

STATE OF MICHIGAN
IN THE COUNTY OF ALLEGAN

IN THE MATTER OF:

ALLEGAN COUNTY DRAINAGE

#374 MINER LAKE LEVEL CONTROL STRUCTURE

ALLEGAN TOWNSHIP

_____ /

REVIEW OF SPECIAL ASSESSMENT ROLL

Public Hearing on the 1st day of August, 2016, at the
Circuit Court Jury Room, 113 Chestnut Street, Allegan, Michigan
49010, at 10:00 a.m.

A P P E A R A N C E S

DRAIN COMMISSIONER: Denise Medemar
Allegan County Drain Commissioner
113 Chestnut Street
Allegan, Michigan 49010-1332
(269) 673-0440

ALSO PRESENT: Kriss Kraker, Chief Deputy
Peter Klooster, Staff Engineer
John Brennan, Fahey, Schultz, Burzych,
Rhodes, P.L.C.
Claire Schwartz, Fishbeck, Thompson, Carr
& Huber

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EXHIBITS:

Notice of Meeting of Board of Determination

Attendance Sheet

1 Allegan, Michigan

2 Monday, August 1, 2016 - 10:00 a.m.

3 P R O C E E D I N G S

4 MS. MEDEMAR: Okay, I think we're going to call
5 the public hearing to order. I want to thank everyone for
6 coming today for the Miner Lake Level Control Structure
7 public hearing. I am Denise Medemar, the Allegan County
8 Drain Commissioner. With me today I have Kriss Kraker, my
9 chief deputy. Also I have Peter Klooster. He's in the
10 back. He's our engineer from the Drain Office. I also
11 have Bonnie Rozema. She will be taking the recording of
12 the hearing today. I have John Brennan. He is our
13 attorney from Fahey, Schultz, and Claire Schwartz, who is
14 the engineer for this project from Fishbeck, Thompson, Carr
15 and Huber.

16 We will be trying to answer all your questions
17 today. I'm sure the main question is how much is it going
18 to cost. The total cost of the project now is \$421,000.
19 This amount is being divided between 273 parcels. This
20 amount comes to approximately \$1,600 for those who have
21 property on the lake, and those who have deeded access it
22 would be around \$800. This amount will be spread over ten
23 years, so it will -- the assessments will be \$160 and \$80
24 per year for the ten years.

25 The assessment roll will be going before the

1 board of commissioners on August 11th. Once approved by
2 the board of commissioners, if any property owner wishes to
3 appeal their assessment, they would have 15 days from
4 August 11th.

5 We are now going to answer questions that we
6 have received on the cards. So if you have your card
7 filled out, and then after we answer those questions, and
8 if your questions aren't answered, then you can come up to
9 the microphone. It's just -- it's not a microphone, it's
10 just for the court recorder to get this recorded. But will
11 you give your name and your address.

12 So I will collect any of the questions you have,
13 and then we'll go from there.

14 (Papers handed to Ms. Medemar)

15 Anyone else?

16 AUDIENCE MEMBER: I'm writing.

17 MS. MEDEMAR: Okay. How do we want to do this?

18 I guess --

19 MR. BRENNAN: Just read them off, I guess.

20 MS. MEDEMAR: Okay. This one first is from Sam
21 Martin. He is president of the Miner Lake Association and
22 his address is 2467 Lorraine Drive. His first question is,
23 "This project needs a written public budget."

24 MR. SAM MARTIN: A statement, not a question.

25 MS. MEDEMAR: Oh, okay.

1 MR. SAM MARTIN: And pleasant request, please.
2 We've not seen a published budget on where we're at, what
3 the concerns, what the constraints are, what the costs are,
4 and we need to see that, given that it's our dollars.

5 MS. MEDEMAR: Okay. Well, we do have the
6 assessment roll and we do --

7 MR. SAM MARTIN: Assess -- okay, sorry. Please
8 continue.

9 MS. MEDEMAR: Okay. And we do have a
10 computation of costs. We can make copies of that for you.
11 I think we do have a couple of copies up here.

12 MR. LEONARD DOMPKE: But I don't believe
13 that's -- ma'am, I don't believe that's what he's asking
14 for. He's asking for a project budget to know where the
15 cost overruns could possibly come in and have an idea of
16 how our tax dollars are being spent.

17 MR. SAM MARTIN: Correct.

18 MS. MEDEMAR: Okay, well --

19 MR. LEONARD DOMPKE: Did I summarize that right?

20 MR. SAM MARTIN: Yeah, an accounting for what
21 has been spent and where we're at, how we got to here with
22 the -- with the 33 --

23 MR. LEONARD DOMPKE: Can you get that for us?

24 MS. KRAKER: Yes, we do have it. I have the
25 computation of costs, I have all the backup documentation,

1 meaning that's the budget. I mean we don't actually have a
2 set -- you have your expenses that already took place, and
3 then you're also going to be having your construction
4 costs, which Claire would be able to explain the budget
5 that came off in regards to doing the construction amount
6 of work. So yes, we do have that documentation for you, if
7 you want to stop in the office.

8 LEONARD DOMPKE: Okay.

9 MS. KRAKER: Okay?

10 MS. MEDEMAR: Okay, and his next question is,
11 "What is a current overall project cost?"

12 MR. SAM MARTIN: You addressed that.

13 MS. MEDEMAR: Okay. "Who is responsible for
14 costs associated with failure or movement of the structure
15 and the road in future years? How many years and what
16 limit?"

17 MR. BRENNAN: I'm not sure I quite understand.

18 MS. MEDEMAR: It's a --

19 MR. SAM MARTIN: There are -- the soil out there
20 is not premium soil. There are significant concerns from
21 reading some of the engineering accounts as well as
22 individual property owner's concerns that the structure
23 will not sit where it's at. There's concerns over the past
24 years that even the much lighter weight sheet metal
25 structure and section behind has moved, has heaved and

1 either moved up or down, it's unclear. And what we don't
2 want to be doing is buying this dam again, quite simply.

3 There are fundamental concerns from a number of
4 property owners that the soil that is in that area is not
5 stable, and it's unclear to the degree to which that's been
6 accounted for and the concern from a number of individuals
7 is that we do not want to be buying this dam again in a
8 number of years. The existing structure, there is strong
9 contention that that has moved over time, and it is a
10 fraction of the total mass of the structure that's being,
11 you know, proposed to be implemented here. So we want on
12 the record and clearly understood who is responsible for
13 costs in out years should the structure move. The court
14 mandate has, you know, the level of the lake set in summer
15 and fall, and if the structure fails to be able to
16 accomplish that by having moved, we, as property owners, do
17 not want to be responsible for paying for that. We're
18 already paying more than we ever imagined for the current
19 structure, and we want assurances.

20 MR. BRENNAN: Will you answer anything about the
21 soil movement?

22 MS. SCHWARTZ: Yes, certainly. This is Claire
23 Schwartz with Fishbeck. We are the engineers of record for
24 the project, so we have been involved with the project
25 since 2012. We have -- had retained a geotechnical

1 consultant to do soil borings and provide a report to us
2 regarding the suitability of the soils for construction of
3 an access road and the dam structure, the lake level
4 control structure. So we have followed the recommendations
5 of the geotechnical consultant. We have a structural
6 engineer on staff who has designed this using those
7 parameters. That report and our design is available to
8 you, so if you would like to have copies of that, review
9 it, hire your own consultants to look at that. We also had
10 the contractor look over the design and, you know, from his
11 experience and his expertise, and he also questioned,
12 especially for the roadway, because of the heavy equipment
13 that would need to access over the poor soils, he also
14 looked into that when we were trying to look for ways to
15 reduce cost and maybe go with a smaller section. And the
16 conclusion in the end was no, what we've got designed is
17 basically the minimum that you'd want to have there. So
18 again, trying to balance the cost with the actual function.

19 MR. SAM MARTIN: In regards to the liability.
20 You did not address that. You addressed the reports, but
21 not the -- not the future liability.

22 MR. BRENNAN: Right. I -- this is John Brennan.
23 I'm the attorney for the drain district on this project.
24 So there isn't a -- there isn't a provision that -- in the
25 law that allows the drain commissioner's office, for

1 example, to guarantee or to ensure, you know, what happens.
2 It's like any other -- any other public project. You know,
3 it's done according to the best standards available at the
4 time, and if -- we don't expect anything less than that.
5 If there were some -- some problems with how it was
6 constructed, you know, the contractor has liability
7 insurance in case that's an issue, engineers have
8 insurance, everyone has insurance with regard to their own
9 work, so you have that, you know, to fall back on if there
10 was a -- if there was negligence or something like that in
11 connection with how it was constructed or designed. But
12 the Drain Office itself doesn't have a fund or an insurance
13 policy or anything that would, you know, that would
14 guarantee that if there was a problem that would just step
15 in, and, you know, and fix it. It's like any other public
16 project.

17 You have a followup question?

18 MR. LEONARD DOMPKE: I have a followup question
19 to you, sir.

20 MS. MEDEMAR: You need to come up to the mike
21 then, please, and give your name, please.

22 MR. LEONARD DOMPKE: Leonard Dompke, 2084 Lake
23 Drive. I actually have a question for you, and that is in
24 the contract with the construction company, is there an
25 error and omissions clause in there so that if in the

1 future there are problems with it, you, as the
2 representative of the drain commission, can pursue
3 corrective action to that contractor and not us landowners?
4 That's number one. And you can think about that while I
5 ask madam engineer here a question.

6 I looked at the dam and I understand what its
7 shortcomings are, mainly it's been beat up by age and
8 weather and those kind of factors, but I guess I don't
9 understand how you arrived at your design. Because the
10 parts that I saw failing was, you know, I counted five
11 discharge tubes going into the creek, I just wanted to know
12 why couldn't for the cost of the project to bring it down,
13 why couldn't concrete sleeves be made and slid into those
14 tubes? That way when the metal tubes finally disintegrate
15 and fail, there's a structure within that tube that will
16 carry on the work of the dam. I guess the bottom line is,
17 I don't think we need a -- and no reflection on your
18 ability as an engineer, you're probably a fine engineer,
19 but sometimes I've worked with engineers, they over design
20 things. I just don't think we need a sledge hammer to hit
21 a tack here. I think we need a simpler, more cost
22 effective, financially responsible solution. I was
23 wondering if that's something that you could entertain?
24 Thank you.

25 MR. BRENNAN: So I guess I'll respond to the

1 first question. I have not personally looked at the
2 contract, so I can't tell you from memory or from having
3 looked at it. We certainly can do that, and I know --

4 MR. LEONARD DOMPKE: Well, I would think you
5 would want to do that. Why haven't you?

6 MR. BRENNAN: No, no, because I wasn't -- hold
7 on. I wasn't the attorney involved --

8 MR. LEONARD DOMPKE: Then why are you here?

9 MR. BRENNAN: -- with the project at the time
10 that was let in 2012 or whatever it was. I wasn't even
11 involved with the project back then, so, but I can assure
12 you that -- that a standard contract has those provisions
13 in it and we can -- I'm happy to look at it. An issue
14 hasn't even arisen yet before, so.

15 MR. LEONARD DOMPKE: Would you please?

16 MR. BRENNAN: Absolutely. But it's not
17 something that I think is a concern.

18 MR. DON SWARTZLANDER: No, you don't want him
19 looking at it. He 's going to charge you.

20 MS. MEDEMAR: Okay.

21 MR. LEONARD DOMPKE: We're going to pay for it
22 one way or the other.

23 MS. MEDEMAR: Okay. If you're going to talk you
24 need to come up to the mike, please. Thank you.

25 MS. SCHWARTZ: Well, having put together the

1 contract for construction, I can tell you that the
2 contractor does have general liability insurance, there is
3 the owners protective, so that's again, for things that
4 might happen. And then we do, Fishbeck does have the
5 professional liability insurance. So that's what the owner
6 would fall back on were there to be a, you know, flaw with
7 the design or a failure that could be related back to the
8 design.

9 In terms of construction, we have provisions, we
10 have shop drawing review that we have conducted. We have
11 all those, you know, inspection during construction. So to
12 the best of our ability and to professional standards, you
13 know, we are employing all those -- all those measures to
14 ensure that it's constructed properly.

15 So I guess in regard to your question, yeah, the
16 tubes, you know they're failing. They are, there are holes
17 there, they have rusted out. They are metal tubes. So I
18 know lining with concrete can be relatively more expensive.
19 We are taking the tubes out. So we are just removing them
20 and we're not putting anything back in their place.

21 So we have some rock that will then line the
22 channel to make a spillway which would be less expensive
23 than to try to line the tubes with concrete. So we had
24 looked at that.

25 MR. LEONARD DOMPKE: I -- I guess this gets back

1 to the other point I made which is if you put the sleeves
2 in, you wouldn't need to do all that reconstruction. And
3 madam commissioner, is there somebody from the drain
4 commission on the engineering side who is coordinating the
5 interests of the people with your design team? I know you
6 have counsel here looking at the contractual aspects of it,
7 but who from the drain commission on the engineering
8 technical side is looking at what the contractor and the
9 designers are doing?

10 MS. MEDEMAR: I believe, you know, I don't know
11 if Peter has looked at it or not. I'm sure Glenn, the
12 former engineer that worked for the Drain Office, has spent
13 numerous times with Claire going over her plans and stuff,
14 so, you know, at that point it was looked at with Claire
15 from our engineering person in the Drain Office. And we do
16 have Peter on board now, and I can have him look at it too,
17 but --

18 MR. LEONARD DOMPKE: I think I'll just put a
19 chair here for myself. You said the former -- you
20 currently don't have anybody on staff that's --

21 MS. MEDEMAR: Yes.

22 MR. LEONARD DOMPKE: -- looking at this?

23 MS. MEDEMAR: Yes.

24 MR. LEONARD DOMPKE: Who is that?

25 MS. MEDEMAR: Glenn Pomp was our former

1 engineer. He's retired. And Peter Klooster, back there,
2 is our new engineer.

3 MR. LEONARD DOMPKE: Okay. And Peter, have you
4 looked at this?

5 MR. KLOOSTER: Uh-huh.

6 MR. LEONARD DOMPKE: And what's your take? I
7 mean are you in agreement with what the --

8 MR. KLOOSTER: With regard to your specific
9 question, if it's cheaper to --

10 MS. MEDEMAR: Just a minute. He's --

11 MR. KLOOSTER: Sorry.

12 MS. MEDEMAR: Peter you're going to have to come
13 up here to catch --

14 MS. KRAKER: Thank you.

15 MR. KLOOSTER: So, do you want me to answer your
16 specific question about whether it's cheaper to pull the
17 tubes out and put in a rock spillway? Or --

18 MR. LEONARD DOMPKE: Well actually there's two
19 questions. That's one of them. The other one is have you
20 looked at the current engineering plans for this and
21 blessed them on behalf of the drain commission? Because
22 I'm not hearing that.

23 MR. KLOOSTER: Well, at the point when they
24 required the drain commissioner's blessing, Glenn was on
25 staff at the time and he did. But, I mean knowing what I

1 know of the plans now, yes. I still think it's an
2 appropriate design.

3 MR. LEONARD DOMPKE: Okay. So in other words
4 you're picking up the responsibility that Glenn had,
5 correct?

6 MR. KLOOSTER: Yeah.

7 MR. LEONARD DOMPKE: Okay.

8 MR. KLOOSTER: He retired, I'm the new guy.

9 MR. LEONARD DOMPKE: All right. And as the new
10 guy who will be on the hook, I would take it you have
11 looked at this, then?

12 MR. KLOOSTER: Yeah, I've looked at the plans.

13 MR. LEONARD DOMPKE: Okay. And what is your
14 take on it? Do you think we need something that --

15 MR. KLOOSTER: Like I said, it's an
16 appropriate --

17 MR. LEONARD DOMPKE: -- extensive?

18 MR. KLOOSTER: -- design.

19 MR. LEONARD DOMPKE: Okay.

20 MR. KLOOSTER: That's the way I'm going to
21 phrase it, okay?

22 MR. LEONARD DOMPKE: Is there a -- is there a
23 least expensive design -- less expensive.

24 MR. KLOOSTER: Well, I'll tell you from my
25 experience in the Drain Office, that's always -- we're

1 always looking for the solution that accomplishes the need
2 at the lowest cost. That's always what we're doing.
3 Because we don't -- we know that we're spending your money
4 so we don't want to be spending -- and yeah, we could build
5 an enormous concrete structure and spend ten times as much,
6 but that's not what the Drain Office does.

7 MR. LEONARD DOMPKE: Okay, because there is
8 folks in the audience that believe that we're on our --
9 well on our way of spending the ten times that what it
10 should cost to fix the problem, and that's why I'm asking.

11 MR. KLOOSTER: Well, and but that's -- and
12 Claire may have answered your question appropriately, too,
13 is that we looked at lining the tubes as a solution and
14 it's -- yeah, it seems okay. All we're doing is lining the
15 tubes, we're not pulling them out and putting all this
16 stuff in, but it's actually easier and less expensive for a
17 contractor to do what he's doing than to line the tubes
18 with concrete as he --

19 MR. LEONARD DOMPKE: Well, I guess I -- I don't
20 see how you see it's easier and cheaper when the current
21 approach is requiring a road, whether slightly --

22 MR. KLOOSTER: It would require a road to put in
23 a liner. If you're talking bring -- hauling concrete back
24 there.

25 MR. LEONARD DOMPKE: You know, I guess that

1 remains to be seen, because I'm sure that if you talk with
2 the -- the person whose property is there, maybe they might
3 have an interest in being willing to help you with that
4 point of being able to bring the equipment in there to do
5 it, provided that they were cared for when all --
6 everything was said and done, and I just think that would
7 be so much, you know, more cost effective than putting a
8 road in on land that, you know, has failed soil tests
9 before its spent. You know, that's just my opinion, but --

10 MR. KLOOSTER: Yeah.

11 MR. LEONARD DOMPKE: -- I think it's -- it's
12 not that far out of the realm of possibilities.

13 MR. KLOOSTER: Well, I -- I guess it -- there's
14 not much more I can say it to your satisfaction other than
15 say we've looked at the options that you've spoken of, so.

16 MS. MEDEMAR: Okay, just a minute. Leonard, did
17 you get your questions answered or has there --

18 MR. LEONARD DOMPKE: I think to the best of your
19 ability I did.

20 MS. MEDEMAR: Okay. Okay, this one is from
21 Jerry Young at 1968 Stoney Point Drive. His question is
22 how we got so far over budget on a new dam that has a high
23 rate of failure.

24 MR. JERRY YOUNG: Yeah, I'm Jerry Young from
25 1968 Stoney Point Drive. I don't know if you remember,

1 Claire, back in 2012 when this started I invited you and
2 Glenn Pomp to my place. We laid the plans, laid the
3 briefs, looked at it. Dave Dargis didn't have time to come
4 so he signed over an easement. The consensus in our
5 neighborhood was to give you free easements, give us full
6 restoration, and let's make this simple and sweet. Well,
7 that ran way off the league and we ended up in legal
8 battle, and I'm sure part of this assessment is for your
9 legal fees.

10 I want to know who is compensating my \$22,000 in
11 attorneys. We had more attorney fees on the site of the
12 dam there than what this dam itself costs without the road,
13 and to me it's a high abuse of taxpayer's dollars. You
14 were -- you could have sat and negotiated a free deal that
15 we offered you and you walked away. And today's deal is
16 exactly what you were offered in 2012. Exactly. So
17 whose -- the overages I can understand is in legal fees. I
18 built several developments myself. I've worked with
19 engineers myself. I've worked with lakeshore, sea wall
20 people, like they say, drive four pilings down, bedrock's
21 90 feet, put the pilings down, pull the tubes, crawl out.

22 There's no need for a road. We sell equipment
23 that will walk on water hauling cement. This has just been
24 a runaway train, and I want to know why is the taxpayer
25 responsible for it all? Because it could have been shut

1 off in 2012. It could have been -- we could have been done
2 with this project. Where did this instigation come to
3 steamroll the thing in? I just can't comprehend, we're all
4 elected officials, and I'm thinking how did we get this
5 far?

6 MR. BRENNAN: You want me to --

7 MS. MEDEMAR: Yeah.

8 MR. BRENNAN: I can -- I can address a good
9 portion of that anyway. I was part of the negotiations
10 after Dr. Dargis gave the easement. We needed access up
11 Stoney Point in order to get to that easement. I was part
12 of the negotiations. They involved another attorney by the
13 name of David Kiel. The -- the -- and we had to have
14 signoff on everybody because there were many people share
15 that road, Stoney Point. So there had to be a group assent
16 or one person holding out or two people holding out, you
17 have a problem with access.

18 MR. JERRY YOUNG: I understand.

19 MR. BRENNAN: So the -- at the time there was a
20 demand. Most of it had to deal with what was going to
21 happen on the Dargis easement, even though he'd already
22 given it.

23 MR. JERRY YOUNG: Correct.

24 MR. BRENNAN: But the folks on Stoney Point
25 Drive who had control over Stoney Point Drive were not

1 willing to give an easement over Stoney Point Drive until
2 what was demanded over the Dargis easement was satisfied,
3 and there was a request for maps, which we did run the
4 numbers. Every suggestion -- I want to make it absolutely
5 clear, every suggestion that was made about how that
6 easement could be dealt with we looked into and we costed
7 out. I mean I say we, I mean this team, right?

8 MS. SCHWARTZ: That's correct.

9 MR. BRENNAN: I didn't. The attorney -- I
10 wouldn't know what to do with that, but -- and it was
11 prohibitively expensive, would have run the costs more than
12 it should have, and we declined to do that. Because again,
13 you know the concern actually is to try to keep the costs
14 in the project down. And the folks who had control over
15 Stoney Point Drive would not give us the easement
16 voluntarily. I don't know, Mr. Young, if you were one of
17 those folks or not, but we ended up having to name you and
18 all the other folks in the neighborhood as defendants in
19 that action.

20 MR. JERRY YOUNG: Yeah, we -- we all got
21 condemned.

22 MR. BRENNAN: We did not want to file the
23 condemnation action. That is we -- we wanted to have an
24 easement, we were willing to make lots of concessions with
25 regard to the access and -- and what would happen with

1 regard to restoration and everything else. There was, you
2 know, we were -- we were making all kinds of progress at
3 some point, but the maps apparently were the, I don't know
4 what, the line in the sand, if that's the right way to put
5 it. And we weren't going to, the cost of doing that ended
6 up being I believe more than it would cost to actually get
7 the -- the easement. When we filed the condemnation
8 action, four of the property owners, and you were one of
9 them, hired an attorney to contest it. All right, well,
10 that drove the cost of legal fees up because we had to
11 respond to all those, there were motions filed. In an
12 effort, again, to try to achieve a result that was going to
13 be an agreement, a negotiated agreement, we suggested and
14 called a meeting. We had a meeting downstairs in the jury
15 room with all the attorneys who had filed an appearance in
16 the action, and we asked all -- we asked all four, what do
17 you -- what do your folks want? What do you want?

18 You had a very excellent attorney, Mr. King, who
19 was there, present, and made it clear what your concerns
20 were and your concerns about flooding on your property, and
21 we made several design changes which cost money to do, to
22 accommodate your attorney's and your requests, so that the
23 design of the dam would be done in a way that it would be
24 potentially less threatening if there were flooding on the
25 property -- to your property. We did that specifically in

1 response to your request. And there were other requests
2 that the attorneys made. And when the meeting was over, I
3 sent a letter out to all of the attorneys and said,
4 here's -- I took minutes at the meeting, I sent a request
5 out to all the attorneys and said, "Here's what you all
6 asked for, I want to make sure I got everything, does
7 everybody -- are all your concerns addressed now?" And I
8 sent it out to all the attorneys. I got a couple responses
9 back, "No, you got this wrong you need to change it to
10 something like that." Said fine, we changed it, sent it
11 off to Claire and Denise's office. We responded to every
12 single request, every single concern, okay? I put those
13 concerns in a settlement agreement, and when I sent it out
14 to the attorneys, guess what happened? No, no, we want
15 something different. No, no, this is a problem. No, no,
16 this is a problem. I had an agreement sent out for all
17 the -- all the attorneys to sign, and I wasn't able to get
18 all the attorneys to sign. We had to get every attorney,
19 every client had to do it separately because even though
20 they were represented at the meeting, well, turns out the
21 attorney didn't call his client. And so now he agreed to
22 something at the meeting he shouldn't have agreed to
23 because he didn't contact his client, and now the client
24 wants something different, and I've got to respond to that,
25 okay? I had another attorney who I couldn't even get a

1 phone call back from that person. For weeks I'm calling
2 almost every day. And Dr. Dargis's, I don't even want to
3 start with that. Because that was -- we just finally got
4 his signature last week on the consent. And he didn't
5 even -- we responded to all of his requests, everything.
6 There were all kinds of alternatives, can you go here
7 with -- can I give you access over this part over that
8 part, there were liability issues. We considered
9 everything.

10 MR. JERRY YOUNG: And I understand that. My
11 question is back why when you came to the table once and
12 talked to us you walked away and never came back? We all
13 had it laid out. Exact -- what we have --

14 MR. BRENNAN: I think I --

15 MR. JERRY YOUNG: -- today is what we offered.

16 MR. BRENNAN: I think I -- I think I tried to
17 explain that --

18 MR. JERRY YOUNG: Well, and I understand the
19 legal jargon of the world today.

20 MR. BRENNAN: No, it's not the jargon part.
21 What I'm trying to suggest is that we -- I was present at
22 those conversations. I was present --

23 MR. JERRY YOUNG: I understand that.

24 MR. BRENNAN: -- in those negotiations. We
25 tried to accommodate every way we could with what the folks

1 along Stoney Point wanted.

2 MR. JERRY YOUNG: I understand that.

3 MR. BRENNAN: We -- we -- that they wanted --
4 they drew a line in the sand, Mr. Young.

5 MR. JERRY YOUNG: And I understand that. And
6 the reason it was offered the way it was is you're building
7 a road through a swamp that -- the road through the swamp
8 will be better than Stoney Point, and that's ludicrous and
9 it's going to sink. We've lived there for years. We know
10 what's going to happen. And I guess I -- I just wonder how
11 it got so far off the plane in the beginning. And I
12 understand your view and your aspect of it, and I
13 appreciate that. But as a drain commission, I just can't
14 comprehend how that got so far off.

15 MS. MEDEMAR: So I started out with working with
16 everyone and I think Mr. DeKryger on what he needed without
17 getting the easements. And when the contractor went out
18 there to start working, I had a call from a property owner,
19 Dr. Dargis, who said that we're done talking, I don't want
20 the contractor out there, I've got the police on board, and
21 if you don't stop it now, he doesn't want the contractor
22 and us in between it, and so I had no other choice but to
23 stop the project then and then start with --

24 MR. JERRY YOUNG: I just couldn't comprehend --

25 MS. MEDEMAR: -- getting the easements --

1 MR. JERRY YOUNG: -- how this has been
2 maintained since the Sixties with no easement and there was
3 never a problem.

4 MS. MEDEMAR: Well they -- they actually when
5 they built it they went in on Mr. Overton's property --

6 MR. JERRY YOUNG: Correct.

7 MS. MEDEMAR: -- where Dr. Dargis's house is
8 built now --

9 MR. JERRY YOUNG: Right.

10 MS. MEDEMAR: -- and since that's not an option
11 now, we had to find a different route.

12 MS. SCHWARTZ: And Mr. Young, to answer your
13 question regarding, you know, since that meeting that we
14 had with you and Mr. Pomp, we did proceed with a written
15 just letter of agreement, you know, with Mr. DeKryger about
16 using Stoney Point, and that was for, you know, the routine
17 access. Obviously to construct it, bringing heavy
18 equipment there, you had a nice finished driveway. We
19 didn't want to damage that. So in any case, we needed to
20 have a road built back there. Now then the question was
21 could we use mats, could it be a temporary road, okay? So
22 we looked at those options. We couldn't use mats because
23 it's different than when you're cleaning a drain and the
24 drain has always been cleaned from that side, too. And you
25 can track along and use the mats and clean as you go, but

1 here we needed to get like concrete trucks back and
2 materials back, so you can't just keep moving mats, or the
3 cost of the mats, as I think maybe Peter or John alluded
4 to, we looked at that contractor prices, not our prices,
5 but contractor prices were extraordinary because there's
6 800 feet that you would have to mat. So then we looked at,
7 well, what if you built a temporary road. Well, because of
8 the soils, the temporary road would have to be as
9 reinforced as a permanent road, so we might as well went
10 with the permanent road and then leave it in place for
11 future, you know, work because there's the drain and the
12 structure. And we did. In fact we bid the project with
13 just the letter of agreement that we had with -- with the
14 folks, well Dr. -- or Mr. DeKryger on the kind of the
15 westerly side of the drain. And as Denise just explained,
16 then we were stopped in our tracks. So that was actually
17 bid and we were planning to start January and February of
18 2015. So in the interim, that's -- that's basically what
19 happened is what you heard John describe, that process.

20 MR. JERRY YOUNG: I understand.

21 MR. DON SWARTZLANDER: Excuse me, my name's Don
22 Swartzlander. I have a followup to that. Claire, I've
23 known you for quite a while. I worked for Fishbeck. Why
24 did you bid the project without having easements?

25 MS. SCHWARTZ: We had --

1 MR. DON SWARTZLANDER: I've been involved in a
2 lot of projects, and I can count on one hand the number of
3 times we did projects with no easements. And I can also
4 count on one hand the number of times we had extremely huge
5 problems because the easements were not obtained prior.
6 You issued an order -- a notice to proceed without having
7 all the easements?

8 MS. SCHWARTZ: We had --

9 MR. DON SWARTZLANDER: That's pretty improper.

10 MS. SCHWARTZ: I would disagree with that
11 because we did have attorneys' recommendations that for the
12 ingress and egress we had what we were call -- what was
13 called an easement, ingress/egress agreement with the
14 property owners as we spoke. We did get permanent
15 easements where we needed them along the drain, but so we
16 were proceeding that way and then it just -- it did not
17 work out. So then we had to regroup and go back.

18 MR. DON SWARTZLANDER: So you didn't -- you did
19 not have the easements?

20 MR. BRENNAN: Actually --

21 MR. DON SWARTZLANDER: Regardless -- just a
22 second.

23 MR. BRENNAN: I'm sorry.

24 MR. DON SWARTZLANDER: Let Ms. Schwartz finish.
25 You did not have the easements, and you bid the project

1 regardless?

2 MS. SCHWARTZ: We did not have a recorded
3 ingress/egress easement, but what we had --

4 MR. DON SWARTZLANDER: I take that as no.

5 MS. SCHWARTZ: -- was a letter of agreement.

6 MR. DON SWARTZLANDER: Which apparently meant
7 nothing.

8 MR. BRENNAN: Well, I actually can respond to
9 that.

10 MR. DON SWARTZLANDER: Okay.

11 MR. BRENNAN: Dr. Dargis gave the permanent
12 easement that was needed. Stoney Point was an existing
13 road and there was an understanding at the time that there
14 was a bid that the owners along the road and those who had
15 an easement interest in the road were going to cooperate
16 and let them use the trucks. What happened was that
17 Dr. Dargis was unhappy with the fact that he'd actually
18 given an easement without qualifications, and it -- and he
19 leveraged Stoney Point access so that he could try to get
20 his easement conditions changed.

21 MR. DON SWARTZLANDER: Wouldn't that have been
22 cheaper?

23 MR. BRENNAN: That's what happened. So what
24 happened was we had an unhappy property owner who had given
25 the rights that we needed and wanted to change them and

1 knew he couldn't change them because it was already done,
2 it was already recorded, and he got his neighbors to
3 support a disagreement or one willingness to allow us to
4 use Stoney Point so that he could get his easement
5 conditions along his easement changed. That was not
6 anticipated that that -- that that kind of maneuvering was
7 going to happen, and it ended up costing quite a bit of
8 money as a result.

9 MR. DON SWARTZLANDER: How much?

10 MR. BRENNAN: Well, the -- the acquisition costs
11 went from 2,000 to something in the neighborhood of 40,000.

12 MR. DON SWARTZLANDER: Okay. What did the
13 engineering costs go to? And we haven't even started
14 construction.

15 MS. KRAKER: The original costs for the
16 contracted engineering was 57,980. The additional cost
17 ended up being \$24,241 for a total of \$82,221.

18 MR. DON SWARTZLANDER: I have a copy of a
19 contract here that says initial contract with Fishbeck was
20 for \$10,450. And you're saying the initial contract was
21 57?

22 MS. KRAKER: Because it depends on what contract
23 you're looking at. The first contract --

24 MR. DON SWARTZLANDER: It says "Professional
25 Service Agreement" --

1 MS. KRAKER: Well, let me finish my sentence.
2 Hold on. Correct. Because the first part of it there are
3 several contracts when it comes to doing engineering.

4 MR. DON SWARTZLANDER: I understand that.

5 MS. KRAKER: Okay, well, I apologize, I think
6 you're probably looking at the wrong one then.

7 MR. DON SWARTZLANDER: I was -- I'm looking at
8 the one that was given to me by your office.

9 MS. KRAKER: That's a possibility. There's
10 probably additional contracts that came in place after
11 that, too.

12 MR. DON SWARTZLANDER: Okay. Okay.

13 MS. ANNE SWARTZLANDER: What date was that
14 dated?

15 MR. DON SWARTZLANDER: Oh, this is when they
16 did -- this is before the design was done.

17 MS. MEDEMAR: Don?

18 MR. DON SWARTZLANDER: Yes?

19 MS. MEDEMAR: Do you have your questions
20 answered? I've got your card here.

21 MR. DON SWARTZLANDER: No.

22 MS. MEDEMAR: So --

23 MR. DON SWARTZLANDER: No, I just -- I'll let
24 you -- I'll let you guys address that.

25 MS. MEDEMAR: Okay. Well, okay. Your one

1 question is, "What is the reason for the 33 percent
2 increase?"

3 MR. DON SWARTZLANDER: And I think that's why
4 you need to respond to that so everybody can hear it.

5 MS. MEDEMAR: Okay, well, basically because we
6 had to --

7 MR. DON SWARTZLANDER: The easement costs went
8 up from -- went from 12 to 40.

9 MR. BRENNAN: From 2 to 40, I'm sorry.

10 MR. DON SWARTZLANDER: 2 to 40, okay.

11 MR. BRENNAN: And actually I probably -- that's
12 just the attorney fee portion of that, so if you look at
13 the -- if you look at the other aspects of the easement
14 acquisition, I'm trying to think, there was something else
15 here with regard to --

16 AUDIENCE MEMBER: \$2,900 cash.

17 MS. MEDEMAR: Okay.

18 AUDIENCE MEMBER: To be split among the
19 homeowners.

20 MR. BRENNAN: Right.

21 MS. MEDEMAR: That's enough. We need someone to
22 talk in the -- up here one at a time, please.

23 MR. DON SWARTZLANDER: So the attorney fees went
24 from 2 to 40.

25 MR. BRENNAN: And then there were --

1 MR. DON SWARTZLANDER: Wouldn't it have been
2 easier to just keep talking --

3 MR. BRENNAN: And the --

4 MR. DON SWARTZLANDER: -- rather than getting
5 the attorneys involved?

6 MR. BRENNAN: Let me just finish if I could.

7 MR. DON SWARTZLANDER: Uh-huh.

8 MR. BRENNAN: The other part of the engineering
9 costs that were -- had to be expended in response to the
10 demands of those involved in the litigation were also part
11 of the acquisition costs, so Claire's office had to go back
12 out, there were demands with regard to installing more
13 culverts, there were demands with regard to the level of
14 the spoils, and I don't know much more about the
15 engineering terms, I think I've exhausted it, but there --
16 so those costs were associated with the --

17 MR. DON SWARTZLANDER: Well, let's let --

18 MR. BRENNAN: -- acquisition costs.

19 MR. DON SWARTZLANDER: Let's let Claire explain
20 that, then.

21 MR. BRENNAN: Sure.

22 MR. DON SWARTZLANDER: If you've exhausted. Why
23 don't you explain the reason for your costs increasing so
24 much.

25 MS. SCHWARTZ: Certainly. So the contracted --

1 MR. DON SWARTZLANDER: I'm -- excuse me. Start
2 from the beginning, maybe.

3 MS. SCHWARTZ: Yeah. So the contract that you
4 have a copy of --

5 MR. DON SWARTZLANDER: Uh-huh.

6 MS. SCHWARTZ: -- that was our original contract
7 to the Drain Office in 2012. That was for initial design
8 of the dam and survey.

9 MR. DON SWARTZLANDER: Uh-huh.

10 MS. SCHWARTZ: And --

11 MR. DON SWARTZLANDER: And permits.

12 MS. SCHWARTZ: And permits, correct. Correct.
13 There were, because of some access issues when we brought
14 in our geotechnical consultant, they were stopped from
15 accessing the property, so in terms -- at that point we
16 were using the drain easement.

17 MR. DON SWARTZLANDER: Okay, did you inform the
18 people the geotechnical people were coming prior to them
19 showing up?

20 MS. SCHWARTZ: I -- I am not aware of that. We
21 had a prior engineer working on the project before I got
22 involved. That person is no longer with the firm.

23 MR. DON SWARTZLANDER: Involved from the
24 beginning?

25 MS. SCHWARTZ: Yes. Yup, there was another

1 engineer.

2 MR. DON SWARTZLANDER: No, you were involved
3 from the beginning?

4 MS. SCHWARTZ: I was involved from the
5 beginning, yes, as the project manager.

6 MR. DON SWARTZLANDER: Uh-huh.

7 MS. SCHWARTZ: We had another engineer handling
8 the day-to-day, okay? So he was -- he was in contact with
9 the geotechnical consultant. He was arranging for the
10 access. So I can't tell you here and now was property --
11 were property owners contacted. They may have been, they
12 may not have been.

13 MR. DON SWARTZLANDER: I would assume. Okay.

14 MS. SCHWARTZ: So, but in any regards there was
15 some additional fee there. There was then easement
16 negotiations because then Glenn Pomp contacted us to help
17 him with the easement negotiations. Therefore, Mr. Young
18 alluded to a meeting that took place in 2012, so we were
19 involved in that. That was not in our original scope. So
20 those were all invoiced separately with documentation, and
21 the Drain Office has documentation on every invoice that we
22 submitted that tells what exactly we performed for that
23 fee.

24 So most on the additional was a lot -- was the
25 easement negotiations all the way through until we got to

1 the point we had to bid. We had another proposal for
2 bidding and construction that was submitted to the Drain
3 Office, and so we were operating under that proposal as
4 well. In addition, we then bid the project with the
5 understanding that we had adequate easements and permission
6 to access the property and construct the project or, you're
7 right, we would not have bid it if we did not feel that we
8 were not -- we did not have the adequate access.

9 MR. DON SWARTZLANDER: Can I interrupt for a
10 second?

11 MS. SCHWARTZ: Yes.

12 MR. DON SWARTZLANDER: Glenn Pomp told me that
13 they bid it without having all the easements because he
14 expected some of the contract -- I think he expected the
15 contractor to get his own easements.

16 MR. SAM MARTIN: And I can second that. That
17 was what I was --

18 MS. SCHWARTZ: Okay.

19 MR. SAM MARTIN: Those was going to be in my
20 comments.

21 MR. DON SWARTZLANDER: So some -- something's
22 wrong here.

23 MS. SCHWARTZ: Okay. We --

24 MR. SAM MARTIN: And I had direct conversations
25 with Denise to that effect. I asked why are we proceeding

1 to contract when you have not obtained the easements you
2 need, two conversations, one in person and one on the
3 phone, and in both of those your response was, "We have
4 been unable to obtain the easements we need, but we believe
5 the contractor will be better positioned to obtain them."
6 And my question back to you is, "In what world do you
7 believe that's conceivable? He has no authority and no
8 ability to obtain them. That is your responsibility." And
9 we had some pretty strong conversations at that point in
10 time. And your clear stance was that you did not have
11 easements, but that you were proceeding to construction
12 with the hopes that the contractor could obtain them. And
13 I recall that very clearly.

14 MR. DON SWARTZLANDER: And in support of what --
15 we once did a project for the Corp. of Engineers where we
16 did a value engineering change proposal and part of it was
17 obtaining easements. We went and purchased the easements.
18 The project went forward. The owner wanted to go to
19 condemnation. So continue.

20 MS. SCHWARTZ: Yeah, well, sure. Sure. And --
21 and so what we had, like I said, we had the letter from
22 Mr. DeKryger that allowed us to use Stoney Point Drive, was
23 not a permanent easement, but we were told in discussions
24 that they didn't want to grant a permanent easement so we
25 probably likely would have had to go to condemnation

1 anyways to get that. We did have the Dargis permanent
2 easement. So the contractor had what he needed. He did
3 obtain then temporary easements from additional property
4 owners for storage and materials. So and that is just a
5 standard course of practice, as you would know, too.

6 MR. DON SWARTZLANDER: Uh-huh.

7 MS. SCHWARTZ: Many times that is -- that is
8 done.

9 MR. DON SWARTZLANDER: That's -- that's not
10 right -- that's yeah.

11 MS. SCHWARTZ: So, right. Right. So, yeah, so
12 that's back to the -- our additional costs. That's
13 primarily where our additional costs came in. Now with the
14 delay of the project we had, you know, some additional
15 staking of the -- because we staked it once, now we had to
16 go out and make sure that it was, you know, the stakes were
17 still in place for the contractor to start. So there was a
18 little bit of that as well.

19 MR. DON SWARTZLANDER: That's minimal.

20 MS. SCHWARTZ: Minimal, but --

21 MR. DON SWARTZLANDER: That's a half a day.

22 MS. SCHWARTZ: Right. But --

23 MR. DON SWARTZLANDER: The staking involved
24 there is a half a day max.

25 MS. SCHWARTZ: Certainly, but that was, you

1 know --

2 MR. DON SWARTZLANDER: That's, yeah, I mean --

3 MS. SCHWARTZ: -- that's all part of it.

4 MR. DON SWARTZLANDER: -- that's -- that's
5 pocket change.

6 MS. SCHWARTZ: That's all part of it. So, yeah,
7 and all of our costs are documented, all of our invoices
8 have exactly what we did for the -- for the price that we
9 charged and it's all there. And primarily it was the
10 easement negotiations.

11 MR. DON SWARTZLANDER: Okay.

12 MS. SCHWARTZ: And the value engineering that we
13 were -- this we were doing, the responses to the property
14 owners that were involved in the -- the negotiation
15 process.

16 MR. DON SWARTZLANDER: Wait, you were doing the
17 value engineering?

18 MS. SCHWARTZ: Yes.

19 MR. DON SWARTZLANDER: That's kind of unusual.

20 MS. SCHWARTZ: Yeah. And with the contractor.
21 With the contractor looking at this option --

22 MR. DON SWARTZLANDER: Normally the contractor
23 does the value engineering.

24 MS. SCHWARTZ: -- looking at that option. There
25 were questions regarding the hydraulics that we --

1 MR. DON SWARTZLANDER: That should have been
2 addressed --

3 MS. SCHWARTZ: -- ran additional --

4 MR. DON SWARTZLANDER: -- in the design.

5 MS. SCHWARTZ: -- that we ran additional
6 calculations for that.

7 MR. DON SWARTZLANDER: Additional calculations
8 after the design was completed?

9 MS. SCHWARTZ: When there are specific
10 questions, you know regarding, well, how -- what's the
11 hydraulic effect of a -- of an equalizer culvert and we
12 wanted to make sure that we had an appropriate answer --

13 MR. DON SWARTZLANDER: Uh-huh.

14 MS. SCHWARTZ: -- then we again took our
15 calculations out, we looked at them closer to be able to
16 provide that answer. So --

17 MR. DON SWARTZLANDER: Okay. I -- I guess we've
18 seen that. How much have the construction costs increased?

19 MS. KRAKER: The construction costs actually
20 increased \$15,724.

21 MR. DON SWARTZLANDER: Do we have a change order
22 on that?

23 MS. KRAKER: There should be, yes.

24 MR. DON SWARTZLANDER: Do we?

25 MS. KRAKER: Claire usually works them with

1 getting the change orders.

2 MR. DON SWARTZLANDER: Well, you -- you would
3 certainly have it. You have to sign it.

4 MS. KRAKER: I do not sign it, no.

5 MR. DON SWARTZLANDER: Do you have a change
6 order to that effect?

7 MS. SCHWARTZ: A change order has not been
8 executed yet for that.

9 MR. DON SWARTZLANDER: So the \$15,000 --

10 MS. SCHWARTZ: We received --

11 MR. DON SWARTZLANDER: -- is not concrete?

12 MS. SCHWARTZ: We received those prices from the
13 contractor to make sure that we had them in the comp of
14 cost, but we have not issued a change order yet to --

15 MR. DON SWARTZLANDER: When -- when did you get
16 those --

17 MS. SCHWARTZ: -- do that.

18 MR. DON SWARTZLANDER: -- costs from the
19 contractor?

20 MS. SCHWARTZ: Approximately two weeks ago.

21 MR. DON SWARTZLANDER: And but he's only -- he's
22 only asking for \$15,000 increase on this project, even
23 though he's been delayed for two years now?

24 MS. SCHWARTZ: That is correct.

25 MS. KRAKER: Uh-huh.

1 MR. DON SWARTZLANDER: So I guess all the
2 increased costs have gone to the engineer and the
3 attorneys, haven't they? I guess we have pretty much of an
4 open book here and somebody saw it and said (whistle) here
5 we go. Well, okay, thank you.

6 MS. ANNE SWARTZLANDER: Can I have a followup to
7 that question, because you talked about --

8 MS. MEDEMAR: Okay, just a minute --

9 MS. ANNE SWARTZLANDER: -- oh, okay.

10 MS. MEDEMAR: You need to give your name.

11 MS. ANNE SWARTZLANDER: My name is Anne
12 Swartzlander, 2116 Bayview Drive. I'm the wife, but I
13 don't understand all the engineering stuff, but I have a
14 question for the lawyer.

15 You talked about having the paperwork and then
16 you had the condemnation and then you had the meeting. I'm
17 wondering was there a meeting to get everybody together and
18 talk before everybody's lawyers got involved, because my
19 experience with lawyers is this is exactly what happens.
20 So was there a meeting or was it just letters sent back and
21 forth?

22 MR. BRENNAN: There were several primarily phone
23 conferences. The -- the property owners were being
24 informally represented. Their spokesperson was informally
25 David Kiel, the attorney for Dr. Dargis. And we were

1 communicating primarily through him and getting information
2 back from the -- from the folks around the -- the road
3 through him.

4 MS. ANNE SWARTZLANDER: Okay. So no general
5 meeting until after condemnation?

6 MR. BRENNAN: There wasn't a public meeting.
7 There wasn't a public meeting --

8 MS. ANNE SWARTZLANDER: Yeah, I was just --

9 MR. BRENNAN: -- you know, required.

10 MS. ANNE SWARTZLANDER: -- no, I -- I was not
11 talk -- pardon me, I was just talking about the people -- a
12 meeting of the people involved.

13 MR. BRENNAN: Right. Well --

14 MS. ANNE SWARTZLANDER: You were communicating
15 other ways, you're saying?

16 MR. BRENNAN: That was -- we had an effective
17 communication channel that was an efficient communication
18 channel, so we weren't talking with, you know, several
19 people all at once and it was represented to us that that
20 communication we were getting reflected the viewpoints of
21 the property owners.

22 MS. ANNE SWARTZLANDER: Okay. Just that was my
23 question. Thank you.

24 MS. MEDEMAR: Okay, we're trying -- could you
25 wait to --

1 MR. TOM LYNCH: I don't care. It's Tom Lynch
2 from 1950 Stoney Point. First of all we had an agreement
3 from the property owners February 15th of 2015. We talked
4 to Denise Medemar. She said she wanted to take it
5 adversarial, so let's start there. You filed condemnation
6 proceedings. You decided to hire a sheriff to try and
7 notify me and my wife who both live out of state. All your
8 paperwork was drawn, didn't fit the stuff for out of state.
9 You tried to put stuff in your final agreement where she
10 has the authority to pull the boards when she wants, which
11 is violation of the whole thing, so don't sit here saying
12 it's all us. Nobody talked to us. We approached her in
13 February 2015 saying we had this done and ready to sit
14 down. She said no. I don't want to hear this from the
15 property owners and slamming the property owners. It's you
16 guys sitting at this table.

17 Second of all, if you read your own SME report
18 it will say that your road will not support a light duty
19 rubber tired vehicle. Period. Explain how you're
20 engineering a \$50,000 road that won't support a pickup
21 truck. It's in your SME report. Explain it.

22 MR. BRENNAN: Well, I guess I'll start out
23 first, Mr. Lynch. We did hire a process server because we
24 have to. In a condemnation action we have to achieve
25 personal service.

1 MR. TOM LYNCH: No, you don't. On the kind of
2 service you were serving it just takes a certified
3 letter --

4 MR. BRENNAN: Excuse me.

5 MR. TOM LYNCH: -- to serve us. When I called
6 you, you said you had no clue where I even lived.

7 MR. BRENNAN: Mr. Lynch --

8 MR. TOM LYNCH: Which is on record --

9 MR. BRENNAN: -- you wouldn't give me your
10 address --

11 MR. TOM LYNCH: -- with the county.

12 MR. BRENNAN: -- when I asked you politely over
13 the phone if that's the case, and I -- and frankly when we
14 sent a process server over to your place to serve them, a
15 weapon was drawn against him.

16 MR. TOM LYNCH: Yeah, did he tell you he walked
17 in my front door without knocking?

18 MR. BRENNAN: So I'm just --

19 MR. TOM LYNCH: And he was standing in my house.

20 MR. BRENNAN: -- telling you what he told me.

21 MR. TOM LYNCH: I could have killed him.

22 MR. BRENNAN: Well, that would have been
23 unfortunate.

24 MR. TOM LYNCH: Yeah, it would have. Especially
25 for you guys.

1 MR. BRENNAN: So I'm just suggesting, Mr. Lynch,
2 that you have a viewpoint and I appreciate the fact that
3 you have a viewpoint. We went and exercised on behalf of
4 the drain commissioner according to the law what was their
5 option in order to obtain the easement, all right? We did
6 the best we could under the circumstances. We tried to
7 keep the costs down. What was put into the agreement was
8 perfectly legal, Mr. Lynch. I'm --

9 MR. TOM LYNCH: Yeah, but saying she has the
10 right to decide who floods, who doesn't isn't.

11 MR. BRENNAN: No, that isn't --

12 MR. TOM LYNCH: That's a standing court order.

13 MR. BRENNAN: That is a misrepresentation of
14 what the agreement says --

15 MR. TOM LYNCH: No, it doesn't.

16 MR. BRENNAN: -- Mr. Lynch. All right, well you
17 and I can disagree --

18 MR. TOM LYNCH: My laptop's --

19 MR. BRENNAN: -- with that.

20 MR. TOM LYNCH: -- here. You want me to go
21 home, get my laptop and print it out and show it to all of
22 these people in this audience?

23 MR. BRENNAN: Anyone can put --

24 MR. TOM LYNCH: Saying she decides who floods,
25 who doesn't flood? That's set by court order.

1 MR. BRENNAN: Excuse me, Mr. Lynch. Any one
2 who -- any one in this room who would like to can FOIA the
3 office and get a copy of the settlement agreement that was
4 entered. You are misrepresenting what the settlement
5 agreement says.

6 MR. TOM LYNCH: No, I'm not. Because I have the
7 copies --

8 MR. BRENNAN: We're all going to --

9 MR. TOM LYNCH: -- from the lawyer.

10 MR. BRENNAN: Then you and I can simply disagree
11 with that. I don't want to waste anyone's time here, okay?

12 MR. TOM LYNCH: Okay. Then explain why, in your
13 SME report it says it won't support the pickup truck, so
14 why we going with the road that won't support a pickup
15 truck?

16 MS. SCHWARTZ: The soil certainly will not, but
17 we were also provided by SME with a recommended design. We
18 also had engineers in our office who ran calculations based
19 on the soil testing that was done to come up with a design
20 for the road section. Essentially it requires some
21 specialized engineering, some geogrid to float the road
22 over that section. It's been reviewed by the geotechnical
23 consultant, it's been reviewed by engineers in our office,
24 it's been reviewed by the contractor and his experts. So
25 that is the present design that we have and that's what we

1 decided then to go with in order to allow construction
2 equipment back.

3 MR. TOM LYNCH: Okay, second of all, why is it
4 being charged to only us when it's going to be a county
5 road and only serviceable for county, has no benefits to
6 anybody around the lake?

7 MR. BRENNAN: It's not going to be a county
8 road. It is still a private road. All the county has --
9 all the drainage -- excuse me, the lake level district has
10 is an easement --

11 MR. TOM LYNCH: But --

12 MR. BRENNAN: -- over private road, excuse me --
13 over a private road that has been either provided or
14 condemned. Actually there in the end almost everyone
15 except for one person gave an agreement as a result of the
16 litigation. It is still a private road. It is not a
17 county road. It's not going to be --

18 MR. TOM LYNCH: That 900 foot --

19 MR. BRENNAN: Excuse me, Mr. Lynch. It's not a
20 county road. It's not going to be used for general county
21 purposes. The easement has restrictions on it that relate
22 to the lake level district, all right? I drafted the
23 easement, so I know what it says.

24 MR. TOM LYNCH: We're talking about the 900 foot
25 road across Dargis's property.

1 MR. BRENNAN: That is also not a county road.
2 That is a --

3 MR. TOM LYNCH: But if you're putting in a --

4 MR. BRENNAN: Excuse me. It is not a county
5 road. It is an easement given by a private owner for a
6 specific purpose to Miner Lake Level District. It can only
7 be used for the purposes that are set forth in the
8 easement. It is not a county road.

9 MR. TOM LYNCH: I get that. And I'm saying why
10 isn't it? Because it's only there for her convenience. It
11 provides no -- nothing for anybody else in this room who
12 lives around the lake.

13 MR. BRENNAN: That's true with any easement. A
14 drain easement only serves a purpose for the drain. Any
15 easement that's given for purposes of a statutory approved
16 purposes is limited to those purposes.

17 MR. TOM LYNCH: That --

18 MR. BRENNAN: It does -- excuse me, it doesn't
19 mean it has to become, and you wouldn't want it to become a
20 general county road that could be accessed at any time
21 anyone from the county feels like it for any purpose.
22 Easements are given by private owners to public entities
23 for limited purposes so that they don't have to give up
24 their entire property for general purposes. That's the --
25 that's the reason for it.

1 MR. TOM LYNCH: Well, if you read the ingress
2 and egress easement for Dargis, and I'm not defending Dave
3 Dargis by any stretch of the imagination, it says any
4 county vehicle and/or drain commission can use that road.
5 What are the maintenance fees associated with this? You
6 haven't told anybody what the maintenance is going to cost
7 on that road or anything else. That road is going to fail.
8 And if you read the SME report, it also says if the dam
9 functions, it's going to function poorly. If it functions.
10 Explain that.

11 MR. BRENNAN: Well, all I can say with regard to
12 the easement is I think you're misrepresenting it, but of
13 course the easement's a public document. Anybody in this
14 room can get it and read it for themselves. It is not a
15 general easement for any purpose at all. It's limited to
16 the purpose for which it was obtained. That's all I can
17 say about that.

18 MR. TOM LYNCH: Okay. Any comment on
19 maintenance of the road and anything else? What if the dam
20 fails, because your SME report says your design won't
21 function properly.

22 MS. SCHWARTZ: (Shook head, no verbal response.)

23 MR. TOM LYNCH: Rest my case.

24 MS. MEDEMAR: Okay, we have -- we have Judy
25 Corbett.

1 MS. JUDY CORBETT: And I think some of my
2 questions have been answered already.

3 MS. MEDEMAR: Have they? Okay, do you have any
4 more questions that --

5 MS. JUDY CORBETT: No, but I think the first one
6 I would still like to.

7 MS. MEDEMAR: Okay. Her address is 2503
8 Lorraine Drive. "I thought there was a structure that was
9 already built and ready to install."

10 MS. JUDY CORBETT: Yeah, I talked to --

11 MS. MEDEMAR: You want to come up to --

12 MS. JUDY CORBETT: -- the gentleman who built
13 it.

14 MS. MEDEMAR: Can you come up here, please?

15 MS. JUDY CORBETT: I talked to the gentleman who
16 built a structure for the dam and it's been sitting there
17 now for two or three years waiting to be installed. Are we
18 building another one? Is this one not good enough?

19 MS. SCHWARTZ: I think I can clarify that. So
20 as part of the dam improvements there is a catwalk that
21 will be also attached to the structure for safety purposes,
22 primarily for county staff when boards need to be put in
23 and pulled. And the current surface of the dam is very
24 slippery at this point and so we designed a catwalk. The
25 catwalk has been built by the contractor and it is ready to

1 be installed as soon as the dam is constructed.

2 MS. ANNE SWARTZLANDER: So we built the catwalk
3 before the dam, is what you're saying?

4 MS. SCHWARTZ: That's correct.

5 MS. ANNE SWARTZLANDER: And is the slippery part
6 of the dam new?

7 MS. MEDEMAR: If you're going to talk --

8 MS. ANNE SWARTZLANDER: Has the slippery --

9 MS. MEDEMAR: If you're -- name?

10 MS. ANNE SWARTZLANDER: Is the dam been always
11 slippery or is that something new to the condition of the
12 dam now?

13 MS. SCHWARTZ: No, it has always been slippery.

14 MS. MEDEMAR: Okay, I have one from Jack
15 DeFroll, and did you get your questions answered or do you
16 still have some questions? Come up here.

17 MR. JACK DEFROLL: My name is really Jerald, but
18 they go -- I go by Jack because it's a little easier for
19 everybody to remember. The other one starts with "J" and
20 they always want to spell it with a "G." I always say
21 Jerald -- my J starts like you spell junk, and the other
22 one spells like it's half garbage. That's just a little
23 joke. So I go by Jack.

24 Yes, I have one question. Have you ever
25 considered having the public contribute to the cost and

1 maintenance of the dam? We have a lot of people that use
2 the lake regularly, sometimes to the point where it almost
3 gets to be a nuisance for us property owners on the lake.
4 And I'm just wondering why. Some areas are doing this,
5 having some meter there or something that they would be
6 contributing to the upkeep in the dam or the lake itself.
7 Have you ever considered that?

8 MS. MEDEMAR: I don't think we can do that under
9 the law.

10 MR. JACK DEFROLL: Why can some do it?

11 MS. MEDEMAR: I --

12 MR. BRENNAN: I don't know what you're referring
13 to, and there may be -- there may be other ownership issues
14 or other -- it may be partially public. I don't know what
15 the -- I don't --

16 MR. DON SWARTZLANDER: I can probably address
17 part of that.

18 MR. BRENNAN: All right.

19 MR. DON SWARTZLANDER: Don Swartzlander. The
20 public access is owned by the state and the state's not
21 going to get involved.

22 MR. JACK DEFROLL: Oh, okay.

23 MR. DON SWARTZLANDER: I guess that's
24 probably -- it's easy --

25 MR. BRENNAN: Yeah, I -- I can certainly confirm

1 what the drain commissioner just said in terms of our
2 statutory limitations with regard to doing this project are
3 with the -- with the property owners. I mean we're
4 constrained by that section of the statute.

5 MR. JACK DEFROLL: Uh-huh. Okay.

6 MR. DON SWARTZLANDER: Dumont Lake is owned by
7 the county. That might be --

8 MR. JACK DEFROLL: Yeah, they have --

9 MR. DON SWARTZLANDER: -- that's why -- that's
10 why they can charge.

11 MR. JACK DEFROLL: They have one there. That's
12 why --

13 MR. DON SWARTZLANDER: I guess that's why they
14 can charge. Ours is owned by the state.

15 MS. MEDEMAR: Okay -- okay.

16 MR. JACK DEFROLL: Oh, okay.

17 MS. MEDEMAR: She is trying to get this. Okay.

18 MR. JACK DEFROLL: Okay, fine. That answers
19 that question. And now is a single contractor being let
20 this job, however the additional contractor is going to be
21 presented the plans for bidding?

22 MS. MEDEMAR: No. We've already bid this out
23 and the current contractor is going to do this still for
24 us.

25 MR. JACK DEFROLL: Other contractors had the

1 opportunity to bid on it?

2 MS. MEDEMAR: Yes, they did.

3 MR. JACK DEFROLL: Okay.

4 MS. MEDEMAR: Yes, they did.

5 MR. JACK DEFROLL: Well, I think the other
6 people answered my other question. Thank you.

7 MS. MEDEMAR: Okay. You're welcome.

8 MS. DEBORAH PULLEN: Hi, I'm Deborah Pullen,
9 2549 Lorraine Drive. And this is all kind of new to me. I
10 didn't really know what I was coming into. So, I wasn't
11 even sure what this is all about and I don't even know if I
12 got it straight, but obviously we're building a new dam.
13 We have to do -- we have an easement on the Dargis's
14 property, right? The dam is going to be constructed in the
15 same place, but we have to build a new road. Is that it?
16 And is there something more that goes with that? Because I
17 have to go home and tell my husband what's going on.

18 MR. BRENNAN: Good luck with that.

19 MS. DEBORAH PULLEN: Okay. So do I got this
20 right?

21 MS. MEDEMAR: Yeah.

22 MS. DEBORAH PULLEN: Okay.

23 MR. SAM MARTIN: He's welcome to call me. This
24 is Sam Martin. My contact information is on the website.

25 MS. DEBORAH PULLEN: Yeah, you're just down the

1 road.

2 MR. SAM MARTIN: Yeah, you're welcome to stop
3 by, too.

4 MS. ANNE SWARTZLANDER: I had other questions.

5 MS. MEDEMAR: Okay, go ahead.

6 MS. ANNE SWARTZLANDER: Is there anybody else?
7 Okay, my name is Anne Swartzlander. I talked before. I
8 live at 2116 Bayview Drive. The questions I asked were is
9 the \$1,600 a final figure? Or will this cost increase? I
10 mean we've all -- I think we're all concerned about how
11 much money has been spent already between lawyers and
12 engineering fees, and so now our concern as we walk out of
13 here with a number of \$1,600 and \$800 for the lots, and
14 then in six months or a year or two months this has
15 ballooned to another number. So are these costs set? If
16 not, why? Are there other fees involved? Please address
17 those issues.

18 MS. MEDEMAR: The \$1,600 should be the final
19 cost. Now this assessment is going out for ten years.
20 Hopefully the money that we have in contingency will cover
21 any maintenance cost as far as, you know, inspections and
22 for our office to go out and pull the boards and put them
23 back in and stuff. This should last for a long time. That
24 is my expectation of it.

25 MR. LEONARD DOMPKE: As a followup to the lady

1 before -- I'm Len Dompke, 2084 Lake Drive. Will there be
2 on a \$1,600, will there be a sunset clause in that so that
3 we know that at the end of ten years we're done with this
4 and that's going to be taken off of our tax bill? Question
5 number one. And then question number two is, was this
6 document proofed? Because I own a lot and a half, but I'm
7 being charged the full rate for two lots. And yet my
8 neighbor who I split the other lot with, they're only
9 getting charged half the amount. So how do I get that
10 corrected? Is that something I see you about?

11 MS. KRAKER: No.

12 MR. LEONARD DOMPKE: She said fondly, yes.

13 MS. MEDEMAR: Your lot and a half, are there two
14 parcel numbers for that lot and a half?

15 MR. LEONARD DOMPKE: Yes, there are.

16 MS. MEDEMAR: You have two separate parcels?

17 MR. LEONARD DOMPKE: I have two separate
18 parcels.

19 MS. MEDEMAR: And are they both on the lake?

20 MR. LEONARD DOMPKE: They are both on the lake.

21 MS. MEDEMAR: And that is why, then.

22 MR. LEONARD DOMPKE: But both of my -- but see
23 my neighbor was charged, he's line three on page one, Roger
24 Abbott, he shares that lot and he's paying \$800 and change
25 for his half lot.

1 MS. MEDEMAR: But his must be a back lot.

2 MR. LEONARD DOMPKE: No, it's right next to it
3 because the lots are -- they butt up to each other and are
4 both on the lake. That's my point. I mean I understand
5 for my main lot I'm going to pay the \$1,600, I get that,
6 but what I'm saying is for the half lot I should pay half
7 that amount, just like he did.

8 MS. MEDEMAR: Okay.

9 MR. LEONARD DOMPKE: So I believe there's been
10 an error there. Who do I see about getting that fixed?

11 MS. MEDEMAR: I guess you need to come down to
12 our office and let us review it and --

13 MR. LEONARD DOMPKE: Okay, is your office --

14 MS. MEDEMAR: -- see what --

15 MR. LEONARD DOMPKE: I'm not familiar with the
16 building. Is it in this building?

17 MS. MEDEMAR: Yes, it is. Down in --

18 MR. LEONARD DOMPKE: Downstairs?

19 MS. MEDEMAR: -- the basement.

20 MR. LEONARD DOMPKE: Thank you.

21 MS. MEDEMAR: Yeah.

22 MS. ANNE SWARTZLANDER: Can I have a second
23 followup?

24 MS. MEDEMAR: Yes.

25 MS. ANNE SWARTZLANDER: The \$1,600 is going to

1 be put on our taxes for ten years, put on the roll for ten
2 years. We would pay interest on that --

3 MS. MEDEMAR: Yes.

4 MS. ANNE SWARTZLANDER: -- if we go that route?

5 MS. MEDEMAR: Yes.

6 MS. ANNE SWARTZLANDER: So we could just write a
7 check for \$1,600 if we wanted to, or if -- it will have
8 interest if we spread it out?

9 MS. MEDEMAR: Right. After the first year --
10 after this year that first time that it goes on the tax
11 bill, after that you're welcome to come in and pay off the
12 remaining amount.

13 MS. ANNE SWARTZLANDER: Okay. Okay.

14 MR. BRENNAN: Are there more sheets?

15 MS. MEDEMAR: No, we've got them all.

16 Does anyone else have any questions that hasn't
17 ask any previously?

18 MR. JAMES WENDT: My name is Jim Wendt, 1977
19 Koterias. Is this a done deal, we're getting a dam whether
20 we want it or not, right?

21 AUDIENCE MEMBER: Yes.

22 MS. MEDEMAR: According -- well, every three
23 years it is our responsibility to have the dams inspected
24 by an engineer. In 2012 this dam did not pass inspection,
25 and the DEQ makes us, you know, repair it or replace it

1 under their code.

2 MR. JAMES WENDT: So regardless of what was said
3 here, we're getting a dam?

4 MS. MEDEMAR: It has to be replaced, yes.

5 MR. JAMES WENDT: And it looks like there is
6 mistakes on just about everybody's side, including the
7 drain commission. Is there any way that the county can
8 cover some of these legal fees instead of us having to pay
9 for the legal fees the county created?

10 MS. MEDEMAR: I'm not sure I understand. How do
11 you figure?

12 MR. JAMES WENDT: We're getting charged for the
13 legal fees that you guys went through to get the easements,
14 we are paying for it.

15 MS. MEDEMAR: Uh-huh.

16 MR. JAMES WENDT: The County should pay for some
17 of this I think.

18 MS. MEDEMAR: I don't think we're going to get
19 the county to pay for any of it. I don't know.

20 MR. JAMES WENDT: Even though it was mistakes on
21 everybody's part here, we're stuck with it?

22 AUDIENCE MEMBER: Yes.

23 MR. JAMES WENDT: Thank you.

24 MS. MEDEMAR: Anyone else? Yes.

25 AUDIENCE MEMBER: Oh, I just have one more

1 comment.

2 MR. BRENNAN: Wait, we have someone coming up.

3 MR. GERALD SETTER: Gerald Setter, 120th Avenue.
4 If half of this money that we're talking about were spent
5 on the old dam, where would we be?

6 MS. MEDEMAR: What do you mean?

7 MR. GERALD SETTER: Why don't they fix the one
8 that's there instead of going with this monument building
9 project?

10 MS. MEDEMAR: Claire? I --

11 MS. SCHWARTZ: Well, so the five tubes that are
12 part of the dam are beyond fixing, and if you were to line
13 them as we talked about, it would cost more than simply
14 removing them. The existing sheeting on the dam, some of
15 it had been replaced prior. There were some repairs done
16 to the dam in years prior, so the solution then was rather
17 than to try to repair the sheeting that's there was to put
18 in the new sheeting which then has the 50 year plus design
19 life to it. We are using the existing concrete that's
20 there for the dam, so we want to use what we can. In fact
21 the sheeting that is there currently, it's a very -- it's a
22 very thin light weight sheeting, and again, because of the
23 soils we're staying with a thin sheeting section, but it is
24 slightly thicker than what's there now.

25 MR. GERALD SETTER: Has the sheeting ever

1 failed?

2 MS. SCHWARTZ: Yes. It had -- it had to be
3 repaired several years ago and there are records in the
4 Drain Office on that, so --

5 MR. GERALD SETTER: And there will be guarantees
6 that this stuff will last --

7 MS. SCHWARTZ: 50 plus years.

8 MR. GERALD SETTER: 50 plus years?

9 MS. SCHWARTZ: Uh-huh. Yes, sir.

10 MR. GERALD SETTER: Who is -- who is underlining
11 the guarantee?

12 MS. SCHWARTZ: So, again, we have manufacturer
13 certificates and we have then our design and liability
14 insurance over the next ten years, and then we have, you
15 know, the contractor, too, so that's --

16 MR. GERALD SETTER: How much difference is there
17 in the sheeting thickness?

18 MS. SCHWARTZ: How much different -- I could not
19 tell you off the top of my head. I would need to look that
20 up.

21 MR. GERALD SETTER: See, and that would relate
22 to how long it lasts.

23 MS. SCHWARTZ: Uh-huh.

24 MR. GERALD SETTER: If you're going to use the
25 thin sheeting again, how long has this dam been there?

1 MS. SCHWARTZ: So this dam has been here 50
2 years.

3 MS. MEDEMAR: 1965 it was built.

4 MS. SCHWARTZ: Yup. Yup. So it's lasted --

5 MR. GERALD SETTER: Because they set the lake
6 level --

7 MS. SCHWARTZ: -- 50 years.

8 MR. GERALD SETTER: -- in '64.

9 MS. MEDEMAR: Yup.

10 MS. SCHWARTZ: Uh-huh. Uh-huh.

11 MR. GERALD SETTER: So this dam will be
12 guaranteed to do its job for its life.

13 MS. SCHWARTZ: That is correct. That is
14 correct.

15 MR. GERALD SETTER: No -- no sheeting changes or
16 anything?

17 MS. SCHWARTZ: That is correct.

18 MR. GERALD SETTER: We'll see.

19 MS. DEBORAH PULLEN: Oh, I'm sorry. You --

20 MR. DON SWARTZLANDER: No, I'm done.

21 MS. DEBORAH PULLEN: Okay. Deb Pullen again.
22 Just one more question. With this construction that's
23 going on, is that going to cause any future pollution for
24 the lake? With the, you know, building over wetlands I
25 guess is what you're saying and things like that. I know

1 that there is a huge, huge culvert or something that's been
2 put on the lake that I've never seen before. It's about
3 four feet wide, and we already have a lot of pollution
4 coming in from the farmers. Is this also going to add
5 anything? Or should it affect the lake at all that way?

6 MS. SCHWARTZ: So, no. Pollution-wise it should
7 not affect the lake. It's an outlet structure, so it will
8 not be adding any pollutants into the lake. And we also
9 have received all of our environmental permits for the
10 project, so in terms of working in wetlands and floodplains
11 and below ordinary high water marks of lakes and streams,
12 we are permitted for this project. So --

13 MS. DEBORAH PULLEN: Okay.

14 MS. SCHWARTZ: -- if that answers your question.

15 MS. ANNE SWARTZLANDER: Anne Swartzlander, 2116
16 Bayview Drive. She made me think of something. So when
17 you start this project, how will that affect the lake on a
18 day-to-day basis? Will the lake level go down while
19 they're working on the project? Will there be any changes
20 to the lake?

21 MS. SCHWARTZ: Just my understanding from
22 talking with the contractor is that he is able to work with
23 the existing dam in place while he works, yes.

24 MS. ANNE SWARTZLANDER: Thanks.

25 MR. DON SWARTZLANDER: Have you had a

1 preconstruction meeting?

2 MS. SCHWARTZ: Yes, we have.

3 MR. DON SWARTZLANDER: Are you going to have
4 progress meetings?

5 MS. SCHWARTZ: Yes, we will have progress
6 meetings. The contractor anticipates this taking about two
7 months, eight weeks of construction, so we will have
8 progress meetings.

9 MR. DON SWARTZLANDER: How do we go about being
10 notified?

11 MS. SCHWARTZ: Drain Office could notify the
12 property owners around the lake of the construction
13 progress meeting, certainly. And I don't know, Denise, are
14 you planning on posting website updates?

15 MS. MEDEMAR: We can post --

16 MS. KRAKER: We can do that. I'll do that.

17 MS. MEDEMAR: -- updates on the website.

18 MR. DON SWARTZLANDER: Has the contractor been
19 issued notice to proceed?

20 MS. SCHWARTZ: Yes, he has.

21 MS. MEDEMAR: Several times.

22 MR. DON SWARTZLANDER: That was a bad statement.
23 When -- when does he propose starting construction?

24 MS. MEDEMAR: Well, we have to, once this is
25 done --

1 MR. DON SWARTZLANDER: Normally you have ten
2 days after notice to proceed.

3 MS. MEDEMAR: Okay, once this is done and goes
4 before the board of commissioners and if they approve it,
5 then we have to work on bonding for the project because we
6 have to have money then to pay the contractor.

7 MR. DON SWARTZLANDER: You don't have the
8 financing in order on this project? And you've issued
9 notice to proceed -- or notice proceeds and contracts and
10 you don't have the financing in order? Is that unusual?
11 Claire?

12 MS. KRAKER: No, normally we have -- normally we
13 have the financing already in place, yes.

14 MR. DON SWARTZLANDER: I would --

15 MS. KRAKER: I agree with you.

16 MR. DON SWARTZLANDER: About 99 percent of the
17 time.

18 MS. KRAKER: I agree with you.

19 MR. DON SWARTZLANDER: And this time you elected
20 not to be. I'm done. Never mind.

21 MR. BRENNAN: One of the problems that, as I
22 understand it anyway, was that because of the acquisition
23 cost issues we would not have had to go back before the
24 county board if it could have been done in the original
25 budget. We had -- we already went through that process,

1 right?

2 MS. MEDEMAR: Yes, we did.

3 MR. BRENNAN: So the glitch here, if you will,
4 is the fact that we had the acquisition costs. That really
5 is --

6 MR. DON SWARTZLANDER: And the attorney costs.

7 MR. BRENNAN: Well, the attorney costs, and I'm
8 not --

9 MR. DON SWARTZLANDER: All part of it.

10 MR. BRENNAN: -- ashamed to be an attorney or to
11 have to charge for my work, like you charge for yours.

12 MR. DON SWARTZLANDER: Well, you probably charge
13 a lot more than me, so --

14 MR. BRENNAN: So my point is that the
15 acquisition costs were the bump in the road, that this
16 project, the timeline would have been more typical had we
17 had the -- had we not had the acquisition costs and the
18 dispute that arose.

19 MR. DON SWARTZLANDER: Am I'm going to go back
20 to my original point, then. If you had not bid this
21 without having easements, we probably wouldn't be sitting
22 here. So it's you, you, and you (pointing) fault for
23 proceeding with this without having your documentation
24 ready prior to it.

25 MR. BRENNAN: I --

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MR. DON SWARTZLANDER: And I'm not going to accept anything other than that.

MR. BRENNAN: That's fine. Everyone is entitled to their opinion, and I certainly don't --

MR. DON SWARTZLANDER: That's not an opinion. That's truth.

MR. BRENNAN: That's everyone -- you can -- all I'm going to respond to that is that had the Stoney Point Drive, which was a perfectly existing road and provided all the access that was needed, if we had been able to obtain those easements as we -- as we had expected and had been negotiated, this would not have been a problem. What happened in this situation is nothing more or less than the fact that a dispute arose. And again, the finger pointing -- the finger pointing is just not going to resolve or -- or do anyone any benefit. What happened happened. We were in a situation where the law required us to have the rights, we didn't have the rights, and the only thing you can do at that point from, if you're from the drain commissioner's office, is to go through the legal proceeding to acquire the rights. And that's all we did.

MR. DON SWARTZLANDER: Exactly. But the property owners are not the ones that caused the problem. They're not the ones that caused the screw-up.

MR. BRENNAN: I --

1 MR. DON SWARTZLANDER: But we're getting to pay
2 for the screw-up. And you cannot disagree with that.

3 MR. BRENNAN: I respectfully --

4 MR. DON SWARTZLANDER: And that's enough.

5 MR. BRENNAN: -- disagree with that.

6 MR. DON SWARTZLANDER: Okay.

7 MR. JERRY YOUNG: The news that this was not
8 bonded is new. It is in fact news. So if I understand
9 correctly, you're saying that had we not had revisions this
10 was bonded or the finances were sufficiently in place?

11 MR. BRENNAN: We were in a position, as I
12 understand it, and Denise you can correct me, but we were
13 in a position is we had the authority, we were in a
14 position to do the bonding work on a normal schedule.

15 MR. JERRY YOUNG: Okay. And does the bonding
16 work typically follow letting the job out and beginning
17 construction?

18 MS. MEDEMAR: Yeah.

19 MS. SCHWARTZ: Yes.

20 MR. JERRY YOUNG: Okay, thank you. That seems
21 cart horse to me. But so the -- in regards to the project
22 meetings and updates, I request that the Miner Lake
23 Association and the Miner Lake Improvement Board be made
24 aware of those meetings. I am willing to serve as the
25 contact for that with due notice so that we can attend

1 and/or publicize the fact that they are occurring. Thank
2 you.

3 MR. LEONARD DOMPKE: This is directed to you,
4 Claire.

5 MS. SCHWARTZ: Uh-huh.

6 MR. LEONARD DOMPKE: Earlier you had
7 mentioned --

8 MS. MEDEMAR: What is your name again?

9 MR. LEONARD DOMPKE: Oh, I'm sorry, Leonard
10 Dompke, 2084 Lake Drive. Earlier you had said that the
11 approach of lining the current tubes with concrete was
12 expensive. I was wondering, would you please prepare some
13 sort of an estimate for the drain commission, as well as
14 the residents here, so that we understand the gravity of
15 what the difference in costs are because, and I don't mean
16 any disrespect here, we just have an opinion from you that
17 it would cost more, and I think it would help move the
18 conversation along if we knew -- we know what your current
19 plan is costing, but it would be helpful for the commission
20 and the residents to know what, if we did put the tubes in,
21 you know what it would cost. Because I can't believe that
22 it would be more expensive than the current approach, but
23 you're the engineer here, so I'm going to default to you to
24 help us -- help educate us on that, okay? Thanks.

25 MS. ANNE SWARTZLANDER: You're looking for data

1 versus we had a lot of words, lots of data.

2 MS. MEDEMAR: Okay --

3 THE COURT REPORTER: I'm sorry?

4 MS. ANNE SWARTZLANDER: I said -- I said we're
5 looking for data here. Anne Swartzlander. I think his
6 point is good that we've had a lot of words flying back and
7 forth and some things we can't have proof on, but I guess
8 we'd like some data, without having you put extra money
9 into it, is there something written up already? Or not?
10 It's going to cost more to do that?

11 AUDIENCE MEMBER: It's going to cost more.

12 MS. ANNE SWARTZLANDER: Whatever.

13 MS. MEDEMAR: Yes?

14 AUDIENCE MEMBER: That \$1,600 just went up to
15 18.

16 AUDIENCE MEMBER: Yeah.

17 MR. CHARLES SETTER: Charles Setter, 120th
18 Avenue. Did the DEQ mandate repair or mandate replace the
19 structure?

20 MS. MEDEMAR: I'm -- I'm really not for sure.
21 Becky was in when we had it, but I'm sure they probably
22 said it needed to be fixed, whatever --

23 MR. CHARLES SETTER: That could be called
24 repair.

25 MS. MEDEMAR: Well, I think that's why --

1 MR. CHARLES SETTER: Repair would be a hell of a
2 lot cheaper than what you're doing on it.

3 MS. MEDEMAR: Well, I think that's why Becky
4 hired Fishbeck to review it and decide what was the best
5 plan for it.

6 MR. CHARLES SETTER: They naturally are going to
7 go for the whole thing, because they're doing the business.

8 AUDIENCE MEMBER: That's right.

9 MR. CHARLES SETTER: I'm just wondering why it
10 wasn't looked at as a repair project because I have been up
11 to that dam from the water side and I know what it's like.
12 And it's not near as much trouble as some people would like
13 you to believe.

14 MS. SCHWARTZ: Well, I can add that when we
15 looked at this again, it was always stressed to us that
16 cost is imperative. And we were looking for cost effective
17 solutions. So that's why when we -- we though have fifty
18 year old very thin sheeting, it was not --

19 MR. CHARLES SETTER: How thick was that
20 sheeting?

21 MS. SCHWARTZ: -- possible to repair it, so it
22 was a better solution to just replace it and then you have
23 moving forward the fifty plus year design life on the dam.
24 So I -- I would have --

25 MR. CHARLES SETTER: Again, how thick was that

1 sheeting?

2 MS. SCHWARTZ: -- to --

3 MS. MEDEMAR: Hey.

4 MS. SCHWARTZ: I would have to look that up, but
5 we have that information back at Denise's office. We have
6 the, I believe we do have the as-builts for that -- for
7 that dam, yes.

8 MR. SAM MARTIN: Sam Martin, Miner Lake
9 Association. Claire, I think part of what we're dealing
10 with as well here is people have different mental pictures
11 of what is presently in place, and different mental
12 pictures of what is proposed.

13 MS. SCHWARTZ: Uh-huh.

14 MR. SAM MARTIN: So I think some people are
15 picturing something akin to Hoover Dam going in, and some
16 people are picturing something that is much less than
17 what's currently there as well.

18 MS. SCHWARTZ: Uh-huh.

19 MR. SAM MARTIN: So to aid in that, I would like
20 to request, and I'll follow up with you following this, if
21 you could provide renderings --

22 MS. SCHWARTZ: Absolutely.

23 MR. SAM MARTIN: -- that I could publish to the
24 Miner Lake website --

25 MS. SCHWARTZ: Uh-huh.

1 MR. SAM MARTIN: -- of what the structure will
2 be. I have obtained pictures of the current structure.

3 MS. SCHWARTZ: Right.

4 MR. SAM MARTIN: And I'm comfortable posting
5 those, so that we can -- we can at least provide that to
6 the dialogue. I think there are numbers that believe that
7 what's going in is a solid wall-to-wall concrete structure
8 that -- and the conversation has repeatedly come back to
9 why aren't they just putting sheeting back in, and I'm
10 hearing you saying you are in essence putting sheeting back
11 in.

12 MS. SCHWARTZ: That is correct.

13 MR. SAM MARTIN: And, yeah, you're making some
14 additional changes. So it would benefit from that. The
15 issue of the road, we're not going to resolve that here. I
16 think that's become eminently clear. And just understand
17 there are strong concerns about the possibility for
18 flooding and the cost with that.

19 MS. SCHWARTZ: Uh-huh.

20 MR. SAM MARTIN: Finally, is there a set
21 construction date? I think that has not been set?

22 MS. MEDEMAR: (Shook head, no verbal response.)

23 MS. SCHWARTZ: (Shook head, no verbal response.)

24 MR. SAM MARTIN: Okay. The reason that I ask
25 that is from people who have direct experience with that

1 region of the lake, that property, it is their strong,
2 strong contention that near the end of the year, certainly
3 late summer into winter is the optimal time to access that
4 property. Earlier, and when this was initially let out
5 there was discussion about this being done in February, and
6 the advice of local residents and people who have been on
7 the lake for years is that is the best way to lose a
8 tractor is to go during that time of year. So we strongly,
9 strongly recommend that if -- if or when this proceeds to
10 construction, that that advice be heeded, given local
11 experience.

12 MS. SCHWARTZ: Thank you.

13 MS. MEDEMAR: Anyone else?

14 MR. JACK DEFROLL: Jack DeFroll again, 2031
15 Forest Drive. You are saying now the way the project is,
16 the property owners per se do not have a vote on this
17 thing. It's either approved or disapproved by a board,
18 correct?

19 MS. MEDEMAR: This is already a project that's
20 going forward.

21 MR. JACK DEFROLL: So we have no say as far as
22 voting on the issue?

23 MS. MEDEMAR: No.

24 MR. JACK DEFROLL: Okay. Thank you.

25 MS. DEBORAH PULLEN: Okay, I'm going to say it.

1 Has it been brought before counsel, I don't know if you
2 have counsel or who you have, but has it been brought
3 before them to try to get some of those costs into a budget
4 to help us? I mean you said you don't think that the
5 county would go forward and pay anything. Has anybody even
6 tried, and to put that forth, you know?

7 MS. MEDEMAR: I guess I've never known before.
8 We would have to go before probably the board of
9 commissioners to ask for them to put some money into this,
10 and I've never known that it has happened in the past. And
11 we have several, you know we have over 800 county drains
12 that properties, you know, pay on and we just don't get any
13 help.

14 MS. DEBORAH PULLEN: Well, I know that there's
15 budgets. I mean, you know, you're budgeting for, you know,
16 sewer, water, you know, you name it. You're budgeting for
17 something. You're budgeting for everything.

18 AUDIENCE MEMBER: Tell them that's true. Tell
19 them to get a lawyer.

20 MS. DEBORAH PULLEN: So I know that there has to
21 be a budget that's set for this, and why hasn't -- I mean
22 it can go before a vote -- before your commissioners and,
23 you know, put that into the budget. And did anybody even
24 try?

25 MR. BRENNAN: Actually, I could speak to that a

1 little bit. The statutes that deal with lake levels, it's
2 a unique statute and it's -- and for whatever reason our
3 legislature decided to handle the financing of these kinds
4 of projects differently than general projects that the
5 county does for its general work. So you have a statutory
6 scheme that we're kind of, I guess for lack of a better
7 word, stuck with. You know, if there's a political
8 solution which would not be the drain commissioner's
9 position to do, you know, you all have county commissioners
10 that you could -- that you could, you know, lobby with and
11 see if -- what -- what they might want to do in terms of a
12 county to take over any aspect of it or, you know, there
13 are county lakes and there are lakes that have state access
14 and, you know. So the point is, though, that from this
15 perspective is we've got a lake level, we have a statute
16 that deals with lake levels and how -- and how work is to
17 be done with regard to keeping those lake levels. And
18 that's -- that's the confines that we're stuck with right
19 now. We don't -- I mean that's -- it's set by statute,
20 which none of us in this room, you know, I mean we can't
21 change on our own, let's put it that way.

22 So it isn't just, you know, well maybe they've
23 got some extra money and can give it to us, because the
24 response is likely to be that's not how the statute works.
25 The statutes works is that the folks around the lake pay

1 for the lake level improvements, to have the lake level a
2 particular way. And so that's going to be the response
3 you're likely to get. Unless somebody, you know, has some
4 pull or some lobbying experience or whatever, but that's --
5 that's the constraint that Denise's office is left with.
6 Her office has to operate with regard to the statutes that
7 she's sworn to implement, you know, when she took -- took
8 office.

9 MS. DEBORAH PULLEN: Okay, thank you.

10 MS. MEDEMAR: If there's no one else that has
11 questions, I want to thank everyone for coming today and
12 hopefully your questions were all answered. Thank you.

13 (At 11:24 a.m., proceedings concluded.)

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