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JAMES HAUSMAN v. SAWYER COUNTY
DEPOSITION OF KRIS MAYBERRY
TAKEN MAY 26, 2005

P R O C E E D I N G S

KRIS MAYBERRY,

having been first duly sworn on oath, was interrogated and testified as follows:

* * * * *

EXAMINATION

BY MS. AZAR:

Q. Mr. Mayberry, I'm Lauren Azar; and as you know Jim Hausman's attorney and will be conducting the deposition today. You had -- you had provided a deposition last year but you were appearing in your personal capacity last year as far as being a clerk of Sawyer County. Today you're actually appearing as a corporate designate of Sawyer County. Do you understand that?

A. Yes.

Q. And do you understand that your answers are being made on behalf of Sawyer County?

A. Yes.

Q. And that your answers will bind Sawyer County?

A. Yes.

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2 Q. I'd like to hand you what's been marked as Exhibit 155,
3 which is the notice of deposition that was sent to your counsel
4 and we understand that you were being presented here today to
5 answer questions in relation to Paragraph 1 U, any considerations
6 since the onset of this litigation by Sawyer County to construct
7 a bridge in place of either the Carlson Road Dam or the culverts
8 at NN. Is that your understanding as to your role here today?

9 MR. DREGNE: Could I just interject he was also designated as to
10 1 T, I believe. Communications.

11 MS. AZAR: Fantastic.

12 BY MS. AZAR:

13 Q. So Mr. Mayberry you're here then to answer questions about 1
14 T and 1 U, correct?

15 A. Yes.

16 Q. How did you prepare for this deposition?

17 A. Ahm, I looked back through the file to see what
18 communications might be in it concerning communications with the
19 Department of Natural Resources.

20 Q. And what documents did you find in review?

21 A. There were by and large letters from copies of letters to
22 the Department of Natural Resources from Sawyer County's attorney
23 in this litigation, Matt Dregne.

24 Q. All right. Before we get into questions I just want to go
25 through the same ground rules we used during the last deposition.

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2 If we try not the talk over each other that would be great if all
3 your answers could be audible that will help the court reporter.
4 If you don't understand any questions that I ask please stop me
5 and ask me to clarify and if at any point in time you need to
6 correct or amend any of the answers you provide please stop me
7 and correct those answers. I want to ensure that you're very
8 comfortable with all the answers you provide today. Do you
9 understand those directions?

10 A. Yes.

11 Q. Mr. Mayberry in what municipality do you live?

12 A. The local unit of government is the Town of Lenroot.

13 Q. Could you spell that?

14 A. L-e-n-r-o-o-t.

15 Q. And what's your date of birth?

16 A. 1-30-50.

17 Q. Have you ever been arrested?

18 A. No.

19 Q. Since the onset of this litigation has Sawyer County
20 considered constructing a bridge in place of the Carlson Road
21 Dam?

22 A. Not that I'm aware of.

23 Q. And since the onset of this litigation has Sawyer County
24 considered placing a bridge at the intersection of Osprey Creek
25 and the culverts at NN?

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2 A. Not that I'm aware of.

3 Q. Now, what -- what is your current role for the County in
4 relation to this litigation?

5 A. It would pertain to my duties as County Clerk more or less
6 coordinating the -- the mail that's received, the input to the
7 County Board and conveying to it them getting copies of that to
8 them and occasionally passing on information between the County
9 board and our attorneys in this litigation.

10 Q. Do you play any other role as far as oversight of or review
11 of documents?

12 A. No.

13 Q. I'm going to hand you what's been marked as -- Exhibit 134.
14 Could you identify this document please?

15 A. It's a letter from Stafford Rosenbaum and, specifically,
16 Mr. Dregne, Attorney Dregne for Stafford Rosenbaum.

17 Q. This is actually a petition to the Wisconsin Department of
18 Natural Resources wherein Sawyer County asks DNR to provide some
19 assistance concerning clarifying prior orders that had been
20 issued to Sawyer County, correct?

21 A. Yes.

22 Q. And why did Sawyer County submit this petition to the
23 Wisconsin Department of Natural Resources?

24 A. The -- it was basically the recommendation of Mr. Dregne.

25 Q. I don't want you to disclose what Mr. Dregne told you but

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2 what were the underlying reasons that Sawyer County submitted
3 this petition?

4 A. That I'm not -- not really sure other than the document kind
5 of describes the circumstances and so they determine to authorize
6 that this petition be filed.

7 Q. And when you say they determined, who determined?

8 A. The County Board.

9 Q. County Board determined. What sort of follow-up has Sawyer
10 County had with Wisconsin Department of Natural Resources in
11 relation to this petition which has been marked Exhibit 134?

12 A. The -- hard to figure out time table. This was June of
13 2004. Ahm, at some point there was a responsive letter shortly
14 after this from a DNR official. I -- indicating that the DNR was
15 going to meet and discuss this and -- and take action on it and
16 then for a long time there was -- there was perhaps no
17 communications or correspondence. At some point I know that I
18 think there may have been a letter written by Mr. Dregne to the
19 Department of Natural Resources I think a Mr. Aartila from Park
20 Falls Department of Natural Resources office concerning the time
21 frame when we might expect a response to this.

22 Q. And what was the concern about the time frame?

23 A. The -- if I recall, the Department of Natural Resources
24 response to this letter. They said that a response or -- it
25 would be sometime next year which would be placing it sometime in

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2 2005 and I don't believe the County had any idea when we would be

3 receiving the response to this. But I -- not long prior to the
4 session on mediation that was held in Madison concerning this
5 litigation, the -- Mr. Aartila was asked and -- and I also asked
6 Mr. Aartila that, if we were going to receive a response to this
7 and was told that we would get one shortly. And that was -- I
8 believe Mr. Dregne also contacted him.

9 Q. Mr. Dregne contacted Mr. Aartila?

10 A. I believe so.

11 Q. Does Sawyer County hope that the Wisconsin Department of
12 Natural Resources takes action on this petition before this
13 litigation goes to trial?

14 A. I don't know what they hope and I don't know that they would
15 expect that.

16 Q. Now, what communications have you had with the
17 representatives from the WDNR in relation to this litigation?

18 A. It's been limited other than again I had a -- I did have
19 a -- place a phone call to Mr. Aartila again not long before the
20 mediation just to ask if we could expect a -- a response, so --

21 Q. Have you been on any telephone calls with the Wisconsin
22 Department of Natural Resources during which parties were
23 discussing the objectivity of Mr. Kafura?

24 A. I haven't discussed that on the phone with anybody.

25 Q. Have you discussed that in person with anybody?

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2 A. I haven't really participated in a discussion, I -- at
3 one -- at one time -- what was the question again.

4 MS. AZAR: Would you please read it back.

5 (The pending question was read.)

6 THE WITNESS: I -- I wouldn't say specifically that was -- I was
7 in the -- let's see I was -- I -- Mr. Dallam who works for the
8 department had come in and -- and to the Land and Water
9 Conservation office I just happened to be there and there was a
10 question about if we had any questions about the process to
11 contact the DNR.

12 Q. And so let's talk about that meeting that you had with
13 Mr. Dallam who was in attendance?

14 A. I'm not certain but I'm pretty sure Dale Olson was there.

15 Q. Who else?

16 A. And beyond that I can't say. And I was -- I was there when
17 Mr. Dallam entered and I'm not sure I stayed -- I think I was
18 there when he left. I'm not real sure about that.

19 Q. Had Mr. Dallam made an appointment with Mr. Olson?

20 A. That I couldn't tell you.

21 Q. Did you know Mr. Dallam was going to be there?

22 A. No.

23 Q. And why don't you describe to me the discussion or -- why
24 don't you describe to me the discussion concerning Mr. Kafura
25 that morning?

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2 A. I don't know that it was specific about Mr. Kafura it was
3 more in general that if we had questions about the procedures,
4 I'm trying to place it in a time frame but I believe that we were

5 aware that there was -- that the DNR had a group that was
6 discussing this and again it was an unsolic -- we basically -- it
7 was kind of an incomplete discussion but it was about if we did
8 have any concerns or -- about how the DNR was handling it we
9 should get in touch with their office. I'm not sure who that
10 would have meant to get in touch with but I'm assuming
11 Mr. Aartila.

12 Q. So was Mr. Kafura's name mentioned during that meeting?

13 A. It's possible I really don't recall.

14 Q. And did Sawyer County contact the Wisconsin Department of
15 Natural Resources after that meeting to discuss Mr. Kafura?

16 A. I don't know about discussing Mr. Kafura but I believe -- I
17 believe that -- at that time -- I discussed the situation with
18 Mr. Dregne and he may have contacted Mr. Aartila.

19 Q. Now, I don't want to know what you told your attorney but
20 obviously you reported something out and something concerned you
21 that you heard during that meeting and I want to understand what
22 you were concerned about?

23 A. I really wasn't sure but I -- I thought he should contact
24 Mr. Aartila.

25 Q. You weren't sure about what he should contact Mr. Aartila

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2 about?

3 A. That's right. Yeah, the -- I wasn't sure what Mr. Dallam
4 was referring to and he -- he must have been involved in the
5 process with the Department and Natural Resources was describing

6 how to respond to our petition and I called -- I basically called
7 Mr. Dregne to discuss.

8 MR. DREGNE: Just caution you to be careful not to disclose what
9 you said to me, our communication.

10 A. I basically just mentioned that Mr. Dallam had been in and
11 that if we had concerns to contact the DNR and I think it must
12 have been Mr. Aartila.

13 BY MS AZAR:

14 Q. Now did Sawyer County have concerns?

15 A. Ah, not necessarily. Again I don't think we were you know,
16 I -- I don't know that we did. We obviously were concerned that
17 communications take -- or that their process move forward and
18 that we get a response but.

19 Q. So Sawyers' County's concerns then were -- did not involve
20 Mr. Kafura; is that correct?

21 A. I'm -- you know if they did I don't think that's the focus
22 of what that was about. I can't speak for -- the County Board
23 certainly hasn't really addressed that issue.

24 Q. Okay. Well, you've been presented here today to make
25 representations about Sawyer County's communications with the

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2 Wisconsin Department of Natural Resources concerning this
3 litigation and that includes concerns that Sawyer County has
4 about Mr. Kafura. So, I need to understand what Sawyer County's
5 position is in relation to Mr. Kafura. Does Sawyer County have
6 any concerns about Mr. Kafura's objectivity vis a vis water

7 levels on Round Lake?

8 A. I don't think there was any -- there's never been an
9 official expression that I'm aware of. Unless that was conveyed
10 by Mr. Dregne.

11 MS. AZAR: Could you please read back the question?

12 (The pending question was read.)

13 BY MS. AZAR:

14 Q. Please answer the question.

15 A. Okay. And again if -- if anybody had those concerns, it
16 would have been in a discussion with Mr. Dregne which I don't
17 know that I should discuss that.

18 MR. DREGNE: You shouldn't disclose or -- our discussion.

19 MS. AZAR: What you do need to disclose is, however, is Sawyer
20 County's position.

21 A. And I don't think Sawyer County has an official position on
22 that.

23 Q. So I'm going to ask the question again. Sawyer County does
24 not have any concerns about Mr. Kafura's objectivity in relation
25 to the water levels on Round Lake, correct?

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2 A. Correct.

3 Q. Sawyer County has no concerns about Mr. Kafura's objectivity
4 in relation to the damage on Mr. Hausman's property, correct?

5 A. Correct.

6 Q. So if Sawyer County -- strike that. So if any agents on
7 behalf of Sawyer County conveyed something otherwise to the

8 Wisconsin Department of Natural resources they would have been in
9 error, correct?

10 A. Again, I'm entitled to clarification. Again by con --
11 official position or a position of the County, do you mean the
12 County Board, the County entity, then the answer is, I'm not
13 aware that they have a concern for Mr. Kafura's objectivity.

14 Q. Fair question. And let's be quite clear about who you are
15 representing when you're here today. Okay. There's an entity
16 called Sawyer County who is a defendant in the lawsuit, correct?

17 A. Correct.

18 Q. That is who you are representing, the defendant in this
19 lawsuit. You need to determine how to answer questions on behalf
20 of that defendant. So when you give answers today your answering
21 on behalf of the defendant?

22 A. Okay.

23 Q. Okay. Now I'm going to go back and ask you to read the last
24 question.

25 The pending question was read.)

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2 THE WITNESS: If -- correct, if by -- by conveyed, I don't think
3 the Department of Natural Resources was ever approached by the --
4 a representative of the County Board about a concern but I --
5 again I've not been a party to -- you know, as far as I know.

6 Q. Let me rephrase the question. If -- when I refer to an
7 agent of Sawyer County I'm referring to any agent. It could be
8 your counsel, it could be consultants, anybody who's speaking on

9 behalf of Sawyer County?

10 A. Yeah.

11 Q. So if any agent of Sawyer County told the Wisconsin
12 Department of Natural Resources that Sawyer County was concerned
13 about the objectivity of Mr. Kafura that agent would have been in
14 error, correct?

15 A. Correct, if he was advised that the County Board or the
16 entity Sawyer County had that position.

17 Q. Thank you. Has Sawyer County -- strike that. Looking at
18 Exhibit 134, has Sawyer County made any other requests of the
19 Wisconsin Department of Natural Resources asking you to clarify
20 Sawyer County's obligations in relation to other structures,
21 water control structures in the County?

22 A. I don't believe so. I'm not aware of any let's put it that
23 way. Unless let's see, I can't remember if this includes the
24 double N culverts I think there was a request for an
25 after-the-fact permit for that so I guess that would be another

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2 structure.

3 Q. Now how did the Wisconsin Department of Natural Resources
4 respond to Sawyer County's after-the-fact permit application for
5 the culverts at NN?

6 A. I believe that they said that they would review that as part
7 of this process of reviewing and clarifying orders relating to
8 Round Lake.

9 Q. And did Sawyer County make a request that that be how the

10 Department responds?

11 A. I think that was -- I almost -- I'm pretty sure that
12 Mr. Dregne conveyed that that would be the reasonable way to deal
13 with that.

14 Q. And has the Wisconsin Department of Natural Resources
15 provided any other responses at this point in relation to the
16 after-the-fact permit application?

17 A. I almost think they've said -- concurred that they would
18 address it as part of this whole review.

19 Q. Now, as you know, Mr. Hausman has asked the Wisconsin
20 Department of Natural Resources to designate the Carlson Road Dam
21 as a large dam. Do you understand that?

22 A. Yes.

23 Q. What has Sawyer County's position been in relation to that?

24 A. I believe that Mr. Dregne advie -- or wrote to the DNR and
25 said that that too should be addressed in the greater view of the

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2 water levels on Round Lake.

3 Q. And has -- strike that. Prior to communicating that to the
4 Wisconsin Department of Natural Resources did Sawyer County
5 conduct any investigation as to the size of the Carlson Road Dam?

6 A. That I couldn't say. -- not aware of it. But --

7 Q. Prior to submitting the after-the-fact permit application
8 for the culverts at NN what sort of investigation did Sawyer
9 County conduct of those culverts?

10 MR. DREGNE: Object to the question as beyond the scope of the

11 topics on which this witness has been designated to testify
12 subject to the objection you can answer.

13 A. I -- could you repeat, please.

14 MS. AZAR: Could you.

15 (The pending question was read.)

16 THE WITNESS: And I'm -- I'm just not aware of the nature.

17 MS. AZAR: If we could just take a few minutes.

18 (Recess.)

19 MS. AZAR: That's about it, Mr. Mayberry.

20 MR. DREGNE: I just have one follow-up.

21 * * * * *

22 EXAMINATION

23 BY MR. DREGNE:

24 Q. Mr. Mayberry, I just have a couple of questions regarding

25 the petition marked as exhibit?

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2 A. Oh, I don't want to walk off with an Exhibit.

3 Q. 124. That's an exhibit also?

4 A. 124 or 134?

5 Q. Exhibit No. 134 which is the petition that was filed on

6 behalf of the County with the Wisconsin Department of Natural

7 Resources?

8 A. Yes.

9 Q. Did the County Board have copies of that petition. Members

10 of the County Board have copies of that petition for their own

11 personal review before it was filed with the WDNR?

12 A. If they didn't have this form of it, they had a draft that
13 included the meat of it -- the basic provisions of it. That you
14 provided to me by fax and discussed with them in a closed
15 session.

16 Q. And who was it that authorized the final petition that was
17 filed on behalf of the County with the WDNR?

18 A. The full County Board of supervisors approved it in draft
19 form and then this was basically the same thing.

20 MR. DREGNE: That's it.

21 MS. AZAR: Thank you very much.

22 THE WITNESS: Okay.

23 (Deposition concluded at 9:34 a.m.)

24

25