

1 STATE OF MICHIGAN

2 STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

3 In the matter of: File No.: 06-57-0002-P
4 Missaukee Lakes Master Homes, Part: 301, Inland
5 LLC Lakes and
6 _____/ Streams
7 Agency: Department of
8 Environmental
9 Case Type: Land and Water
10 Management
11 Division

12 HEARING - VOLUME NO. IV

13 BEFORE RICHARD A. PATTERSON, ADMINISTRATIVE LAW JUDGE

14 525 West Allegan Street, Lansing, Michigan

15 Friday, January 18, 2008, 10:00 a.m.

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Michael Smith

RECORDED BY: Marcy A. Klingshirn, CER 6924
Certified Electronic Recorder
Network Reporting Corporation
1-800-632-2720

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1 Lansing, Michigan

2 Friday, January 18, 2008 - 10:03 a.m.

3 JUDGE PATTERSON: Mr. Morrow, just before you
4 start, I'll remind you, you've been sworn in. You're still
5 under oath.

6 MR. MORROW: Yes, sir.

7 JUDGE PATTERSON: Okay. Thank you.

8 RICHARD MORROW

9 having been recalled by the Intervenor and previously sworn:

10 DIRECT EXAMINATION

11 BY MR. PHELPS: (continued)

12 Q Mr. Morrow, when we left off, I think you'd been describing
13 a little bit on the west end of the lake. And just to
14 recap, how many times have you been out on that end of the
15 lake?

16 A Well, hundreds; hundreds of times.

17 Q And just give us a quick summary again of the plant life,
18 wildlife, fish life that you've witnessed in and about the
19 proposed dredge site.

20 A That proposed dredge site is very rich in wildlife. The
21 habitat itself is still there. There's a lot of submergent
22 wetland vegetation as well as vegetation that resides on the
23 top of the water as well. I call them lily pads, Dr.
24 Jaworski's redefined them for me with the technical names
25 which I don't remember. But they are qualified as wetland

1 vegetation. The habitat -- there are loons in this area.
2 I'm not saying they're just in lot 8. That would be a wrong
3 presumption. But loons and eagles frequent the west side of
4 the lake quite frequently. In fact, the eagles had two
5 eaglets this year and, you know, they forage for fish and
6 food throughout the entire lake. But because of the low
7 density population and the excessive amount of habitat area
8 at the west end of the lake, they more frequent that area
9 just because of the lack of population.

10 Q What about fish? Do you see fish in or about the proposed
11 dredge site?

12 A Yes. When you get into that dredge site -- in fact, when
13 Dr. Jaworski and I went in there to do some lake
14 measurements, we observed at that time schools of minnows.
15 We observed larger fish, you know, swimming rapidly to get
16 away from our boat. So we -- you know, I've got a jar here
17 (indicating) that I took approximately 150 feet out which
18 still has little critters swimming around in it. And that
19 jar has been -- that sample was collected on December 9th.
20 To me, this kind of refutes Dr. Lehman's testimony that this
21 is a dead zone. I couldn't disagree more. I think it's
22 very active with different types of little critters such as
23 this. I think a good example is, is that you don't see any
24 active vegetation growing in this sample and yet you got
25 these little critters still swimming around so they

1 absolutely have made a home out of the unconsolidated
2 sediments. So the unconsolidated sediments do support, as
3 proof right in front of me, habitat for -- let's call it
4 food for fish to eat.

5 Q With regard to sediments, have you personally investigated
6 the types of sediments that are in the proposed dredge site?

7 A Yes, myself as well as Dr. Jaworski as well as other board
8 members have went into that area numerous times looking at
9 and defining the depth of these unconsolidated sediments and
10 the fineness of the unconsolidated sediments. Back in our
11 2002 argument against dredging in an area about three lots
12 adjacent to this area, we took a sample and we actually had
13 that defined as far as what the consistency of the sediments
14 were. And so there's a graph back from 2002 that shows an
15 independent lab doing the work and saying, "Okay. Here's
16 the consistency of these sediments." So they have been
17 defined by an outside lab as well, albeit that they are
18 about three lots, you know, north of this area that's
19 proposed to be dredged now.

20 Q Just in lay terms from your lay understanding, describe the
21 types of sediments that are in the proposed dredge site.
22 And are they all consistent with the type of sediment that's
23 in the jar here in front of the tribunal?

24 A Well, the sediments are extremely fine on the upper part of
25 the sediments. Dr. Lehman called it a --

1 Q Nepheloid?

2 A -- nepheloid layer. That nepheloid layer is extremely fine
3 and it's confined really to the west end of the lake. It's
4 something like I don't see out in front of my place. I'm on
5 the south shore and when I go out I don't see that nepheloid
6 layer. We've always considered that nepheloid layer to be
7 part of the sediments. And that nepheloid layer as Dr.
8 Lehman testified was a minimum of six inches thick and going
9 farther than that. And, you know, that raises another huge
10 issue which always has been with our association and our
11 lake property owners -- is when you start dredging an area,
12 how do you stop? When do you know you're done? Because
13 this layer is going to continually flow in and fill up
14 whatever area you're evacuating it's so fine.

15 Q Does that nepheloid layer float about this whole area in the
16 west end of the lake?

17 A Yes. If you get in real, real shallow water, it's not as
18 pronounced. But, you know, if you get out probably 50 feet
19 from shore, it becomes very pronounced.

20 Q And your place is off in this (indicating) area?

21 A Yes.

22 Q And you don't see that -- do you see that nepheloid layer
23 about the main part of the lake?

24 A No; no, we don't. I never heard it defined as such before.
25 We've always just considered it as part of the fines.

1 Q Okay. Describe for the tribunal what happens when those
2 sediments in that nepheloid layer get stirred up.

3 A Well, that's really the issue, is the nepheloid layer and
4 the fines directly underneath them because what happens is
5 that anytime they are -- they get suspended in the water
6 column, the prevailing westerly winds take those and they
7 start spreading them out over the rest of the lake. And
8 it's a major concern our property -- lake property owners
9 have is that their beaches will become polluted with
10 resultant increased boat traffic through these layers of
11 fines creating this turbidity, making it waterborne, being
12 carried with prevailing winds onto their beaches as well as,
13 you know, the destruction of wetlands that are there now,
14 the habitat for the, let's call them, critters and fish and
15 those that prey upon fish because you're taking more of that
16 away out of the area. Those are major, major concerns of
17 our association.

18 Q Have you yourself witnessed the plumes or turbidity when
19 those fine sediments on the west end of the lake get stirred
20 up?

21 A Absolutely.

22 Q And how many --

23 A Most everyone on the lake has witnessed these plumes. This
24 is nothing new. This is something that if someone,
25 particularly -- someone hasn't been on the lake before,

1 they're not familiar with this end of the lake and they
2 start driving in too close, all of a sudden they -- it's
3 almost a false conception. When you're driving your boat
4 and you think it's actually bottom -- because you're only
5 looking at, you know, a depth of maybe, depending on where
6 you are -- but you're only looking at a depth of maybe 14 to
7 18 inches of water. And it looks almost like it's bottom --
8 you know, like you expected it to be hard bottom. Well,
9 it's not. And so what happens is all of a sudden they look
10 and their motors are just generating a huge plume -- huge,
11 huge plume of these unconsolidated sediments, which I call
12 them, that then become waterborne. And if you got a windy,
13 wavy day, they are going. They are gone.

14 Q Well, what do you mean "they are gone"? What have you
15 personally witnessed with regard to that?

16 A I've seen on busy weekends if boats get into that area, that
17 they will eventually, about a day later, end up on my beach
18 and adjacent beaches to me. And that's the concern that our
19 property -- lake property owners have is how do you control
20 these plumes? How do you prevent the plumes from happening?
21 You know, if there's a way to stop those plumes so that the
22 beaches aren't polluted, it would sure make a lot of our
23 membership a lot happier.

24 Q Were you here -- I think you were here when Dr. Lehman
25 testified about his experience with dumping some sediments

1 over the side of his boat?

2 A Yes.

3 Q And as I recall, he testified they settled out rather
4 quickly. Do you remember that?

5 A Right. I have to believe that those sediments are probably
6 the ones that he took with this Ponar grabbing device which
7 I think totally ignored the fines on the top.

8 Q Well, is the way he described how those sediments settled it
9 at all consistent with your 33 years on the lake?

10 A No, it's not. No, it's not. But, again, I think it's that
11 sampling technique.

12 Q I want to move on to Missaukee Lakes Master Homes and the
13 permitted issue in this proceeding. When did you and the
14 association first become aware of the proposed dredging
15 that's the subject of this permit?

16 A Well, as I testified earlier, Mr. Boughner back on --
17 actually, I went back and looked -- July 12th of 2005,
18 called me over to Harry Mohney's residence which we call
19 "Missaukee Lakes Master Homes" and told me at that time that
20 they were going to have to dredge. They had to dredge so
21 that he could use his boats, to get his boats in and out; no
22 reference to swimming whatsoever and no maintenance dredging
23 whatsoever. And so that was pretty much -- you know, he had
24 some grandchildren that they wanted to use boats and
25 watercraft to -- you know, in front of his place. That was

1 the first time I heard about it. Then back in 2006 we get
2 on the CIWPIS -- the DEQ CIWPIS website and that always
3 tells us what's going on with respect to permit
4 applications. And we saw probably that --

5 JUDGE PATTERSON: You mean CIWPIS (pronouncing)?

6 THE WITNESS: CIWPIS? C-I-W-P-I-S.

7 JUDGE PATTERSON: Yeah. Right. Okay. Just for
8 the record.

9 A We visit that very frequently just to see what kind of
10 permits are going through the DEQ -- are being requested and
11 we do an examination. And we saw that -- this site and we
12 saw what the permit application looked like through the
13 Freedom of Information Act working with the DEQ and that's
14 when we first became aware of it.

15 Q And I take it the association then opposed the dredging?

16 A Absolutely. I think I need to really make sure that this is
17 well understood. Our association formed in 1997 and it
18 formed really because there was several issues. One is that
19 no one had been testing the water on the lake since '84 and
20 there was need to do water testing on the lake. And it was
21 suggested that an association be formed so that this type of
22 activity could happen.

23 There was a passionate -- and I can't stress this
24 enough, a passionate probability -- high probability that
25 once it became known to the lake property owners that a

1 subdivision was being proposed on the west end of the lake,
2 that in order for them to sell lots they would have to
3 dredge because the property owners on the lake fully
4 comprehend that this area is a bog. And people aren't
5 readily go in and purchase lakefront property on a bog
6 unless they dredge it. So it became an extremely passionate
7 issue that the property owners said, "Well, we don't want
8 another Redman's Island fiasco where our beaches are
9 polluted, the wetlands are destroyed, the wildlife habitat
10 is destroyed. We want a voice. We want a voice." And that
11 was part of the reason for our formation.

12 Interestingly, we had a formation dating back in
13 early August of '97 at which time the agent representing
14 Indian Lakes West, his name was Charles Green, came to this
15 gathering. We weren't an association at this time. We were
16 just thinking about forming an association. And we were
17 kind of in a deadline because the Indian Lakes West had
18 already granted permission to establish basically a sewer
19 connection between their two sets of properties, Indian
20 Lakes West and Indian Lakes North, which is -- they're both
21 on the west end of the lake. And there was going to be a
22 site condo plat approval meeting held on the 13th of August
23 by the Lake Township board. And so what this information
24 meeting was on the 9th before this meeting on the 13th was
25 to convey to lake property owners what the plans were for

1 development and the turnout was tremendous.

2 We had people actually standing outside of the
3 Lake Township hall trying to listen to the dialogue; there
4 was that number of people there. And their concern was
5 they're going to have to dredge in order to sell that
6 property. We don't want dredging in that sensitive area of
7 that basin and so, therefore, we are opposed to any dredging
8 in that area. We don't want a repeat of the Redman's Island
9 stuff and the destruction of wetlands and everything else I
10 just stated. Charles Green got up at that meeting. He came
11 to the formation meeting and stated that they were not going
12 to dredge.

13 Q And this was Missaukee Lake Masters Homes representative at
14 that meeting?

15 A This was Indian Lakes West representative at that time -- or
16 Indian Lakes, LLC, probably would be technically more
17 correct.

18 Q Which, for the record, is the subdivision that we've been
19 talking about for this whole hearing?

20 A Yeah. Well, they had tied in North as well, you know. It's
21 like when they put their proposal together to the Lake
22 Township board, it showed Indian Lakes West and North. So
23 the conversation by Green at that time was for that entire
24 project.

25 Q I want to make sure -- and you've already touched on some of

1 this and I don't want to repeat everything, but I want to
2 make sure you've had an opportunity to identify for the
3 tribunal all the various reasons why you're opposed to the
4 dredging. So if there is anything you haven't already
5 testified to, this is an opportunity for you to clean that
6 up.

7 A Well, you know, this is the second dredging application
8 since 2002, to dredge that -- let's call it "Indian Lakes
9 West." Our association and the property owners are very,
10 very concerned about, one, their beaches being polluted not
11 only by the dredging operation -- it's like, when you start
12 sucking down here (indicating), how do you stop? How do you
13 know when you're done? With the fineness of these
14 unconsolidated sediments, how can you reference when you are
15 done? You can't. You can stick that hose out there and
16 keep sucking. Dr. Jaworski has estimated to be 10 million
17 cubic yards of unconsolidated sediments in this basin; 10
18 million cubic yards. And with the consistency so fine where
19 you got to stick a hose in there and walk away because it's
20 going to keep on coming, how do you contain it to 50 feet
21 wide by 200 feet out by 2-1/2 feet deep? How do you contain
22 that? You don't. You don't. It's going to fill right back
23 in. So how do you know when you're done? I mean, that's a
24 question that property owners all have. How do you know
25 when you're done? Define it. And how long do you think

1 it's going to sit there once you evacuate it and not fill
2 back in again with these exceptionally fine layer of
3 sediments? That's a concern.

4 The other concern I already mentioned was we have
5 a major concern about the loss of, you know, the fish food.
6 Once you start destroying one little segment, there is no
7 question in our mind that the next one's going to follow and
8 the next one after that's going to follow. They're not
9 going to stop. This is just the first phase. Please,
10 believe that. This is a phase to sell lots.

11 Q Well, and that leads to my next question which is do you
12 have any reason to believe that the proposed dredging
13 project may be a keyhole to the rest of the Indian Lakes
14 West development?

15 A No question about it. They failed to get the approval
16 between lots 10 and 11 in 2002 for -- at which time was
17 going to be for the back lot property owners, not so much
18 the lakefront, at least that's how it was defined in the
19 application. This application now is for -- in front of lot
20 8, again, would be a phase of, "Okay. Now we've got this
21 and now we'll start bringing adjacent property owners into
22 this area and start filling it -- using it."

23 Q And the Indian Lakes West subdivision or Missaukee Lakes
24 Master Homes, whatever entity it was, attempted to install a
25 marina previously?

1 A Absolutely. Back in 2002 they actually put a marina in -- a
2 permanent marina that was over 100 feet in length that was
3 large enough to accommodate 12 boats that had to be removed
4 because they put it in without a permit for a permanent
5 structure. So after it sat there for over a year, through a
6 winter or two, they had to take it back out.

7 Q Where was it?

8 A Between lots 10 and 11.

9 Q Okay. And if you could, turn to Exhibit 15. I think it's
10 the red. It's the Intervenor's exhibits, which is going to
11 be this red book.

12 MR. PHELPS: And, your Honor, do you have an
13 Intervenor's book?

14 JUDGE PATTERSON: I don't have that.

15 MR. PHELPS: I've got another one here.

16 Q If you turn to the second page of Exhibit 15, Mr. Morrow,
17 can you identify for the tribunal where the marina was that
18 was previously installed by the Petitioner?

19 A Yeah.

20 MR. SHAFER: Objection; mischaracterizes the
21 evidence. Petitioner is Master Lakes Home. He talked about
22 Indian Lakes West.

23 JUDGE PATTERSON: Can you clarify that?

24 MR. PHELPS: Well, it could be the Indian Lakes
25 West. But I have an objection, and that is their -- I'm not

1 going to be tag-teamed by two different attorneys on their
2 side. My understanding was from last time -- was who? -- I
3 forgot your name -- Mr. --

4 MR. HOFFER: It's Hoffer.

5 MR. PHELPS: -- Hoffer was handling objections.
6 So I'd like to know who's handling objections for their
7 side.

8 MR. SHAFER: That's fine. Mr. Hoffer can handle
9 it.

10 JUDGE PATTERSON: Okay.

11 MR. SHAFER: It's still our objection.

12 Q All right. Mr. Morrow, if you're on the second page of
13 Exhibit 15, could you identify for the tribunal where the
14 marina where you referred to earlier in your testimony was
15 installed?

16 A Yes, it's depicted pictorially with a dock there between lot
17 units -- what they call unit 10 and unit 11.

18 Q And how many boats would that marina have serviced?

19 A 12.

20 JUDGE PATTERSON: We're on the second page of
21 Exhibit 15?

22 MR. PHELPS: Second page of Exhibit 15, lower left
23 corner.

24 JUDGE PATTERSON: Oh, okay. I was a page ahead of
25 you. I see it now.

1 Q And Exhibit 15 shows kind of a pull-out of the proposed
2 marina. Do you see that?

3 A Oh, yeah. Okay. Yes.

4 MR. SHAFER: I'm sorry, where are you at?

5 THE WITNESS: Top left-hand corner.

6 MR. PHELPS: Right where it's kind of drawn out.

7 MR. SHAFER: Oh, okay.

8 Q And it says -- it's got various arrows to various parts of
9 the dock and it says, "Limited common element, dock unit
10 19"; for example, "Limited common element, dock to unit 18."
11 Do you see that -- those references, Mr. Morrow?

12 A Yes, I do.

13 Q And was that your understanding when they put that dock in
14 that that was going to service multiple --

15 MR. HOFFER: Your Honor, I'm going to object to
16 that. I don't see the relevance of this to this project.

17 MR. PHELPS: Your Honor, the relevance is under
18 Part 303.11(D) the tribunal is to take into account the
19 probable impact of each proposal in relation to the
20 cumulative effect created by other existing and anticipated
21 activities in the watershed. And we certainly think that
22 the Petitioners or its related entities' prior activity in
23 the area to put a marina that would service 12 boats is
24 relevant to what their ultimate intentions might be with
25 regard to the proposed dredge site.

1 MR. HOFFER: Your Honor, as Mr. Morrow testified
2 to, this dock was on the commons area as opposed to an
3 actual one unit that's owned by Missaukee Lakes Master
4 Homes, the Petitioner in this case. And this is the dock
5 that they previously objected to by Mr. Morrow's own
6 testimony. A common dock for the development is not
7 relevant to a private dredging area for one person.

8 JUDGE PATTERSON: I think given cumulative
9 impacts -- obviously there's a valid distinction you just
10 made -- but I'll overrule the objection.

11 Q And, Mr. Morrow, I don't know, did you answer my last
12 question before the objection?

13 A About the -- yes, it was defined as the top left quadrant
14 shows for those lots. That was a definition of that dock.

15 Q Okay. And then tell us what ultimately happened to that
16 marina after it was installed.

17 A After the marina was installed, it remained in place for
18 over 12 months which really then made it a permanent
19 structure. It was at that time -- I had talked, you know,
20 quite frequently to the DEQ about that structure and they
21 said that it would need a permit to remain there. And they
22 did not have a permit for a permanent structure, so they
23 ordered that removed from that area.

24 Q If the channel -- the proposed dredge site is dredged, does
25 the association believe that servicing multiple boats at

1 that site will be harmful to the ecology in the west end of
2 the lake?

3 A Yes, I'd like to even add to that. Multiple boat usage in
4 that basin from any lot is going to create havoc to the rest
5 of the lake. And like I mentioned earlier, the more boats
6 that you have into that basin, the higher turbidity is going
7 to be generated by the motors because let's face it, they're
8 not going to go in there with canoes and little flat-bottom
9 fishing boats, they're going to bring speed boats in there.
10 And a high horsepower is going to create a tremendous amount
11 of turbidity and you can just multiple it by the number of
12 boats versus one. And that's what -- that's what our
13 association is so concerned about, is how you control the
14 turbidity and not pollute the rest of the beaches as a
15 result as well as, you know, how do you define a channel and
16 keep the boats confined to that channel? How do you do
17 that? You don't. They're going to hip-hop all through that
18 area. So let's be realistic. That's realistic.

19 Q Mr. Morrow, is the association opposed to development in the
20 Indian Lakes West area?

21 A Not at all. Not at all. And we made that point right up
22 front before we even formed and after we formed, numerous
23 times. We have nothing against the development as such. We
24 are absolutely astounded by the location for that
25 development and we remain so today. And we've stated that

1 to the agents repeatedly at several meetings as to "Why
2 would you want to place a development on a bog?" And it was
3 done. It was done and now 10 years later we can't sell lots
4 because it's on a bog and so we're talking about exactly the
5 issue our membership is so concerned about and that's
6 dredging in order to sell lots.

7 Q Mr. Morrow, I want to move on to the next issue which is
8 alternatives. Are you aware -- or are there alternative
9 dock access points available?

10 A Absolutely.

11 Q And are there some that are available that the association
12 is not opposed to?

13 A Absolutely.

14 Q And where would they be?

15 A May I just show you on the picture?

16 Q Please.

17 A There are several sites that are very conducive to solving
18 this entire issue as far as we're concerned. As you can see
19 in this here schematic, there's a point right here
20 (indicating). And you see the sand. You can see these
21 whiter sections here are sand. And the nice thing about it,
22 if you really look close, that you can see that this sand
23 cascades out into the lake hundreds of feet; hundreds of
24 feet. And this point area here is absolutely a perfect area
25 for watercraft or swimming; swimming with a hard sand

1 bottom. You could take boats -- traffic in and out of here
2 without taking unconsolidated sediments and spread them out
3 throughout the rest of the lake. You have a beach over here
4 (indicating) that's a little north of the point that is
5 populated during the boating season. People illegally, I'm
6 sure, drive their boats up into this area and use the beach.
7 You also have a sandbar here which has become kind of a
8 hangout for a lot of the young people on the lake because
9 it's only about two feet of water over here and so they all
10 drive their boats over there and hang out on the sandbar.
11 But as far as good, suitable area for swimming with access,
12 it would be this (indicating) here off the point and this
13 beach area over here; very, very well defined.

14 Q And for the record, where you've been pointing on our
15 picture is kind of the point area between the Indian Lakes
16 West and North subdivisions or proposed subdivisions?

17 A Exactly; exactly. Yup; yes, that's correct.

18 Q And have you personally been out to that area?

19 A Yes, I have.

20 Q And is there -- how far out from shore would somebody have
21 to go to hit three foot of water for boating?

22 A Off of the point itself, you probably don't have to go more
23 than I'd say 100 feet at the most when you're there, where
24 the real -- this sandy area here (indicating) on the beach
25 over here, less than that, probably 30 feet.

1 Q Now, you would acknowledge that that site is a fair distance
2 from Mr. Mohney's current cottage?

3 A Yes, it is.

4 Q But, --

5 A Yes, it is.

6 Q -- first, is there a road that goes back to that area?

7 A There is a road. It's not shown in this picture. This
8 photo is a 1993 photo. But there is a road that takes you
9 down close to this (indicating) point. And there's also
10 been -- Indian Lakes has also had a trailer on this property
11 kind of like behind the sandbar -- I mean, this sandy
12 area -- the sand beach area right here (indicating) -- had a
13 trailer there and there's also a trailer right over here not
14 too far from the point as well. So road access obviously is
15 there.

16 Q Okay. And you say it's a ways from Mr. Mohney's cottage.
17 Before he built his cottage, did you and other lake
18 owners -- lakeshore owners tell Mr. Mohney that you were
19 opposed to dredging on the west end of the lake?

20 A Yes. Not Mr. Mohney himself, his agent.

21 Q And tell us when and where that happened.

22 A The first time was when Mr. Green came to our formation
23 meeting. This would have been August 9th, 1997. Not just
24 myself, but many property owners approached Mr. Green and
25 told him that they were opposed to dredging; that they were

1 opposed to this site condo plat being located in that area
2 because the only way they could make this thing happen is by
3 dredging because people wouldn't buy property on a bog.

4 Q And this communication to Mr. Mohney's agent, was that made
5 before he had built that cottage?

6 A Yes, it was before they even had condo site plat approval.

7 Q And what did Mr. Green say?

8 MR. HOFFER: Objection, your Honor. That calls
9 for hearsay and Indian Lakes is not here. It's Missaukee
10 Lakes Master Home. There's been no evidence that Mr. Green
11 was ever a representative of Missaukee Lakes Master Homes,
12 so it's hearsay and it's not party admission.

13 MR. PHELPS: Well, it's not hearsay. It is a
14 party admission. He was there on behalf of -- according to
15 the testimony -- Mr. Mohney -- and we've had ample testimony
16 from our earlier days in the testimony that Mr. Mohney owns
17 and controls this whole area and whether he's titled it in
18 the name of Master Homes, LLC, at one point or Indian Lakes
19 West or Indian Lakes North, they're all controlled by him as
20 testified to by his own witnesses at this proceeding.
21 That's more than enough to establish that Mr. Green was an
22 agent for him and his interests at this meeting.

23 JUDGE PATTERSON: I'll overrule. I'll allow him
24 to answer.

25 Q You can continue. What did Mr. Green say at the meeting in

1 response to your concerns about dredging?

2 A Mr. Green was -- there was many people approached Mr. Green.
3 Mr. Green initially qualified his statement, "We're not
4 going to dredge at this time." That was his qualification
5 statement. "We're not going to dredge at this time." After
6 repeated confrontation by various property owners, lake
7 property owners, I think he got a little heated and he very
8 outspokenly stated, "We're not going to dredge." That was
9 it.

10 Q And after that is when the subdivision went in?

11 A No. After that, on the 13th of August '97, the Lake
12 Township board conducted a site condo plat approval meeting
13 at which time many property owners from the lake attended
14 that meeting as well as Mr. Green who represented Indian
15 Lakes Development, LLC. At that hearing, I personally
16 testified to the board on behalf of a lot of different
17 property owners who also gave their testimony, that in order
18 for this area to be developed, dredging would have to occur.
19 "Therefore, deny the application. Deny this application for
20 site condo approval" but they ended up approving it anyway.
21 At that same meeting, I invited the board -- the Lake
22 Township board to accompany me personally down to Indian
23 Lakes West to observe the conditions of what they were
24 approving. I wanted to make sure they fully understood that
25 this is a bog. They refused to do so.

1 Q And subsequently Mr. Mohny eventually built his cottage?
2 A Yes, years later.
3 Q Years later? All right. Is there a second site along this
4 9,000 or so foot of shoreline that Mr. Mohny or entities
5 controlled by him owns that you feel you do not object to a
6 dock being located at?
7 A These two would be the primary -- right here on the point,
8 and there's one here (indicating) because of the sand
9 conditions.
10 Q Those are ones you just testified about?
11 A Yes. Those two would be one and two. In interests of just
12 common sense, if you look at the property on lot 1 -- at
13 Indian Lakes West, lot 1 -- I believe the gentleman's name
14 was Mr. Bales. He has a dock out there which he uses every
15 year. If you look at the property adjacent to -- this would
16 be east of Indian Lakes West, the people here on Birchaven
17 Beach have docks on them.
18 Q And I think what might be helpful as you go through this is
19 if we go back to Exhibit 15, that same second page that had
20 the subdivision drawing on it. Tell the tribunal the spot
21 you were referring to as an alternative access point to the
22 lake.
23 A Well, it would be -- do you see where the dock is, the
24 second dock on the cross-hatched area just east of lot --
25 unit 1?

1 MR. SHAFER: What page is he --

2 MR. PHELPS: Second page of Exhibit 15.

3 MR. SHAFER: Okay.

4 Q Yeah, if you find unit 1.

5 A And if you go east, you'll go right to that -- right of unit
6 1 you'll see a cross-hatched area which is I believe owned
7 by Indian Lakes West. And if you look out there, you'll see
8 a dock -- or proposed dock there.

9 Q Right.

10 A Dr. Jaworski and I went out there and did some measurements
11 looking at water depth versus hard bottom and found that
12 area to be deeper, "deeper" meaning more water above the
13 sediments than at that proposed site.

14 Q You mean than in front of lot 8?

15 A Yes.

16 Q And to the -- adjacent to this proposed dock site, this
17 cross-hatched area on Exhibit 15, there's unit 1. And who
18 owns that lot?

19 A Mr. Jack Bales.

20 Q Okay. And does he have a dock on lot 1?

21 A Yes; yes, he does.

22 Q Does he have a boat on that dock during the summertime?

23 A Yes, a pontoon.

24 Q And is he able to access the lake from his dock?

25 A Yes, he does.

1 Q And to your knowledge, did he do any dredging at that site?

2 A No, he did not.

3 Q It's not on this drawing, but on the opposite side of this
4 alternative area, is there a cottage or residence there?

5 A Yes, there is. And they also have a dock.

6 Q Do you happen to know the names of who that is?

7 A It escapes me right now.

8 JUDGE PATTERSON: Are we referring to unit 2?

9 THE WITNESS: No, this would be --

10 MR. PHELPS: No, it would be the opposite of the
11 cross-hatched, on the other side of lot -- unit 1.

12 JUDGE PATTERSON: Oh, okay.

13 MR. SHAFER: Are you talking about unit 31?

14 MR. PHELPS: It's not a unit at all. It's not on
15 this drawing.

16 A This would be on the lake just to the right of the cross-
17 hatched area. That's where -- Birchaven Beach starts at
18 that -- if you look at the right angle at the very uppermost
19 part of the cross-hatched area, just to the right of that
20 lot line is Birchaven Beach. Birchaven Beach, there's
21 people that own that property right there and they have a
22 dock right there. So we'd be talking about putting a dock
23 between two existing docks, yes.

24 Q Yeah, and I apologize if there's confusion about this. As
25 far as we know, Mr. Mohney's -- or his entities' property

1 line would be this line to the far right of the cross-hatch
2 area on Exhibit 15?

3 A Yes.

4 Q All right. And so unit 1, if I understand your testimony,
5 was purchased by Jack Bales and he has a dock and a boat
6 there?

7 A Right; yes.

8 Q And then we've got this cross-hatched area?

9 A Right.

10 Q And then continuing on we've got a new property owner that
11 didn't purchase from Mr. Mohny or his entities?

12 A That's correct.

13 Q Okay. And they have a dock?

14 A Yeah, that's correct.

15 Q And do they have a boat?

16 A Yes, they do.

17 Q And do they access the lake?

18 A Yes, they do.

19 Q And do they have to dredge?

20 A No, they did not.

21 Q Okay. Is another alternative access for Mr. Mohny that the
22 association does not object to to simply having a longer
23 dock without dredging?

24 MR. HOFFER: Objection; leading.

25 JUDGE PATTERSON: Can you rephrase that?

1 MR. PHELPS: Sure.

2 Q Can you identify another alternative that's satisfactory to
3 the association?

4 A Well, it's the obvious one and that's put in a longer dock,
5 something that takes you out to where at which point you
6 don't disrupt the unconsolidated sediments with a motor,
7 with a -- you know, which I call, you know, a typical I/O --
8 an outboard motor as opposed to a flat bottom fishing boat
9 or canoe or kayak. Because the concern -- you know, our
10 concern as an association is the vast array of fines in this
11 area, that once they become waterborne, they're going to
12 pollute our beaches.

13 Q Mr. Morrow, I've just handed out a blow-up of what's already
14 admitted Exhibit 17. I want to hand it out to -- a little
15 bit clearer. Tell the tribunal what this depicts.

16 A Well, this is -- these are just examples of dock lengths
17 that are along Forest Drive where I live. My address is
18 7600. You can see my dock length at this time was 115 feet.
19 I must also mention that these dock lengths vary based on
20 lake level. For example, our lake has went through kind of
21 a curve as going from real excessively low level to high
22 level. And as the lake level actually decreases, we
23 actually will extend our dock lengths out further into the
24 water because many of us have boat hoists that we put our
25 boats into. And in order to gain access to the boat hoists,

1 you have to extend your dock and move the boat hoist out
2 deeper as the lake level goes down. So this (indicating) is
3 a snapshot in time. For example, at the low level -- my
4 particular dock was 130 feet long when we were down at the
5 low lake level. So it's just depending on, you know, what
6 the lake level is.

7 Q And at least on the drawing you've handed out, it looks like
8 the longest dock is about 160 feet?

9 A Yes. And, again, you can kind of see the natural shoreline,
10 the sand bottom and it pretty much -- you know, it's not a
11 straight line across and you can see the dock lengths kind
12 of vary according to, you know, the depth of the water above
13 the sand.

14 Q Are there longer docks than these on the lake?

15 A Oh, much, much longer. If we went down to the southeast
16 corner of the lake along Lakeview Drive, you would see docks
17 well in excess of 200 feet.

18 Q Okay. We've heard some testimony about longer docks perhaps
19 posing hazards. Are you aware of -- have any of the docks
20 depicted in this picture presented a hazard to boaters or
21 others on the lake?

22 A No, not at all.

23 Q What about the longer docks that you referred to, 200 foot
24 or over 200 foot docks?

25 A No. You know, people are generally vigilant of boats,

1 docks, rafts, watercraft, you name it, on the lake. That's
2 one thing our association always looked at is safety. As I
3 mentioned earlier in my testimony, it's a major concern that
4 we always have on the lake. But we don't find people
5 really -- you know, there's nobody running into docks or
6 rafts. It just doesn't happen.

7 Q Well, then does the association from a safety perspective
8 have any objection to Mr. Mohny putting a 200 foot or even
9 longer dock at lot 8?

10 A No. The main issue we want to make sure is that it's long
11 enough to make sure that we don't disturb these
12 unconsolidated sediments with the motor. We don't want to
13 propel them into the water stream.

14 Q You've testified you've been in and about the area of the
15 proposed dredge site?

16 A Yes.

17 Q If the dredging were to go forward as stated in the permit,
18 do you believe that would still be a -- there would be a
19 suitable swimming area?

20 A Absolutely not.

21 Q Why not?

22 A Because it's going to fill right back in, like that
23 (indicating). I mean, it's a nebulous question in my mind.
24 I'm sorry to say that. But I don't think there's a good
25 understanding of the fineness of these sediments. These

1 sediments are so fine that they are going to seek their own
2 level. And they are going to fill in any evacuated area
3 quite rapidly. So let's say you create a swimming area and
4 you suck all of the unconsolidated sediments off the bottom
5 and now you've created a 50-foot wide swimming area. My
6 question is, how do you prevent this fine, fine layer of
7 sediments from filling that area back in very quickly? How
8 do you prevent that? I have heard nothing in testimony of
9 how they're going to contain these fine sediments from
10 filling in the proposed dredge site.

11 Q But have you personally seen the nepheloid layer that Dr.
12 Lehman described?

13 A Yes. As I earlier testified, we consider -- "we" being the
14 lake property owners consider that as part of the
15 unconsolidated sediments.

16 Q And is that nepheloid layer something that in your mind
17 makes swimming inhospitable?

18 A Absolutely; absolutely.

19 Q The last thing I want to do, Mr. Morrow, is just have you
20 review some additional photographs which I'm going to mark
21 as proposed Exhibit 22. If you could, thumb through those
22 and tell the tribunal what they represent.

23 A Well, these are classic examples of disturbance of
24 wetlands -- upland wetlands from the water's edge up to
25 probably 20 or 30 feet from the shoreline. These photos

1 were taken May of 1999 by our association which shows the
2 disruption of all the foilage as well as what we call the
3 "high banks," which were predominant in that area.

4 MR. HOFFER: Your Honor, I'm going to object to
5 this as irrelevant. I mean, how the lots were prepared in
6 1999 has very little to do with the environmental impacts or
7 alternatives as they relate to this project.

8 MR. PHELPS: I'm not even done laying the
9 foundation yet. I guess I can --

10 JUDGE PATTERSON: Why don't you pursue that.

11 MR. PHELPS: Okay.

12 Q These were taken -- when did you say? -- May of --

13 A May of '99.

14 Q And are they the Indian Lakes West?

15 A Yes, these are Indian Lakes West.

16 Q And they include the area known as "lot 8"?

17 A Yes; uh-huh.

18 MR. PHELPS: Your Honor, we move to have proposed
19 Exhibit 22 admitted into evidence. These are photographs of
20 the exact area that's at issue. They are -- in fact,
21 they're part of the same roll of film, I believe, as earlier
22 photographs that have already been admitted as Exhibit 19.
23 They're just larger versions of that and show the full
24 shoreline. And they are relevant because one of the things
25 that Petitioner's witnesses testified about was that -- at

1 least implicitly, that this lot 8 was somehow a superior
2 location for a dock as to other properties near it because
3 there was less vegetation there than on adjacent or nearby
4 lots. Well, we will submit through these photographs that
5 the reason for that is because the Petitioner and/or people
6 acting on his behalf destroyed the shoreline area and filled
7 in some of the wetlands as shown in these pictures. So
8 clearly they're relevant, at the very least to rebutting the
9 testimony offered by the Petitioner.

10 MR. HOFFER: Your Honor, we still object to this
11 as being irrelevant. First of all, we don't know exactly
12 where or if we could even identify where lot 8 is on here.
13 I repeat what I said earlier -- and to the extent that this
14 is relevant, I mean, this is just more prejudicial than
15 probative and that they're just trying to make the -- you
16 know, Indian Lakes development out to be bad guys. And
17 that's exactly what these are intended to show.

18 MR. PHELPS: Well -- and I'll just note that
19 Exhibit 19 that's already been admitted has some of these
20 photos in it. So I don't know how they could be more
21 prejudicial than what's already been admitted in the record.

22 JUDGE PATTERSON: Well, I think the activity
23 depicted in this is obviously distinct from the proposal
24 here which I think calls in question its probative value.
25 But I think given the totality of the record at this point,

1 they are at least arguably relevant. I will admit them.

2 MR. HOFFER: Thank you, your Honor.

3 (Intervenor's Exhibit 22 marked and received)

4 MR. HOFFER: Could I interrupt? Is there a number
5 for this exhibit?

6 MR. PHELPS: 22.

7 MR. HOFFER: 22.

8 Q Mr. Morrow, have you -- did you personally witness the
9 activity that's depicted in the photographs at Exhibit 22?

10 A I witnessed basically what you saw here. I did not
11 physically see the crane do the work.

12 Q Do the work?

13 A Do the work.

14 Q You saw it before the work was done, the shoreline?

15 A Many times.

16 Q And you saw it after the work was done?

17 A Yes.

18 Q And did it change -- did the work that was done, some of
19 which is depicted in these photographs, did that change the
20 shoreline and wetland area along lot 8?

21 MR. HOFFER: Objection; leading.

22 MR. PHELPS: I asked him if it changed the
23 shoreline along lot 8.

24 JUDGE PATTERSON: I'll overrule.

25 A Yes.

1 Q How so?

2 A As I mentioned, the vegetation was removed as well as -- I
3 guess the best way to describe it is if you would go north
4 of Indian Lakes West, you would see the shoreline has
5 probably about two to three foot sections at -- that are
6 embankments where over the years the wave action and lake
7 action has actually created like a -- I can't think of what
8 the word would be -- but it's a mound. Okay? It's not like
9 originally you could walk on a plane down to the lake. You
10 would walk down to the edge of the water and then you would
11 have to jump down an embankment that was maybe two to three
12 feet tall from wave/ice action over many years. That had
13 created an embankment which wasn't very wide -- deep into
14 the uplands, but it was an embankment. And that was
15 eliminated.

16 Q And at the bottom of that embankment where the water was,
17 were there plants?

18 A Yes; yeah. And I think a good example is the first picture.
19 This (indicating) first picture here shows where the crane
20 stopped and you can see the vegetation. That's the type of
21 vegetation that was removed. It pretty well speaks for
22 itself.

23 Q So before the construction that's on the left side of the
24 first photograph of Exhibit 22, did you witness plants and
25 other wild -- vegetation growing up out of the water along

1 the shoreline?

2 A Yes.

3 Q And was that filled in?

4 A It was either filled in or just removed with the crane.

5 Q With this backhoe?

6 A Yeah, with the backhoe; right. And, you know, some of the
7 fill-in actually occurred back in '97. So there was
8 actually two instances of filling in versus leveling. Most
9 of the filling in took place in '97 when the ground was
10 cleared for the cul-de-sac. That's when most of the
11 vegetation was removed and the land cleared and a lot of
12 wetlands filled in at that time. That's '97. This goes
13 back, like, April of '97 -- late April or early May of '97.

14 Q And the filling in and leveling that you've just described,
15 did that include the area that we've known as lot 8 in this
16 proceeding?

17 A Yes.

18 MR. PHELPS: That's all we have for now.

19 JUDGE PATTERSON: Mr. Reichel, any questions?
20 You've been very quiet this morning.

21 MR. REICHEL: Yes, I have. I have a few, Mr.
22 Morrow.

23 CROSS-EXAMINATION

24 BY MR. REICHEL:

25 Q Just following up on questions counsel asked you about your

1 knowledge of other docks on Lake Missaukee?

2 A Yes.

3 Q I believe your testimony is that there are a number of docks
4 and this photograph that I understand is Defendant's Exhibit
5 17 -- is just an illustration of some of the docks in a
6 particular section of the lake; is that correct?

7 A Right. That is correct; yes, sir.

8 Q You've testified that you've been on the lake numerous times
9 over the years. To your knowledge, are some of the docks on
10 the lake seasonal and some permanent or are they all one or
11 the other?

12 A Most of them are seasonal. The only permanent dock I can
13 think of on the lake is at the lake level. It's on the east
14 and then the southeast corner of the lake. There was a lake
15 level put back in the lake back in the -- I'm going to guess
16 it was in the 60's. I'm not sure of the date. And there is
17 a large permanent structure that goes out into the lake
18 which actually -- and carries the pipe, if you will, that
19 acts as the drain to remove excess water out of the lake.
20 It takes it underneath Highway 66 into a creek.

21 Q Again, based on your experience being on the lake over a
22 number of years, have you had occasion to observe how some
23 of these seasonal docks are constructed? I mean, that is
24 how they're put in and out of the water?

25 A Yes, there are just about -- you name it and they've got it.

1 There's a lot of aluminum docks now that they're more
2 popular, they're lighter weight. There's a lot of residents
3 going to aluminum. There's a lot of wooden structures with
4 wooden supports. Most people have now went to aluminum
5 supports. And the nice thing about the aluminum supports is
6 that they offer you different types of either augers that
7 you can take into the hard substrate or big, wide pans on
8 the bottom that will actually help support it. A lot of
9 people use the aluminum with a wood dock itself. There are
10 some that roll out. There are some of the real -- more
11 modern ones have wheels already built on them. You know,
12 they're extended maybe, you know, 20 foot sections and they
13 just roll them up.

14 Q Okay. Just I want to make sure I understand what you've
15 just described. So how does this work? You don't go in the
16 water to roll them out each season, they're rolled out from
17 the surface; is that right?

18 A Some of them have that capability. They're actually on
19 wheels when they can -- you know, people will go into the
20 water and they'll push them out to put them out. There's
21 that type. There are types that people will take and put
22 horses into the water, put their docks on that. Those with
23 the real large wheels, I can't see any reason why you
24 couldn't push them out from shore.

25 Q Let me ask you this: Have you ever seen either in Missaukee

1 Lake or elsewhere any sections of dock that actually float
2 on the surface of the water?

3 A Well, the dock that was put in between lots 10 and 11 at
4 Indian Lakes West was a floating dock. Unfortunately, it
5 didn't do a lot of floating because at that particular area,
6 the dock was so massive -- in fact it was a marine -- it was
7 so massive that it actually squished -- and I use the word
8 "squished" -- it squished the sediments out as it went down.
9 And it kind of sat on top of the sediments near the
10 shoreline. But that was the floating dock that I'm aware
11 of. Most of them are not floating nature and I think it's
12 because if you look at the pictorial, you'll see it's all
13 sand around the lake. And so people have no, you know,
14 problem with the sand and putting the docks out. And that's
15 probably a very good distinction as to why, is that -- the
16 pictorial shows it better than any I could describe. If you
17 look at the whole rest of that lake, you're going to see
18 sand shoreline. When you look at Indian Lakes West and
19 North, you don't see that sand except in that area between
20 them.

21 Q Okay. I think just one or two more questions. In terms of
22 the lengths of the dock, again, I want to make sure I
23 understand this. Your testimony is that the particular
24 lengths depicted in Exhibit 17 are not necessarily the
25 longest docks that you observed on the lake?

1 A Oh, no, not at all; no. If I wanted -- pictorially if we
2 wanted to show the longest, we would have went down to the
3 southeast corner of the lake. I don't know if it shows it,
4 but -- yeah, it does show it. If you look -- if you look
5 here (indicating) in this picture, you can see this section
6 here. This is Long -- Lakeview Drive or is it Lakeshore? I
7 think it's Lakeview. Anyway, this (indicating) sand goes
8 out into the lake hundreds of feet. And so you've got docks
9 now that are hundreds of feet long. And I'm talking
10 probably in excess of 200 feet to get to that little drop-
11 off area. And there's numerous docks out that far,
12 numerous. And another example would be here (indicating).
13 If you look at the east end of the lake right here, you'll
14 see some docks that are in excess of --

15 Q Could you show that so the judge can see it, please?

16 JUDGE PATTERSON: Yeah.

17 A This area here (indicating) as well as this area right here
18 you'll find docks 200 plus out there.

19 MR. REICHEL: Thank you, sir. That's all I have.

20 JUDGE PATTERSON: Can we take about a five minute
21 break before you start your cross?

22 MR. HOFFER: I was just going to ask the same
23 thing. Thank you.

24 (Off the record)

25

CROSS-EXAMINATION

1
2 BY MR. HOFFER:

3 Q Mr. Morrow, do you have in front of you a Intervenor's
4 Exhibit labeled Number 18? It should be a large aerial
5 photo? And these were also the loose sheets, so it may not
6 actually be in the binder.

7 A Yeah, I have it. Exhibit 18?

8 Q Uh-huh (affirmative).

9 A Yes.

10 JUDGE PATTERSON: In the red book?

11 THE WITNESS: In the red book.

12 JUDGE PATTERSON: I don't have an 18.

13 THE WITNESS: It's not -- it's not in the --

14 MR. HOFFER: Your Honor, it looks like that
15 (indicating).

16 MR. PHELPS: Your Honor, these were added after so
17 I don't know -- if I gave you an extra book that -- you can
18 just have mine.

19 JUDGE PATTERSON: Okay. I don't know where
20 the book -- okay. That will work for now.

21 Q Okay. Now, the alternative site you proposed is -- or at
22 least one of the alternative sites you proposed for the dock
23 is in this photo; correct?

24 A Yes.

25 Q And this sandbar that's kind of in the middle of the photo,

1 that's the sandbar you were referring to?

2 A No. That sandbar, it's a little tough getting to it from
3 the land itself. If you go to the left of that which would
4 be north, you see the point that goes out? That's the area
5 I'm referring to. The sandbar is used a lot by the young
6 people on the lake. But if you follow that around that
7 basin area, you'll see like a little point going out. That
8 point area is the area I was referring to.

9 MR. HOFFER: Your Honor, do you mind if I
10 approach?

11 JUDGE PATTERSON: No, go ahead.

12 Q Just go ahead and point it out to me, Mr. Morrow.

13 A Sure. This (indicating) area right here, this point.

14 Q Okay. That point right there.

15 A We're talking about right there.

16 Q Now, would you turn to Intervenor's Exhibit Number 15? And
17 if you could page four pages into Exhibit 15, there should
18 be a page that is -- when the page is upside -- right side
19 up, the top left corner says, "Indian Lakes Development West
20 and North."

21 A Exhibit 15?

22 Q Correct.

23 MR. PHELPS: Four pages in?

24 MR. HOFFER: That's what I counted, yes.

25 MR. PHELPS: I don't have that.

1 THE WITNESS: I don't either. Let me keep
2 looking.

3 MR. PHELPS: Is that (indicating) what you're
4 talking about?

5 MR. HOFFER: No, this is your exhibit book.

6 THE WITNESS: It's not in this one either.

7 MR. HOFFER: Do any of the other books have an
8 actual pullout, like a larger, maybe 11 by 17, page behind
9 Exhibit 15?

10 JUDGE PATTERSON: Mine doesn't.

11 THE WITNESS: Mine doesn't either.

12 Q Do you recognize what's depicted in this area?

13 A Yes, I do.

14 Q And is this the Indian Lakes West area?

15 A Yes, on the lower left is Indian Lakes West and the upper
16 left is Indian Lakes North.

17 Q And as far as you're aware, this accurately describes -- or
18 accurately depicts the Indian Lakes West and North areas?

19 A I'd just like to qualify my answer that this probably pretty
20 much accurately reflected it in, say, '96, '97.

21 MR. HOFFER: Your Honor, I'd like to move for the
22 admission of this document as Exhibit 15A.

23 MR. REICHEL: May I approach just to see what it
24 is?

25 MR. HOFFER: Yeah, I can show you.

1 MR. REICHEL: Is this it?

2 MR. HOFFER: Yes, sir. That's it. So you have it

3 somewhere.

4 MR. REICHEL: It's loose.

5 MR. HOFFER: Okay.

6 MR. REICHEL: Fine. Okay.

7 MR. HOFFER: Okay.

8 MR. PHELPS: Yeah, it's fine with me. I can get a

9 copy of it, I guess.

10 MR. REICHEL: We have no objection.

11 JUDGE PATTERSON: All right. No objection.

12 Intervenor's Exhibit 15A will be admitted.

13 (Intervenor's Exhibit 15A marked and received)

14 A I guess the one thing I would like to just say is that the

15 wetland -- the point itself, it doesn't really show the

16 sandbar area that extends out south of that from the west.

17 But, you know, for speaking purposes, it's close.

18 Q Okay. But you do see an area pointing to the point?

19 A Yes.

20 Q And that is the point that you referred to as the

21 alternative site?

22 A Yes.

23 Q And do you see the description next to that arrow as saying

24 "Wetland Point"?

25 A Yes, I do.

1 Q And in the area of the point, do you see demarcations that
2 look almost like an asterisk?

3 A Yes, I do.

4 Q And do you know what those represent?

5 A That would be a wetland plant of some type.

6 Q Okay. And do you see those in other areas to the west of
7 Wetland Point?

8 A Yes.

9 Q And do you see dotted areas that represent water; is that
10 correct?

11 A I'm not sure if that's water or marsh. I would be -- tend
12 to think that was probably marsh.

13 Q But you would agree that that's either water or marsh in
14 there?

15 A Yes.

16 Q And you stated that this area is quite a distance from lot
17 8?

18 A Yes, it is.

19 Q And you would have to cross all of this wetland and marsh to
20 get to that area; is that correct?

21 A If one were to walk, you can see -- it's quite a distance to
22 walk, there's no question about that. Unfortunately, this
23 doesn't show the road access to that area, but there is road
24 access to that area.

25 Q Okay. Can you look back to Intervenor's Exhibit 18 then?

1 A Yes.

2 Q And does that depict the road that you're referring to?

3 A Yes; yes, the road is evidenced there.

4 Q And you would agree that the marshland areas are between the
5 road and that point; correct?

6 A The wetland areas in looking at this here pictorial, you can
7 see the road kind of goes on the highlands. You can see the
8 trees; that it seems to follow the tree line. And it
9 continues down towards the point and then kind of jogs off
10 to the left. I think that's probably the way that the
11 trailer was put in that's down further to the left where you
12 can see that real sandy area right at the water's edge. And
13 I would say that that shows just a high tree line. You have
14 to realize that that property is quite high there. It's
15 deceiving. But, you know, you're probably talking I'm going
16 to guess 12 feet above the water.

17 Q Okay. And you would agree that the shortest straight line
18 distance between the road and that point goes straight
19 through the areas we decided were either marsh or water; is
20 that correct?

21 A Yeah, the area to get from that road to the point would be
22 depicted back in '97 or '98 or before that, whatever time
23 those prints were taken off some geological study. That's
24 the point I looked at at that time. If you were to walk
25 there today, it does not look like that.

1 Q Okay. And in the kind of bottom right of Exhibit 18, do you
2 see a lot of docks near the shore?

3 A Yes.

4 Q And do you see one dock in the middle that's maybe a little
5 larger than the rest that sticks out, the whiteness of it?

6 A Yes.

7 Q And do you think a reasonable estimate of the length of that
8 dock is, say, 150 feet or would you say it's more or less
9 than that?

10 A It's probably less than that. Knowing the sand bottom
11 contour in that area, it might be 100 feet, 110.

12 Q Okay. And would you agree between the point that you
13 referred to as the alternative site and the road, it would
14 be at least four of those dock lengths away?

15 A Between the road and the alternative dock site?

16 Q Yeah, between the point and the road, using that bold, white
17 dock as a reference, would you say it would be about four of
18 those lengths between there, more or less?

19 A So you're looking from the point itself out to the water?

20 Q No, from the point to the road.

21 A Oh, from the point to the road?

22 Q Yes.

23 A Well, I don't know. I would say that, yes, it would be --
24 from that road to that point would be at least four units of
25 that length of that dock. I would say, yes, that's a true

1 statement.

2 Q Thank you.

3 A I guess I'm not sure why you'd need a dock over that dry
4 land.

5 Q And you own a speedboat or a powerboat of some type?

6 A Yes; yes, I do.

7 Q And do you take people skiing behind your boat?

8 A Yes, I do.

9 Q And it's typical that when you go out to your boat, you're
10 bringing lots of items with you out to the boat. Is that
11 typical?

12 A Yes, you know, your life jackets and gear.

13 Q Coolers would be something else?

14 A Sure.

15 Q And maybe tubes?

16 A Tubes, absolutely.

17 Q Okay. So in order for someone to use that point as an
18 alternative, they would have to carry all those items
19 through that marsh area one way or another; correct?

20 A Yeah. I think I need to make the distinction that that area
21 is not difficult to walk through. It's not like they're
22 walking through a marsh anymore. I need to really make that
23 clarified because really what you're talking about is, how
24 far do you have to carry it from the water's edge out?

25 Q And regardless of what you're walking on it would be at

1 least a 400 foot walk; correct?

2 A Yes, to get from that road to the water's edge, yes.

3 Q Okay. Now, you first learned about the project that we're
4 discussing today from Mr. Boughner; that's correct?

5 A That is correct.

6 Q And he called you and told you about the project; that's
7 correct?

8 A He called me and told me he would like me to come over to
9 Mr. Mohney's residence. He had something he wanted to
10 discuss with me. And so I went over there and at which time
11 he gave me a tour of the house, showed me the living
12 quarters and then he called me back -- he showed me the
13 recreational equipment that Mr. Mohney had in his garage. I
14 think there were some jet skis and I believe there was also
15 a powerboat in there, if I recall. And then he told me
16 that -- you know, that Harry wanted to use the area in front
17 of his place for his grandchildren to use the jet skis and
18 for boat access in and out of the lake.

19 Q Okay. And he took you down to the water and showed you
20 where he was proposing that this take place; is that
21 correct?

22 A I think he just more or less pointed out saying, you know,
23 "This is -- this is kind of the area we're talking about."
24 It's not the same as what we ultimately ended up with, but
25 it's -- you know, that's this (indicating) area right here,

1 right out in front of the place.

2 Q Okay. And after that, you invited Mr. Boughner to a meeting
3 of the Missaukee Lake Association; is that correct?

4 A Yeah. I don't know if we -- you know, our meetings are open
5 to anyone, you know, we publicize it in the paper and so I
6 don't remember actually inviting him directly. I probably
7 did because there's always such a concern for dredging. And
8 it's such an extremely sensitive, passionate issue with our
9 membership. You know, Mr. Green appeared back in '97 and,
10 you know, Mr. Boughner appeared at that time.

11 Q And that meeting was pretty much an ambush of Mr. Boughner,
12 wasn't it?

13 A Well, again, I've talked about passion. And I can't
14 overemphasize this enough. The passion is there from our
15 lake property owners that you're going to have to dredge in
16 order to sell these properties. And that doesn't subside,
17 you know. And it's just unfortunate that -- you know, and I
18 respect Mr. Boughner. He's the first guy that's ever come
19 to our association that said, "Hey, we're going to put an
20 application in to dredge"; first one ever to this day. And,
21 you know, I respect him for that tremendously. It just
22 doesn't change -- it just doesn't change the property
23 owners' feelings about dredging in that sensitive end of the
24 lake.

25 Q And you would agree that the questioning of Mr. Boughner was

1 passionate, shall we say?

2 A Yes.

3 Q And Mr. Boughner at one point got up and left; is that

4 correct?

5 A I don't recall if he left or not. He probably -- he was

6 peppered with a lot of questions about dredging. I mean,

7 again, I have to take you back to Redman's Island and the

8 impact that had on these folks that is indelible in their

9 minds. And they look at that area as a wildlife sanctuary

10 and any desecration of that area they are violently against.

11 I mean, it's like, "Hey, we're opposed to dredging on this

12 end of the lake."

13 Q And the Redman Island dredging, that was clamshell dredging;

14 correct?

15 A As far as I know. This was before I had bought my property.

16 Q So you weren't there during the Redman Island dredging?

17 A No, I was not.

18 Q So you never witnessed the disturbance?

19 A No.

20 Q That's all secondhand information to you?

21 A To me personally, but not from our memberships. Our members

22 it's very passionate.

23 Q And this happened 40 years ago; is that correct?

24 A Back in the early 60's.

25 Q Back in the early 60's? Okay. So back to the meeting, did

1 you continue to discuss the dredging project after Mr.
2 Boughner left?

3 A I don't know. I imagine it was probably pretty much well
4 defined and we were probably getting on to a different new
5 agenda item after that because our agendas are quite
6 lengthy. And dredging is just one little chunk of the
7 agenda.

8 Q Okay. And Missaukee Lake Association, you are incorporated;
9 is that correct?

10 A Yes.

11 Q And have articles of incorporation?

12 A Yes.

13 Q When did the membership make the decision to oppose this
14 project?

15 A This specific project?

16 Q Correct.

17 A I'll tell you, the real truth of the matter is, is that the
18 membership opposed dredging in this end of the lake when it
19 was formed on August 30th, 1997. So it doesn't matter what
20 project it is. It's like we don't want dredging in this end
21 of the lake for the reasons that I already discussed.

22 Q Okay. So any --

23 A It's -- this happens to be project number two in this area.

24 Q So any project that goes on the west end of the lake is
25 going to be opposed by the Missaukee Lake Association?

1 A That's correct.

2 Q And was there ever an actual vote taken to oppose the
3 dredging that we're discussing today?

4 A Was there a vote taken? Let me think about that a minute
5 because what we have as an association -- depending on if
6 it's new business or old business, we will have motions made
7 by members of the audience to accept proposals as defined or
8 positions as defined and then they are approved or
9 disapproved by the membership.

10 Q Was there ever a motion made in regards to the project that
11 we're talking about today?

12 A I would have to go back and look at the minutes of the
13 meeting.

14 Q So you're not sure if there was ever a motion to oppose
15 dredging in the Indian Lakes development?

16 A I'd have to look at the minutes of the meeting because they
17 would be in the minutes. As I stated earlier, our
18 membership is comprised of property -- lake property owners
19 who vehemently oppose dredging in this end of the lake.

20 Q Okay. Was there ever any motion to oppose dredging at the
21 Indian Lakes development?

22 A Any motion to oppose dredging? You know, there's probably
23 several motions that were made to oppose dredging, but I'd
24 have to go back and look at the minutes of our meetings to
25 be able to tell you specifically when. Looking back at the

1 support our association has always given the board of
2 directors with respect to dredging, it's like "You make sure
3 we don't dredge this end of the lake." That's our marching
4 orders.

5 Q So as you sit here today, can you testify that there was
6 ever a motion made to oppose dredging at the Indian Lakes
7 development?

8 A I have to say -- wow, I wish I had the minutes of our
9 meeting. I would say over the course of our meetings, there
10 has got to be some meeting in which this was discussed as a
11 motion. I can't recall when. It could have been that very
12 first meeting that we had as an association or with respect
13 to this project specifically that we're talking about now.
14 The board met specifically as an emergency board meeting to
15 oppose this dredging and the board supported no dredging 100
16 percent by a vote. And the board represents the people.
17 That is a fact.

18 Q There was a vote taken by the board?

19 A Yes, with respect to this specific project.

20 Q And who were the members of the board at that point?

21 A The members of the board at that time was -- in 2006, the
22 same board members as we have today.

23 Q And who are those?

24 A Our vice president would be Bill Artis; our treasurer is
25 Richard Levandowski; our -- let's see. We also have -- our

1 secretary is David Smith; board members Mimi Zwolak -- let's
2 see. Also -- let's see what else we got on there. We have
3 eight board members. How many did I mention right now?
4 Q By my count we have four: Bill Artis, Richard Levandowski,
5 Dave Smith, Mimi Zwolak. And I'm sure -- I'm assuming
6 yourself as president as a board member; correct?
7 A Yeah. How many is that?
8 Q That is five including yourself.
9 A Five?
10 Q Correct.
11 A Isn't that terrible? Let me --
12 Q Sure.
13 A Okay. We got Marilyn Zondervan; we've got --
14 Q Is Gerard Winkle?
15 A Winkle. Gerard Winkle. Gerard's our local guy. He resides
16 on the lake year round.
17 Q Why don't I interrupt you. Can you look in the big binder
18 at Exhibit Number 21?
19 A Yeah, Dave Thompson. I can't forget Dave. Dave does all --
20 a lot of our work on the lake with respect to helping with
21 the milfoil treatments.
22 Q Okay. And the board of directors here listed on -- or
23 behind Exhibit 21, those are the board members that were the
24 board members at that time?
25 A Yes.

1 Q Okay. And out of this list, who was present?

2 A They were all present.

3 Q They were all present? And did they all affirmatively vote

4 to oppose the project?

5 A They all affirmatively voted against the dredging project,

6 yes.

7 Q And you said your organization formed in '97; is that

8 correct?

9 A Yes, it did.

10 Q And you were its first president?

11 A Yes.

12 Q And how often do you hold elections?

13 A Yearly.

14 Q Yearly? And when was the last time you were opposed for

15 president?

16 A Never have been opposed.

17 Q You've never been opposed? Okay.

18 JUDGE PATTERSON: Probably wish you had been.

19 THE WITNESS: Yeah, you're right.

20 Q Excuse me?

21 JUDGE PATTERSON: Probably wished he had.

22 A He said I probably wished I had. I said, "You're right,

23 your Honor."

24 Q Okay. And according to you, the association is objecting to

25 the proposal for environmental reasons; correct?

1 A Environmental as well as the destruction of, you know, the
2 wetlands. The environmental would be -- it also included
3 the pollution from the unconsolidated sediments of the boat
4 traffic as well as the dredging activity, the destruction of
5 the habitat for the fish as well as wildlife.

6 Q And you made that decision in 1997; correct?

7 A Yes.

8 Q And your first environmental assessment was in 1999; is that
9 correct?

10 A Yeah, we hired Dr. Jaworski, I think it was in '98, but his
11 report didn't come out 'til like March of '99 -- is when he
12 submitted his report.

13 Q So you opposed the project on environmental reasons before
14 you had any type of an assessment; is that correct?

15 A What we did is we opposed not this -- are you talking about
16 this project here?

17 Q I'm talking about the --

18 A Dredging in general?

19 Q -- the whole Indian Lakes West project in general.

20 A Yeah, we opposed that based on the fact that we knew
21 dredging would have to take place in order to sell lots.

22 Q Okay. And you are opposed to all development in this area;
23 correct?

24 A No, we're not opposed to development, we're just opposed to
25 dredging in this end of the lake.

1 Q Okay. So you would be perfectly all right with this area
2 filling up with houses so long as there was never any
3 dredging; is that correct?

4 A Sure.

5 Q And you would be okay if each one of these houses had a 200
6 foot dock that extended from the house?

7 A I hate to put a length down because, like I say, that length
8 fluctuates with the water level. As long as their boat
9 motors would not disrupt the sediments and cause them to go
10 waterborne; no dredging. Did you say with dredging or
11 without dredging?

12 Q I haven't said "dredging" yet.

13 A Okay.

14 Q So absent dredging with appropriate length docks, you
15 wouldn't be opposed to this entire area filling up with
16 houses?

17 A No, as long as they -- the docks were a sufficient length to
18 keep the boat propellers from disrupting all of sediments
19 and then polluting the rest of the lake.

20 Q And this is your -- this is your main concern or one of your
21 primary concerns is the boat motors or boat propellers
22 disrupting the sediment; correct?

23 A Yes.

24 Q So have you determined how far a boat motor has to be from
25 the sediment to disturb the sediment?

1 A Well, the trouble is, is that typically if you look at most
2 boats, they have like three feet of free board more or less
3 for the bottom of the motor. And so we as an association,
4 as our board members, we always look at having a minimum of
5 that, a minimum. Let's have at least three foot of water so
6 we know that propellers are not directly hitting -- you
7 know, being surrounded by the unconsolidated sediments.

8 Q Okay. And when you're driving, say, your speedboat, when
9 you first accelerate, the bow on your boat rises; correct?

10 A Yes, that is correct.

11 Q And the stern lowers?

12 A Yes.

13 Q And the propeller becomes angled downward?

14 A That is correct if -- you know, giving the type of boat that
15 you've got, if it's got a transom on it or -- you know, or
16 not. But most people, you know, depending on the depth of
17 what they think is bottom -- and this is what happens at
18 Indian Lakes West a lot is, when you look at it, you would
19 think the bottom is real close to the water's edge, you
20 know, like three feet down or more. And so people tend to
21 slow down. But if they keep going fast and they get in
22 shallower, now all of a sudden they're picking this up stuff
23 through their intakes, you know, if it's an I/O, for
24 example, or just a regular outboard. And people can plug
25 their intakes up with this stuff if they go in too deep, too

1 close to shore. And then the plumes -- the plumes are a
2 direct result in that.

3 Q But as far as a boat leaving this area, you don't know how
4 deep the water above the nepheloid layer would have to be to
5 avoid disturbing the nepheloid layer?

6 A Say three feet minimum.

7 Q But you don't know, say, at --

8 A Because they plane off quickly, you know. It's like, yeah,
9 it plane (sic) off quickly so you're not going to be
10 disturbing it. The whole big issue is, is that if you're
11 going to be constantly agitating this (indicating) whole big
12 area for an extended period of time, it's going to create a
13 tremendous amount of plumes.

14 Q And that happens right now, correct?

15 A Inadvertently it does, yes.

16 Q And you testified that pretty much every time there's a busy
17 weekend on the lake that this area gets churned up?

18 A Certainly; certainly. Yes. Depending on people not being
19 cognizant of the area, they'll drive a powerboat too close
20 to the shoreline which may be, you know, 100 feet out. But
21 it would put up a huge plume of stuff.

22 Q And if there were docks there, they probably wouldn't come
23 as close to shore; correct?

24 A That's correct.

25 Q And there is laws on how close you can come to a dock;

1 correct?

2 A Yes.

3 Q And having a dock there would effectively force boats to go
4 farther out; correct?

5 A Yes.

6 Q But even if this -- even if this project goes forward,
7 there's still going to be boats traversing this every good
8 weekend; correct?

9 A I don't see anything changing it except what you said. If
10 you had an extended dock out there, it would be kind of like
11 a -- it's kind of like a gauge. So other recreational
12 boaters would say, "My god" -- this boat's out here, say,
13 200 feet, to use your example, it gives them a depth
14 perception on how close they can get to shore. And that's
15 pretty much true around the entire lake. People gauge how
16 far that dock goes out as to how far they -- how close they
17 should get to shore.

18 Q Okay. But I want to be clear is whether or not this project
19 goes forward where there is still going to be boats
20 traversing in this area generally; correct?

21 A Yes. There would be people that are unfamiliar with that
22 area that would still go in. However, if the dock was
23 there, it would -- it would actually be an assistance to
24 preventing more turbidity because people would use it as a
25 gauge.

1 Q And you said that you and other association members have
2 gone out and checked water depths in the area; is that
3 correct?

4 A Yes.

5 Q And did you determine where the water level exceeds your
6 three-foot minimum?

7 A We have done that in various areas of the lake in the west
8 end of the lake. We have got -- in fact, Dr. Jaworski and I
9 in December have taken some more additional measurements in
10 front of lot 8 that he will testify to that shows that --
11 how far you actually have to go and the depth to hard bottom
12 which exceeds 10 feet, which is going to be an issue because
13 you're talking some serious depth out there.

14 Q Okay. And it's possible that these large I/O's can disturb
15 the sediment even as deep as four feet; correct?

16 A You know, there's a certain thing I think every boat owner
17 has is prudence. And, you know, if you're in a boat and you
18 know that there's a lot of sediments underneath your
19 propeller, it behooves you to either -- raise your transom
20 on your boat and graciously get yourself further out from
21 that area before you gun it. And that's typically how most
22 people -- boat owners, behave.

23 Q But you can't do that same thing with jet skis, can you?
24 Raise the transom?

25 A No.

1 Q Okay. And you wouldn't say it's the prudent boaters that
2 are causing the sediment stir-up now, would you?

3 A Well, they may be prudent boaters, they're just ignorant of
4 the fact that this area has such a vast volume of
5 unconsolidated sediments. It's more ignorance than lack of
6 prudence. Once they become aware, they don't go back.

7 Q Can you turn to the big binder, Exhibit Number 4?

8 A Yes.

9 Q Okay. And you would agree that the depth at 210 feet is
10 3-1/2 feet?

11 A May I get some of my notes?

12 Q Go ahead.

13 A Thank you for allowing me to look.

14 Q No problem. I wanted to clarify something first. As far as
15 the prop disturbing the nepheloid layer, did you say that
16 you need -- was it your testimony that you need three feet
17 of depth between the surface of the water and the nepheloid
18 layer or between the --

19 A Yeah, because as I mentioned earlier, our association
20 considers the nepheloid layer as part of the sediments.

21 Q But you don't know exactly how far the prop has to be from
22 the nepheloid layer to avoid disturbing it when you take
23 off; correct?

24 A No. We looked at the free board, you know, and the
25 testimony about free board here today and three foot, you

1 know, and we haven't sat down as an association and defined
2 that level. I'm just saying common sense tells me if you
3 have three foot, then let's -- and I've heard a lot of
4 testimony about three foot and I can't disagree with the
5 testimony that's been given.

6 Q Okay. And you're saying that the -- it's your testimony
7 that the nepheloid layer or the type of sediments that exist
8 on the west end of Lake Missaukee appear nowhere else in
9 Lake Missaukee?

10 A No, I'm not -- as I mentioned before, this nepheloid layer,
11 which was a new term to me until I heard Dr. Lehman testify
12 about it, we've always considered it just to be part of the
13 unconsolidated sediments at that end of the lake because we
14 could never distinguish where they started and stopped.
15 It's just like, you know, how do you go down ten inches to a
16 nepheloid layer and say, "This is where the unconsolidated
17 sediments start"?

18 Q But it was your previous testimony that this condition,
19 however it's described, only exists in the west side of Lake
20 Missaukee; correct?

21 A Yeah, we've only observed these very acute fines -- and I
22 don't like the word "nepheloid layer" because I don't
23 understand it. To me it's fines. These fines you don't see
24 elsewhere in the lake. They seem to be part of the bog at
25 that end of the lake.

1 Q So that could not have been what caused the Redman Island
2 disturbance; correct?

3 A No, I don't believe they were. I think it was probably the
4 fines that were there, not the nepheloid layer as much
5 because I don't think it existed there. I can't testify to
6 that because I wasn't there.

7 Q Fair enough. But when the lake association is determining
8 whether or not it approves of a dredging project, the type
9 of material that's being removed is one of your important
10 considerations?

11 A Yes.

12 Q So when you were investigating the Tom's Bay area, you took
13 a sample of that sediment; correct?

14 A No.

15 Q So you never sent any sample from Tom's Bay in for analysis?

16 A No, we did not.

17 Q And when the county was dredging the park, you never took
18 any sediment sample from that area either?

19 A No.

20 Q And you never took a sediment sample from the Tom's Bay
21 lagoon area; is that correct?

22 A That is correct.

23 Q And you didn't take any sediment samples in regards to the
24 sandbar dredging; correct?

25 A The sandbar?

1 Q You testified earlier that --

2 A Yeah; yeah. The sandbars on the south shore. Yes, that's

3 correct.

4 Q Okay. So you've never been able to compare your samples

5 from the western half of Lake Missaukee to any other samples

6 from anywhere else in the lake; is that correct?

7 A We've had -- let me define "samples" for you. We have

8 sampled the lake -- or we have had people sample the lake

9 for us at three different locations on the lake three times

10 a year.

11 Q That refers to water samples; correct?

12 A Yes.

13 Q But you've never obtained --

14 A But that also includes Secchi disks where they actually have

15 to physically look at the disk and how far does it go down

16 through all the layers of sediment that exist until they can

17 no longer see it. Sediments play a very vital role in

18 Secchi disks. How transparent is the water? So, yes, to

19 answer your question, we do look at visually the finest of

20 materials in the lake based on how far down can you see the

21 Secchi disk.

22 Q But you've never removed sediments from the lake for

23 examination or from any other point?

24 A No, we have not. Except maybe one other time when our lake

25 association was first formed, we hired an individual to do a

1 sample so we would have baseline data. That was back
2 probably in late '97 or early '98 before we hired Dr.
3 Jaworski.

4 Q Okay. And so you don't know whether there is material like
5 the material in your jar there at other places near shore on
6 Lake Missaukee?

7 A Visually we know there's not.

8 Q Okay. So probably in one of the places you're most familiar
9 with would be in front of your house; correct?

10 A Right.

11 Q And you're saying that there would be no sediment like that
12 50 feet out?

13 A No, 50 feet out is -- we get sediments when people invade
14 that end of the lake with their boats. We get sediments.
15 Unfortunately, those sediments don't all wash away at
16 shoreline. Some of them are carried into our riparian
17 property rights and deposit themselves there, such as when
18 Redman's Island was created, these sediments were -- think
19 about this, for two years, two years they remained --

20 Q But you didn't observe these sediments; correct?

21 A No, I didn't.

22 Q And where do these sediments permanently end up that come to
23 your property? Do they form a ring along the shore?

24 A What happens, these sediments are deposited by gravity -- by
25 where they are in the water column, they're deposited

1 throughout the lake. They don't just stay -- they're going
2 to all stay on the top six inches of the water column and go
3 on the beaches.

4 Q So what you're saying is they settle out; correct?

5 A There's gradual depositing throughout the entire lake. It's
6 not eliminated -- targeted only to the beaches.

7 Q So what you're saying is that these sediments settle out
8 across the entire lake. And currently you have a sandy
9 bottomland in front of your house; correct?

10 A For the most part, but, again, that's subjected to the type
11 of disturbances that are going on on the lake on any given
12 weekend. Weekends is when -- if you're going to find
13 sediments, it's the Monday after a Sunday.

14 Q So sometimes there is sediment in front of your shoreline
15 and sometime there is not; correct?

16 A That is correct.

17 Q So the sediment that comes to your shoreline goes away;
18 correct?

19 A Eventually it's washed away with the wave action, that is
20 correct. It takes -- or we break it. It depends on if the
21 sediments also have particulate in it such as where boats
22 grab a bunch of weeds and break weeds all up, you know.
23 Like milfoil -- we have a milfoil problem on our lake right
24 now. And it's not uncommon for milfoil to get washed
25 ashore, onto the shorelines. And we have to rake the

1 milfoil up and dispose of it accordingly.

2 Q Okay. Now, when you say you rake the sediments to get rid
3 of it, is that just to re-suspend it and hope it will go
4 away; is that correct?

5 A No, the sediments are fine enough that you can't really rake
6 them. It's more weeds that we're -- it's more of the
7 milfoil that we end up raking. The sediments are just too
8 fine. It's like flour. You know, how do you get rid of
9 flour? You don't.

10 Q Okay. So the raking you do isn't to get rid of the
11 sediments specifically?

12 A Sediments; right.

13 Q Okay. So these sediments, they go away by themselves then;
14 is that correct?

15 A I think with wave action over a period of time, they are
16 dispersed and they might be sucked back out into the deeper
17 water because you will find a gradual siltation in the
18 deeper water.

19 Q Okay. And --

20 A Which again is a form of pollution.

21 Q And these sediments that you have in the jar here, do you
22 have a significant amount of those sediments 150 feet out
23 from your shoreline?

24 A The sediments in front of my place specifically which I can
25 talk to are probably, if I looked at the consistency of

1 those, those may be a little bit finer than what I have, but
2 I can't -- I really don't know. Because all I did was grab
3 that last 16 inches up from the ice down. But there are
4 sediments there 150 feet out, yes. And those sediments --
5 the unfortunate thing is, is that those sediments are there
6 and they don't go away. They stay there unless there's a
7 lot of swimming in the area or something to dislodge them.
8 You know, a bunch of kids who go in the water that's maybe
9 six feet deep, they would kick it with their legs and
10 dislodge those sediments. That's one way they would be
11 dislodged and get in the water column.

12 Q Okay. How deep is the water 150 feet from your shoreline
13 typically? I understand that that changes, but typically
14 what --

15 A Yeah, typically I would say 150 feet would be about 5 feet.

16 Q About 5 feet deep? And you've also said that there are
17 sediments similar to what's in your jar at that 5 feet of
18 depth in front of your house; correct?

19 A Yeah, the big distinction is the depth of the sediments to
20 hard bottom. You know, we're talking just, you know, inch
21 and a half, you know, which is very minimal relatively. But
22 it's a relative situation.

23 Q But you can't say that the sediments that are 150 feet out
24 from your property aren't disturbed by boating on the lake;
25 correct?

1 A I guess I've never witnessed any plumes after the boats pass
2 by my property. So based on that, I would say they're too
3 deep to be disrupted.

4 Q But it is possible that a boat taking off, pulling a skier
5 could disturb sediments at 5 feet out; isn't that correct?

6 A Like I say, I haven't witnessed that.

7 Q But you can't deny that it's possible; is that correct?

8 MR. PHELPS: Objection; form of the question.
9 He's answered it twice already.

10 MR. HOFFER: I don't think he's actually denied
11 the possibility.

12 JUDGE PATTERSON: I don't recall him directly
13 answering that. I'll overrule.

14 A So at 5 foot I don't see it being a problem. I haven't
15 observed it being a problem.

16 Q Do you deny -- do you deny the possibility that that could
17 occur?

18 A The only way that could occur -- I don't think it can occur
19 at 5 foot depth. I think that's too deep for a propeller
20 to -- based on the fact that you're talking about actually 5
21 feet above the sediments -- is what we're really talking
22 about because they're so shallow in depth, it's not an
23 issue.

24 Q Why do you believe that only 5 inches between the bottom of
25 the prop and the top of the nepheloid layer is sufficient to

1 avoid a passing watercraft from disturbing the nepheloid
2 layer? Do you believe that 5 inches is sufficient to avoid
3 disturbing the nepheloid --

4 A I think you misspoke yourself. You mean 5 feet?

5 Q No, 5 inches. Do you believe 5 inches between the propeller
6 and the nepheloid layer is sufficient to avoid the nepheloid
7 layer being disturbed?

8 A I'd have to witness it. I just don't know. It would be
9 speculation.

10 Q Okay. And how long have you noticed this weekender
11 turbidity disturbance on the west side of the lake going on
12 for? How many years approximately?

13 A Since I've been there.

14 Q And you've been there 33 years?

15 A Yes.

16 Q So despite the Redman Island project in the 60's and 33
17 years of disturbance on the west side, you've never had a
18 permanent deposit of sediment in front of your house; is
19 that correct?

20 A What will happen is they will over time -- here's what's
21 happening, and this is really fact. There's been an
22 increase in deposits on the sandy bottom in front of my
23 property over time in depth. That's a fact. What's on the
24 shoreline does get washed away. But what's out there in
25 deeper water does not. That's a fact.

1 Q At what depth are you referring to?

2 A Anything over 5 feet.

3 Q So you're concerned that the sediment depth at 5 feet of
4 water depth is going to increase?

5 A Yes.

6 Q But you haven't noticed a problem in areas of less than 5
7 feet from all this disturbance --

8 A Maybe 4 feet.

9 Q Maybe 4 feet?

10 A Yeah.

11 Q So between your shoreline and as far as you need to go for 4
12 feet of water depth, there has been no permanent deposit of
13 sediment despite 33 years of boat traffic and the Redman
14 Island project; is that correct?

15 A Yeah, from approximately 4 feet water depth to the
16 shoreline, minimal buildup of sediments in that depth area.
17 When you get past that 4 feet, you start seeing a gradual
18 increase in the sediment depth. And a lot of the lake
19 property owners believe that initially that Redman's Island
20 dredging created that sediment condition to begin with and
21 now it's being aggravated with these conditions on the west
22 end, with the unknowns traveling into that area.

23 Q So you believe the Redman Island project caused that
24 sediment to --

25 A It started it. It started it; had to. It absolutely had

1 to. It had to deposit into the deeper areas of the lake
2 these sediments because it's a mile across. From Redman's
3 Island to the south shore is approximately a mile. Think
4 about that. And so you've got sediments that are suspended
5 traveling a mile.

6 Q Do you have an understanding of where these sediments
7 originate from?

8 A After hearing Dr. Lehman, it's part of the decaying process
9 on the lake.

10 Q And you would agree that plants have been decaying on Lake
11 Missaukee probably since there were plants on Lake
12 Missaukee; correct?

13 A Absolutely; absolutely; sure.

14 Q So then there's been for probably hundreds of years plants
15 dying off on Lake Missaukee; correct?

16 A That is correct.

17 Q And those plants have been turning into sediments, it's your
18 understanding?

19 A Yes; yes.

20 Q Okay. Why don't you turn to Intervenor's Exhibit Number 13?
21 Just let me know when you're there.

22 A Okay.

23 Q Okay. And how far out from your property do you need to
24 wade to reach 4 foot of water typically?

25 A I would say typically we go out to get 4 feet of water, oh,

1 140 feet.

2 Q 140 feet? And do people swim in front of your house?

3 A Yes.

4 Q And they swim between the shoreline and 140 feet out?

5 A Yes.

6 Q And there's been nothing preventing them from swimming?

7 A No.

8 Q And the sediments haven't made it uncomfortable for them to

9 swim in that area?

10 A No, there's some -- you know, some people don't like to put

11 their foot down in a foot of sediments, but usually at that

12 depth they just swim.

13 Q Just swim? Okay. Now, you have Exhibit 13 in front of you;

14 is that correct?

15 A Yes.

16 Q Okay. And can you just generally describe for the record

17 what this exhibit is?

18 A I believe this (indicating) dark area around the lake is the

19 sand area on the lake.

20 Q Well, just generally, this is a map of Lake Missaukee;

21 correct?

22 A Yes, it is.

23 Q And this depicts different depths of water in Lake

24 Missaukee?

25 A Right.

1 Q And it also depicts different bottom types in Lake
2 Missaukee?

3 A Yes.

4 Q And underneath the words "Missaukee Lake" in the upper left,
5 do you see writing indicating that the map is from 1941?

6 A Yes, I do.

7 Q Okay. And on the right side of the map you see a legend?

8 A Yes.

9 Q And you see the word "bottom"?

10 A Yes.

11 Q And the word "bottom" refers in your understanding to the
12 type of material that's on the surface of the bottom of the
13 lake; correct?

14 A Right.

15 Q And the first type of material that is depicted is sand;
16 correct?

17 A That's correct.

18 Q And that's depicted by shading?

19 A Yes.

20 Q And the next type of material is pulpy peat; is that
21 correct?

22 A Yes.

23 Q And that is depicted by the absence of shading?

24 A Right.

25 Q And then the next one is gravel?

1 A Yes.

2 Q And gravel is depicted by small, circular indications?

3 A Right.

4 Q Okay. And you don't see any bottom type that's described as
5 loose, unconsolidated matter, do you?

6 A No, unless that's pulpy peat. I don't --

7 Q So you agree that pulpy peat could be loose, unconsolidated
8 matter; correct?

9 A Well, I don't see any other definition listed except for
10 snags, deadheads and -- I mean, that's all it gives you is
11 on the bottom. It's unfortunate that it -- this pulpy peat,
12 I have to believe they considered -- whoever made this map
13 back in '41, considered pulpy peat to be -- include the
14 fines.

15 Q Okay. And you would agree that the absence of shading
16 indicating pulpy peat makes up the vast majority of Lake
17 Missaukee; correct?

18 A Yes, looking at just the bottom definition, yes.

19 Q And sand typically only occurs along the shoreline; is that
20 correct?

21 A Yes, you know, as we -- seen in this pictorial up here, you
22 can see that there's a little more sand than what's shown
23 here (indicating) south of the point.

24 Q That was actually my next question, which is, the situation
25 as to where the sand is and where the pulpy peat -- has

1 probably changed somewhat since 1941; correct?

2 A Yes, obviously; yes.

3 Q But in general, does this accurately describe how -- or the
4 location of sand on Lake Missaukee today?

5 A Yeah, it pretty much resembles that picture there
6 (indicating). Of course, that's a '93 picture, but it
7 pretty much resembles that as well.

8 Q Okay. And under "bottom" you see the word "vegetation," a
9 little bit farther down on the legend column?

10 A Oh, yes. I'm sorry. Yes.

11 Q And there's different marks for "floating," "emergent" and
12 "submergent vegetation"?

13 A Yes.

14 Q And you would agree that the western third of Lake Missaukee
15 is depicted as having submergent vegetation at various
16 points throughout the western third?

17 A Yes.

18 Q And is that accurate to what you see today on Lake
19 Missaukee?

20 A Yeah, this area depicted, that seems to be consistent with
21 what we see with submergent, yes.

22 Q And you would agree that there's a -- lots of depiction of
23 submergent vegetation in the middle of the southern portion
24 of this map?

25 A Yes. There's actually much more now unfortunately because

1 we have Eurasian milfoil in the lake. So the submergent is
2 increased.

3 Q So today on Lake Missaukee there is an abundance of
4 vegetation; is that correct?

5 A Yes, there is because of milfoil, Eurasian milfoil. We are
6 in the process of eradicating it, but it has definitely
7 increased the submergent vegetation.

8 Q And to be clear, there's even more vegetation on Lake
9 Missaukee than you see depicted in this map; is that
10 correct?

11 A At this time I would say "yes" because of Eurasian milfoil.

12 Q Okay. And on the southwestern part of this map, the pulpy
13 peat comes closer to shore than almost anywhere else on the
14 map other than the Indian Lakes area?

15 A Yes.

16 Q Okay. And can you give me some type of visual reference as
17 to where your cottage would be in this map?

18 A Yes. If you would look -- let's see. Let me see where
19 Green Road is.

20 (Witness reviews document)

21 A It's hard for me to describe to you where it would be.

22 Q Do you know -- do you see two roads that traverse north and
23 south between what's labeled "County Road" and the southern
24 shore of Lake Missaukee?

25 A Yes.

1 Q And would your cottage be between those two?

2 A Yes, it would.

3 Q Okay. And where between those two can you describe for me
4 that your cottage is?

5 A I would say -- let's see. We would probably be in that
6 little bit of -- you see -- if you go left of the Center
7 Road that's right in the center of the picture?

8 Q Yes.

9 A It crosses the railroad tracks? If you go up to the beach
10 line and go left of that, we would be in that area -- let's
11 see. We would be in that area where the sand seems to be
12 probably the heaviest. Kind of like you have a peak that
13 comes down at you on the bottom?

14 Q Uh-huh (affirmative).

15 A And then if you go up it makes a little curve and then it
16 gets a little -- like more sandy area? I think that would
17 probably be about where we are.

18 Q Okay. So you would be -- do you see a dotted line?

19 A Yeah, where it says "cottages"?

20 Q Yes. Would you be at the western end of that dotted line?

21 A Yeah, definitely at the western end of that.

22 Q Okay. So around that general area?

23 A Yeah, definitely west of that.

24 Q Okay. Now let's go back to the depth measurements that I
25 referred you to earlier. That will be in the big binder

1 behind Exhibit Number 4.

2 A Okay.

3 Q And I'll remind you that earlier I asked if you had taken
4 depth measurements lakeward of lot 8?

5 A Yes.

6 Q And you see in Exhibit -- behind Exhibit 4 that at 210 feet,
7 the top depth is 3.42 feet; is that correct?

8 A Yes, that is correct.

9 Q And the bottom depth is 7.1 feet?

10 A Right. And that bottom depth is the distance from top of
11 water to hard bottom; correct? Is that -- am I reading that
12 correctly?

13 MR. SHAFER: That's what the testimony is.

14 Q That's what the testimony has been, yes.

15 A Okay. Do you say do I agree with that or is that what I
16 see?

17 Q Well, that's my next question. Do you agree with that?

18 A No.

19 Q Have you taken measurements yourself?

20 A Yes.

21 Q And what type of tool did you take those measurements with?

22 A A 2-by-2.

23 Q A 2-by-2. So that's a piece of wood?

24 A Yeah, a 2-by-2 piece of wood, one foot graduated lines on
25 it. Dr. Jaworski and I went out in December in front of lot

1 8 and did a look at how deep the sediments are versus how
2 deep the water is.

3 Q And how did you determine your distance from shore?

4 A Measured it.

5 Q With?

6 A With a tape from off the red stake that's located on the
7 property of the Missaukee Lakes Master Homes.

8 Q And, I'm sorry, when did you say this occurred?

9 A It's December. I can't remember the date. But it's
10 December of '07.

11 Q So these were taken on the ice; is that correct?

12 A Yes, through the ice.

13 JUDGE PATTERSON: Counsel, just so I'm clear on
14 these depths, the bottom depth is to hard bottom and the top
15 depth is the top of the sediment; is that --

16 MR. HOFFER: That's what I understand the
17 testimony to be, correct.

18 JUDGE PATTERSON: All right. So the depth of the
19 sediment would be the difference between those two?

20 MR. SHAFER: Correct.

21 JUDGE PATTERSON: Okay. It's been awhile since I
22 saw that.

23 MR. SHAFER: Right. And, your Honor, that was
24 part of that whole testimony in regard to the error that had
25 been made where they added rather than subtracted and then

1 the attorney general gave us the correct numbers -- net
2 numbers on the first day of trial.

3 Q Okay. Now I'm going to have you turn to the Intervenor's
4 Exhibit Number 19. And that's going to be one of the loose
5 pages with pictures on it.

6 A Okay. I have it.

7 Q Okay. And can you at the same time turn to Petitioner's
8 Exhibit -- Petitioner's Exhibit Number 2, page 4?

9 A Okay. I have it.

10 Q Okay. Now, Dr. (sic) Morrow, you own a camera; correct?

11 A Yes, I do.

12 Q And the pictures in Defendant's Exhibit 19 were taken in
13 1997; is that correct?

14 A The picture number 1 is 1997; picture number 2 is 1999;
15 picture number 3 and 4 are both 1997.

16 Q Okay. And you testified that these pictures accurately
17 represent how this area appears today; correct?

18 A This is how they appeared in 1997 and 1999. They don't look
19 that way today, particularly picture number 2. 4 -- there's
20 a tremendous amount of growth -- you know, has grown back
21 onto those scalped areas and filled-in areas.

22 Q Okay.

23 A And picture 1, unfortunately you see all that wetland right
24 at the shore land, that was part of what got scalped in '99
25 that's gone.

1 Q So what you depict in these photos is not how it appears
2 today; is that correct?

3 A Yeah, 3, that was scalped out of there, too, so that's gone.

4 Q So if you had previously testified that these photos
5 accurately represented a condition today, that testimony
6 would be inaccurate; correct?

7 MR. PHELPS: Well, I'm going to object because his
8 prior testimony related to the plant life that we saw in
9 these pictures and whether the water lilies that he saw in
10 these pictures was consistent with water lilies and plant
11 life that exists today, not that every -- the sun was in the
12 same position today as it was in '97 and all these -- every
13 other detail of the photographs.

14 MR. HOFFER: Your Honor, I think the testimony
15 speaks for itself.

16 MR. PHELPS: Well, then I'm fine with that. We'll
17 let the record speak for itself.

18 JUDGE PATTERSON: Okay. All right.

19 A Well, for the record, I have to agree with my counsel if I
20 have that right to do so.

21 Q Okay. And on picture 2, can you identify the red stake in
22 that picture?

23 A Well, I'm thinking I'm looking at the wrong -- is it figure
24 1?

25 Q In figure 2.

1 A Figure 2, lakeshore north of proposed dock site?

2 Q I don't have any visual descriptions.

3 A I must be looking at the wrong one.

4 Q I'll approach and we can figure --

5 JUDGE PATTERSON: We're referring, for the record,
6 to --

7 MR. HOFFER: Oh, I'm sorry.

8 JUDGE PATTERSON: -- Petitioner's Exhibit 2;
9 right?

10 MR. HOFFER: No, actually Intervenor's Exhibit 19.

11 THE WITNESS: Okay.

12 JUDGE PATTERSON: Oh, all right. There's the
13 confusion.

14 A Did you say do I see the red stake?

15 Q Correct.

16 A No, the red stake is not there in that picture in 1999.
17 You're talking this (indicating) picture here?

18 Q Yes. So is it your testimony that you see no red stake
19 right there (indicating)?

20 A That's a lot line stake. That's not the same stake, I don't
21 believe.

22 Q Okay. So you don't believe --

23 A I believe that's a lot line stake.

24 Q Okay. So you do see a stake in photograph 2 of Intervenor's
25 Exhibit 19, but you don't believe that that's the same

1 stake; correct?

2 A No, I don't think that is. You know, I just don't think it
3 is. It looks more like a lot line where this other stake
4 looks -- is, I think, in the middle of the property. It's
5 more like a reference stake.

6 Q So in Defendant's Exhibit photo 2, you can't tell where
7 exactly lot 8 is; is that correct?

8 A In photo 2?

9 Q Yes, of Intervenor's Exhibit 19.

10 A On photo 2 it's hard to tell. There's a -- I can just tell
11 you that it's close, but I can't be definitive.

12 Q Okay. And on photo 1, you can't point out exactly where lot
13 8 is on that photo; correct?

14 A Well, if you look right in the center of the photo, you'll
15 see some birches that are kind of at an angle. Can I come
16 over and show you?

17 Q Is this roughly in the right one-third of the photo?

18 A No. This would be further, just left of center. Yeah, this
19 would be right there (indicating) -- yeah, right in there,
20 just left of center.

21 Q Okay. And photo 1 was taken --

22 A In '97.

23 Q In '97, but it was also taken at quite a distance from lot
24 8; correct?

25 A Yes; yes, it was.

1 Q And it's difficult to tell what, if any, vegetation was
2 actually in front of lot 8 from this photo; correct?

3 A Well, I think it accurately shows the vegetation at water's
4 edge. You can see the vegetation as well as the elevated --
5 you know, two- to three-foot high erosion of the land at
6 water's edge which was removed in '99. It's a good
7 depiction.

8 Q And can you identify in picture 1 vegetation that is more
9 than 20 foot from shore lakeward of lot 8?

10 A Yes. If you look out into the water towards the left-hand
11 side of the picture, you'll see lily pads that you can still
12 see. Those are probably very close to in front of lot 8.

13 Q And because you say "very close to in front of," that means
14 you're not sure if they're in front of lot 8; correct?

15 A Well, as you can see by this picture, this is just one of
16 many that these lily pads expound throughout that entire
17 basin and it's reminiscent of the entire basin.

18 Q And there's places where there is more lily pads than there
19 is in other places; correct?

20 A Yes, that is correct.

21 Q And from this photo, you can't tell specifically if lot 8 is
22 one of the places that has more lily pads or less; is that
23 correct?

24 A With this picture, it's difficult. I will admit that, yes,
25 sir.

1 Q Okay. And if you'll turn to Exhibit 19, picture 3, can you
2 identify specifically where lot 8 is identified in this
3 picture?

4 A This picture is not in front of lot 8. I can tell you that.

5 Q Okay. So picture 3 does not show the condition of lot 8
6 directly; correct?

7 A That's correct. This picture, I believe, is probably
8 slightly, slightly north of lot 8. I have the GPS
9 coordinates on this picture where I could really define that
10 for you in better detail if you really wanted it.

11 Q Well, you would agree that standing where you're standing
12 right now you'd have a certain GPS coordinate; correct?

13 A Yes.

14 Q And you could take a picture of the wall to your left;
15 correct?

16 A Uh-huh (affirmative).

17 Q And you could take a picture of the back wall; correct?

18 A Right.

19 Q And you could take a picture of this window; correct?

20 A Right.

21 Q And the GPS coordinate would be the same for all of those
22 pictures; correct?

23 A That's correct.

24 Q And so even with a GPS point, you'd still need to look at
25 the picture itself to identify what you're looking at;

1 correct?

2 A Yeah. Well, also on the back of the picture, the GPS
3 position is noted as well as the direction facing. So this
4 particular photo 3 as your example would say, here's your --
5 you know, your longitude, latitude and this is facing west.
6 So it would say that on the back of the picture, "facing
7 west" and the date and the parties that took the picture.

8 Q And you would agree that "west" is a very general direction;
9 correct?

10 A Right. But the picture's -- like, for example, the picture
11 number 1 would give the GPS coordinates and it would say,
12 "facing southwest."

13 Q Okay. And we don't have any of that information in front of
14 us today -- correct? -- as to what direction you were
15 facing?

16 A Only by looking at the pictures and knowing the area would
17 one be able to tell that we're looking southwest versus
18 west.

19 Q And have you taken pictures of Indian Lakes West between
20 1997 and today?

21 A Yes, in 1999.

22 Q In 1999? But you haven't taken any pictures from 1999 to
23 today; is that correct?

24 A No, that's incorrect. We have.

25 Q Okay. So when did you take pictures between 1999 and today?

1 A Probably took pictures in -- well, Dr. Jaworski took most of
2 the pictures, but I think I took a couple of them with him
3 when he came here in August of '06 -- or '07; August of '07.
4 There was pictures taken then. I've taken pictures on the
5 ice in December of '07.

6 Q Okay. And have you taken pictures either in 2006 or in --
7 let's say, in the last three years have you taken pictures
8 of the vegetation around Indian Lakes West?

9 A Not as detailed as '97. '97 was done just for benchmarking.
10 And the pictures since then, because the benchmarking
11 already exists, would be just if there were some issues.
12 So, therefore, it was part of this study that Dr. Jaworski
13 had.

14 Q Okay. But you would agree that photos 1 and 2 behind
15 Intervenor's Exhibit 19, it's difficult to tell exactly
16 where lot 8 is in those photos; correct?

17 A It is. I will admit that. The only reason I happen to know
18 is that when I looked at my GPS coordinates on the winter
19 picture that we showed with this jar in front, I used those
20 latitude and longitudes and went back to the '97 photos, got
21 to position -- it's extremely close to both longitude and
22 latitude -- and said, "Okay. We know where we're looking."

23 Q And if you turn to Intervenor's Exhibit 21 -- which is the
24 picture you were just describing of the hole?

25 A Okay. 21?

1 Q Yes.

2 JUDGE PATTERSON: I don't have that, I don't

3 think.

4 THE WITNESS: What is that one?

5 JUDGE PATTERSON: This is 22.

6 THE WITNESS: We don't have that one.

7 A But I'm familiar with it.

8 Q Okay.

9 A Yeah, basically we used the longitude and latitude from this

10 here coordinates. Just sort back through the '97 photos and

11 that's what you're seeing.

12 Q And in that photo you also see the house; correct?

13 A Yes.

14 Q And in front of the house you see the red stake?

15 A Yes.

16 Q And because you see the house and the red stake you're

17 absolutely sure you're looking at lot 8; correct?

18 A Yes.

19 Q And if you will, turn back over to Petitioner's Exhibit 2,

20 page 4. On figure 1 you see the red stake; correct?

21 A Yes. Figure 1? Yes.

22 Q And because you see the red stake, you're absolutely sure

23 you're looking at the proposed dredge area; correct?

24 A I'm sure that within a 50 foot width that stake would fall

25 in it because it seems to be centered in the property. So,

1 yes.

2 Q So you would agree that when the tribunal is looking at the
3 photos, the best way to tell where the dredge area is, is to
4 look for either the red stake or the house; correct?

5 A Yes.

6 Q Okay. Now looking at figure 1 of Exhibit 4, you would agree
7 that that represents how lot 8 looked this past summer; is
8 that correct?

9 A Yes.

10 Q And this probably more accurately represents how lot 8
11 looked last summer than any of the pictures behind
12 Intervenor's Exhibit Number 19; correct?

13 A Intervenor's Exhibit Number 19?

14 Q Yeah, Intervenor's 19. It was the photos we were just
15 looking at numbered 1 through 4.

16 A Okay. Oh, yeah; yes. That's correct.

17 Q And it's much easier to tell in Petitioner's Exhibit 2, page
18 4, figure 1 the condition of the dredge area than it is from
19 any of the photos behind Defendant's Exhibit Number 19 --
20 or, excuse me, Intervenor's Exhibit Number 19; correct?

21 A The thing -- the problem that I have with that is that this
22 picture looks to be facing southeast in figure 1 instead of
23 due east. So I would have reservations to say that.

24 Q Okay. But you would agree that there's no confusing where
25 the dredge sites are -- there's no confusing where the red

1 stake is on figure 1; correct?

2 A Correct.

3 Q And in your understanding, the proposed dredge site is
4 directly lakeward of that stake; correct?

5 A Yes.

6 Q And that's the stake you used to take measurements; correct?

7 A Yes, it is.

8 Q Okay. Now I'm going to have you turn to Petitioner's
9 Exhibit Number 27. We're done with the photos for now if
10 you want to make yourself comfortable again.

11 A Okay. I have it.

12 Q Can you turn to Exhibit 27? This is a water quality report
13 that the Missaukee Lakes Association has prepared for it;
14 correct?

15 A Yeah, Professional Lake Management has prepared this for our
16 association.

17 Q And you employed Professional Lake Management for a number
18 of years?

19 A Yes, we have.

20 Q When did you began employing Professional Lake Management?

21 A Probably around 2000; 2000 or 2001, it's one of the two,
22 maybe 2001.

23 Q Okay. And you're pleased with the services that
24 Professional Lake Management has provided?

25 A Yes, they were -- they've been extremely helpful in

1 establishing our water quality indexes for, like I mentioned
2 earlier, three different sites on the lake. They actually
3 discovered the Eurasian milfoil for us in the boat launch
4 lagoon which we treated as an association for three or four
5 years before it got into the main body of the lake.

6 Q So you generally accept the recommendations of Professional
7 Lake Management; is that correct?

8 A Yes, we do. You know, we hired them for their expertise and
9 hopefully they would give us good data.

10 Q Okay. And can you turn to page 3?

11 A Sure.

12 Q And in the upper left corner it says that this is the 2006
13 water quality report; correct?

14 A Yes.

15 Q And you would agree that the first beginning on that page
16 says, "Efforts to reduce nutrient and sediment loading
17 should begin"?

18 A Yes.

19 Q And that, "That should begin to help prevent further
20 deterioration of the lake"; is that correct?

21 A Yes, it does say that.

22 Q And it's your understanding that these -- or your belief
23 that the sediments near lot 8 are nutrient rich; correct?

24 A Yeah, that they support life.

25 Q And this is the type of nutrient rich sediment that the

1 report is referring to; is that correct?

2 A I think "nutrient" also would include chemical treatment.

3 There's a concern --

4 Q So it's your testimony that nutrient and sediment loading

5 would also include runoff; correct? That's what you're

6 referring to there?

7 A Yeah. I was thinking like, you know, guys using fertilizers

8 too close to the lake.

9 Q On their lawns?

10 A Yeah.

11 Q And then it runs off into the --

12 A Right, big issue.

13 Q Okay. And it's good to prevent that runoff from going into

14 the lake?

15 A Well, you're not going to prevent the runoff. What you've

16 got to -- need to do is prevent the fertilization using

17 phosphorous type of fertilizers. So, you know, we try to

18 educate all the riparian owners on exactly that.

19 Q Okay. So you would agree that Professional Lake Management

20 has stated that it's bad for sediment to get in the lake;

21 correct?

22 A Well, I don't know if they consider it bad. It's just that,

23 I think, they're recognizing the fact that you've got to

24 maintain status quo, what you've got right now. And so

25 you've got to do everything you can, you know, including

1 bird droppings, you know, that fall into the lake from the
2 waterfowl, leaves -- try to keep the leaves away from that,
3 from the water. You know, if we see them as property
4 owners, rake them up, get them out of the water.

5 Q And you would agree that this reports says that efforts to
6 reduce sediment loading should begin; correct?

7 A Right.

8 Q And that is to prevent further deterioration of the lake;
9 correct?

10 A Yes.

11 Q Okay. And let's turn to -- same book, Exhibit 31 -- excuse
12 me -- 32, Petitioner's book.

13 A Okay. Yup.

14 Q And you would agree that this is the same report from the
15 year 2007?

16 A Pretty much, yes.

17 Q Well, it's the same type of report, first; correct?

18 A Yes; right.

19 Q And they also make similar recommendations; correct?

20 A Yes, they do.

21 Q And this report also states that efforts to reduce nutrient
22 and sediment loading should begin?

23 A Exactly. But, again, you know, when I read this, it implies
24 that nothing's going on, and that's not the truth. Our
25 association, at our annual meetings, we talk about --

1 specifically with our membership about the use of
2 fertilizers, about bird droppings, about raking leaves up.
3 This is part of our standard meetings that we have.

4 Q So you would agree that it would be beneficial to stop the
5 things going into the lake that create sediment; correct?

6 A Yes, that create any kind of chemical imbalance in the lake,
7 you know, such as phosphorous which states -- the growth of,
8 you know, exotic weeds and algae. We don't want that in the
9 lake.

10 Q So if it's bad for the sediment to get into the lake, then
11 it would also good for the sediment to come out of the lake;
12 correct?

13 A Well, that's somewhat of a loaded question. The issue
14 probably could be better stated, if you're going to remove
15 sediments, how do you remove them without polluting the lake
16 so that they've now been -- they've been moved from one
17 location to another during the process. That's the real
18 issue that's in front of us. We don't want that to happen.

19 Q Okay. And you're aware of a magazine referred to as the
20 Michigan Riparian?

21 A Yes.

22 Q And you've written in to the Michigan Riparian, haven't you?

23 A I have talked to Don Winne who is the president of Michigan
24 Lakes and Streams who publishes the Riparian on many
25 occasions.

1 Q And you genuinely believe that the Michigan Riparian
2 provides quality articles; correct?

3 A Yes, they do. I mean, they're prejudiced -- you know, they
4 are. They're prejudiced towards lakes and streams. But I
5 think --

6 Q You're going to have to clarify for me. What do you mean by
7 "prejudiced towards lakes and streams"? Does that mean
8 environmental concerns?

9 A Protecting them. Yeah, protecting them. You know, there's
10 people that would rather not protect the lakes and streams.
11 They take the opposite side, "Let's protect them."

12 Q Okay. So the Michigan Riparian represents kind of the
13 environmental look at lakes; is that correct?

14 A Yeah, they do. And have laws impacting their -- you know,
15 their degradation as well.

16 Q And do you have a subscription to Michigan Riparian?

17 A Our association does. We have a membership.

18 Q And do you usually read the Michigan Riparian?

19 A I don't always get it. We try to pass it around from board
20 to board member.

21 Q Have you read the recent articles on attacking lake sediment
22 buildup?

23 A No, I haven't.

24 Q You haven't. So you're not familiar with those articles?

25 A No, I'm not.

1 Q Okay. So you haven't read the most current version of the
2 Michigan Riparian?

3 A No, sir, I haven't.

4 Q Okay. Now, previously you said that it's dangerous to
5 water-ski on the west side of Lake Missaukee; is that
6 correct?

7 A Only if you fall.

8 Q Only if you fall? And that's because you become trapped in
9 the sediments; correct?

10 A Yes.

11 Q And so it's your statement that the sediments are so loose
12 that they trap people in them?

13 A With depth, they become more consolidated. They're still
14 unconsolidated, but they become more consolidated the deeper
15 you go. I think the example that your client testified to
16 where he dug out the hard substrate at the bottom showed at
17 the extreme bottom of these sediments it becomes quite rigid
18 and less suspended.

19 Q And you've walked near the shore in the Indian Lakes West
20 area?

21 A Yes.

22 Q And that -- walking in that area suctions your feet?

23 A Yes.

24 Q And you would agree that it's the more consolidated
25 sediments that cause that problem rather than the loose?

1 A Yes, absolutely.

2 Q So if you remove the more consolidated sediments, then that
3 problem will be gone; correct?

4 A Well, for a snapshot in time because you can't remove them.

5 Q You said that you can't remove the unconsolidated sediments;
6 correct?

7 A You can, but they will replace themselves.

8 Q But you didn't testify that the consolidated sediments will
9 replace themselves; correct?

10 A Well, consolidated is hard bottom, so that's sand. If
11 you're going to take sand out, it's not going to replace
12 itself.

13 Q So it's your --

14 A But I'm saying there's a degree of unconsolidatedness, if
15 there's such a word. And that is the finer materials at the
16 top -- and the deeper you go, before you hit hard bottom,
17 the consolidation rate increases. But there's still -- you
18 can take your hand down there and pull them up. If you get
19 down to the hard sand --

20 Q So you can reach in and grab a handful of sediment?

21 A Right; exactly.

22 Q And it's not so -- at least --

23 A It's still surrounded by water. Let's put it that way.

24 Q Okay. And have you ever taken it upon yourself to dig a
25 hole somewhere in the western side of Lake Missaukee or

1 around the Indian Lakes West area?

2 A I didn't dig a hole, but I jumped out of my boat back in
3 2002 to grab a sample three feet below the water which is
4 part of the fineness and it was scary.

5 Q It was scary? Okay. So you've never actually removed a
6 section of the sediment. So you've never actually viewed
7 how long it takes the surrounding sediments to fill in;
8 correct?

9 A Well, our board has.

10 Q But you have not?

11 A No. I have removed sediments -- I have not taken a diagonal
12 slice of the sediments to hard bottom and removed them such
13 as your client did.

14 Q And you've never taken even a one-foot-square area and
15 removed it to see how fast that area would fill back in;
16 correct?

17 A I have taken sections that are 16 inches below the water's
18 area.

19 Q But for the purpose of seeing how fast the area filled back
20 in, have you ever taken any kind of sample for that reason?

21 A I have taken an oar on a boat and ran it through the
22 section -- the area to try to make a trough. It's
23 impossible.

24 Q So you couldn't make a trough out of the sediments that your
25 paddle was able to push aside; that's correct?

1 A That's correct.

2 Q But you've never conducted any type of experiment where you
3 removed down to sand and saw -- and observed how long it
4 took to fill back in; correct?

5 A No, I have not went all the way to hard bottom.

6 Q Thank you. Okay. And would you say it's dangerous for
7 skiers 200 feet from shore?

8 A If one is to fall -- I try to avoid that entire basin when
9 I'm pulling a skier.

10 Q Because you believe that it's dangerous for someone to swim
11 in that area; correct?

12 A I'm saying it's difficult if you fall because you have a
13 trajectory with velocity and you are going to be submerged,
14 not like swimming where you're buoyant and you're above the
15 water, but you're going to be speared with velocity of
16 probably 40 miles an hour at a trajectory down into the
17 stuff and that's dangerous. There's a distinction, though,
18 between waterskiing and falling and swimming.

19 Q And you said you were in approximately three foot of water
20 when you jumped out of your boat to obtain a sediment;
21 correct? Or sediment sample; correct?

22 A No, I was in more water than that. What I was in -- is I
23 took a sample three feet below the surface of the water. So
24 I was in sediments that were closer to the water than that.

25 Q What would you approximate the water depth between the

1 surface of the water and the top of the sediments to be --
2 A Where I took the three-foot sample?
3 Q Yes.
4 A Eight inches of water.
5 Q Oh, eight inches? So it was pretty shallow?
6 A Yeah.
7 Q And that almost trapped you?
8 A Yes. It's scary. It's scary because you can't touch hard
9 bottom. I think that's what is so scary. You're used to
10 being in, you know, when you've got -- when your body has
11 got five feet or four feet of nothing but quicksand around
12 you, it's fearful. It is.
13 Q Okay. So you would agree that right now there's no way that
14 a child could wade or swim by walking in the lake from
15 shore -- correct? -- in front of lot 8?
16 A In front of lot 8, I would not recommend a child swimming in
17 there as it exists today because of the muck that exists
18 there. It does want to capture your feet. It is a suction.
19 My concern is, is that if this is dredged, it will fill in
20 and get back exactly to the condition it's in now.
21 Q Okay. You said you visited the site with Dr. Jaworski?
22 A Yes.
23 Q And you viewed -- or, excuse me -- fish and minnows in the
24 general Indian Lakes West area?
25 A I think this was in front of lot 8.

1 Q Okay. And have you seen fish and minnows in other areas of
2 the lake?

3 A Yes; yes.

4 Q And did you document the number of fish and minnows that you
5 saw that day?

6 A Dr. Jaworski documented, I believe, the presence of --

7 Q Well, let's --

8 A I'm just navigator. Okay? I'm his navigator. I'm doing
9 what he asked me to do to assist him. So with that, I would
10 reside with him.

11 Q Okay. And, now, your jar that you have in front of you,
12 it's your understanding that this is what exists on the very
13 surface of the sediments?

14 A 16 inches down below the ice. The top layer of ice, 16
15 inches down.

16 Q Okay. Now, you're going to have to help me with that 16
17 inches because you -- when you took the sample, you put the
18 bottle in upside down; correct?

19 A Yes.

20 Q So now was there 16 inches from the mouth of the bottle to
21 the top of the ice?

22 A Yes.

23 Q Okay.

24 A When I started filling it. That's the distance when I
25 started slowly inverting it horizontally so it would start

1 to fill up.

2 Q Okay. So the mouth was 16 inches down as opposed to the
3 bottom being 16 inches down; correct?

4 A Yeah, I would say the sample started entering into the mouth
5 at 16 inches below the top of the ice because the bottom
6 went deeper than that before I turned it.

7 Q And do you believe that that -- you believe that that
8 represents what's on the very top of the sediments; is that
9 correct?

10 A It should be very close to the top. There are some
11 distinctions that should be made.

12 Q Okay. Now, you said earlier that the sediments -- you
13 believe that the sediments would fill right back in after a
14 dredging; correct?

15 A Yeah. Now --

16 Q And you also said that --

17 A I'd like to just qualify that.

18 Q Okay.

19 A I think it's extremely important. Our association and our
20 members are under the assumption that this is still going to
21 be a two and a half foot depth dredge with no maintenance
22 dredging. That's what we were believing. So two and a half
23 is going to fill in like you never even took it out.

24 Q Okay. But it's your testimony that these sediments only
25 begin migrating through the water after a boat stirs them

1 up; correct?

2 A Yes, because they seem to -- with no disturbances, they
3 seemed to just stay below the water just like a pool.

4 Q So you're basically saying that they're mobile enough to
5 fill in a dredge area but not mobile enough to be disturbed
6 by the wind?

7 A It hasn't been our observation.

8 Q So you're saying that the wind and the waves haven't caused
9 these same turbidity plumes; is that correct?

10 A Unless they were disturbed first and they get into the water
11 column. See, as long as they're below the water column,
12 they seem to be all right. But once they're disturbed, now
13 the wave action takes them.

14 Q Okay. So you believe these sediments will, by themselves,
15 fill in a dredge area but they won't be carried into other
16 areas of the lake by themselves; correct?

17 A They will fill in a vacated area quite readily because of
18 the fineness of their consistency.

19 Q Because the vacated area is deeper than where the --

20 A Yes.

21 Q And you would agree that there is deeper areas of the lake
22 than where the sediments are right now; correct?

23 A There are areas of the lake that -- if you went to the
24 southeast corner, you could see areas of the lake that are,
25 you know, 23, 24 feet deep.

1 Q But you would agree that between lot 8 and the center of the
2 lake it generally gets deeper; correct?

3 A Yes.

4 Q And that these loose, unconsolidated sediments haven't
5 rolled off into the deep part of the lake; correct?

6 A Well, they extend out into the lake, you know. It's kind of
7 like they seek their own level. But they seem to be really
8 predominantly in that undeveloped area as far as houses.

9 Q But even the distance between the top of the water and the
10 top of the sediments, it's greater as you go towards the
11 middle of the lake?

12 A Deeper out, farther away from shoreline; yes.

13 Q These sediments don't form just a flat layer on the bottom
14 of the lake; correct? That's been your --

15 A It appears it -- visually, if you were driving your boat
16 over top, it looks like, as I said before, you're looking at
17 the bottom of the lake and really what you're looking at is
18 the top of the sediments. It looks flat. It isn't like --
19 when you're driving over these, it looks like there's
20 mountains or -- it's flat. It's flat. It's like you're
21 looking at -- just like a flat bottom where the water depth
22 just increases.

23 MR. HOFFER: Just a moment.

24 Q Can you turn in the Intervenor's book to Exhibit 10?

25 A Okay. Got it.

1 Q And can you turn one, two, three -- actually, yeah, just
2 turn to where the resolution starts.

3 A Okay. I have it.

4 Q Okay. And these are documents you created; is that correct?

5 A No, I did not create these, but one of our members did.

6 Q And you approved of the language that was in these
7 documents; is that correct?

8 A Yes, we did, as a board.

9 Q Okay. And it's the board that created these documents?

10 A With assistance from the membership.

11 Q Okay. And these documents accurately represent the view of
12 the board?

13 A At that time? This is 8-30-97, this is the day that our
14 association formed.

15 Q Okay.

16 MR. HOFFER: I don't believe this has been
17 stipulated to, so right now I'll move to admit Intervenor's
18 Exhibit 10.

19 JUDGE PATTERSON: That's Intervenor's 10; right?

20 MR. HOFFER: Yes.

21 MR. PHELPS: No objection from me.

22 MR. REICHEL: No objection.

23 JUDGE PATTERSON: Okay. Thank you, Counsel. No
24 objection, it will be entered.

25 (Intervenor's Exhibit 10 received)

1 MR. HOFFER: Okay.

2 Q And you would agree that the top two lines indicate that the
3 association has deep concerns regarding proposed development
4 by Indian Lakes West; correct?

5 A Yes.

6 Q And beginning on the fourth line down, "This resolution
7 indicates that this area not" -- or that "It's the lake
8 association's desire that this area not be disturbed by
9 development"; correct?

10 A Yes. But there's an implication there as I mentioned
11 earlier.

12 Q There's no implication spelled out by the language of this
13 resolution, is there?

14 MR. PHELPS: Well, I object to that
15 characterization. It speaks for itself and there is such a
16 thing, so let the witness read the whole thing.

17 Q This resolution doesn't mention dredging, does it?

18 A No, it doesn't because of the fact that we did not want plat
19 approvals -- let me just read this again. It's been a long
20 time. Give me a minute.

21 Q That's okay.

22 MR. HOFFER: I'm done, your Honor. Thank you.

23 MR. PHELPS: You're all done?

24 MR. HOFFER: Yes, I have nothing further.

25 JUDGE PATTERSON: Are you ready to go ahead or do

1 you want to take a short break?

2 MR. PHELPS: Yeah, I might take a very short
3 break.

4 JUDGE PATTERSON: Okay. Let's say five minutes.
5 (Off the record)

6 JUDGE PATTERSON: Whenever you're ready.

7 REDIRECT EXAMINATION

8 BY MR. PHELPS:

9 Q Mr. Morrow, just before our break you were asked some
10 questions about a resolution of the association board, I
11 believe to be association -- which is Exhibit 10?

12 A Yes.

13 Q Do you still have that in front of you?

14 A Yes, I do.

15 Q The last sentence of that resolution says,

16 "We ask that the township board, the Department of
17 Environmental Quality and other approving authorities
18 deny any plat approvals that do not address this area
19 and clearly specify that it is subject to the Michigan
20 Wetlands Protection Act."

21 Do you see that?

22 A Yes.

23 Q What did you mean by that language in the resolution?

24 A Well, exactly what it says. We're not against development
25 as such, "Go ahead. But let's not go in there and destroy

1 all the wetlands that abide in that area. And so we're
2 asking that the township board and the DEQ and other
3 approving authorities deny any plat approvals that do not
4 address this area and clearly specify that it's subject to
5 the Michigan Wetlands Protection Act. It's wetlands.

6 Q Is the position you took in the '97 resolution before you
7 and the position you've taken throughout this hearing
8 consistent?

9 A Yes, it is consistent.

10 Q My next question relates to the alternative sites.

11 MR. PHELPS: If I may approach?

12 JUDGE PATTERSON: Sure.

13 Q I'm going to have you mark on an exhibit where these are for
14 our reference. And I've got a photograph I've marked as
15 Intervenor's 23, another aerial photograph of the lake. I'm
16 going to give you a black marker. And if you could, circle
17 on there and then put a number 1 next to the first
18 alternative site you testified about which is between the
19 Indian Lakes West and North subdivisions.

20 A Okay. And I'll just call it "number 1"?

21 Q Yeah.

22 (Witness marks on exhibit)

23 A "Number 2."

24 Q Then you've marked as "number 2" the second site in that
25 same vicinity?

1 A Yeah, right where the beach -- you can see the sandy beach
2 right up there, right there (indicating).

3 Q All right. That's number 2. And then mark "number 3" on
4 that photograph.

5 A Number 3 is the dock between the two docks.

6 Q And this is the site adjacent to Jack Bales' lot, lot number
7 1?

8 A Yes, between Jack Bales' property and the easternmost
9 property on Birchaven is number 3.

10 MR. PHELPS: Your Honor, I ask that Exhibit 23 be
11 admitted.

12 MR. HOFFER: No objection.

13 MR. REICHEL: No objection.

14 JUDGE PATTERSON: Okay. Thank you, Counsel. No
15 objection, it will be admitted.

16 (Intervenor's Exhibit 23 marked and received)

17 MR. PHELPS: And I'll make copies for everybody
18 and bring them at the next hearing.

19 Q Mr. Morrow, you were asked a number of questions --

20 MR. SHAFER: Hold -- just a sec. Do you have any
21 objection if like later on in rebuttal we actually also put
22 in where lot 8 is just so an appellate body could see that?

23 MR. PHELPS: That's fine.

24 MR. SHAFER: Okay. Thanks.

25 Q All right. You were asked some questions about alternative

1 sites, I think number 1 and number 2, in relation to Exhibit
2 15A. Do you remember that? Do you have that handy?

3 A All right. 15A? Let me just get it out so -- 15A and this
4 (indicating) one?

5 Q Yes, although I don't know if it got put into a binder or
6 not.

7 A Yeah.

8 Q This is 15A.

9 A Oh, that. Okay. Yeah.

10 Q Do you remember that line of questioning?

11 A Yeah.

12 Q Landward of the alternative site that you proposed in your
13 testimony, I just want you to describe for the tribunal the
14 land there. Is it dry? Is it wet? Is it elevated, not
15 elevated?

16 A There is, if you take from the wetland point on Exhibit 15A
17 and went east, there are high -- you can see that it pretty
18 pictorially shows some of the high ground which I said is
19 probably 12 feet above the water which are great building
20 sites, in all honesty. And it's hard. You're walking --
21 you're not walking through a swamp here. You're just
22 walking from the shoreline out into the sandy bottom area
23 into the water.

24 Q How far -- in approximate feet, how far from the proposed
25 alternative dock site would it be to a suitable building

1 location?

2 A Excluding 3?

3 Q Yeah, excluding 3. I'm talking about sites 1 and 2.

4 A I would estimate it to be over a quarter of a mile. That's
5 an estimate.

6 Q Well, I don't mean to the Indian Lakes West.

7 A Lot 8.

8 Q You just testified that there were some ideal building sites
9 or something like that?

10 A Yeah.

11 Q Okay. Where are those located?

12 A There's a picture in there showing the road -- right along
13 those areas would be --

14 Q And approximately how far is that from the lake?

15 A From there? You know, it's all relative. If you start away
16 from the point, it's quite a distance. But if you come out
17 up here (indicating) -- if you come over here and then go,
18 it's much, much less area. That's why I say this area is
19 pristine right here.

20 Q And this area lake land of this point, is this what
21 you're -- is that dry land?

22 A Yeah, it's dry; yeah.

23 Q Is that elevated from the lake?

24 A This (indicating) dark area is elevated and then it just
25 gradually goes down to the water.

1 Q Okay. Is there any reason why -- this area right here
2 (indicating)?

3 A Yeah, I wish we -- well, this is an old picture, but it's
4 still --

5 Q You've got to show the tribunal.

6 A Still, from the water's edge right here (indicating) out
7 into the sand, like I say, you have a boat launch, you can
8 swim there, it's ideal. This doesn't show the road, but
9 there's a road that stops and then turns and goes back
10 adjacent to the shoreline that -- all these are buildable
11 sites where you see all these woods here. Those are all
12 buildable sites. And this area right here (indicating)
13 would be excellent for swimming and boating as well as this
14 area over here, area 2. Absolutely superb beach. I mean,
15 superb. And it's being used now. The people just drive
16 their boats over there and have fun.

17 Q If Mr. Mohny were to put a dock in one of these sites,
18 alternative sites 1 and 2, would there be any obstacle in
19 his way to get from the dock to one of these alternative
20 buildings sites nearby?

21 A No; no. None that I could see. Like I say, there is a
22 walking distance from the road to get there, but based on
23 those aerials on one of the other pieces of documentation --
24 but the real kicker here is, is environmentally -- well,
25 let's do it -- but, one, you don't have to worry about the

1 siltation being dispersed by boats to swimming for their
2 grandchildren for swimming on the sand bottom. So to me
3 it's a win-win, particularly at sites 1 and 2.

4 Q Is one option available to Mr. Mohny if he -- well, we've
5 already talked about the option of putting a longer dock out
6 on his current lot; correct?

7 A Right; right.

8 Q And would one option available to him be to take a boat from
9 that dock over to this sandy swimming area and have a
10 swimming spot for his children?

11 MR. HOFFER: Objection; leading.

12 MR. PHELPS: I asked if that was an option
13 available to him.

14 JUDGE PATTERSON: I'll overrule.

15 A Absolutely. It's a good option.

16 Q Does everybody on the lake have a swimming area right in
17 front of their cottage?

18 A Yes. Basically because -- well, not all of them, no,
19 because some people have properties that are off the lake,
20 they're not lakefront. And so some of them have been
21 established to use different areas of the lake for swimming,
22 et cetera. A lot of that's deeded -- deeded access to the
23 lake.

24 Q Maybe the question I should have asked was does everybody on
25 the lake have a sandy swimming area, even people like in

1 Tom's Bay, for example, and other --

2 A Right, that's -- right.

3 Q If you go to Exhibit, let's see, 20, I believe it is, of the
4 Intervenor's Exhibits -- hopefully you have those.

5 A Yeah. I don't have those.

6 JUDGE PATTERSON: I don't either. I only go
7 through 17, I think.

8 Q 20 is these pictures of Tom's Bay. Do you recognize those?

9 A Yes, I do.

10 Q Okay. And it looks to me like some people in the second
11 photograph have seawalls?

12 A Yes.

13 Q So they don't have a sandy swimming area?

14 A No, they've elected to put, you know, sand either up on the
15 seawall -- you know, from the seawall landward.

16 Q And people -- if they don't have a suitable swimming area,
17 those people can take a boat and go to other parts of the
18 lake and swim where there's shallow, sandy water?

19 A Oh, yes, that's a option that's always available.

20 Q And have you observed people traveling to this end of the
21 lake just to swim?

22 A Yes, it's become -- this (indicating) sandbar has become a
23 party area or congregation area for a lot of the youth on
24 the lake.

25 Q When you first met with Mr. Boughner about the -- and he

1 indicated to you that they wanted -- Mr. Mohney wanted to
2 dredge lot 8 --

3 A Yes.

4 Q Did he mention at all the need to have a swimming area for
5 grandkids?

6 A No, he did not.

7 Q I want to see if I can clarify your testimony as to the
8 vegetation off of lot 8. And to do that, let's turn to
9 Exhibit 11, page 11 of Intervenor's Exhibit -- the
10 photograph there.

11 MR. SHAFER: Intervenor's 11?

12 MR. PHELPS: Yes.

13 A Page 11?

14 Q Yes. Up at the top.

15 JUDGE PATTERSON: You're talking about Dr.
16 Jaworski's report?

17 MR. PHELPS: Yup.

18 Q Two-thirds of the way through there should be photographs.
19 Do you see that, Dr. Morrow?

20 A Yes, I do.

21 Q And that photograph, the caption says that it's a view of
22 near shore area lakeward of lot 8. Do you see that?

23 A Yes, I do.

24 Q And this appears to be lily pads and maybe some other types
25 of plants?

1 A Yes.

2 Q Is this photograph consistent with the plant life you've
3 observed in front of lot 8?

4 A Yes, it is; yes. And this picture is Dr. Jaworski's
5 picture.

6 Q And I think in one of these pictures you're even in the
7 picture somewhere. I mean, were you out there with him when
8 he took these pictures?

9 A Yes, I was.

10 Q The next page, page 12, there's some pictures, it says,
11 "View of emergent marsh plants growing in the wetland zone
12 directly lakeward of the shoreline near 8." Do you see
13 that?

14 A Which picture are you at?

15 Q The very next one, page 12.

16 A "Lake 2"?

17 Q Yup, "lake 2." You see that?

18 A Okay. Hang on one just minute. I want to just familiarize
19 myself with this.

20 Q Take your time.

21 (Witness reviews exhibit)

22 A Yeah. Okay. I just wanted to make sure that these were
23 current.

24 Q And do you see as you go out, I don't know, maybe 10, 15
25 yards it looks like there's emergent plants coming out of

1 the water. Do you see those pockets of those?

2 A Yes.

3 Q Are those emergent plants consistent with what you've

4 personally observed?

5 A Yes, they are.

6 Q And what you personally observed at -- in or around lot 8?

7 A Yes, they are.

8 Q And specifically in front of lot 8 lakeward?

9 A Yes.

10 Q And then if you'd flip to Exhibit 13, this is that map you

11 were asked some questions about. Do you have that in front

12 of you?

13 A Yes, I do.

14 Q You were asked by Mr. Hoffer about the location of

15 submergent plants; do you remember?

16 A Yes.

17 Q If we look at the legend under "vegetation," there's also a

18 mark, a little "t," for floating plants and a vertical dash

19 for emergent plants?

20 A Yes.

21 Q And based on this map, do those plants appear to be confined

22 largely to the west end of the lake?

23 A Yes, they do.

24 Q And that would be adjacent to the Indian Lakes West

25 subdivision?

1 A Yes.

2 Q And then if you'd turn to Exhibit 19, that's those four
3 photographs you were asked some questions about.

4 A Okay.

5 Q On number -- photograph number 1, just so the record is
6 clear, is it your testimony that lot 8 is approximately in
7 the center of that photograph?

8 A Yes.

9 Q And regardless of whether you can see the lily pads right in
10 front of lot 8, are the lily pads that are in the foreground
11 of this picture consistent with the types of lily pads
12 you've seen in front of lot 8?

13 A Yes, they are.

14 Q And likewise, Exhibit -- or picture 3 of Exhibit 19, you'll
15 see lily pads and emergent plants?

16 A Yes.

17 Q And I think you've testified that this picture is not
18 directly in front of lot 8; is that right?

19 A No, I believe this is north of lot 8. I could get my
20 pictures out and tell you very specifically where that is,
21 if you would like.

22 Q Well, based on your personal observations of lot 8 and the
23 lakeward area of lot 8 is what's depicted in this picture as
24 far as the lily pads and the emergent vegetation?

25 A Yes, back in 1997 that's very depictive of what that looked

1 like in front of lot 8, yes.

2 Q And as early as this past summer, did you personally view
3 lily pads and other emergent --

4 A Yes.

5 Q -- let me finish -- and other emergent vegetation in front
6 of lot 8?

7 A Yes.

8 Q Lakeward of lot 8?

9 A Yes.

10 Q And within the proposed dredge site that's the subject of
11 this hearing; is that correct?

12 A Yes; yes.

13 MR. PHELPS: That's all I have.

14 JUDGE PATTERSON: Mr. Reichel?

15 MR. REICHEL: Nothing further.

16 RE CROSS-EXAMINATION

17 BY MR. HOFFER:

18 Q As to Intervenor's -- Dr. or Mr. Morrow, Intervenor's
19 Exhibit 11, page 11, that's plate 1?

20 A Yes.

21 Q And you don't see a house in that picture, do you?

22 A No, I don't.

23 Q You don't see a red stake in that picture, do you?

24 A No, the only thing that I see at the top of the picture is a
25 light glimmer, a reflection off the sand possibly from --

1 that's there at the shoreline.

2 Q So by looking at this photo, you can't tell exactly where it
3 is in relation to lot 8; correct?

4 A All I can tell you is I had Dr. Jaworski out there in front
5 of lot 8 and he took this picture.

6 Q So you would agree you can't tell exactly where this is in
7 front of lot 8; correct?

8 A I don't have a GPS on this picture, no.

9 Q Okay. And next page, page 12, this says that it's a view of
10 the shoreline near lot 8; correct?

11 A Yes.

12 Q And by "near lot 8," that means it's not in lot 8; correct?

13 A I'm not sure what that "near" means.

14 Q So then you're not sure if this is -- if these emergent --
15 so then you're not sure if this emergent vegetation is
16 lakeward of lot 8?

17 A To me it looks like what I saw in front of lot 8.

18 Q And you don't see a red stake in that picture?

19 A No, I don't see it.

20 Q And turn to Petitioner's big book, Exhibit 2, page 4.

21 A Okay. I have it.

22 Q Okay. And figure 2, do you see the groupings of emergent
23 vegetation on the left-hand side of that photo?

24 A Yes.

25 Q And you see that there is one large one and then two or

1 three smaller patches going lakeward?

2 A Yes.

3 Q And those weeds strongly resemble the emergent vegetation in
4 Intervenor's Exhibit 11, page 12, don't they?

5 A Yes, they do resemble it, but there's a lot of that
6 vegetation throughout that entire basin like that, so it
7 would be very difficult to say that's reality.

8 Q And you would agree that the caption for figure 2 says it's
9 the lakeshore north of the proposed --

10 A Yes.

11 Q And that was dock site; correct? North of the proposed dock
12 site?

13 A Dock site; right.

14 Q And you would agree that if this was taken from a person
15 standing near that red stake, then those patches of weeds
16 are quite a bit north of lot 8, aren't they?

17 A Yes, those two patches out there are north.

18 Q And if that's true, then it wouldn't be accurate to say that
19 those patches of weeds are lakeward of lot 8, would it?

20 A Those two that we're looking at here, the answer is correct.
21 Those two that are in plate 2, page 12, may be two different
22 patches of vegetation.

23 Q But they could also be the same patches; correct?

24 A Well, let's look. One thing that bothers me is if you look
25 at page 4, figure 2, to the left side of the picture there's

1 some real heavy, thick vegetation that's -- kind of stands
2 out on a little island by itself. And I don't see that same
3 little island in plate 2, page 12.

4 Q Okay. So if figure 2 was taken by a person standing by the
5 red stake looking north and the vegetation that is depicted
6 in page 12 of Intervenor's Exhibit 11 isn't the same as the
7 bunches depicted in Petitioner's Exhibit 2, page 4, then
8 where are they?

9 A One looks -- like I say, you're looking at two little
10 growths of vegetation that are out, you know -- what? -- 50
11 feet from shore. And looking at plate 2 and looking at the
12 depth -- how far out from shore are those other two plats of
13 vegetation on page 4, figure 2? -- it's hard to estimate
14 that because of the angle on which they're taken. But
15 you're assuming that both pictures were taken from the red
16 stake; one's looking north?

17 Q What I'm saying is if picture 2 was taken from the red stake
18 looking northward, that doesn't show those same bunches of
19 vegetation that you see in Intervenor's Exhibit 11, page 12,
20 does it?

21 A Looking at the two and the description, "lakeshore north of
22 proposed dredge site" on page 4, I would say that that
23 picture was taken somewhere in close proximation to --

24 Q But what I'm saying is --

25 A -- but I don't -- I can't tell you that he was standing on

1 lot 8 when he took that. I don't know.

2 Q I'm not telling you to. I'm saying assuming he was standing
3 near the red stake, taking a picture northward along the
4 shore, that shows the absence of those same emergent
5 vegetation that you see in Petitioner -- or, excuse me --
6 Intervenor's Exhibit 11, page 12, doesn't it?

7 A Well, let's look at the date the pictures were taken because
8 I'll tell you one thing that you will find on that lake is
9 that --

10 Q Let's stick to the original question. If the picture was
11 taken from the red stake looking north, does that picture
12 show the vegetation that you see in Intervenor's Exhibit 11,
13 page 12?

14 A No, they're facing two different directions. If your
15 assumption is they're standing at the red stake for both
16 pictures, you would never see the same vegetation in each
17 one. One's facing north, the other is facing southeast. So
18 therefore you should see two distinct different pictures.

19 Q So you're saying that the Petitioner's page 4, figure 2 is
20 from the -- or assuming that's from the lot 8 pointing north
21 and you're saying that Intervenor's Exhibit 11, page 12, is
22 from north of lot 8 looking south --

23 A That I don't know.

24 Q That you don't know?

25 A No, I don't know.

1 Q But you would agree that the vegetation -- the big clumps of
2 vegetation depicted in Intervenor's Exhibit 11, page 12 are
3 not shown to be close to the dredge site on figure 2, page 4
4 of Petitioner's Exhibit 2? You would agree with that?

5 A The only thing that I could --

6 Q I mean, without qualifying, would you -- do you agree with
7 that or you disagree with that, just assuming that's true?

8 MR. PHELPS: I'm going to object to the question.
9 He's trying to answer what are repeated, convoluted,
10 confusing questions that I don't follow. If he follows
11 them, he can answer them. But I think he's answered --

12 A I think this question should be reserved for the person who
13 took the photos, Dr. Jaworski.

14 Q So you didn't take these photos?

15 A No, I didn't take this. This photo is, I believe, from Dr.
16 Jaworski's report.

17 Q So you don't know where this was taken from then?

18 A Oh, wait. This is John Lehman's report. So John Lehman
19 took that -- John Lehman took that one.

20 Q Yes, I'm aware of that. That's why I'm telling you to
21 assume that figure 2 was taken from near the red stake.

22 A I have no idea of knowing that. Dr. Lehman took it.

23 Q That's why I'm asking you to assume that.

24 A Okay. So I'm going to assume that they stood at the red
25 stake -- Dr. Lehman -- and took this picture facing north?

1 Okay?

2 Q Correct. And if that is the case, wouldn't you agree that

3 it doesn't show the same vegetation to be near lot 8 as does

4 Petitioner's -- excuse me, Intervenor's Exhibit 11, page 12?

5 A It shows the vegetation facing north versus facing south.

6 That's all I can say. I cannot place somebody there.

7 Q And next page -- and the next page on page 13? You don't

8 see a red stake in that picture, do you?

9 A No, I don't.

10 Q And you don't see a house in that picture?

11 A No, I don't see a house.

12 Q Next page, page 14 of Exhibit 11? This is looking right at

13 the shoreline, isn't it?

14 A Exhibit --

15 Q The same one, the same exhibit, next page. So just Exhibit

16 11 of the Intervenor's, page 14.

17 MR. SHAFER: Just plate 4.

18 A Plate 4?

19 MR. SHAFER: Yes.

20 Q Yes.

21 A What was your question?

22 Q Do you have it in front of you?

23 A Yes, I do.

24 Q Okay. And this is looking directly at the shoreline;

25 correct?

1 A It looks to me like it's slightly southwest.

2 Q Okay. And you don't see a red stake on the shoreline?

3 A No, I do not.

4 Q And you don't see a house on the shoreline?

5 A No, I do not.

6 Q So we know this isn't lot 8; right?

7 A No, this is from a -- this is not -- he might have been
8 directly in front of lot 8, but he --

9 Q The picture itself does not show lot 8; correct?

10 A South of lot 8.

11 Q So the picture itself does not show lot 8; correct?

12 A But the emergent -- close -- the emergent lily pads, it's
13 all on the angle of the picture.

14 Q All I'm asking you is -- so the picture doesn't show lot 8;
15 correct?

16 A The lily pads may be directly in front of lot 8, is my
17 answer. But because he's facing south -- southwest, the
18 farther you get away in this picture, the less it will be in
19 front of lot 8. That's my answer.

20 Q Does the picture show the shoreline of lot 8?

21 A No, it does not.

22 Q Thank you. Okay. And you testified that most everyone on
23 Lake Missaukee has a swimming area in front of their house;
24 correct?

25 A Yes.

1 Q And you testified that some people have deeded access to the
2 lake; is that correct?

3 A Yes, that is correct.

4 Q And those people are generally referred to as "backlotters";
5 correct?

6 A Yes.

7 Q And are there backlotters that are members of the Missaukee
8 Lakes Association?

9 A Yes, there are.

10 Q And through the Missaukee Lakes Association, backlotters are
11 able to object to the activities of riparian owners, aren't
12 they?

13 A Yeah, they are -- we are -- I think one thing that I should
14 have mentioned and I didn't --

15 Q Well, just in terms of the question, through the Missaukee
16 Lake Association, backlotters who do not own riparian land
17 are able to object to the activities of riparian owners; is
18 that correct?

19 A Object to the activities?

20 Q Are you objecting to this -- you're objecting to this dredge
21 proposal; correct?

22 A Yes.

23 Q And it's a riparian owner that's preparing to -- or that's
24 hoping to dredge; correct?

25 A Yes, sir, it is.

1 Q And the Missaukee Lakes Association is objecting to that;
2 correct?

3 A Right.

4 Q And the Missaukee Lakes Association is partially made up of
5 backlottery; correct?

6 A Yes, that is correct.

7 Q Thank you.

8 MR. HOFFER: That's all I have, your Honor.

9 JUDGE PATTERSON: Mr. Phelps, any?

10 MR. PHELPS: Nothing.

11 JUDGE PATTERSON: Mr. Reichel?

12 MR. REICHEL: Nothing.

13 JUDGE PATTERSON: Okay. You're done. Thank you.

14 THE WITNESS: Thank you very much.

15 (Hearing adjourned at 1:57 p.m.)

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