

STATE OF WISCONSIN CIRCUIT COURT SAWYER COUNTY

JAMES HAUSMAN,

Plaintiff,

vs.

Case No. 03-CV-167

SAWYER COUNTY,

Defendant.

Telephone deposition of:
NANCY JOHNSON DENT

Date: Tuesday, June 21, 2005

Time: 2:05 o'clock p.m.

Reported by NANCY L. DELANEY

1 NANCY JOHNSON DENT,
2 called as a witness, after being first
3 duly sworn in the above cause, testified
4 under oath as follows:

5 EXAMINATION

6 BY MR. WRIGHT:

7 Q What is your full name?

8 A Nancy Johnson Dent.

9 Q Ms. Dent, you've been deposed before in this case and
10 the only rule that we need to remember today in
11 addition to those we talked about before is that
12 because we're on the phone, and especially because
13 you're on a speaker phone there, if you can wait until
14 I finish my question before giving your answer and
15 I'll try and do the same when you're answering, okay?

16 A Yes.

17 Q And you're there today in your office in Minnesota?

18 A That's correct.

19 Q And with you today in the room there is Mr. Phil
20 Solseng?

21 A Yes.

22 Q Is anyone else in the room with you?

23 A No.

24 Q What documents do you have before you today?

25 A I have Exhibit 179, I have a copy of the study of the

1 TELEPHONE DEPOSITION of NANCY JOHNSON DENT,

2 a witness in the above-entitled action, taken at the
3 instance of the defendant, under the provisions of
4 Chapter 804 of the Wisconsin Statutes, pursuant to
5 notice, before NANCY L. DELANEY, a Notary Public in
6 and for the State of Wisconsin, at the offices of
7 Stafford Rosenbaum, LLP, Attorneys at Law, 222 West
8 Washington Avenue, in the City of Madison, County of
9 Dane, and State of Wisconsin, on June 21, 2005,
10 commencing at 2:05 o'clock p.m.

11 APPEARANCES

12 LAUREN L. AZAR,
13 MICHAEL, BEST & FRIEDRICH, LLP,
14 Attorneys at Law, 1 South Pinckney Street,
15 Madison, Wisconsin, appearing on behalf
16 of the plaintiff;

17 JOSEPH P. WRIGHT and MATTHEW P. DREGNE,
18 STAFFORD ROSENBAUM LLP, Attorneys at Law,
19 222 West Washington Avenue,
20 Madison, Wisconsin, appearing on
21 behalf of the defendant.

22 ALSO PRESENT: JAMES HAUSMAN (by telephone)
23 PHILIP SOLSENG (by telephone)

24 (There were no exhibits marked for identification)
25

1 cause of shoreline loss at the Hausman property that
2 we prepared dated January 4, 2005. I also have a copy
3 of the County Highway NN Round Lake flood analysis
4 dated January 4, 2005.

5 I have a copy of a report from Rob Montgomery
6 dated June 7, 2005. I have a copy of plaintiff's
7 response to defendant's second set of interrogatories
8 and requests for production of documents to
9 plaintiff.

10 I have a copy of plaintiff's supplemental
11 response to defendant's first set of interrogatories
12 and requests for production of documents to
13 plaintiff. I have a copy of an affidavit of Nancy
14 Johnson Dent and I have a copy of the second affidavit
15 of Nancy Johnson Dent.

16 Q Anything else?

17 A That's it.

18 Q Thank you very much. I want to start with what was
19 marked at Mr. Montgomery's deposition as Exhibit 179,
20 which is the report of your office on June 1, 2005?

21 A Okay.

22 Q Did I identify that correctly, that's the report your
23 office submitted Mr. Furlow?

24 A I believe so, yes.

25 Q And it indicates that there are three parts to the

1 report, A, B and C, is that right?
 2 A That's correct.
 3 Q Did you have any involvement in part C of the report?
 4 A Only as Phil needed something in addition, any
 5 information. I have the files in my office.
 6 Q So you made files available to Mr. Solseng?
 7 A Yes.
 8 Q Do you make any changes to any drafts of part C of
 9 Exhibit 179?
 10 A I'm trying to -- I'm thinking. I believe I read
 11 through Phil's draft. I didn't make any direct
 12 changes. We may have talked about some things, I
 13 don't recall exactly.
 14 Q Do you remember what you talked about with him?
 15 A I'm reading it here. As far as the angle of the sheet
 16 pile wall and how far back it goes from the water's
 17 edge, I helped Phil determine that.
 18 Q And when you say you helped Phil determine that, what
 19 did you do?
 20 A I pulled out the plans from the file and went over
 21 them with Phil.
 22 Q Any other input you had into part C of the report?
 23 A I was with Phil when we observed the tension crack on
 24 the adjacent properties and I believe I took the
 25 photos, Figure 2 and Figure 3.

1 Q Anything else?
 2 A The only other thing I can remember is getting
 3 information from the shoreline loss report, just
 4 looking at the shoreline loss report to see how things
 5 were phrased in that report.
 6 Q Anything else that you did?
 7 A No, not that I can think of.
 8 Q You had primary responsibility for parts A and B of
 9 Exhibit 179?
 10 A Yes.
 11 Q Was anyone else at your office involved in parts A and
 12 B of the report?
 13 A Yes, part A. Ray Wuolo was assisting me with part A.
 14 Q Can you spell his last name, please.
 15 A W-u-o-l-o.
 16 Q What did he do?
 17 A He gave me guidance on how the piezometer should be
 18 installed and helped me analyze the information that
 19 we got from the piezometer from the water line.
 20 Q Is he an employee of Barr Engineering?
 21 A Yes, he is.
 22 Q What's his technical background?
 23 A Ground water.
 24 Q What's his educational level?
 25 A I don't recall, I believe he has a master's. I

1 believe he has a master's and a Ph.D, but I don't
 2 remember.
 3 Q Is he a professional engineer?
 4 A I would have to look. I don't know off the top of my
 5 head, but I believe he is.
 6 Q Did he participate on-site at Mr. Hausman's property
 7 with any part of the work that resulted in Exhibit
 8 179?
 9 A No, he did not. Phil Solseng assisted me with the
 10 installation of the piezometers.
 11 Q Was it just you and Mr. Solseng who traveled up to
 12 Round Lake that resulted in Exhibit 179?
 13 A And my husband, but yes, Phil and I were the only ones
 14 from Barr Engineering at that time.
 15 Q Anyone else from Barr Engineering or otherwise, I
 16 guess, involved in the preparation of parts A and B of
 17 the report?
 18 A Let's see, in part B, some of the analysis was
 19 obtained from -- we had the assistance of one
 20 geotechnical engineer who was up on-site when they
 21 took the borings for that.
 22 Q Who was that?
 23 A Steve Juhlin, J-u-h-l-i-n.
 24 Q Is he a Barr Engineering employee?
 25 A Yes, he is.

1 Q Is he a professional engineer?
 2 A I do not know. I believe he is, but I would have to
 3 check.
 4 Q Anyone else from Barr Engineering or otherwise
 5 involved in parts A and B of the report?
 6 A Not that I remember at this time.
 7 Q Anyone besides you and Mr. Solseng involved in part C
 8 of the report?
 9 A Not that I recall.
 10 Q Let's start with Part A of the report that was marked
 11 as Exhibit 179. Can you tell me in summary fashion,
 12 first of all, what work you and the others from Barr
 13 Engineering did that resulted in the part of the
 14 report that's Part A?
 15 A As stated here, we installed three piezometers on
 16 Mr. Hausman's property and we took measurements in
 17 those piezometers. I took measurements, Mr. Hausman
 18 took some measurements and Steve Juhlin took some
 19 measures and Phil Solseng took some measurements and
 20 then Ray Wuolo did some computations on the hydraulic
 21 gradient of the water table.
 22 Q You said the hydraulic gradient?
 23 A Yes.
 24 Q How many times did you visit the Hausman property or
 25 the environs there to prepare Part A of Exhibit 179?

1 A I was there on May 9 and May 10.
 2 Q Was that the first time you had been back to
 3 Mr. Hausman's property since your deposition was first
 4 taken in this case?
 5 A Yes, I believe so.
 6 Q And have you been back to Mr. Hausman's property since
 7 May 10?
 8 A No, I have not.
 9 Q I'll ask him, but do you know whether Mr. Solseng or
 10 anyone else from Barr Engineering has been back since
 11 May 10?
 12 A Steve Juhlin was there later in May.
 13 Q Why did Mr. Juhlin go there, was that for the soil
 14 borings?
 15 A Yes, I don't believe that Phil Solseng has been there
 16 since May 9.
 17 Q Looking at Part A of the report, it indicates that you
 18 put the piezometers approximately four feet deep, do
 19 you see that part of the report?
 20 A Yes.
 21 Q Why at that depth?
 22 A We wanted to be sure that the -- we got below the
 23 ground water elevation so that the water would
 24 actually enter the pipe.
 25 Q Who decided on that depth?

1 A It was based on Phil Solseng and I together came up
 2 with those depths based on information from the septic
 3 borings that were taken on Mr. Hausman's property
 4 several years ago, I don't remember the exact date.
 5 Q Do you remember who took those septic borings?
 6 A No, I don't.
 7 Q The next sentence -- well, let me back up to the same
 8 sentence where you had approximately four feet deep.
 9 You indicated that the piezometers were located near
 10 the southwest and east property boundaries, do you see
 11 that?
 12 A Yes.
 13 Q How did you decide where to put them?
 14 A We wanted to have some so that we could get a profile,
 15 basically the distance from the lake, so we wanted
 16 some closest to the lake and some further away from
 17 the lake and we also wanted to get some closer to the
 18 wetlands in back of Mr. Hausman's property and then
 19 further away from the wetlands.
 20 Q The next sentence says that ground water levels were
 21 approximately two to three feet below the ground
 22 surface, do you see that?
 23 A Yes.
 24 Q When you say approximately two to three feet below the
 25 ground surface, does that mean that they -- the levels

1 varied between two and three feet below the ground
 2 surface or that at different points around the
 3 property, they may have been two feet below the ground
 4 surface in one area and three feet in another?
 5 A Can you read back the question, please.
 6 Q Let me ask it in a different way. I don't know why
 7 I'm getting such a bad echo there. Maybe you can turn
 8 down the volume on your phone a little bit.
 9 A Okay, I'll do that. I did that, does that help?
 10 Q Well, we'll see, I think so. Let me start over with
 11 that question again. What I'm getting at is that you
 12 say in the report ground water levels were
 13 approximately two to three feet below the ground
 14 surface.
 15 And what I want to understand is whether you mean
 16 that at a given point with a given piezometer, the
 17 ground water level varied from two to three feet below
 18 the surface or whether at any given time, it might
 19 have been two feet below the surface in one spot and
 20 three feet below the surface in another spot?
 21 A The ground at the three piezometers was not the same
 22 elevation. For example, there was -- one of the
 23 piezometers that's up closest to the wetlands is right
 24 by Mr. Hausman's new building and there's a slope
 25 there, so the ground elevation, the ground surface

1 elevation there was not the same as the ground surface
 2 elevation at the other two.
 3 So what I was trying to say here was that just,
 4 again, to give a comparison of where the --
 5 approximately how far the ground water level was below
 6 the ground.
 7 Q So at a given moment in time, it may be three feet
 8 below the surface of the ground -- excuse me, let me
 9 start over. At any given point in time, for example,
 10 at the spot nearest the new building where you put a
 11 piezometer, the ground water level was, let's say,
 12 approximately three feet below the surface, whereas at
 13 that same moment in time at another of the
 14 piezometers, it was two feet below the surface level?
 15 A I believe that's correct, because the ground is
 16 changing and the ground level is not the same and the
 17 ground water level is not the same, so both things are
 18 changing, are different at each of the three wells at
 19 any point in time.
 20 Q I was going to say you mean to say that the ground
 21 elevations are different, not that the ground is
 22 physically changing while you were taking these
 23 measurements, right?
 24 A That's what I meant to say.
 25 Q With respect to the piezometers that you put in place,

1 how did you install them, by hand or with the drill
 2 rig, how did you do it?
 3 A By hand.
 4 Q Just pushing them down into the ground?
 5 A With a -- what do they call it, a big sledge hammer,
 6 pounding it in. I obviously didn't do that because I
 7 don't have the strength to. I pounded on it twice and
 8 that was heavy enough for me.
 9 Q You found a use for your husband, is that it?
 10 A Phil did most of it.
 11 Q Now, do you have logs that you maintained of the
 12 borings and the piezometer measurements?
 13 A They were logs taken on the borings. There were no
 14 specific logs taken on the piezometers, we kept
 15 notes. We have those notes in my file.
 16 Q Can you make those available to Ms. Azar so we can get
 17 a copy?
 18 A Yes.
 19 Q When you said logs of the borings, you were referring
 20 then to the borings that were done on Highway NN?
 21 A There were borings done on Mr. Hausman's property as
 22 well.
 23 Q Were those borings done before or after your prior
 24 deposition?
 25 A After.

1 Q As a part of your work for Exhibit 179?
 2 A Yes.
 3 Q And what borings did you take on Mr. Hausman's
 4 property?
 5 A I can't recall, I believe there was two borings
 6 taken. We were trying to get three borings and I
 7 believe there were only two taken, but I can't recall
 8 if there were two or three taken. We were trying to
 9 determine the soil at Mr. Hausman's property.
 10 Q You kind of broke up there, did you say you were
 11 trying to determine the soil at his property?
 12 A Yes.
 13 Q For what purpose?
 14 A To understand its type and just get a better
 15 understanding of what kind of soils were down below
 16 the surface. I'm not sure, Phil Solseng was in charge
 17 of that more than I was.
 18 Q What did you learn from those soil borings, if you
 19 know?
 20 A I have not looked at the results of those borings.
 21 Q Do you know who has within Barr Engineering?
 22 A I believe Steve Juhlin and Phil Solseng.
 23 Q Do you know whether those boring results were provided
 24 to Mr. Hausman's lawyers?
 25 A I believe they were.

1 Q Do you know why the boring results were not included
 2 in the report that's Exhibit 179?
 3 A They weren't part of the questions A, B or C.
 4 Q Then why were they done?
 5 A They're just an additional piece of information that
 6 we thought might be useful.
 7 Q Were the borings done at the request of Mr. Hausman or
 8 his lawyers?
 9 A No, Phil and I suggested that as long as we had a rig,
 10 a boring rig out in the area, it would be useful when
 11 Mr. Hausman is asking us to provide information and
 12 guidance on his new house foundation to know what kind
 13 of soils were on his property.
 14 Q And I apologize if I asked you this before, but do you
 15 know what types of soils were found with those
 16 borings?
 17 A Again, I'm not a soil scientist. I believe that it's
 18 mostly sandy.
 19 Q And what questions had you been asked, if any,
 20 regarding the relationship between the soils and the
 21 new building that Mr. Hausman wants to put up?
 22 A What questions had -- can you repeat that question?
 23 Q Was the notion of doing borings on Mr. Hausman's
 24 property in May of this year something that originated
 25 with Mr. Hausman, with his lawyers or with Barr

1 Engineering?
 2 A Barr Engineering.
 3 Q And I assume before you went to that expense, you
 4 discussed it with either Mr. Hausman or his lawyers or
 5 both, right?
 6 A Yes.
 7 Q And was it both or just Mr. Hausman?
 8 A Both.
 9 Q And when you discussed it with them, what was their
 10 reaction to your suggestion that the borings be done?
 11 A They asked why they would want to be done.
 12 Q What did you tell them?
 13 A Additional information for -- in support of the
 14 foundation for his proposed new structure.
 15 Q And how long has Barr Engineering been involved in
 16 providing support for the design of the foundation of
 17 Mr. Hausman's new house?
 18 A I don't recall when he first was telling us about the
 19 new house, I don't recall.
 20 Q But has it been since you learned about the new house
 21 that Barr Engineering has been involved in design work
 22 related to the new house?
 23 MS. AZAR: Object as to form.
 24 Q Go ahead and answer the question.
 25 A Can you repeat the question? I'm not exactly sure

1 what --
 2 Q Let me ask it again then. You told me that you can't
 3 recall exactly when Mr. Hausman told you about his
 4 plans for a new house, right?
 5 A Right.
 6 Q Has it been since -- whatever time it was, has it been
 7 since that time, in other words, since you learned
 8 that Mr. Hausman was going to build a new house that
 9 Barr Engineering has been involved in design work for
 10 the new house?
 11 A I believe we learned of the new -- I learned of the
 12 new house before he had asked for design help, but it
 13 was after, obviously, we learned about the new house
 14 that we were asked to help with any design on it.
 15 Q How long, approximately, in terms of months, has Barr
 16 Engineering been involved in design work for the new
 17 house?
 18 A I would have to give a range of months. I can't
 19 recall if it was last fall or this winter, sometime in
 20 that area.
 21 Q Somewhere between six and nine months ago?
 22 A I believe that would only be an estimate, because I
 23 can't recall, but yes, that would be an estimate.
 24 Q Getting back to the soil borings that were done up
 25 there, those were done in May of this year?

1 A Yes.
 2 Q And those were done solely in connection with the
 3 design work that was going to be done on Mr. Hausman's
 4 new house?
 5 A Primarily.
 6 Q And how deep were the borings that were done?
 7 A I believe they were 20 feet.
 8 Q And where on the property were the borings done?
 9 A I don't recall. They had some problems, we had
 10 originally requested that they take one over on the
 11 west side of the property, but there were some
 12 problems with the -- with driving over the septic, the
 13 pipes to the septic system.
 14 So I believe there was one done rather close to
 15 like the center of the property and I don't recall
 16 where the other one was taken. I believe it was
 17 close -- I believe it was on the east side of the
 18 property.
 19 Q So do you believe only two borings were done?
 20 A I believe so, but I can't remember. There may have
 21 been a third one, but I think there were two.
 22 Q And you said there are logs of those borings?
 23 A Yes.
 24 Q Would you please provide those to Ms. Azar?
 25 A Yes.

1 Q And with respect to the work that Barr Engineering has
 2 done on the design work for Mr. Hausman's house,
 3 that's been going on for about six or nine months,
 4 does Barr Engineering have a separate project name,
 5 number or account related to that work?
 6 A I don't recall specifically.
 7 Q Well, you keep track of your time like lawyers do,
 8 right?
 9 A Yes, I do.
 10 Q And all of the time that you spent in Sawyer County in
 11 May of 2005, you logged on to the Barr Engineering
 12 system under the number or project name for the
 13 lawsuit against Sawyer County, probably, right?
 14 A Yes.
 15 Q So you have not in the last six or nine months while
 16 working on the design of Mr. Hausman's house logged
 17 your time to anything other than this lawsuit, is that
 18 true?
 19 A The way we log our time here is we have separate tasks
 20 under a certain project, so I don't remember exactly
 21 what all the tasks are under this project number.
 22 Q Well, do you know whether any of the tasks are design
 23 house or anything like that?
 24 A We change the tasks every year and I can't recall what
 25 they were for 2004 versus 2005, I don't know.

1 Q Do you know as you sit here today whether you
 2 differentiated your time on May 9 and 10 between the
 3 Sawyer County lawsuit and the Hausman house project?
 4 A I am not a structural design person, so I don't spend
 5 much time on design of the footings of the structure.
 6 Q You had building responsibility at Barr Engineering
 7 for Mr. Hausman's builds, right?
 8 A Yes.
 9 Q Do you know whether anyone at Barr Engineering at any
 10 time in the last six or nine months has billed his or
 11 her time to anything other than Mr. Hausman's lawsuit
 12 against Sawyer County?
 13 A As I indicated previously, we have specific tasks
 14 under this one project, so we have this case as one
 15 project and there's specific tasks under there and I
 16 don't recall if there is one for the house design.
 17 Q Coming back to the piezometers, I have a few more
 18 questions about that. How many rounds of measurements
 19 were taken with the piezometers?
 20 A As indicated on this memorandum, water levels were
 21 taken on May 9, 10, 22 and 28. There's also been some
 22 taken after that date.
 23 Q And were any of the measurements -- strike that.
 24 Which measurements did you take on which dates?
 25 A May 9 and 10.

1 Q And was that just one measurement each day?

2 A I believe we may have taken two on the 9th. We took

3 one immediately after they were installed and waited a

4 few hours and took it again.

5 Q And how many on the 10th?

6 A Just one.

7 Q And who took the measurements on the 22nd?

8 A I would have to check my records. I don't remember, I

9 believe it was Mr. Hausman.

10 Q And how about on May 28?

11 A Again, I would have to check my records, I believe

12 that was Mr. Hausman as well.

13 Q And on those days, were lake levels also taken?

14 A Yes.

15 Q And who took the lake level measurements on each of

16 those four dates?

17 A The lake level was read off of the gauge on

18 Mr. Hausman's sheet pile retaining wall, so they were

19 referenced to the same gauge on the same dates. On

20 the 9th, I believe it was one of Dave Rieder's sons

21 who was assisting us. On the 10th, I took the

22 measurements. On the 22nd and the 28th, I believe

23 Mr. Hausman took the measurements.

24 Q And you said you think there have been measurements

25 taken since then on the piezometers and the lake

1 levels?

2 A Yes.

3 Q And do you know today when those other measurements

4 were taken on the piezometers, first of all?

5 A No, I don't.

6 Q Do you know what the measurements from the later dates

7 showed you?

8 A I haven't looked at some of them. I know there are

9 some sitting in my e-mail that I have not had time to

10 look at. None of them differed tremendously from the

11 information that was taken on these four dates.

12 Q Do you have the ground surface elevation data for the

13 three piezometers?

14 A Yes.

15 Q And would that data be included in the notes that you

16 referred to earlier as reflecting the measurements and

17 so on?

18 A Yes.

19 Q So that's data you could provide to Ms. Azar?

20 A Yes.

21 MS. AZAR: And you'd like her to?

22 MR. WRIGHT: Yes, please.

23 Q With respect to the work that was done on Part A of

24 the report, am I correct that the basic goal of your

25 work there was to just determine what level the ground

1 water was at on Mr. Hausman's property?

2 A The goal was to determine whether or not the ground

3 water was related to the Round Lake level.

4 Q Was there any effort to measure the level of

5 saturation in the soil above the ground water level?

6 A No.

7 Q Do you have any estimate or knowledge as you sit here

8 today of whether, for example, the top one foot of the

9 soil on Mr. Hausman's property is in any way saturated

10 by the ground water?

11 A I have no way of knowing that, I have not taken any

12 measurements of that.

13 Q Did you as a part of your work in this case at any

14 time survey other lakes in northern Wisconsin similar

15 to Round Lake to determine whether ground water levels

16 near those lakes are tied to lake levels?

17 A No.

18 Q Have you in your career ever studied before this the

19 link between ground water levels adjacent to a

20 controlled lake like Round Lake at all?

21 A No.

22 Q Do you have any basis for saying whether Round Lake --

23 strike that. Let me focus for a moment on the link

24 that you say you found between Round Lake water levels

25 and the ground water level on Mr. Hausman's property,

1 okay?

2 A Okay.

3 Q Do you have any basis for saying that the link between

4 ground water levels on Mr. Hausman's property and the

5 water levels on Round Lake differs from or is the same

6 as the link between ground water levels and lake

7 levels on any other lake in Wisconsin?

8 A I have not studied other lakes in Wisconsin.

9 Q So the answer is you can't tell me whether Round Lake

10 is the same as or different from any other lake in

11 Wisconsin with respect to ground water levels on

12 adjacent properties, is that right?

13 A Correct.

14 Q I'm sorry, you cut out, did you say correct?

15 A Yes.

16 Q Let me move on to part B of Exhibit 179, I have some

17 questions for you there. That focused on the County

18 Highway NN culverts, right?

19 A Yes.

20 Q Were you present when the soil borings were taken on

21 County NN?

22 A No.

23 Q Who was present on behalf of Barr Engineering when

24 that was done?

25 A Steve Juhlin.

1 Q And do you have logs of those borings?
 2 A Yes.
 3 Q Would you please provide those to Ms. Azar?
 4 A Yes.
 5 Q And how many borings were done, do you know?
 6 A Three.
 7 Q And do you know where the borings were done?
 8 A Approximately.
 9 Q Can you give me your best understanding of where they
 10 were done?
 11 A I believe one was taken -- they were all taken on the
 12 west side of the road and one was taken -- and it was
 13 just taken off slightly off the pavement, I don't know
 14 how far. One was taken right between the two existing
 15 culverts.
 16 The second one was taken approximately 15 to 20
 17 feet south of the first one and the third one was
 18 taken, again, approximately 15 to 20 feet south of the
 19 second boring.
 20 Q So were they all taken on the same side of the road?
 21 A Yes.
 22 Q And would that be the upstream side of the road or the
 23 downstream side of the road?
 24 A Downstream.
 25 Q You didn't take any borings on the upstream side of

1 the road?
 2 A No.
 3 Q Why not?
 4 A Safety was a large factor, because of the curve in the
 5 road and we wanted to be on the inside of the curve
 6 for safety reasons.
 7 Q Do you make any requests of the county or the
 8 Sheriff's Department to close the road or otherwise
 9 mark it so that it would be safe to work on the
 10 upstream side of the road?
 11 A We had flaggers there to slow traffic down and direct
 12 traffic. There's also -- there was also a lot of
 13 excavation on the upstream side of the road. We felt
 14 like the downstream side of the road would be a more
 15 natural condition.
 16 Q But you didn't answer my question. Did you make any
 17 requests of the county or the Sheriff's Department to
 18 take steps so that you could do borings on the
 19 upstream side of the culverts at NN?
 20 A No.
 21 Q And why not?
 22 A We didn't feel that any borings on the upstream side
 23 would be as valuable as the ones on the downstream
 24 side, because the upstream side we know had been
 25 disturbed in the past.

1 Q And you know -- when you say it had been disturbed, do
 2 you mean that it would have been disturbed when the
 3 culverts were placed there?
 4 A No, I don't know what happened when the culverts were
 5 placed there.
 6 Q I'm just trying to understand your statement that
 7 there had been excavation that had disturbed the
 8 upstream side that led you to believe that would be a
 9 less fruitful area to bore, or at least that's what
 10 I'm inferring from what you said.
 11 A Yeah, I just heard some information on some accidents
 12 that have happened up on this side, where there's been
 13 cars hauled out of that area on the upstream side and
 14 there was also another road. The road used to be up
 15 on that end a little further, so we just felt like it
 16 would be a more natural condition on the downstream
 17 side.
 18 Q Who told you that there had been accidents there?
 19 A You can see a bunch of crosses and a bunch of flowers
 20 at the side of the road there.
 21 Q Did anyone -- other than observing those crosses, what
 22 information led you to believe that there had been
 23 accidents there that would have impeded or otherwise
 24 interfered with your ability to do borings in that
 25 area?

1 A You can see that there's soil in that -- upstream of
 2 the road had been disturbed quite a bit, but I had
 3 heard that there was an accident, I believe, from -- I
 4 believe from -- what's his name, Hirschfeld, is that
 5 right, Hirschfeld, he was -- yeah.
 6 Q Go ahead, excuse me.
 7 A When he picked us up from canoeing, he had
 8 mentioned -- he had picked us up right at Highway NN
 9 at Osprey Creek and he had mentioned that when we
 10 picked him up, when he picked us up, excuse me.
 11 Q When was that?
 12 A 2003, yeah.
 13 Q So two years before these borings, someone told you
 14 that there had been an accident there, so you decided
 15 you wouldn't do any borings in that spot, is that it?
 16 A I tried to pick the most natural conditions and chose
 17 the inside of the curve.
 18 Q So the goal of this work at Highway NN was to
 19 determine whether the culverts at NN had been placed
 20 in the stream bed, correct?
 21 A Yes, it was to determine where the natural stream bed
 22 was.
 23 Q And part of what you were trying to determine was
 24 whether the lowest point of the inlet on the upstream
 25 side of the culvert had been placed at the location of

1 the natural stream bed, right?

2 A The culverts are fairly flat, so we determined that

3 inbred elevation.

4 Q Excuse me?

5 A The culverts are relatively flat, but it would be,

6 yes, to determine the inbred elevation of the pipe or

7 the natural -- the natural stream channel, I mean.

8 Q And so to do that, you didn't measure at the point

9 where the water from the creek first encounters the

10 culverts, you didn't take a boring there, I mean?

11 A No, we did not.

12 Q Now, aside from Mr. Hirschfeld telling you that there

13 has been an accident there and you observed some

14 crosses, was there any other information that led you

15 to believe that the area around the upstream end of

16 the culverts had been disturbed by excavation?

17 A You can see some -- you can see almost like some

18 tracks where a car might have gone down into the

19 ditch.

20 Q Let's leave the car accident out of it for a minute,

21 and there was only one car accident that you've ever

22 heard about, right?

23 A I don't recall, I believe it was just one, but.

24 Q So leaving the car accident out of it, what I'm asking

25 you about is what information did you have that led

1 you to conclude that there had been excavation at or

2 near the upstream end of those culverts?

3 A Well, I know in the past, there has -- Sawyer County

4 had done some excavation in the channel upstream of

5 County Highway NN.

6 Q Where?

7 A Where? Between NN and Osprey Lake.

8 Q And how long a distance is that?

9 A I don't recall offhand, several hundred feet.

10 Q And so where -- strike that. So do you have any

11 information that leads you to believe that there was

12 excavation within even 50 feet of the upstream end of

13 the culverts at NN?

14 A I don't know where the excavation started when Sawyer

15 County did their excavation of NN.

16 Q And the excavation for the placement of the culverts

17 themselves, you're obviously aware of, right?

18 A Will you say that again?

19 Q There had to be some excavation in order to put those

20 culverts in place, right?

21 A No.

22 Q Why do you say that they wouldn't have had to do any

23 digging there to put the newest culverts in?

24 A I'm not sure how they put the newest culverts in.

25 Q So when you decided where to do your borings, you

1 didn't know one way or the other whether there had

2 been excavation that may have taken soils out of there

3 before the culverts were put in, right?

4 A Can you have her repeat that question, please?

5 (Reporter reads back previous question)

6 A I had no information on any excavation for -- or the

7 installation of those culverts.

8 Q I want to take you to page 3 of Exhibit 179. This the

9 second line at the top of the page. It says in a

10 parenthetical, "The soil borings showed a distinct

11 layer of peat about two feet below the existing

12 culvert inverts," do you see that?

13 A Yes.

14 Q But you don't know whether there may have been peat

15 there that was excavated as a part of the process of

16 laying the culverts, do you?

17 A I don't know what the construction of the existing

18 culverts was.

19 Q And so you don't know whether there was peat there

20 that may have been excavated down to the level where

21 you found peat in 2005, true?

22 A Not with -- no, I don't know.

23 Q And did you perform any analysis of the soils to

24 determine what kind of soil you found between the

25 ground level and the peat?

1 A The soil borings do show -- do identify what kind of

2 soil it is, yes.

3 Q And is it consistent with -- strike that. What kind

4 of soil was it?

5 A It's noted as I believe some sort of sandy type fill.

6 Q And so that's -- go ahead, excuse me.

7 A I'm not a soil scientist, a soil person, so I don't

8 know how to distinguish between those real well.

9 Q And so you wrote section B of the report, but you

10 can't tell me whether the soil that was above the peat

11 is or is not consistent with the fill that might have

12 been put in place when the culverts were laid, is that

13 true?

14 A Based on the soil borings and the information from my

15 geotechnical engineers, it is fill above the culvert.

16 Q Let me go back to the beginning of section B here and

17 ask you about some of the other statements that are

18 made. In particular, in the second sentence you say

19 that replacing the dam and doing some other things

20 would have achieved about 80 percent of the reduction

21 to the state designated maximum level, do you see

22 that?

23 A Yes.

24 Q And then you go on to say that replacing NN would have

25 brought the level down the remaining 20 percent.

1 What's the basis for those two statements?
 2 A We did an analysis of the 2002 flood and replacing
 3 those different restrictions came up with those
 4 estimates.
 5 Q What kinds of analysis did you do?
 6 A We did an XP-SWMM analysis.
 7 Q Can you say that again, please.
 8 A X-P dash S-W-M-M, it's a model.
 9 Q And what assumptions went into that model as a part of
 10 this analysis?
 11 A The model was developed based on the data from the
 12 HEC-1 and HEC-RAS model that was previously developed.
 13 The information was directly put into this XP-SWMM
 14 model and along with the precipitation for the -- in
 15 the 2002 period.
 16 Q Were the assumptions as between your HEC-RAS model,
 17 your HEC-1 model and the XP-SWMM model?
 18 A Yes.
 19 Q Where did you obtain the 2002 precipitation data?
 20 A NOAA, National Weather Service, the gauge.
 21 Q When did you do this analysis?
 22 A I believe it was in May, it would have been right
 23 before the report was done, so in May.
 24 Q May of 2005?
 25 A Yes.

1 Q And did you perform that analysis?
 2 A No.
 3 Q Who did?
 4 A Scott Sobiech here at Barr Engineering.
 5 Q Can you spell his last name, please.
 6 A S-o-b-i-e-c-h, I believe.
 7 Q Do you have electronic input data preserved for the
 8 XP-SWMM model?
 9 A Yes.
 10 Q Can you provide that to Ms. Azar, please, and she'll
 11 give it to me?
 12 A Yes.
 13 Q What format is that in, is it on a CD or what?
 14 A What format is it?
 15 Q I'm trying to wait until they were done paging someone
 16 there. Is it just something you load onto a CD, you
 17 can burn onto a CD and send to us?
 18 A The model itself or the data files?
 19 Q The data files.
 20 A The data files are just electronic files that can be
 21 burned onto a CD.
 22 Q If you would do that, I'd appreciate it, and provide
 23 it to Ms. Azar. Let me just confirm something.
 24 Farther on in the paragraph I was just asking you
 25 about, you say there you assume that the Little Round

1 Lake dam is replaced and the man made channel
 2 downstream of the dam is enlarged, do you see that?
 3 A Yes.
 4 Q And does that mean that the dam is replaced and the
 5 channel is enlarged as you describe in the prior
 6 report that you filed in this case?
 7 A Yes, the same as option one.
 8 Q And it also option one with respect to the culverts?
 9 A Yes.
 10 Q Now, let me go on to the next paragraph where you say
 11 a channel survey indicates that the channel bottom is
 12 about two feet lower than the culvert elevations, both
 13 upstream and downstream of Highway NN, do you see that
 14 in your references to Figure 1?
 15 A Yes.
 16 Q Aside from the soil borings that you testified to,
 17 what else did you do to determine that the channel is
 18 two feet lower than the culvert elevations?
 19 A Dave Rieder conducted a survey.
 20 Q And other than that, anything else that you did?
 21 A I'm trying to think, taking information from Dan
 22 Carthel's surveys, that would be it.
 23 Q And you understand, don't you, that in approximately
 24 1999, the county replaced the culverts at Highway NN?
 25 A That's my understanding. I haven't seen any

1 information on that, but.
 2 Q And I want to understand one thing about what your
 3 statement means here in Exhibit 179 regarding the
 4 culverts being two feet higher than the stream
 5 bottom. I'm going to refer to the culverts that are
 6 there now as the current culverts and I'm going to
 7 call the other ones the old culverts, okay?
 8 A Okay.
 9 Q What if anything did you do to determine the elevation
 10 of the old culverts?
 11 A There was some information in some of the documents
 12 that just said the old culverts and their invert
 13 elevation.
 14 Q And how do those elevations compare with what you
 15 found for the current culverts?
 16 A You'll have to define what you mean by how do they
 17 compare.
 18 Q Well, were the invert elevations for the old culverts
 19 the same, higher or lower than the currents culverts?
 20 A I would have to look at the documents themselves, but
 21 I believe they were quite a bit lower.
 22 Q Which were lower?
 23 A The old culverts.
 24 Q We're kind of talking over each other, let me try and
 25 summarize. You're saying that you believe that the

1 old culverts were lower than the current culverts?
 2 A Yes.
 3 Q How much lower?
 4 A I'd have to look at the documents to know precisely,
 5 but I believe it was at least a foot, maybe two feet.
 6 Q You think the old culverts were two feet lower than
 7 the current culverts?
 8 A Based on my recollection.
 9 Q And what was the diameter differential between the old
 10 culverts and the current culverts?
 11 A Again, I don't have that information in front of me.
 12 Q Have you at any time in the course of this case made
 13 any effort to model the flows with the old culverts?
 14 A I believe we may have done that with the XP-SWMM
 15 model, but I don't know for sure. Because I didn't do
 16 the modeling, I can't recall, but I think we might
 17 have done that with the SWMM model. If we did, it's
 18 in those files.
 19 Q So you'll provide those files to us as well?
 20 A Yes.
 21 Q And I know you just said you're not sure you even did
 22 it, but with that in mind, do you have any memory of
 23 what the results were, if any?
 24 A I don't think there was a direct comparison.
 25 Q I don't know what you mean by that.

1 A Yes.
 2 Q And when you say rise above the state designated
 3 maximum levels, what's the basis for that statement?
 4 A Based on the 2002 model, the XP-SWMM model.
 5 Q And can you tell me how far above the state designated
 6 maximum level the water level would have risen even if
 7 a new dam were constructed?
 8 A I'm thinking here. I don't recall exactly, it was
 9 several tenths of an inch, or several tenths of a
 10 foot, I don't remember how much.
 11 Q Would that be in the data that you're going to provide
 12 to Ms. Azar?
 13 A Yes.
 14 MR. WRIGHT: Let me just take a
 15 two-minute break. I'm going to get some more
 16 water and be right back, okay?
 17 A Okay.
 18 (A short recess is taken)
 19 Q Ms. Dent, are you still there?
 20 A Yes.
 21 Q I want to ask you some questions about your second
 22 affidavit, which is dated -- actually, it's undated --
 23 well, March 25.
 24 MS. AZAR: And you're going to have
 25 to tie these into the report, so.

1 A I don't know that there's any results that I could say
 2 there are not specific results or drawing conclusions
 3 from it.
 4 Q You say in the last sentence of part B of your report
 5 that raising the culverts above the natural channel
 6 level and limiting the opening side restricts the
 7 outflows, do you see that?
 8 A Yes.
 9 Q What do you mean when you say limiting the opening
 10 side, as compared with what, the old culverts or your
 11 option one under your report?
 12 A I think that was a general statement, but let me read
 13 it here. I believe that was more of a general
 14 statement, that whenever you limit the opening size,
 15 you're going to restrict the outflows.
 16 Q It's just kind of a truism then, isn't it?
 17 A What do you mean?
 18 Q Well, never mind. Let me go on. You say in that same
 19 sentence that these items would have caused the water
 20 levels to rise above the state designated maximum even
 21 if a new dam were constructed, do you see that?
 22 A Yes.
 23 Q When you say a new dam there, were you referring to
 24 the dam outlined in your option one in your earlier
 25 report?

1 MR. WRIGHT: Because I haven't
 2 deposited her on this, this is all new stuff since
 3 her last deposition. I mean, it is tied to her
 4 report, but I don't believe I have to. If you
 5 want to instruct her not to answer, go ahead.
 6 MS. AZAR: We could do it this
 7 way -- well, let me put it this way, are we
 8 then -- we'll be allowed to talk to Rob about
 9 anything, correct?
 10 MR. WRIGHT: No, not since -- not
 11 anything before his last -- before his
 12 deposition. This is after her deposition and it's
 13 tied --
 14 MS. AZAR: Well, we didn't finish
 15 his depo.
 16 MR. WRIGHT: It's tied to her
 17 ground water opinion, so I don't think there's
 18 going to be an issue.
 19 MS. AZAR: Why don't we talk about
 20 it with the judge on Friday?
 21 MR. WRIGHT: There's no motion
 22 pending.
 23 MS. AZAR: How many questions do
 24 you have?
 25 MR. WRIGHT: A lot and I have a

1 deposition to take here and if you want to get the
 2 judge on the horn to stop it, go ahead and try,
 3 but I'm going to ask her questions about this.
 4 Q Do you have it in front of you, Ms. Dent?
 5 MS. AZAR: If we could take a break
 6 for a moment, I'll be right back.
 7 (A short recess is taken)
 8 Q Ms. Dent, we're back on the record, Ms. Azar is on the
 9 phone trying to find her partner to get some question
 10 answered and I have some questions for you about your
 11 second affidavit. Do you have that in front of you?
 12 MS. AZAR: And hold on just a
 13 moment. I just got Jon, if you can hold on just a
 14 moment I will talk to him. I'm going to come back
 15 and we'll put everything on the record in a moment
 16 and Joe, I talked to you about this in advance of
 17 the deposition. You said all the questions you
 18 with going to ask related to her supplemental
 19 report.
 20 MR. WRIGHT: Because her
 21 supplemental report is about her ground water
 22 issues.
 23 (A short recess is taken)
 24 MS. AZAR: Let me just state for
 25 the record that prior to this deposition,

1 Mr. Wright had asked that Ms. Dent have a number
 2 of documents before her in addition to the
 3 supplemental report and I agreed to that request,
 4 but also indicated that we thought it was
 5 inappropriate that he ask any questions in
 6 addition to the supplemental report, because he
 7 has already deposed Ms. Dent and she was not
 8 subject to recall.
 9 He had actually finished her
 10 deposition. Ms. Dent came to this deposition
 11 prepared to answer questions in response to her
 12 supplemental report and no other documents. We do
 13 not want to be obstructionist in this litigation.
 14 We're going to ahead and allow Ms. Dent to answer
 15 any questions that Mr. Wright may have today with
 16 the complete understanding that Ms. Dent was only
 17 prepared to answer questions on her supplemental
 18 report.
 19 And to the extent that she's asked
 20 questions in other areas in which she did not
 21 prepare, she shouldn't speculate and if she needs
 22 to review documents, she should so do that and
 23 with that, Mr. Wright?
 24 MR. WRIGHT: Let me just make one
 25 statement for the record. In our discussion

1 before the deposition, what I said is that any
 2 discussion about other issues with respect to
 3 Exhibit 125 and 126, meaning the previous Barr
 4 reports, I was not going to question her anew
 5 about that.
 6 I did not agree not to question her
 7 about other documents produced since her last
 8 report and in my view, anything is fair game and
 9 if Ms. Dent feels a need to go prepare herself,
 10 we'll adjourn the deposition and convene it
 11 another day. So your choice, Ms. Azar, we either
 12 do the deposition by the rules today or we adjourn
 13 it to another date.
 14 MS. AZAR: Nancy, would you like to
 15 adjourn for another day and have the opportunity
 16 to review your materials or do you want to go
 17 ahead today? It's up to you.
 18 A If I could just have about ten minutes to read through
 19 it, that would be helpful.
 20 MR. WRIGHT: We won't get done in
 21 any events today, because I have to be out of here
 22 at 4:30, so what other days do you have? Let's go
 23 off the record for a minute to find out dates.
 24 (Discussion off the record)
 25 (3:30 p.m.)

1 STATE OF WISCONSIN)
 2)ss.
 2 COUNTY OF DANE)
 3 I, NANCY L. DELANEY, a Notary Public in and for the
 4 State of Wisconsin, do hereby certify that the above
 5 telephone deposition was taken before me at Stafford
 6 Rosenbaum, LLP, Attorneys at Law, 222 West Washington
 7 Avenue, in the City of Madison, in said County and State,
 8 on June 21, 2005, commencing at 2:05 o'clock p.m.; that
 9 it was taken at the request of the plaintiff, upon verbal
 10 interrogatories; that it was taken in shorthand by me, a
 11 competent court reporter and disinterested person,
 12 approved by all parties in interest, and thereafter
 13 reduced to writing by me using computer-aided
 14 transcription; that said deposition is a true record of
 15 the deponent's testimony; that said deposition is to be
 16 used in the above-entitled action now pending in Circuit
 17 Court; that the appearances were as shown on page 2 of
 18 the deposition; that reading and signing was not
 19 requested; that the said NANCY JOHNSON DENT, before
 20 examination, was sworn by me to testify the truth, the
 21 whole truth, and nothing but the truth relative to said
 22 cause.
 23 Dated June 27, 2005.
 24 _____
 25 Notary Public, State of Wisconsin