.

13 BY MR. GLEISNER:

14 Q How far north did the data points go?

15 A The data points that are not shown on this plan
16 sheet --

17 Q Uh-huh.

18 A -- extend from the northernmost data point that
19 you can see here to the line marked "property
20 line." In other words, it fills in the gap
21 between the northernmost data points shown on this
22 plan sheet and the property line.

23 Q Let me ask it this way. You stated a moment ago
24 that, "I observed being -- the survey that I
25 observed being done included more data points

1 particularly to the north of the data points that
2 are located on this plan sheet."

3 Can you point out for me where the
4 northernmost data points are?

5 A It would be -- I don't know how to describe this,
6 but in this area.

7 Q Okay. Before we make the record, and to the north
8 of those data points would be where?

9 A (Witness points.)

10 Q That property line?

11 A Right.

12 Q All right. Having reference to C114 then -- let's
13 just mark this so we're clear on what we're doing
14 here. Let's take this light green marker here.
15 Would you draw a line along the property line
16 that's along the northern portion of the plat that
17 we have in front of us?

18 A (Witness complies.)

19 Q Thank you very much. Now, let's be clear. You
20 did not consider any data points north of that
21 line?

22 MS. KAVANAUGH: And I guess I'd object.
23 He didn't say "consider." You asked him where he
24 saw them take data points, so where the
25 information he looked at had data points.

1 MR. GLEISNER: Actually, Counsel, I
2 asked a very specific question.

3 BY MR. GLEISNER:

4 Q Did you consider any data points north of that
5 line?

6 A I do not know the answer to that question.

7 Q And the data points that are involved in this plat
8 are all south of that property line, correct?

9 A I would agree with that, yes.

10 Q All right. Now, let's take a look at the data
11 points that run -- first of all, are you familiar
12 with the existence of a stream or some kind of
13 unnamed creek that is on the northern portion of
14 the plat of survey that you have in front of you?

15 A Yes. I am aware that there is a drainage channel
16 on the north side of the property.

17 Q Do you have in mind where that would be in
18 reference to that plat? Don't draw with that one.
19 Let's use this blue one. If you could give me an
20 idea of the location of that stream, I'd
21 appreciate it, using the blue marker.

22 A (Witness complies.)

23 Q And is it that wide, or is it wider than that?

24 A It's quite a bit wider than that.

25 Q Can you give me an approximation using that

1 marker?

2 A (Witness complies.)

3 Q Thank you, Mr. Wood. Now, you have drawn in
4 blue -- and let me just ask you to -- would you
5 initial the blue marks that you've just placed?

6 A (Witness complies.)

7 Q And also just maybe the blue marks, too.

8 A Oh, I'm sorry. All of them?

9 Q No, that's good.

10 A Okay.

11 MR. GLEISNER: Now, Counsel, just so
12 we're clear on this, Exhibit 3 will be attached to
13 the deposition of Mr. Hudak from yesterday, but
14 we'll also attach this --

15 MS. KAVANAUGH: That's fine.

16 MR. GLEISNER: -- to the deposition of
17 Mr. Wood.

18 BY MR. GLEISNER:

19 Q The blue lines that run along the northern part
20 that you've drawn on this plat of survey, those
21 represent a stream, is that correct, or a stream
22 bed?

23 A I would say that represents an approximate
24 drainage channel configuration.

25 Q Can you explain what you mean by that?

1 A It's a conveyance of -- it's a channel that allows
2 for conveyance of water from one point to another.

3 Q And did you make observations yourself about that
4 channel?

5 A I have been on the property approximately two
6 times. I had never been on the property during a
7 rain event. So I did not see flowing water during
8 the time I was on the property; however, I did see
9 pockets of standing water in the channel.

10 Q Can you tell me, looking at the blue lines that
11 you have placed on Exhibit 3, can you tell me
12 whether or not that water was located toward the
13 east? toward the middle? toward the west of those
14 blue lines?

15 A Can you restate? I don't understand.

16 Q Sure. Where was the standing water?

17 A The standing water was at several locations. I
18 can't -- I'm -- off of memory, I can't pinpoint
19 that.

20 Q All right. Fair enough. Are you familiar with
21 bed and banks?

22 A I'm familiar with the concept, but I don't fulfill
23 that role for DNR, so I'm not trained in that
24 particular area. I'm just familiar with the
25 concept.

1 Q Did you observe banks on that channel?

2 A Without the training, I guess I would be hesitant
3 in making any kind of assessment or claim. I'm
4 not trained or have any experience in defining
5 that.

6 Q So you are not in a position to testify whether or
7 not there were bed or banks on this -- what we
8 call a channel?

9 A I would agree with that, yes, I'm not in a
10 position to testify on this.

11 Q Can you tell me the elevations that are noted in
12 that channel? Are there any elevations noted in
13 that channel?

14 A Not on this plan sheet.

15 Q What plan sheet would that be in?

16 A There was another document that was generated by
17 Kapur based on the surveying that I observed.
18 That document should be available somewhere.

19 MR. GLEISNER: Off the record for a
20 moment.

21 (Discussion held off the record.)

22 (Exhibit No. W-1 was marked.)

23 BY MR. GLEISNER:

24 Q I want to show you what has been marked as RRNA
25 Exhibit W-1, which was produced for the first time

1 today by counsel for the DNR. And I want to ask
2 you: Can you read the elevations on this sheet?

3 A With a -- probably a magnifying glass.

4 MS. KAVANAUGH: And I have one.

5 BY MR. GLEISNER:

6 Q Well, we can't read the elevations, and we note
7 that this is Kapur & Associates.

8 MR. GLEISNER: And Counsel for the RRNA
9 and NLMD would like to have you, Edwina, call
10 Kapur & Associates and have them send a PDF over
11 of this document so that we can make out what's on
12 here. We consider this to be a crucial document.

13 MS. KAVANAUGH: Okay. Well, I'm not
14 sure who to -- maybe --

15 THE WITNESS: I have it.

16 MS. KAVANAUGH: You have his number or
17 you have the document?

18 THE WITNESS: I actually have a PDF of
19 this.

20 MR. GLEISNER: Can you get it to us now?

21 THE WITNESS: If I can get on a
22 computer.

23 MR. GLEISNER: Here you go.

24 (A brief recess is taken.)

25 (Exhibit No. 16 was marked.)

1 MR. GLEISNER: Back on the record. A
2 statement first of all. Because of the kindness
3 of Mr. Wood and Ms. Kavanaugh, we have gotten some
4 documents that --

5 MS. KAVANAUGH: A document.

6 MR. GLEISNER: A series of documents,
7 actually, that constitute one group exhibit that
8 are more legible than what was previously marked
9 as RRNA W-1. That now has been now renumbered
10 RRNA Exhibit 16, correct, Madame Reporter?

11 BY MR. GLEISNER:

12 Q We have now given you, Mr. Wood, what has been
13 marked as Exhibit 16. And that is a
14 four-page document, correct?

15 A That is correct.

16 Q Now, on that document on the first page, there are
17 a series of elevations, correct?

18 A That is correct.

19 Q Okay. Now, would this be easier for you to see?
20 Just take a look at that and see if that's easier.
21 Or if you can make out all of the elevations on
22 that 11 X 17.

23 A I can make out the elevations on the 11 X 17.

24 Q Very good. Then we won't mark these right now. I
25 would ask, first of all, do you see the stream bed

1 that we were talking about a few minutes ago?

2 A I see the drainage way that was surveyed when I
3 was on site portrayed on this map.

4 Q All right. Then I would like you to just use the
5 blue pen and mark the boundary line of the
6 drainage way just so that we can have an idea of
7 what you saw.

8 A What I'm going to mark is the approximate --

9 Q Understood.

10 A -- area.

11 Q Understood.

12 A (Witness complies.)

13 Q Thank you very much. Now, I'm also going to
14 reference your attention -- thank you for
15 initialling that. I appreciate that.

16 A I'm learning.

17 Q Very good. I'm referencing your attention back to
18 what has now been marked as Exhibit 15. And there
19 is an area that is surrounded in red. What does
20 that refer to?

21 A This is an area that I drew on the maps provided
22 by Kapur that are part of Exhibit 16 to
23 demonstrate a depression that appears to exist on
24 the DNR property where the proposed boat launch
25 will be located.

1 So the pink line represents, I would
2 say, like, the upper limit of this depression. In
3 other words, if the water -- if the depression was
4 filled with water, the pink would represent where
5 you would visually see standing water.

6 So I put -- I drew that on the map. And
7 then I placed an arrow, which is the lowest
8 elevation that -- where water would be released
9 from this depression.

10 Q Yes.

11 A So that's all it represents. If water had filled
12 up the depression, where would we prefer to leave
13 the DNR property? And that's what that arrow
14 represents is the lowest contour -- or the lowest
15 data point that I could find that would basically
16 represent where the water would tend to leave the
17 depression.

18 Q Now, is Exhibit 16, the first page, what we see in
19 Exhibit 15?

20 A No. The Exhibit 15 is based on page 2 of
21 Exhibit 16.

22 Q Okay. Very good. Then on page 2 of Exhibit 16,
23 again, for orientation purposes, could you, in
24 blue, show us where the drainage ditch or stream
25 or whatever is located?

1 A (Witness complies.)

2 Q Thank you very much. Now, could you also -- I
3 don't have pink. I'm sorry. Could you use orange
4 and do an approximation of that line that you see
5 on Exhibit 15?

6 A (Witness complies.)

7 Q Now, could you take green, just so -- thank you
8 for initialling that. I appreciate that. Could
9 you take green and put the arrow that appears on
10 Exhibit 15 so that we can see that?

11 A (Witness complies.)

12 Q Thank you. And, again, thank you for initialling
13 that. So now at this point, except for the --

14 (Cell phone rings.)

15 (A brief recess is taken.)

16 MR. GLEISNER: Back on the record.

17 BY MR. GLEISNER:

18 Q We were in the process of asking you if Exhibit 15
19 now, except for the added blue marks, corresponds
20 to page 2 of Exhibit 16?

21 A That's correct.

22 Q Okay. Now, could you go back to page 1 of
23 Exhibit 16 and describe for the record what we're
24 looking at there.

25 A This is the representation of the additional

1 surveying that was done while I was present on the
2 site last fall that pulls in the data for the
3 drainage way, drainage channel that was located on
4 the north end of the property.

5 Q So the purpose of this survey, was that done by
6 Kapur & Associates?

7 A Yes.

8 Q The purpose of that survey in page 1 of 16 was to
9 establish the elevations in the drainage way, is
10 that correct?

11 A That's correct.

12 Q And did you, at that time or anytime subsequent,
13 address the trees on the location of the site?

14 A I'm not sure what you mean by that.

15 Q The trees on the east end of where the parking
16 lot, the proposed parking lot would be.

17 MS. KAVANAUGH: I would ask for
18 clarification. What does "address" mean?

19 THE WITNESS: You have to point to what
20 you mean by "trees."

21 BY MR. GLEISNER:

22 Q This area here. And for clarification, did you
23 shoot -- or did Kapur shoot any elevations in and
24 among the trees that are located on the eastern
25 third of what will be the proposed parking lot for

1 the DNR?

2 MS. KAVANAUGH: On the date that --

3 THE WITNESS: While I was on site, the
4 surveying was restricted to running a series of
5 cross-sections on the north drainage way that
6 we've been talking about. When I was on site,
7 there was no additional surveying points or data
8 points collected on the site.

9 BY MR. GLEISNER:

10 Q At any time --

11 A At any time I was there, no.

12 Q Can you explain to us what page 2 of Exhibit 16
13 shows?

14 A Page 2 is a representation of the data, the survey
15 data points that were collected on the DNR
16 property at a larger viewpoint. In other words,
17 it pulls in a larger area versus the page 1 of the
18 exhibit. It pulls in the whole DNR property area,
19 whereas the first page just covers the northern
20 section of the channel area.

21 Q So if I'm correct then, page 2 is an overview of
22 the entire area where the parking lot will be?

23 A Exactly.

24 Q And page 3 then of 16.

25 A Page 3 are basically just the cross-sections from

1 the north property line or the north end of the
2 channel --

3 Q Yes, sir.

4 A -- heading south across the DNR property.

5 Q Okay.

6 A So it's basically representing a series of
7 cross-sections going south running down the
8 channel to the east and then representing the
9 elevations from -- along that point.

10 Q Okay. And page 4.

11 A Page 4 would be a continuation of the series of
12 cross-sections.

13 Q Thank you. Now, going back to pages 1 and 2 of
14 Exhibit 16. To your knowledge, are those the most
15 current elevations that the DNR possesses?

16 A To my knowledge, that would be correct.

17 Q And those elevations were not shot by DNR
18 personnel; they were shot by Kapur & Associates?

19 A The only knowledge -- the only thing I have
20 firsthand knowledge of is the elevation shot by
21 Kapur on the date I was there. I don't have
22 firsthand knowledge of any of the other data
23 points.

24 Q Now, could you -- let's back up for a moment and
25 talk about your job description. You -- I believe

1 you testified, I could look, but I believe you
2 testified that you're a storm water specialist?

3 A Storm water engineer.

4 Q Storm water engineer?

5 A Yes, yes, correct.

6 Q Now, in terms of your responsibilities for the
7 DNR, are you a surface water specialist?

8 A I don't know what that means.

9 Q Okay.

10 A Can you restate what that means?

11 Q Are you concerned primarily with surface waters on
12 properties that might interest or be of interest
13 to the DNR?

14 A That would be hard to quantify. I'm in the storm
15 water program with the DNR.

16 Q Okay.

17 A Okay. Okay? My role as a storm water program
18 employee is to be involved in permitting and
19 regulation of construction sites both during
20 construction -- so that would be erosion control
21 during construction and what we call post
22 construction storm water management for what we
23 call developments such as this one.

24 I also work in regulation of municipal
25 storm water discharges. In both of those realms,

1 there is a surface water and groundwater
2 component. One of the codes I've worked with very
3 closely is NR-51. It's a state performance
4 standard for both agricultural and what we call
5 nonagricultural runoff.

6 As part of the performance standards for
7 that -- that would apply to development, which I
8 regulate. There is a groundwater component. We
9 have a regulation on certain conditions that we
10 require developments to take surface water and
11 infiltrate it into the ground.

12 So in that component, there is a
13 groundwater/surface water connection there. So I
14 don't know if I'm really answering your question.
15 But what I'm trying to say is that the storm water
16 is not just surface water. Storm water has a --
17 somewhat of a groundwater component --

18 Q Right.

19 A -- where it ultimately may end up. So I'm not
20 sure if that is helpful at all.

21 Q It's very helpful. I would like to ask you this:
22 I'm just going to reference this for informational
23 purposes and not mark this.

24 The property where the DNR has -- that
25 the DNR has purchased, the Kraus site, is east of

1 some farm fields. Have you done any studies with
2 regard to the runoff that will be occasioned from
3 the farm fields?

4 A I have not done any kind of studies or analysis of
5 the runoff to this property.

6 Q To your knowledge, has the DNR done any studies in
7 that regard?

8 A To my knowledge, no.

9 Q Okay. I would like to focus for a moment on your
10 actual visits to the Kraus site.

11 A Uh-huh.

12 Q You testified earlier that you visited at least
13 two times, is that correct?

14 A Yes.

15 Q Can you recall -- take a second and recall if you
16 had -- if you have knowledge of when you were
17 there?

18 A The first time would have been several years ago.
19 I was involved as a more or less technical
20 consultant for Kapur engineers when they were
21 developing the site plan, particularly on the
22 elements related to the storm water treatment
23 practices.

24 So what I tried to do was give them some
25 advice on different ideas for treating the storm

1 water from the proposed boat launch area. So my
2 first visit was base checklist just to go and get
3 oriented with the property.

4 So that was several years ago. And then
5 I was involved -- I think I met you. I was
6 involved in the informational hearing in Waukesha.

7 Q Oh, on September 30?

8 A Yeah, I was manning the booth that had the storm
9 water display. I know Mr. Gallo was there also,
10 and I remember -- I recall meeting you.

11 Q Yes, I do, too.

12 A So that was my role was more of the advisory.

13 Q Uh-huh.

14 A And I really had not done anything at all since
15 that time until we started talking -- you know,
16 some of these court cases had moved along and
17 there was some interest in understanding the
18 drainage patterns a little more.

19 Q So let's go back to several years ago.

20 A Yeah.

21 Q When you were consulting with Kapur & Associates,
22 were you actually involved in setting up or
23 helping to set up culverts and other --

24 A I wasn't involved in that part. My role was
25 strictly just to give them some advice on

1 different storm water treatment practices; not
2 flow issues, not storm water management from a
3 flow standpoint; just a treatment standpoint.

4 The fact that storm water has permeable
5 surfaces, have stuff in it and different
6 techniques, that could be used to remove
7 pollutants from storm water. That was my
8 exclusive role. I wasn't involved in anything
9 about how water moved around at all at that point.

10 Q Thank you. I'm going to show you what was marked
11 yesterday as Exhibit 5. It represents to be the
12 Kapur & Associates report dated September 22,
13 2009. Are you familiar with that report?

14 A Yes, I believe I am.

15 Q And what was the purpose of that report, to your
16 knowledge?

17 A It was to quantify the storm water management
18 system that was proposed.

19 Q Did you have any role in authoring that report?

20 A I was not involved in anything as far as any kind
21 of calculations or any kind of role in writing any
22 of this or any such things.

23 Q Would your role or would your responsibility in
24 connection with the Kapur report that you have in
25 front of you relate to issues such as development

1 and redevelopment of the parking lot or the access
2 road?

3 A Could you --

4 Q Different types of fill are required if you are
5 using -- if you're building a new development as
6 opposed to redeveloping an --

7 A Yes.

8 Q -- existing?

9 A Right.

10 Q Did you have any role in that?

11 A I gave some guidance on interpretation of NR-151.

12 Q Okay. I'd just like to talk about that for a
13 moment, if I could. With regard to the access
14 road now from Reddelien Road down to where the
15 parking lot is concerned --

16 A Yep.

17 Q -- it has been characterized in that Kapur report
18 that you have in front of you as redevelopment.
19 Can you explain why that is?

20 MS. KAVANAUGH: And I guess I would
21 object. What does that have to do -- I think
22 storm water is arguably relevant and likely to
23 lead to admissible evidence in terms of flow
24 patterns and things like that.

25 But whether or not it's characterized as

1 redevelopment or new development is relevant to
2 the storm water permit, which isn't part of this
3 hearing.

4 MR. GLEISNER: I do want to understand.
5 This is discovery, Counsel. I just want to
6 understand the concept, why he reached that
7 conclusion, if he reached that conclusion.

8 MS. KAVANAUGH: But you -- explain to me
9 why that's likely to lead to you to discover
10 admissible evidence having to do with navigability
11 on this site.

12 MR. GLEISNER: I don't have to explain
13 my strategy right now. I just want to understand
14 if he -- or if he had any involvement in that and
15 why that decision was made.

16 MS. KAVANAUGH: Okay. You can answer,
17 but my objection stands.

18 MR. GLEISNER: Go ahead.

19 BY MR. GLEISNER:

20 Q Mr. Wood.

21 A I'm trying to figure out how to give you the right
22 answer. The code -- okay. The code has a
23 definition of redevelopment. It's very simple.
24 It's any proposed development that replaces an
25 existing development.

1 We consider -- and this has been
2 established through many, many projects that an
3 existing gravel road is equivalent to basically
4 essentially a paved road. It functions that way,
5 because over time, it gets compacted, and it
6 functions like pavement.

7 So the thought process was that there is
8 an existing gravel road that runs from the main
9 road to the boat launch. So the thought process
10 was putting a road on top of that road is the
11 redevelopment.

12 That's kind of the short version. I
13 guess that's the -- and we have other projects
14 where a similar approach was used.

15 Q Focusing on Exhibit 2, which was introduced
16 yesterday, there is an access road which purports
17 to be -- this is a -- this is a survey that was
18 done back in 2005 -- that purports to be the road
19 that will be -- where the access road of the DNR
20 is going to be located.

21 And on that drawing, it says "gravel
22 drive." Did you ever observe gravel on that --

23 A Yes, I do recall seeing gravel.

24 Q Where?

25 A See, my recollection, through the entire course of

1 the road.

2 Q Okay. Thank you. I'm now going to show you what
3 has been marked as Exhibit 7. That was marked
4 yesterday. Do you recognize that?

5 A It doesn't look particularly familiar to me.

6 Q Just for the record, that's the Gestra report.
7 You never had an opportunity to study or use that?

8 A I don't believe so. It doesn't look familiar to
9 me.

10 Q Okay. Thank you very much. I'd like to return,
11 if I could -- I'd like to return, for a moment, to
12 how we began this deposition. We read in what
13 you're going to be testifying to at the hearing.

14 And we've touched on many of the things
15 that you indicated you'd be testifying on, but it
16 says that you are going to be testifying on
17 adjacent wetland complex. What's that mean?

18 A There is a wetland complex that I'm aware of that
19 would be located -- I don't know how to give you a
20 location. It would be west of the DNR proposed
21 boat launch site running towards -- running west
22 towards the bottom of the slope as shown on DNR
23 wetland maps and things.

24 Q I apologize.

25 MR. GLEISNER: Off the record.

1 (Discussion held off the record.)

2 BY MR. GLEISNER:

3 Q I'm going to show you, again, Exhibit 2. And I
4 wonder if you could help me or orient me as to
5 what you're talking about, "wetland complex."

6 A It is my understanding, based on this exhibit, the
7 area marked in green is considered a wetland. And
8 my understanding is that it is even shown on the
9 DNR wetland inventory maps as wetland.

10 Q So the area in the green circle to the north of
11 the proposed access road and the area in green or
12 circled in green to the south of that wetland area
13 on Exhibit 2, to your understanding, are wetland
14 complexes?

15 A That's -- to my understanding, I would believe
16 that's wetland --

17 Q Thank you very much. Now, turning to your
18 description of what you'll be testifying to. It
19 says that you will be testifying as to adjacent
20 wetland complexes. What would you -- what would
21 you understand your responsibility to be in that
22 regard?

23 A Well, it certainly wouldn't be whether it is
24 wetland or not. But possibly it's -- obviously
25 the wetlands are part of the bigger storm water

1 picture as in any wetland.

2 Q Yeah.

3 A They tend to be large areas that accumulate water.
4 So I think in that regard, that's how -- that's --
5 I guess we'd view the wetlands as large storm
6 water collection areas.

7 Q Thank you very much. Now, let me just -- so we're
8 understanding each other here, my -- what I have
9 learned from various materials that I have read
10 and from our experts is that storm water wetlands
11 and navigable waters are really facets of the same
12 issue. Would you agree with that?

13 A I'm not sure I understand that question.

14 Q They're all interrelated?

15 A Can you restate just to --

16 Q Sure. If you have wetlands, it will often be
17 filled, as you just testified, with storm water?

18 A Wetlands in many cases do receive runoff from
19 contributing drainage areas. In other words,
20 up-gradient lands in many, many cases drain to
21 wetlands. And the only exceptions would be ones
22 that are like fan-like wetlands that are dominated
23 by groundwater inputs.

24 But, yes, I would say most -- not most,
25 but in many, many cases, wetlands do receive some

1 of their water from the surrounding up-gradient
2 lands.

3 Q Now, I don't mean to imply that all navigable
4 waters relate or are in any way related to
5 wetlands or storm water, but wetlands or storm
6 water can lead to the existence of navigable
7 water. Do you agree with that?

8 A I'm not an expert in the navigable water issue.

9 Q Fair enough.

10 A I wouldn't want to talk much about that, so.

11 Q Okay. Fair enough. It also says that you're
12 going to be testifying as to an outlet channel.
13 Would you describe what that refers to?

14 A On this exhibit.

15 Q Sure. Let's look at Exhibit 2.

16 A On Exhibit 2 --

17 Q No, I apologize. I would like to go back to
18 Exhibit 16 in that regard.

19 A Yeah. In Exhibit 16 on page 1, it would be the
20 area that I highlighted in blue. That would be
21 what I would describe as the outlet channel.

22 Q If you go to page 2 of that, there is an arrow in
23 the -- that you've marked in green on page 2 of
24 Exhibit 16. Is that where the outlet is going to
25 occur?

1 A The green arrow on page 2 is a sub-outlet, I guess
2 I would call it. It was only used to represent
3 what would happen if the depressional area that is
4 on the DNR proposed boat launch site filled up
5 with water, where the water would prefer to go.

6 It would prefer to drain, based on my
7 interpretation of this map, back towards the west
8 and to what I understand to be the wetland
9 complex.

10 The drainage channel that we talked
11 about at the north end, when I say "outlet
12 channel," I would say this would be the outlet
13 channel from the larger wetland complex system
14 based on the information I have towards the lake.
15 Does that help?

16 Q It does help. As I'm looking at that drawing from
17 your perspective, to the right then is where the
18 lake is?

19 A Exactly.

20 Q And to the left looking at it from your
21 perspective is the west?

22 A Yes.

23 Q And so when that depression that you've marked in
24 orange fills with water, you expect the wetlands
25 to flush back into -- or the water to flush back

1 into the wetlands?

2 A Yes. If it filled up with water, that would be
3 the preferred direction initially.

4 Q Okay. Thank you very much. Let's take a look at
5 Exhibit 2. Where would that arrow be located on
6 Exhibit 2? And I don't expect you to mark it
7 right now. Just point to it, and then we'll talk
8 about it.

9 A It would be in approximately this location.

10 Q Okay. Now I would like you to mark something.
11 This time we're going to have you initial it real
12 clearly. Would you mark where that arrow would be
13 on Exhibit 2 in purple, please?

14 A (Witness complies.)

15 Q Thank you very much. Now could you just --

16 A Is that okay?

17 Q Maybe circle it so we can --

18 A Circle this?

19 Q Yes, thank you.

20 A (Witness complies.)

21 Q Actually, circle it just one more time so we
22 really can see it.

23 A Double circle like this?

24 Q That's good. Now, what you have done on Exhibit 2
25 is you have indicated that the flushing back or

1 the outlet from where the depressed area is on
2 Exhibit 16, page 2 would be to the southwest back
3 into the large wetland that is encompassed with
4 the green circle. Am I correct about that?

5 A To the best of my ability, yes.

6 Q Okay. Where would that water -- if it became
7 really inundated in that green area, where would
8 that water go from?

9 Assuming that this water becomes
10 filled -- the area in orange on Exhibit 2 becomes
11 filled with water and it goes back into this green
12 area, where would that area surrounded by the
13 large green circle to the south of the new access
14 road, where would that water go if it became very
15 full?

16 A I have a partial answer.

17 Q Sure.

18 A And my partial answer is because I only have
19 limited information. The full answer could only
20 be obtained by getting more surveying data south
21 of the DNR property.

22 Q Okay.

23 A In other words, surveying data running down
24 Reddelien Road and all the adjacent properties. I
25 think that's a component. In order to make a

1 complete, good answer, I would need to know that
2 information.

3 Q And that has not been obtained?

4 A No.

5 Q Okay.

6 A The only information that I have is the data that
7 was generated, I believe, again, by Kapur. Again,
8 I wasn't privy to the surveying that was done
9 other than when I was on site of the existing
10 access road. We have that, I believe. That
11 should be somewhere in the files, so.

12 Q Uh-huh, I believe so.

13 A So we have some information about the top
14 elevation of the access road.

15 Q Uh-huh.

16 A And we have information about at least one
17 existing culvert under that access road. Based on
18 the -- what we call the invert elevation or the
19 bottom elevation of that existing culvert, that
20 would be one of the ways water that came back from
21 the DNR land into the main larger wetland complex
22 that you referred to would go to the north.

23 Q And I appreciate your honesty, first of all, about
24 the lack of engineering reports, et cetera. Is
25 there any -- I don't know how to say this in a way

1 that is not going to be -- I want to be very
2 clear.

3 Is there any way that the water --
4 assuming that the large circle in green on
5 Exhibit 2 became full with water, is there any way
6 that that could wash east over the homes that are
7 located on Reddelien Road?

8 A I don't know an answer to that without more
9 detailed information.

10 Q And the DNR has not acquired that information?

11 A Not to my knowledge.

12 Q And you would be in a position to know if they
13 had?

14 A I wouldn't know that. No one's ever told me. No
15 one's ever asked me. I don't have any inside
16 information on that.

17 Q I appreciate that. Your responsibility would be
18 to have that information, I mean, as a storm water
19 manager, right?

20 A I don't have any personal responsibility on this
21 particular project other than just providing
22 advice to people. So I'm not sure whose
23 responsibility that would be.

24 Q Would you be -- who else in the DNR might have
25 that storm water information?

1 A I do not know.

2 Q That's fair. Now I'm going to show you what has
3 been marked as Exhibit 4. And in Exhibit 4, which
4 is some answers to interrogatories your counsel
5 was kind enough to provide us with -- bear with us
6 for a moment.

7 A Yep.

8 (Discussion held off the record.)

9 MR. GLEISNER: Back on the record.

10 BY MR. GLEISNER:

11 Q I'm going to show you Exhibit 4, and I am going to
12 refer your attention to Exhibit J attached to
13 Exhibit 4. That purports to be a memo from
14 Lynette Check, I believe?

15 A Yes. Sorry.

16 Q It's an email.

17 MR. GLEISNER: Thank you, Mr. Harbeck.

18 It's an email.

19 BY MR. GLEISNER:

20 Q Now, there is attached to that email a map or
21 actually a color -- there we go. It looks like an
22 aerial photograph. Was that done by you?

23 A This is -- yes, I produced this document.

24 Q I just would like to address that document for a
25 moment. Now we're dealing with hopefully the one

1 that was --

2 MR. GLEISNER: Off the record.

3 (Discussion held off the record.)

4 BY MR. GLEISNER:

5 Q I'd like you to take a look at that drawing and
6 explain to me, if you would, there's a reference
7 here in the Lynette Check email -- or memo, excuse
8 me, to an existing depression in the proposed
9 parking lot area, "see blue shaded area." And I
10 have to tell you very honestly, maybe I'm old, but
11 it all looks blue.

12 A There may have been -- I tried generating this
13 using PowerPoint. We have low technology at DNR.
14 I tried to generate this using PowerPoint. And
15 possibly I intended to have a blue area shown, and
16 it did not end up in the final product.

17 But I would say what we've been talking
18 about, and the pink area that I outlined on the
19 previous exhibits, that would have been the area
20 that I would have highlighted as a blue area.

21 Q Well, I appreciate that. And I wonder if you
22 could take -- I think red will show up the best.

23 A Okay.

24 Q I'm going to hand you a red Sharpie. And I'm
25 going to ask you, if you could, on that aerial

1 photograph -- would you agree it's an aerial
2 photograph --

3 A Yes, yes.

4 Q -- attached to Exhibit J? Could you draw what was
5 intended to be the blue area or surround it for
6 us?

7 A And, I believe, if I would have sent them the one
8 with the blue area, because I was using a crude
9 technique, it would have looked something like a
10 very crude shape, something very similar to what
11 I've just drawn on here.

12 Q Now, I would just like to have a couple
13 understandings.

14 A That's the best I can do without having the
15 contour overlay.

16 Q Is --

17 A So as long as you understand that. I'm eyeballing
18 based on --

19 Q I do understand that. We understand these are all
20 approximations.

21 A Yeah.

22 Q But let me just go back and say, is it your
23 recollection that that is what would have been the
24 blue area that Lynette Check was referring to?

25 A As best as I can recall, yes.

1 MR. HARBECK: Just for the record, it's
2 not Lynette Check. It's Mr. Wood's email himself.

3 MR. GLEISNER: Thank you very much,
4 Mr. Harbeck.

5 MR. HARBECK: The email that's attaching
6 this is Mr. Wood's email of September 27, 2010.

7 MR. GLEISNER: I stand corrected.

8 BY MR. GLEISNER:

9 Q So you were the one who authored the email --

10 A Yes.

11 Q -- to which this is attached --

12 A Yeah.

13 Q -- this photograph is attached?

14 A Yes, right.

15 Q There are some other characteristics of this, and
16 I just want to have you identify them. There are
17 some green arrows --

18 A Yes.

19 Q -- or green -- what is that?

20 A That represents -- all this information represents
21 a summary of what we've been talking about as my
22 interpretation of the data generated and the maps
23 produced by Kapur as my best guess of if a
24 raindrop fell on the DNR boat launch site and
25 filled up the depression, what would be a possible

1 flow path out of that location.

2 So this is my representation with the
3 information that I have following flowing water
4 downhill, taking a general rule of thumb on Earth
5 and just that water flows downhill and following
6 the elevations down.

7 So that was my best guess based on the
8 information that we had as to where that flow path
9 could have occurred.

10 Q So let me just make sure I understand what this
11 means. The green dot in the center --

12 A Yes.

13 Q -- to the west of the -- what you call a blue
14 area --

15 A Yes.

16 Q -- is the beginning of what you would believe to
17 be the flow pattern?

18 A That would be the arrow that I marked on the
19 previous exhibits. That would represent, similar
20 to the location where I marked --

21 Q The purple arrow on Exhibit 2 --

22 A Right.

23 Q -- for example?

24 A Yes. It would represent a spot elevation that I
25 picked out of the Kapur survey data.

1 Q Explain to me the pathway that that green arrow
2 then traverses.

3 A The pathway is -- again, this is just a function
4 of using a nonengineering graphic program. It was
5 basically a crude representation of water heading
6 a direction -- it's not really a scientific or a
7 calculated arrow.

8 It's basically a function -- it's a
9 crude representation of a possible flow path to
10 the next lowest point, which would be the culvert
11 under the existing road.

12 Q And that flow path heads out the -- what we've
13 discussed before, the stream that is just south of
14 the Peters' house, is that correct?

15 A Let's back up again. Restate that.

16 Q The green arrow seems to curve around and then run
17 east between a yellow and red line. That green
18 arrow on what is attached to Exhibit J, that is a
19 flow path that is following along what we call the
20 drainage ditch?

21 A Yes, yes.

22 Q Okay. And that green arrow presupposed that it's
23 going to be going through a culvert under the
24 access road, is that correct?

25 A Yes.

1 Q What data or professional evidence do you have
2 that it would follow that path and not, instead,
3 go south into the large green circle of wetland on
4 Exhibit 2?

5 A As I stated before, I don't have any evidence of
6 that. The only information I have is the survey
7 data in and around the access road. So this is
8 solely based on the information that is available.

9 Q So the green arrow that we have here is kind of a
10 wish that it would go under the culvert?

11 MS. KAVANAUGH: Object to the
12 characterization of that.

13 BY MR. GLEISNER:

14 Q A hope? Is there any evidence that it would go in
15 the direction that you have?

16 A The evidence is the elevations of the culvert. It
17 is pitched -- the culvert itself, based on what we
18 call the invert elevations of the existing
19 culvert, it's pitched to drain to the north.

20 Q But if there was enough water that left that arrow
21 that we've marked on -- let's just be clear here.

22 The arrow that is going southwest on the
23 photograph attached to Exhibit J, which is the
24 same arrow which is going southwest out of the
25 orange on Exhibit 2 and the same arrow -- the blue

1 arrow going southwest out of page 2 of Exhibit 16,
2 that arrow showing the flow path, if there was
3 enough water coming out of the depression, you
4 have nothing or no evidence that it couldn't go
5 south into that large green circle, is that
6 correct?

7 A Correct.

8 Q So if there was enough water coming out of that
9 orange area on Exhibit 2, it could, in fact,
10 inundate or fill up the green area that's in the
11 large circle on Exhibit 2, is that correct?

12 A Well, I guess you'd have to define what you mean
13 by "fill up."

14 Q That's a fair statement.

15 A Right.

16 Q It could cause the water level to rise in the
17 large green circle on Exhibit 2?

18 A You'd have to further clarify what you mean by
19 "rise." The issue -- these are large flat areas.
20 I think even without the actual survey data from
21 the DNR property down Reddelien Road --

22 Q Uh-huh.

23 A -- there is some other information, public
24 information available. Some of this information I
25 got off the Waukesha County GIS website.

1 They do have what's called a two-foot
2 contour interval map that gives a picture better
3 than a 10-foot contour interval map of the
4 topography here. If you would look at that map,
5 it would suggest that this area is very flat, and
6 it's all essentially at the same elevation.

7 That's why I'm saying it's difficult to
8 say any of this stuff in a lot of detail, because
9 the existing available data suggests very little
10 change at all in topography.

11 Q Uh-huh.

12 A I don't know if that's making any sense at all
13 or --

14 Q It is to a certain extent, but I just want to go
15 back to your earlier testimony that storm water
16 will often cause wetlands to fill with water. Is
17 that what you said?

18 A Yeah, storm water runoff can enter a wetland. A
19 wetland is just like any other depression. It has
20 a finite ability to make water disappear. When
21 that capacity's been exceeded, it has nowhere to
22 go except up. Similar to filling up a bathtub. I
23 don't know if that helps explain --

24 Q It does.

25 A -- how it works, but, sure, yeah. Anytime you add

1 water to a bathtub, something happens. But it's
2 really about -- it's more about the degree of. So
3 I want to make this highlight -- this wetland
4 complex, to my knowledge, is very large, 10 to 12
5 acres in size.

6 Q The green -- the large green --

7 A Yes.

8 Q -- circle --

9 A Yep.

10 Q -- on Exhibit 2?

11 A Right. The situation you get into -- you can do
12 this experiment yourself. If you take a glass of
13 water and fill it up, maybe that would be a
14 several-inch rise in water. If you took that same
15 glass of water and put it in the bathtub, you
16 wouldn't notice the change.

17 So that's an issue in this particular
18 situation also. Because of the large size and the
19 ability of that wetland to spread out water, for
20 lack of a better word, there has to be some
21 discussion about the degree of.

22 In other words, water draining off the
23 DNR property into the wetland complex, it can be
24 calculated what the maximum water level rise that
25 would occur.

1 Q Uh-huh.

2 A But you would need to know a lot more information
3 about the topography of the wetland to actually --
4 but it can be calculated. These are things that
5 could be done. You can calculate a volume of
6 water --

7 Q Sure.

8 A -- and project that over the wetland, and that
9 would tell you. The point would be, yes, that if
10 the wetland was not able to infiltrate water, that
11 if you added a drop of water, there would be
12 nowhere for it to go but up. But the question is:
13 Can you even measure what up is? I guess that's
14 the point.

15 Q Uh-huh. So let's just -- as I conclude here,
16 let's just quantify, as far as what you know, what
17 the DNR doesn't know.

18 The DNR doesn't know for sure that the
19 water flow along the arrow that is identified in
20 the photo attached to J of Exhibit 4 and at the
21 purple arrow in Exhibit 2 and the blue arrow in
22 the second page of Exhibit 16, the DNR doesn't
23 know for sure that that's the path the water is
24 going to go?

25 A That's correct.

1 Q The DNR does not know the characteristics of the
2 wetlands surrounded by the green circle in
3 Exhibit 2?

4 A That's correct, to my knowledge, yeah.

5 Q And the DNR doesn't know whether or not the
6 green -- the large green circle on Exhibit 2
7 became sufficiently full of water? The DNR does
8 not possess data to indicate that that water
9 wouldn't flow east over Reddelien Road?

10 A That's correct, there's no definite conclusion on
11 that.

12 Q Thank you very much. I'm going to -- do you have
13 Exhibit 1-A in front of you?

14 MR. GLEISNER: Maybe, Counsel, you could
15 provide it. Things are a little messy here right
16 now.

17 MR. HARBECK: Here. You can borrow
18 mine.

19 BY MR. GLEISNER:

20 Q We're almost done with my questioning. Mr. Gallo
21 is going to have questions. But I would just like
22 to go back to your description of what you -- what
23 your counsel has been kind enough to indicate what
24 you'll be testifying to.

25 And it states in that description that

1 you have information that would lead to an
2 analysis regarding elevations of various
3 locations. What is your analysis, if it's any
4 different from what we've been talking about?

5 A I think we've pretty much summarized what I know
6 and my interpretation of --

7 Q You have nothing to add to that?

8 A No.

9 Q And then your knowledge and information about
10 adjacent wetland complexes, we've pretty well
11 plumbed that subject, too?

12 A Yes.

13 Q So you have nothing to add to that?

14 A Nothing.

15 Q And with regard to the outlet channel, have we
16 pretty well covered everything that you know about
17 that?

18 A Yes.

19 Q And you have nothing to add to that?

20 A Nothing to add.

21 Q And your interpretation and engineering opinion
22 regarding preferred flow paths of surface water,
23 have we pretty well covered that?

24 A Yes.

25 Q You have nothing to add to that?

1 A Nothing to add.

2 Q Including whether it would take it along or across
3 the DNR, formerly Kraus, property, we've covered
4 that?

5 A To my knowledge, yes.

6 Q Is there anything you have to add to that?

7 A I have nothing to add.

8 MR. GLEISNER: Mr. Gallo.

9 EXAMINATION

10 BY MR. GALLO:

11 Q Is it okay if I call you Pete?

12 A Yeah. Can I call you Don?

13 Q Yes, that is fine. This figure -- this is
14 Exhibit J of Exhibit 4 you've been discussing with
15 Attorney Gleisner. The elevations that are shown
16 on this figure, did you put those on? And where
17 did you get those elevations?

18 A Yes. I put the elevations on, and they came off
19 the Kapur surveying data that we've been talking
20 about. I round -- I did round.

21 Q I understand.

22 A What you'll see there is -- just to simplify it, I
23 rounded it to the nearest --

24 Q Ten?

25 A Yes.

1 Q Okay. Thank you. Are you familiar, Pete, with
2 the concept of ordinary high water mark?

3 A You know, I'm familiar with it, because I work
4 with developers a lot. Many times in the permits
5 I issue, navigability questions come up.

6 And so my role at DNR, when people ask
7 about that is I refer them to a water management
8 specialist to do an ordinary high water mark
9 determination. That's my extent.

10 I know what the term is. I know it
11 comes up a lot. It know it applies to navigable
12 waterways. It sets a regulatory mark. And it
13 becomes significant for some of the projects I
14 permit, but I'm not involved in doing those
15 determinations or anything like that, so.

16 Q Are you familiar with the concept that below the
17 ordinary high water mark is in the public trust?

18 A Yes, yes.

19 Q Thanks.

20 (Pause in testimony.)

21 BY MR. GALLO:

22 Q I'm going to hand you North Lake Management
23 District Exhibit 104. And it's an email. And if
24 you could just take a moment to read that. It has
25 to deal with the ordinary high water mark. I

1 think the top email was an email from Jim
2 Morrissey.

3 (Pause in testimony.)

4 BY MR. GALLO:

5 Q I'm not going to ask you anything in detail about
6 the confusing --

7 A Okay. It's very confusing.

8 Q This email, the second email in the middle of the
9 first page is an email from Dale Pfeiffle at the
10 Army Corps to Jim McNelly, Andy, Bob Wakeman
11 regarding some confusion over the ordinary high
12 water mark.

13 But the subsequent email at the top of
14 the page from Jim Morrissey, is it your
15 understanding that that is the elevation of the
16 ordinary high water mark? I believe Jim was
17 trying to clarify between this.

18 A Unfortunately, Don, I'm not involved -- I've never
19 seen this. I'm not involved with this. I've
20 never been asked about it.

21 Q That's fair. I appreciate that.

22 A Yeah, I really have nothing to offer on that.

23 Q Okay. That's fine. Pete, when you were out there
24 looking at the storm water drainage, and I
25 appreciate you were predominantly looking at

1 treatment systems, but when you -- as I recall,
2 there was a culvert under the existing driveway.

3 I'm going to hand you a new exhibit, so
4 that would be exhibit, I think 108. No, it's 110.
5 This is a Bing photo. Make sure you familiarize
6 yourself with that. It just shows the existing
7 driveway.

8 And maybe in looking at that photo and
9 also this photo, which was RRNA 4 Exhibit J, back,
10 again, this elevation, what I'm going to ask you
11 about is this culvert, this existing culvert.

12 And when you were out on those site
13 visits, did you -- were you able to inspect that
14 culvert?

15 A I have seen the culvert.

16 Q It's really a small diameter. I'm not sure --

17 A Eighteen inches is what's shown on the Kapur --

18 Q Is it?

19 A From a culvert standpoint, it's relatively small.
20 So based on the Kapur plans -- and I know I've
21 seen the culvert. I never measured it myself.

22 Q Okay.

23 A But I know I've seen the culvert when I've been
24 out there.

25 Q Could you locate it on the new map that I...

1 A Well --

2 Q It would be just an approximate.

3 A When I look at my drawing, again, I was not --
4 this was not supposed to be --

5 Q The definitive --

6 A As far as accurate where it is spatially in the
7 world. So this is more of a -- really
8 approximate.

9 Q A graphic --

10 A Yeah.

11 Q -- depiction? Is that fair?

12 A But do we have any other exhibits that go down the
13 existing road a little further?

14 Q Yeah.

15 A I found one.

16 Q For the record, Pete is referring to RRNA
17 Exhibit 3, which is a set of plans. And he's, I
18 think, looking -- if you turn on the exhibit plans
19 to C116.

20 A Yes, yes.

21 MS. KAVANAUGH: And what exhibit is
22 that?

23 MR. GLEISNER: 3, RRNA 3.

24 BY MR. GALLO:

25 Q It doesn't --

1 MS. KAVANAUGH: And what plan page is
2 that?

3 THE WITNESS: Yeah, C116, yep.

4 BY MR. GALLO:

5 Q It says to remove existing eight-inch CP?

6 A Yes.

7 Q I think that's the existing culvert?

8 A I believe so, too.

9 Q So it's an eight-inch --

10 A When I look at Kapur's more blown-in -- they
11 have --

12 Q Right.

13 A -- a more detailed view of this. It shows an
14 18-inch.

15 Q I see. Okay.

16 A But all or some of us are going in the field on --

17 MS. KAVANAUGH: Yeah, with them.

18 THE WITNESS: Yeah, we can --

19 BY MR. GALLO:

20 Q We can --

21 A -- determine that then, yes.

22 Q Okay. I appreciate that.

23 A But --

24 Q So --

25 A -- you can probably by, you know --

1 Q Do you --

2 A -- seeing the curve in the road on this aerial
3 photo, Don --

4 Q Yeah.

5 A -- and trying to, like, eyeball the curve in the
6 road up to where the proposed boat launch area is,
7 I could probably put a pretty good --

8 Q That's okay.

9 A -- guesstimate if you wanted.

10 Q I don't think that's necessary.

11 A Okay.

12 Q Because what I'm going to have you do is take this
13 yellow marker and just highlight the existing
14 culvert on the existing driveway on drawing C116.

15 A Okay.

16 MR. GLEISNER: Off the record.

17 (Discussion held off the record.)

18 MR. GALLO: Let's do the blue, if that's
19 okay.

20 BY MR. GALLO:

21 Q So the blue --

22 A Is to show the existing culvert --

23 Q Yes.

24 A -- to my knowledge.

25 Q Yes, thank you. That would be great.

1 MR. GLEISNER: Off the record.

2 (Discussion held off the record.)

3 BY MR. GALLO:

4 Q Do you mind initialling --

5 A Yes, I did.

6 Q And is it fair to say that that culvert is
7 existing in the existing driveway?

8 A Yes.

9 Q And that the proposed roadway would be to --
10 directionally to the north of the existing
11 driveway, what appears to be into the wetlands?

12 MS. KAVANAUGH: Huh?

13 BY MR. GALLO:

14 Q The existing roadway is to the north of the
15 existing driveway?

16 A Right.

17 Q What appears to be into the area that is existing
18 wetlands --

19 A That's my understanding, yeah.

20 Q Okay. Now, on this -- on this drawing also
21 there's a dashed -- there's a dashed line on both
22 sides of the proposed roadway, and it's called --
23 it's -- the area -- arrows to that dashed line say
24 "slope intercept."

25 A Hang on. Yes, okay, yes, right.

1 Q It's noted in a couple locations.

2 A Yes.

3 Q Can you explain for us, what does that line
4 represent?

5 A The slope intercept would be the location where
6 the proposed roadway fill connects back up to the
7 existing topography.

8 Q Okay. Were you involved with any of the roadway
9 design?

10 A I was not involved in any of the road, no.

11 Q Okay. I'm sorry. Let's correct the record. I
12 said the existing roadway is to the north of the
13 existing driveway. What I meant to say is that
14 the proposed roadway is to the north of the
15 existing driveway.

16 A Agreed.

17 Q Okay. Thank you.

18 A Sorry about that. It's the old nodding thing
19 again.

20 Q Okay. Thank you. Can you state for the record
21 your date of birth?

22 A Date of birth, July 5, 1968.

23 MR. GLEISNER: Off the record.

24 (Discussion held off the record.)

25 MR. GALLO: I'm done.

1 MR. GLEISNER: I have one more question,
2 a follow-up question.

3 EXAMINATION

4 BY MR. GLEISNER:

5 Q For the sake of completeness, you were testifying
6 earlier about development versus redevelopment,
7 and you said you saw gravel. Does gravel have any
8 impact on whether or not a roadway is developed or
9 not?

10 A That is a good question. Gravel comes up a lot in
11 redevelopment sites. This is not typical. The
12 ones we normally deal with, they are coming up a
13 lot, say -- I know there was a project in
14 Franklin, a McDonald's redevelopment of an
15 existing McDonald's site.

16 So we talk a lot about it when we talk
17 about fitting into the rules. In that case, what
18 they normally do is they pull up the existing
19 asphalt and regrade the parking lot.

20 So our interpretation of what we tell
21 people in this particular case is that we consider
22 the parts where there's existing gravel -- or
23 maybe there's an existing gravel parking lot that
24 they want to pave over.

25 That's why it comes up a lot, because

1 there seems to be a lot of gravel parking lots
2 that people want to pave. So that's the
3 interpretation we've always said is that's
4 existing.

5 In many cases those become exempt
6 projects, because they're not -- they're not
7 expanding the footprint. They're just going over
8 the top of the gravel.

9 What our policy is, if you have a
10 redevelopment site like that where you're paving
11 beyond the gravel area, that's when we tell you,
12 "Okay, now you have to do something. You have to
13 do the 40 percent treatment."

14 I have to slow down. In the previous
15 version of NR-151, there was an exemption for many
16 redevelopment sites if they were not going to
17 increase the area of parking or roads. The
18 current code, those exemptions have been removed.

19 But there were many redevelopment sites,
20 because they were working within the existing
21 footprint, that they were essentially exempt. So,
22 again, this is a lot of legal code stuff that --

23 Q No, it's very helpful. The footprint's being
24 significantly increased here, correct?

25 A I don't know. I don't know if it's "significant."

1 I've never done the measurements or anything to
2 that effect.

3 Q I gather from talk about parking lots and gravel
4 and parking lots, et cetera, normally there's a
5 lot of gravel and not just a little gravel, is
6 that correct, for there even to be a matter?

7 A I don't know if the size means anything.

8 Q The amount -- I mean, the amount of gravel, the
9 depth?

10 A That probably is not that significant.

11 Q It's mainly the footprint?

12 A It's more -- yeah, it's more the idea of is it
13 being used as an existing urban land use, I guess,
14 is what -- how we look at that. So it's not a
15 natural, it's not an agricultural thing.

16 It's something that -- so a dirt road
17 could be -- reconstructing a dirt road could get
18 the same interpretation, because it's a road, not
19 a farm field or woods or a prairie or anything
20 like that.

21 Q Footprint expands, it's probably going to be
22 redevelopment?

23 A Yes.

24 MS. KAVANAUGH: I guess I would put an
25 objection in here, because --

1 MR. GLEISNER: No need, Counsel. I'm
2 done.

3 MS. KAVANAUGH: Well, I would object to
4 that last question, because it doesn't have
5 anything to do with the navigability. You are
6 trying to expand the scope of this deposition to
7 cover storm water issues that do not have anything
8 to do with navigability.

9 MR. GLEISNER: And I will state for the
10 record that the DNR seems to compartmentalize
11 things in an order to try to avoid issues, and
12 it's very disturbing to me.

13 MS. KAVANAUGH: And you can have that
14 opinion. But there are separate permits, and this
15 is a deposition that's being conducted in
16 relationship to this manual code approval and not
17 to the authorization for the general permit for
18 storm water.

19 I have allowed some -- without
20 objecting, some of the questions about storm water
21 as they relate to whether this water might back up
22 on -- I'm assuming that's where you're getting --
23 going on -- to these depositions.

24 But when you start getting into issues
25 for the general storm water permit, that's not

1 relevant. That's not calculated to lead to the
2 discovery of admissible evidence. I want a record
3 for that.

4 MR. GLEISNER: As long as you have put
5 it this way, let me just go on the record and
6 state that if you're dealing with an issue about
7 the filling of the wetlands to the south of the --
8 in the large green area on Exhibit 2, the
9 character and constitution of the, quote/unquote,
10 access road could have an impact that would lead
11 to problems, particularly when Mr. Hudak testified
12 yesterday that whole area was navigable water.

13 MR. HARBECK: Can I suggest if you want
14 to have an argument going forward, go off the
15 record? You've made your point, he's made his
16 point.

17 MS. KAVANAUGH: Well, you know, he's
18 got, you know, an answer. I've made my objection.

19 MR. HARBECK: Okay.

20 MR. GLEISNER: Are we finished with
21 Mr. Wood?

22 MR. GALLO: I am. Thank you very much.

23 (Exhibit No. 110 was marked.)

24 (Proceedings concluded at 12:19 p.m.)

25

1 STATE OF WISCONSIN)
2) SS:
3 COUNTY OF MILWAUKEE)
4

5 I, JESSICA R. WAACK, a Registered Merit
6 Reporter, Certified Realtime Reporter, Registered
7 Diplomate Reporter and Notary Public in and for the
8 State of Wisconsin, do hereby certify that the above
9 examination of PETER WOOD was recorded by me on
10 August 26, 2011, and reduced to writing under my
11 personal direction.

12 I further certify that I am not a
13 relative or employee or attorney or counsel of any of
14 the parties, or a relative or employee of such attorney
15 or counsel, or financially interested directly or
16 indirectly in this action.

17 In witness whereof I have hereunder set
18 my hand and affixed my seal of office at Milwaukee,
19 Wisconsin, on September 3, 2011.
20

21 _____
22 Notary Public
23 In and for the State of Wisconsin
24

25 My Commission Expires: September 1, 2013.

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