

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Wednesday, May 11, 2022 at 9:30 a.m.

VOLUME 12

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1 Arbitration Place Virtual

2 --- Upon resuming on Wednesday, May 11, 2022

3 at 9:30 a.m.

4 MR. LEWIS: Good morning,
5 Commissioner, Counsel.

6 JUSTICE WILTON-SIEGEL: Good
7 morning, everyone.

8 MR. LEWIS: Today we have
9 Mr. David Hainer to testify, and I would ask the
10 court reporter if you could please affirm him.

11 DAVID HAINER; affirmed

12 EXAMINATION BY MR. LEWIS:

13 Q. Good morning, Mr. Hainer.
14 Thank you for coming.

15 A. Good morning.

16 Q. I understand that you
17 have worked at Dufferin since 1997; is that right?

18 A. That's correct, yes.

19 Q. And you're still there
20 now?

21 A. Yes.

22 Q. And what's your current
23 position and title?

24 A. I'm the operations
25 manager for the northeast district.

1 Q. Where is that?

2 A. Pretty much Barrie up to
3 Huntsville, across to Lindsay, over to Bancroft
4 area. So a large geographic area.

5 Q. And prior to working at
6 Dufferin prior to 1997, I understand that you
7 worked at the MTO for a period of time; is that
8 right?

9 A. I did, yes.

10 Q. How long were you there
11 for?

12 A. I worked there about two
13 years full-time, and I also did my co-ops for my
14 schooling through the Ministry of Transportation.

15 Q. I see. And where was
16 your schooling done?

17 A. Mohawk College in
18 Hamilton.

19 Q. In what program?

20 A. Civil engineering
21 technology.

22 Q. Did you complete that
23 program?

24 A. I did, yes.

25 Q. And then you went

1 straight to the MTO from there; is that right?

2 A. Pretty much, yes, yeah.

3 Q. And then so you joined
4 Dufferin in 1997. Could you just briefly describe
5 for us the roles that you held from then to
6 approximately 2006 -- 2005/2006 would be the time
7 period that we're focusing on.

8 A. So I started as a grade
9 man with Dufferin Construction working in I'll
10 call it the Hamilton area --

11 Q. What's a grade man?

12 A. A grade person I should
13 say. My apologies. But a grade person basically
14 works with the excavators, the dozers and the
15 graders and verifies the grade and the
16 horizontal/vertical alignment of the elevation
17 we're -- or geometry we're shooting to.

18 Q. So go on. I interrupted
19 you.

20 A. Yes. And then from there
21 I took a role as a construction coordinator and
22 then onward to an assistant superintendent,
23 superintendent, senior superintendent, did a
24 couple years as an estimator, coordinator;
25 went back to be a project manager, superintendent

1 on a project and then I went out and built -- I
2 was part of the 407 phase 2 project where I was
3 the deputy construction manager. And I went
4 beyond your timeline there, so I apologize.

5 Q. That's okay. When was
6 that?

7 A. That was 2015 I went out
8 to the 407 east area.

9 Q. I understand that you
10 were the senior project superintendent, is it,
11 from 2002 to 2011? Does that sound about right?

12 A. That sounds about right,
13 yes.

14 Q. When did your involvement
15 with the Red Hill Valley Parkway project begin?

16 A. I can't say the exact
17 year. I know it was -- it started in the
18 grading -- some of the earlier grading staging
19 projects that was in around the King Street area.
20 Timeline probably 2004-ish, I think.

21 Q. The grading tenders were
22 issued and awarded in 2004 and one in 2005. Does
23 that sound about right?

24 A. That does, yeah. I took
25 over for another superintendent that started, yes.

1 Q. So you didn't begin as
2 superintendent with that project; you took over
3 for someone else?

4 A. I took over, yes, it had
5 started.

6 Q. So that was your first
7 involvement though in the project with the
8 grading?

9 A. Yes, that's correct.

10 Q. Did you have -- take from
11 your timeframe, did you have any involvement with
12 the prior part of the overall Red Hill Valley
13 Parkway project being the Lincoln Alexander
14 Parkway or --

15 A. Yes.

16 Q. And from the time you got
17 involved on the Red Hill project did you also have
18 other projects on the go or were you entirely
19 dedicated to the Red Hill?

20 A. I was dedicated to the
21 Red Hill for the most part. I might have had some
22 lingering things when I started and then nearing
23 the completion I started to get some other
24 assignments as well.

25 Q. Could you describe your

1 general duties and responsibilities as the project
2 superintendent on the Red Hill?

3 A. Yeah. So I was
4 certainly -- I was charged with the safety of the
5 workers and the public, overall execution of the
6 project, logistics, you know, the finance areas of
7 the project and just day-to-day resourcing,
8 scheduling equipment and people to the project.

9 Q. For example, did you deal
10 with the subcontractors?

11 A. Absolutely, yeah,
12 certainly, all of the subcontractors and any
13 tradespeople that were required as well, yes.

14 Q. And what about the
15 supplies, quantities, things like that?

16 A. Yeah, and all the
17 materials that were -- I simplified that as
18 resources, but yeah, all the materials coming to
19 the job, anything active on that construction site
20 to execute the contract for the City of Hamilton
21 was my responsibility.

22 Q. And were you -- would you
23 generally be on site daily?

24 A. Yes.

25 Q. And did your -- I mean,

1 appreciating of course that the grading and paving
2 are different parts of the project, were your
3 fundamental duties similar during both those
4 phases?

5 A. Yes, they are.

6 Q. And who did you report
7 to?

8 A. It would have been Jake
9 Sudac.

10 Q. He was the district
11 manager; is that right?

12 A. Yes.

13 Q. And what was -- what
14 about Peter Gamble, what was your reporting
15 relationship with him?

16 A. A bit of a dotted line.
17 He was manager I think at that time of plants and
18 equipment, and as far as we would have regular
19 meetings where we schedule crews and equipment and
20 certainly what our needs were at the project,
21 i.e., asphalt, that type of thing, would all be
22 involved with Peter Gamble.

23 Q. Because he was involved
24 in the purchasing and decisions relating to the
25 materials to use?

1 A. Yeah, related to asphalt,
2 yes.

3 Q. And what was your
4 relationship in the hierarchy with Paul Janicas
5 who was the -- I mean, at the time of the paving
6 anyway he had become -- he was the senior quality
7 control manager for bituminous. So in the
8 paving -- leading up to paving and so forth, what
9 was your relationship with him? Was he peer or?

10 A. Yeah. So Paul basically,
11 he was part of the asphalt group. So when the
12 asphalt crew came on-site he would take the role
13 to work with them and the plant and the lab to
14 ensure mix properties, placement methods were
15 achieved according to the contract. And we kind
16 of -- we worked together throughout and certainly
17 he would be our on-site technical person for -- to
18 represent Dufferin.

19 Q. And then just in terms of
20 the hierarchy, was he a peer of yours?

21 A. Yeah, yeah, I would say
22 yes.

23 Q. You didn't report to him;
24 he didn't report to you?

25 A. No. That's right.

1 Q. And who directly reported
2 to you during the -- just talking about the
3 paving?

4 A. Yeah, so the construction
5 coordinators would have reported to me, the
6 foreman would have reported to me. We have
7 project administrators. I would be a -- you know,
8 the estimator coordinator in this case they worked
9 with me, more of a peer I would say as well.

10 Q. Who was the estimator
11 coordinator that you're speaking of?

12 A. For the paving project it
13 was Rick Triemstra.

14 Q. Right. And James
15 Wharrie, he was what?

16 A. Construction coordinator.

17 Q. And Brandon Dodds?

18 A. Construction coordinator.

19 Q. And sorry, I think you
20 mentioned the foreman, who was that?

21 A. There were several
22 foremen on the job. So depending on the
23 discipline, whether it be structures or grading or
24 sewers, that type of thing, so all the foremen,
25 the men and ladies out doing the work reported to

1 me.

2 Q. Right. And the foremen
3 for each crew, each paving crew, or?

4 A. Yeah, yeah, paving crews
5 as well, yes.

6 Q. And so did the paving
7 crews, did they -- they reported to a foreman who
8 in turn reported to you?

9 A. Well, the paving foreman,
10 he was responsible for his own crew, so he was
11 on-site with that crew daily. And it was kind
12 of -- we kind of operate -- not to silo (ph) or
13 (indiscernible), they kind of report to me as well
14 as they kind of report to Peter and the -- you
15 know, worked with the lab and what have you.

16 Q. And just in general to
17 the sort of paving side of things, you are on-site
18 day-to-day but at the same time you're working
19 with people that you've described. What sorts of
20 issues would you typically escalate up to your
21 superiors?

22 A. Certainly, yeah, if there
23 was issues on the site that I maybe wasn't able to
24 resolve timely that I felt were going to impact
25 the outcome or results of the project in any way,

1 they would get elevated. I would say we had a
2 very open, collaborative relationship with my
3 superiors and we talked about issues regularly,
4 and we had -- we did have tours of the project
5 from time to time where we would go through any
6 things that could be of concern.

7 Q. In terms of the other
8 entities and people outside of Dufferin on the
9 project, of course, just to name a few, we've got
10 the City of Hamilton, we've got Philips, the
11 contract administrator, Golder Associates, who are
12 doing quality assurance work at the time. So in
13 terms of your contact with the City of Hamilton,
14 and I appreciate the contract administrator was
15 there too, but were you Dufferin's primary point
16 of contact with the City's representative on site?

17 A. Yes, yeah, so Walt -- you
18 know, Philips being the CA, our communication was
19 direct back and forth. You know, Mark Oddi was
20 very active on the project and we had a good
21 collaborative approach, whether or not I might
22 bump into him out on the project we would maybe
23 discuss an issue or say good morning, and whatever
24 might be discussed would trickle back to the CA of
25 course to keep him in the loop with whatever that

1 conversation may have been, if it was of
2 importance.

3 Q. I think you said Walter,
4 that's Walter Maranzan at Philips?

5 A. That's correct.

6 Q. How often did you think
7 you interacted with Mr. Oddi, whether it be by in
8 person or by phone?

9 A. Typically it would be in
10 person and it would vary week to week, day to day
11 type thing. Sometimes I might see him a couple
12 times in the day passing through on the job. He
13 might be observing things and it could be a wave
14 or it could be stop for a 10, 15-minute chat type
15 of thing. I would say it was reasonably regular.
16 Couple times a week I might see him. And we
17 shared the same compound with Philips. Our
18 trailer lives there next to Philips, so if he was
19 going in there quite often we would see each other
20 in the parking lot as well.

21 Q. Sort of temporary
22 neighbours?

23 A. Yes, that's right. I've
24 had a lot of them over the years.

25 Q. In terms of the City,

1 what about Gary Moore? Is he someone that you had
2 any interactions with or some?

3 A. I would say very minimal.
4 More of a -- I didn't see Gary very often on the
5 project or had much interaction.

6 Q. Okay. So fair to say
7 from that that at least from your perspective he
8 was on site infrequently; is that right?

9 A. I didn't see him very
10 often but I can't say for -- it was a big, large
11 project.

12 Q. Right. I understand.
13 And so you have regular, often daily
14 communications with Mr. Maranzan; is that right?

15 A. Yeah, that would be
16 accurate.

17 Q. And similar with
18 Mr. Oddi? Or --

19 A. More Walter. Again, we
20 respect boundaries and that would be -- my go-to
21 person would be Philips.

22 Q. What about Golder? What
23 level of interaction, communication did you have
24 with Golder staff?

25 A. Next to zero. I didn't

1 have much interaction with Golder staff at all, or
2 Ludomir for that matter, with the exception of
3 some of the site meetings I would see Golders.

4 Q. And you -- from reviewing
5 the paving construction site meeting minutes it
6 appears that you attended every meeting from
7 July 2006 to the end of 2007. Does that sound
8 right?

9 A. Yes.

10 Q. And often Golder was
11 there but -- at those meetings, but outside of
12 those meetings I understand you're saying that
13 your contact with Golder was pretty minimal?

14 A. That's correct.

15 Q. Okay. And was that
16 Mr. Janicas, was that -- he was more than the
17 Dufferin contact with Golder; is that right?

18 A. Yes, yeah, that would be
19 right.

20 Q. What did you understand
21 Golder's role to be on the project?

22 A. More of a quality
23 assurance role for -- related to the asphalt
24 portion of the project.

25 Q. And was this -- was the

1 Red Hill, was this your first project for the City
2 of Hamilton?

3 A. Yes.

4 Q. I take it you've been
5 involved with, by that point, a number of MTO
6 projects; is that fair?

7 A. That's right, yes.

8 Q. Can you just describe
9 generally how this project differed from -- in
10 your experience from an MTO project?

11 A. I would say the methods
12 of communication would be one thing that were a
13 little more defined. We had instruction
14 notices and --

15 Q. Sorry, more defined in
16 which --

17 A. In the MTO work that I
18 would say at that time it was probably a little
19 more developed. Certainly there wasn't as much --
20 the owners, the client, City of Hamilton in this
21 time, maybe the MTO wasn't as active on some of
22 their projects. It was the CA was pretty much 100
23 percent the person communicating with.

24 As far as the payments and
25 things like that, some of those processes were

1 different as well. At that time the ministry had
2 a little -- some of the quality requirements were
3 different and how we managed the quality program.
4 Not to say there was anything wrong with what we
5 were doing, it was just different and a little
6 more regimented with the processes.

7 Q. More regimented with the
8 MTO?

9 A. With the MTO again, yes,
10 sorry.

11 Q. So it is more regimented.
12 What was your then experience with this project,
13 with the Red Hill project? Am I correct in
14 inferring what you are saying that the lines of
15 communication weren't perhaps quite so clear, is
16 that what you're saying?

17 A. Well, they were clear,
18 it's just that the methods and the processes that
19 we underwent, right, and again it was -- my first
20 City of Hamilton project so it was new to me and I
21 guess I was -- you get used to dealing with a
22 client and a customer, and the City of Hamilton
23 was very active in the project as we know the
24 importance and sensitivity of the Red Hill Valley
25 project, so they certainly had a vested interest

1 and were very much part of what was happening on a
2 regular basis.

3 Q. Did that difference, did
4 that present any problems or challenges for you or
5 is it just that it was different?

6 A. No, just different, just
7 different structure that I wasn't accustomed to.

8 Q. And I had asked you about
9 the site meetings which occurred throughout the
10 project. What typically was your role at those
11 meetings?

12 A. Certainly I was
13 representing Dufferin, and if any issues from
14 either side were presented and discussed and
15 depending on -- depending on the nature of the
16 issues could involve subcontractors, material
17 suppliers or other technical representatives that
18 I couldn't speak to, I was kind of the middleman
19 for those sorts of conversations.

20 Q. And others attended at
21 the meetings as well from time to time. Were
22 there regular people that were always to attend at
23 those meetings or just when particular issues that
24 pertained to them were being discussed?

25 A. I would say me and my

1 direct team, meaning the construction
2 coordinators, were the regular attendees at those
3 meetings, and then depending on the topics at hand
4 we would bring in other representatives as needed.
5 The estimator coordinator would attend certainly
6 when he was available as well from our side.

7 Q. So again the coordinators
8 being Mr. Wharrie and Mr. Dodds, right?

9 A. That's right, yes.

10 Q. Mr. Triemstra being the
11 estimator?

12 A. That's correct.

13 Q. And Mr. Janicas from time
14 to time?

15 A. Yeah. Again, when we had
16 those technical discussions on the asphalt side I
17 don't have those expertise to speak to that so it
18 was just easier that Paul attend that -- attend at
19 those times.

20 Q. So those are issues
21 pertaining to mixed design, issues about
22 aggregates, those sorts of things?

23 A. Yeah, any questions that
24 might arise from a testing, you know, procedures,
25 frequency, those types of things, they could all

1 get flushed out there sitting together in a
2 collaborative effort.

3 Q. And as a matter of
4 general practice, if you recall, if matters were
5 discussed at a site meeting and agreement was made
6 and so forth and that's recorded in the minutes,
7 was it typical to follow up with the confirmation
8 of those things or just to rely on the minutes?
9 Do you recall?

10 A. It could be a bit of both
11 depending on the clarity of the minutes.
12 Sometimes minutes don't accurately reflect the
13 discussion or the agreement, so depending on the
14 nature of it it could be reconfirmed in another
15 piece of correspondence.

16 Q. And do you recall were
17 minutes -- I know they were circulated -- were
18 they typically corrected during the process, if
19 there was -- if someone identified an issue, do
20 you recall that?

21 A. I would say from time to
22 time they may be corrected. Not too often but
23 from time to time something could be clarified.

24 Q. All right. Now, the Red
25 Hill project as you know was perpetual pavement

1 structure that had a rich bottom mix layer. Do
2 you recall that?

3 A. Yes.

4 Q. Prior to the Red Hill is
5 that something that you had worked with, a rich
6 bottom mix and a perpetual pavement?

7 A. No.

8 Q. That was your first time?

9 A. Yes.

10 Q. What about Dufferin, do
11 you recall if Dufferin had done that before?

12 A. I don't believe they had
13 done a perpetual pavement -- or rich bottom mix
14 before no.

15 Q. The surface course for
16 the main line was stone mastic asphalt, SMA. Had
17 you ever been involved in SMA placement before?

18 A. No.

19 Q. And do you know was this
20 Dufferin's first SMA placement? Do you know that?

21 A. I believe so. At the
22 timeline it was starting to become more popular so
23 things kind of meshed together, and I know during
24 there was maybe some other active projects going
25 on but I don't recall we had much experience with

1 the SMA at that time.

2 Q. Just to be clear, to your
3 knowledge it was Dufferin's first project as far
4 as you know?

5 A. Yes, yes.

6 Q. The aggregates used for
7 the SMA and Superpave 12.5 FC2 surface courses,
8 those were sourced from the Demix Aggregates
9 Varennes quarry in Quebec. Was that source of
10 aggregates, was that something that you have
11 worked with before?

12 A. No.

13 Q. Do you recall if there
14 was any advance training or education provided to
15 you or other staff with respect to rich bottom mix
16 or SMA with those products prior to the paving
17 taking place?

18 A. Not to me. I can't speak
19 to the -- maybe some information or training or
20 discussions with the crews or the plants producing
21 the mix, that's something I don't get too involved
22 with. Maybe an observer from time to time on
23 things like that, but not part of the training per
24 se.

25 Q. I'm just talking about

1 the -- for the placement, not the mix and so forth
2 itself. Your end of things.

3 A. Yeah, again the
4 placement, no, I wouldn't get trained on that.
5 Our crews, through the plants and equipment they
6 get their training with the equipment and how to
7 best place and the mixes they are using.

8 Q. Are you aware of any
9 specific training that they received with respect
10 to the placement --

11 A. I'm not aware of it, no,
12 at that time.

13 Q. All right. From what you
14 have said and what others have said, am I correct
15 that you didn't have any role in selection of the
16 components of the mixes, and specifically the
17 aggregates? That wasn't your end of things,
18 correct?

19 A. Correct.

20 Q. Am I correct that you
21 were not part of the, from what you've said, the
22 mix design approval process, that wasn't your end
23 of things?

24 A. No.

25 Q. We know that Trow did the

1 actual mix designs and we've heard that -- I think
2 you mentioned that Mr. Janicas was involved in the
3 mix design approval process for Dufferin. Does
4 that accord with your recollection?

5 A. Yes.

6 Q. There's a lot of
7 correspondence between Dufferin and Golder. And
8 it begins more with Philips, but then at Dufferin
9 and Golder about -- and it's from late March
10 through July 2007 -- about -- back and forth about
11 pertaining to the selection and approval of the
12 aggregate, mix designs, test results, and so
13 forth.

14 And on some of this, not all
15 of it, but on some of this you're copied, and
16 you've described your -- that you weren't a
17 decision maker on the issues that we've discussed,
18 on those issues, so why are you being included in
19 those sorts of communications?

20 A. Again, it's just that
21 they keep informed of the discussions. It
22 certainly involves a project that I have a lot of
23 responsibility for -- the responsibility for, so
24 the potential for impact and just knowledge and
25 having some sort of I'll say constructive

1 conversation about something, I'm kept in the loop
2 with what's being -- information being transferred
3 back and forth.

4 Q. I mean, you're the one,
5 as I understand it, who is doing the staging and
6 organizing of the work site, right?

7 A. That's right.

8 Q. And so if I understand it
9 correctly, you need to know the status of things
10 so that you can look forward and plan forward for
11 the actual asphalt placements; is that fair?

12 A. I would agree with that,
13 yes.

14 Q. If we could go to
15 overview document 3, image 43. Your counsel has
16 probably discussed this with you, but we've got an
17 overview document that sets out a chronology of
18 events and documents and so forth, and most of the
19 documents are -- that I'll take you to are --
20 though not all of them are summarized in this
21 document. And if I take you to a document I'll
22 let you know if it's -- if the entire
23 communication is put there, but -- but if you
24 actually want to go see the underlying document
25 just let me know.

1 So the first one here is at
2 paragraph 85, and there's a letter from you to
3 Marco Oddi of the City, and if you could expand
4 that for us, please. And as well, if you have
5 trouble reading something and I haven't asked the
6 registrar to expand it, let me know and we will do
7 that.

8 A. Thank you.

9 Q. May 17th and this is --
10 you are writing to Mr. Oddi about a warranty
11 asphalt on part A of the City of Hamilton paving
12 contract. And you write:

13 "Marco, as stated previously,
14 Dufferin Construction company,
15 DCC, cannot warranty any of
16 the asphalt placed which was
17 constructed on material placed
18 by others. This is due to
19 unknown quality of granular
20 placed prior to DCC commencing
21 work on this contract. The
22 location which will not be the
23 responsibility of DCC can
24 generally be defined as the
25 area just south of Greenhill

1 structure to the south limits
2 of the contract. Should you
3 require any additional
4 information regarding this
5 issue please do not hesitate
6 to contact the undersigned."

7 (As read)

8 Do you recall this letter and
9 this issue?

10 A. Yes, I do.

11 Q. Could you describe what
12 gave rise to this?

13 A. Yeah. And it's quite
14 common, you know, if we're doing work on top of
15 other people's work we would be concerned about
16 the quality. We don't have access to the records
17 of compaction and the actual quality of the
18 materials being used.

19 So there was a couple of
20 settlements that were identified throughout this
21 portion indicated in the letter and really it was
22 just defining if a bump showed up at those
23 structures or where those sewer crossings were,
24 Dufferin was not going to be responsible for it.

25 Q. And by the settlements

1 you mean what?

2 A. So basically if the road
3 becomes depressed, right, so basically the
4 material potentially -- I don't know, if it's not
5 packed properly it may settle and you'll get a
6 bump in the road. And then we obviously have our
7 warranty that we give on our work, and should that
8 happen sometimes repairs are required and just
9 mitigating costs if that had've shown up.

10 Q. You're talking about
11 settlement in the previously done work, in the
12 grading contract?

13 A. Yeah, underneath the
14 granulars and asphalt, yes.

15 Q. And that's -- Aecon did
16 the south portion which you described there as
17 part A of the contract; is that right? They did
18 the grading contract for that?

19 A. It was another
20 contractor, yes. I can't say that word.

21 Q. Competition. But the
22 rest of the -- north from there were Dufferin
23 grading contracts and that's what you had worked
24 on, right?

25 A. That's right.

1 Q. Given the description of
2 the lines of communication that you described, do
3 you recall why you sent this letter to Mr. Oddi
4 specifically rather than Philips?

5 A. I know -- I know it was a
6 conversation that likely precipitated from being
7 on site like at that area, and I believe -- and it
8 what was kind of -- there was -- I would say that
9 because it was outside of the work area of the
10 paving contract I sent it to Marco, as he might
11 have requested it.

12 Q. You indicate as stated
13 previously, so you think you probably had a
14 conversation with him?

15 A. Yes.

16 Q. And you said that it's
17 quite common to this, so this is something that
18 you've done on other projects where Dufferin
19 hasn't done the work?

20 A. Yes. It doesn't happen
21 very often. Most of the projects we start, we
22 finish ourselves, but there may be other
23 circumstances that are beyond our control where a
24 similar letter would go out that we can't warranty
25 it. If it was maybe that we didn't feel was

1 addressed adequately we might give a similar
2 letter.

3 Q. Do you recall if there
4 was any followup or further discussion of this
5 topic between you and Mr. Oddi about this?

6 A. I don't recall. I know
7 repairs were done and I can't -- I don't recall
8 the details of that.

9 Q. Sorry, repairs done on
10 what?

11 A. The subbase. Obviously
12 the settlement had to be fixed prior to paving so
13 there was some work done there.

14 Q. If we could go to
15 image -- take that down please. Thank you. Go to
16 image 48. 48 and 49, please. It's paragraph 97
17 that straddles the two pages there.

18 This is on June 22nd, 2007,
19 Mr. Janicas e-mailed Dr. Uzarowski the SMA mix
20 design for the main line surface course and sets
21 out the -- Mr. Janicas' e-mail. And this is one
22 that a number of people were copied on, including
23 you. And so again is this an example of what you
24 described you're being copied on it for
25 information so that you know the status at his end

1 of things? Is that consistent with --

2 A. Yes.

3 Q. And so this is about

4 40 days before the paving actually started on the

5 SMA on August 1st. In your experience is this in

6 the normal range for a mix design to be submitted?

7 A. Yeah, normal or on the

8 high end at times, yes.

9 Q. Sometimes it's later than

10 this?

11 A. Sometimes it would be a

12 shorter period, yes.

13 Q. And in your experience is

14 it usual or unusual to have again back and forth

15 with the -- between Dufferin or its

16 representatives and the quality assurance (skipped

17 audio) about mix designs?

18 A. There's sometimes is

19 questions. Generally not as much as what was on

20 this project.

21 Q. So not uncommon for there

22 to be questions asked but uncommon for this level,

23 fair?

24 A. Yes, yeah.

25 Q. At this point when you

1 are -- you know, mix design has been submitted,
2 you have plans about when the paving is going to
3 start, for instance. Is that something at this
4 point you are watching to -- the progress of so
5 that you can do your staging and prepare for the
6 paving process?

7 A. Yeah, very much so, yes.

8 Q. I'm going to show you a
9 couple of e-mails to give some context and then
10 ask you some questions about it. The first thing
11 is on the next page -- so if you put 49 and pull
12 up 50 as well, Registrar.

13 Just so we have the timing
14 here, paragraph 100 refers to the July 10th site
15 meeting and the minutes from that meeting. And
16 you'll see under "Asphalt issues" there's
17 outstanding mix design approvals and discussion
18 about that.

19 So from what you've described,
20 am I correct that you would have been aware of
21 these discussions but this wouldn't be the kind of
22 thing that you are leading, is that right, at the
23 meeting?

24 A. That's correct.

25 Q. But then there's the

1 reference to SMA test strip from what I
2 just (skipped audio). - is that your end of
3 things?

4 A. To a certain degree
5 setting up the logistics and the area to make sure
6 it was prepared, yeah, that would be my
7 involvement.

8 Q. Okay. And at this point
9 in time what's your thought process about the
10 timing that's involved with the mix designs? It
11 does indicate that after a quick glance they
12 appear to be satisfactory and will provide written
13 confirmation and there is a test strip coming up.
14 What are you thinking about the process at this
15 time, if you recall?

16 A. Yeah, I'm feeling fair --
17 I'm feeling confident that we're on the right
18 track and we're ready to go.

19 Q. There's a reference in
20 those minutes to -- in the top of second page,
21 about the trial batch of SMA for field labs to
22 work out testing correlation differences and that
23 Golder indicated the vibratory roller currently
24 being used by Dufferin is likely too heavy for
25 SP19 and SMA pavement layers.

1 Do you recall this issue being
2 raised?

3 A. Not really, no.

4 Q. Nonetheless, can you
5 describe what the vibratory roller is. We
6 understand that Dufferin's rollers all have static
7 mode and vibration mode; is that right?

8 A. That's correct, yes.

9 Q. And then what's the issue
10 about a roller being too heavy for SP19 and SMA?

11 A. Again, I would probably
12 have to defer to Golders to answer that. I guess
13 you could do -- you could do damage if you
14 overcompact things, so certainly maybe that was a
15 concern of Golder's.

16 Q. But as you said, you
17 don't specifically recall it being raised at the
18 time?

19 A. I don't recall that
20 concern, no.

21 Q. If we could go to
22 image -- actually no, we're there. Image 50 and
23 51. I'm going to show you a couple of e-mails to
24 give you some context and then I'll ask you some
25 questions.

1 So the first one here is
2 July 17th, so a week after the site meeting that
3 we just discussed. This is paragraph 101.

4 Mr. Janicas e-mailed
5 Dr. Uzarowski and Mr. Oddi about ignition oven
6 test results, and if you just take a moment to
7 read that e-mail. You were not copied on this. I
8 just want to give you context of what's going
9 forward.

10 A. (Witness reviews
11 document).

12 Q. Just let me know when
13 you're done.

14 A. I'm done.

15 Q. Great. You can take that
16 down, Registrar. And then at paragraph 102 at the
17 top of the next page there, Mr. Janicas wrote
18 again to Dr. Uzarowski, providing physical test
19 results and discussing the results of the testing.
20 This one you were copied on I can tell you.

21 So if you could just pull that
22 up please, Registrar. Let me know when you've
23 reviewed that.

24 A. (Witness reviews
25 document). Yes.

1 Q. Specifically the last
2 couple of paragraphs talking about the testing,
3 first of all. From what you describe, and tell me
4 if I'm wrong, you're not -- you are interested, I
5 take it, in the results and about being able to
6 move forward or not being able to move forward as
7 opposed to the specific test results; is that
8 fair?

9 A. I would say it's fair
10 that I want to confirm that they meet the contract
11 requirements and we are moving forward to schedule
12 and complete our obligations on the contract, yes.

13 Q. I wasn't meaning to
14 suggest that you -- that you want to meet the
15 contractual requirements, but it's Mr. Janicas
16 that's dealing with the specifics of the test
17 results; is that fair?

18 A. That's fair, yeah.

19 Q. So the last two
20 paragraphs he asks are the SMA and 12.5 FC2 mixes
21 approved for production. That's the first thing.
22 And then he says:

23 "If, after reviewing these
24 results there is still a
25 question of the suitability of

1 the aggregates please advise
2 Dufferin immediately and a
3 meeting with all the
4 stakeholders involved will be
5 convened at the earliest
6 possible opportunity." (As
7 read)

8 So do you know or do you
9 recall who was questioning the suitability at that
10 point of the aggregates?

11 A. I don't recall, but I
12 remember the ignition oven because it was the
13 first time I heard of it. So I can only say that
14 it was Golders who was looking at that due to the
15 correspondence we just read in the previous
16 exhibit there.

17 Q. Is that because you were
18 familiar with -- at least in some respect with the
19 other method of extracting the aggregates using
20 solvent? Is that something that you were familiar
21 with but not --

22 A. I'll be honest, I learned
23 probably through this process about that, that's a
24 process we used as well so it was a bit of an
25 education for me.

1 Q. Okay. And so now we're
2 at July 18th. How are you perceiving this? What
3 are your thoughts at this point about the paving
4 schedule given that these questions are being
5 raised about the mix designs and the aggregates?

6 A. Yeah. I got to think
7 that we're getting concerned. As we said, we met
8 the contract requirements that are specified and
9 we're not getting confirmation that there's
10 alignment with our submissions.

11 Q. At this point are you
12 concerned about whether you're going to be able to
13 start on the SMA paving when you were intending
14 to? Is that something at this point that you are
15 concerned about?

16 A. Certainly it's got to be
17 on my mind I'm sure, yes.

18 Q. If there was -- if the
19 mix designs were not approved at this point do you
20 have any insight into what sort of delays that
21 would occasion if you had to go back and redo
22 them?

23 A. Can you repeat the
24 question?

25 Q. If the mix designs aren't

1 approved at this stage, given how close you are to
2 the intended start of paving, do you have any
3 insight as to what sort of delay that would
4 occasion?

5 A. Not completely, and I
6 wouldn't know that exact delay to reproduce a mix
7 design. Again, from reading this we've met the --
8 sounds like all of our results were within
9 acceptance of the contract so we would probably
10 dig into -- again, likely have what the concerns
11 were. And you can see we were trying to get
12 everybody involved to make sure we could try and
13 resolve it and not compromise the project. But,
14 you know, certainly we were all working together
15 to meet and get completed.

16 Q. Do you recall any
17 discussion -- I'm going to take you to some
18 correspondence in it, but do you recall any
19 discussions that you had with anyone about the mix
20 design approval and moving forward at that point
21 in time?

22 A. I do feel -- you know, if
23 I had had the opportunity to speak to Walter or
24 Marco or made an opportunity it would have been a
25 topic of discussion that, you know, again we're

1 concerned. We've supplied all the information
2 according to the contract so -- and there was --
3 if you read their correspondence you can see that
4 there was -- you know, people were on board and we
5 still don't have that approval.

6 Q. All right. If we could
7 go to Duf, D-U-F, 1965.01. So this is an e-mail
8 at the top from you on July 23, 2007, to Philips
9 and copying Mr. Oddi, Mr. Wharrie and
10 Mr. Triemstra, subject SMA aggregate concerns.
11 And you are -- we will look at the e-mail in a
12 sec, but you are forwarding an e-mail below from
13 Paul Janicas to you and copying Mr. Gamble,
14 subject RHV mixed aggregates dated July 20th.

15 And then if we could expand
16 just the text for the top e-mail:

17 "Walter, please see attached
18 correspondence regarding the
19 concerns of the aggregate
20 which are to be used in the
21 FC2 and SMA surface course
22 mixes. As you are aware, we
23 still have the test trip for
24 the SMA scheduled for this
25 upcoming Wednesday and trust

1 that the documents below will
2 satisfy the concerns verbally
3 identified. Should there
4 still be concerns on this
5 matter after reviewing this
6 information please call me at
7 your earliest convenience so
8 we can arrange a meeting to
9 resolve this matter." (As
10 read)

11 And the -- if you take that
12 down, please.

13 The e-mail you are forwarding,
14 the attachments that are indicated there as PDF
15 images have not been located, but you can see --
16 if you can expand those, thank you. There's PDF
17 images on the e-mail for skid resistance report,
18 mix design examples, Red Hill Valley aggregate
19 physicals comments, Trow 20th July, 2007, and
20 Demix Aggregates July 20 Dufferin cover letter.

21 Do you have any recollection
22 of what those attached documents were?

23 A. No, not exactly.

24 Q. Would you have reviewed
25 them before you forwarded them?

1 A. Likely not in any great
2 detail, no.

3 Q. And the first one is a --
4 PDF is labelled "Skid Resistance Report." Do you
5 recall what that was, aside from the obvious
6 wording?

7 A. Yeah, all I can say is it
8 was, yeah, the obvious wording. I don't recall,
9 no.

10 Q. Before I ask you just
11 some more questions about it, I want to look at
12 another document, overview document 3, image 53.
13 It's at the top image 53 there. It's the same
14 day, later the same day. Mr. Janicas e-mailed
15 Philips and Mr. Oddi about the subject there, as
16 you can see that. It's prior uses of the Demix
17 Aggregates by the Quebec Ministry of
18 Transportation. You were copied on that e-mail.

19 Do you recall, was there a
20 request for the information provided in those two
21 e-mails, yours on the 23rd and Mr. Janicas' on the
22 23rd? Or do you know what prompted this?

23 A. Again, I would say that
24 again there would have been discussion on site
25 potentially looking for some more history or any

1 more results we may have about using the product
2 and this is what we were able to come up with with
3 our division out of Quebec.

4 Q. Do you have any specific
5 recollection of who you were discussing this with?

6 A. Well, I would have only
7 been discussing it with Marco and Walter, Philips.

8 Q. All right. And in your
9 e-mail -- you can take that down, please. If you
10 can pull up 52 so it's there as well.

11 So you will see in the middle
12 of the image on the left, image 52, is just your
13 e-mail that we already were talking about. You
14 wrote -- in your e-mail three times you refer to
15 concern or concerns. In the first paragraph it's
16 attached correspondence regarding the concerns of
17 the aggregate.

18 In the second paragraph that
19 you trust the documents below will satisfy the
20 concerns verbally indicated. And then should
21 there still be concerns on this matter after you
22 read this information please call me.

23 So do you recall what those
24 concerns were?

25 A. I can only -- you know, I

1 would believe the history of the material and
2 certainly perhaps there was, you know, it being a
3 new material to Ontario that people weren't
4 familiar with they were just looking for -- that
5 that was their concern and they were looking for
6 more history on it.

7 Q. Okay. And am I correct
8 that it would have been intended that the
9 materials that were -- that you forwarded from
10 Mr. Janicas were intended to address those
11 concerns, whatever they were?

12 A. Yes.

13 Q. Do you recall if someone
14 had expressed a concern about skid resistance
15 specifically?

16 A. No.

17 Q. You don't recall one way
18 or the other or no one raised it with you?

19 A. I don't recall it, no.

20 Q. Sorry, I just want to
21 deal with your sort of level of certainty. There
22 can be a distinction between I just don't remember
23 one way or another, or no, I definitely (speaker
24 overlap) -- whether you know which of those two it
25 is.

1 A. I don't remember any
2 concerns of friction specifically.

3 Q. Okay. And do you know
4 why both of these e-mails was sent to Mr. Oddi and
5 to Philips, Mr. Maranzan, rather than to
6 Dr. Uzarowski at Golder?

7 A. Yeah, again just the
8 reporting, you know, my lines of communication
9 again are with Philips, and certainly Marco is
10 very much in tune with what's happening at this
11 time too, so that would be his inclusion for that.

12 Q. Fair enough. But
13 Mr. Janicas, he also sent it to Philips and
14 Mr. Oddi and we know that he frequently
15 communicated directly with them on --

16 A. Yeah, again I believe
17 that this would have been the same conversation.
18 And if you can imagine, we didn't have smart
19 phones at that time and I spent my days out on
20 site, so I'm assuming there could have been a
21 conversation where if Paul is at his laptop I may
22 have asked him just to forward it directly and
23 copy me, which would be quite common for me to do
24 at that time.

25 Q. Sorry, what would have

1 been common for you to do?

2 A. Have somebody send an
3 e-mail for me or a communication if I was out on
4 site dealing with a matter or unavailable to
5 e-mail.

6 Q. Okay. And do I
7 understand you correctly that you don't have a
8 specific recollection of those discussions or what
9 happened, but just based on your practices and the
10 lines of communication that you described that's
11 what you think is likely the case?

12 A. Yes, that's what I
13 believe would have been my reaction to the
14 information I'm seeing, yes.

15 Q. Given the nature of the
16 information that you were sending, is that
17 something you would have expected Philips or
18 Mr. Oddi to bring to Golder's attention?

19 A. Yeah, I would say they
20 probably would be having conversations regarding
21 the information we were providing.

22 Q. And did you have any
23 knowledge at the time of whether or not it was
24 provided to Golder?

25 A. No, I wouldn't. That

1 would be up to Philips and Marco.

2 Q. Moving towards the test
3 strip and the paving itself of the main line, can
4 you just describe a bit about Dufferin's typical
5 surface layer paving practices back at that time?

6 A. Yeah.

7 Q. Configuration of the
8 train and -- types of rollers, that sort of thing?

9 A. Yeah. So depending --
10 well, this job called for the surface paving to be
11 done in echelon so we would have started with
12 the -- if I work from the front to the back we
13 would have our transportation vehicle supplying
14 the asphalt, dumping into the shuttle buggy.
15 There would be two pavers in line paving to keep
16 that centre line joint hot. And then we would
17 have our roller train in behind, and that could be
18 a variant in a number of rollers. A project like
19 this could be four to five rollers finishing
20 depending on temperatures and conditions we were
21 exposed to. But, yeah, and we would have traffic
22 closed off in behind there so nobody was driving
23 on the hot mat.

24 Q. Like, no construction?

25 A. That's right.

1 Construction and equipment and what have you.
2 Bystanders. You would be surprised.

3 Q. The shuttle buggy is
4 what?

5 A. It's a material transfer
6 vehicle, so it basically takes the asphalt from
7 the truck, you know, continues to mix it up
8 through, right, and then it can by conveyor load
9 it into the two pavers as needed as they place the
10 mix off the back of the screed.

11 Q. The paver itself are the
12 machines that place the asphalt?

13 A. That's correct.

14 Q. And what about the types
15 of rollers? What kind rollers were you typically
16 using?

17 A. Yeah, so there would be
18 steel drum rollers and then you would have rubber
19 tire rollers.

20 Q. And rubber tire rollers,
21 is that something that you use for the SMA or no?

22 A. Yeah. It's again not
23 something I typically get too involved with with
24 SMA and I haven't done a lot of it so I can't
25 answer that.

1 Q. You mean you can't recall
2 whether you did or not?

3 A. Yeah, I don't recall, no.

4 Q. Okay. And what about the
5 use of the vibratory setting on the rollers, is
6 that -- apart from this project, is that typically
7 Dufferin's project to use the vibration setting
8 when it's rolling?

9 A. Not always. Again,
10 depending on the mix, the conditions, the -- what
11 we are paving. So that's something that's worked
12 out with the -- our technical representative
13 on-site, in this case Paul, the paving foreman,
14 and the roller operators; they come up with the
15 sequence and the pattern for rolling that gives
16 the desired results.

17 Q. Is the intention with
18 using the vibration setting is to achieve greater
19 compaction?

20 A. Yeah, yeah, they would
21 manage the setting to -- again to get better or --
22 better results for overall compaction of the mat
23 that's being placed.

24 Q. And are you familiar with
25 issues about if you -- again, if rollers are too

1 heavy or potentially with SMA, if vibration is
2 used, that it can potentially result in cracking
3 of aggregates? Are those issues that you're
4 familiar with?

5 A. Not really, no.

6 Q. Not your end of things?

7 A. No.

8 Q. If we could go to
9 image 53. I guess we're there. 53 and 54,
10 please.

11 So we know that Dufferin
12 placed the test strip for the SMA on July 25th,
13 2007, and I understand you were present for the
14 test strip; is that correct?

15 A. Not the SMA, no.

16 Q. Not the SMA?

17 A. No.

18 Q. What ones were you
19 present -- there was an RBM test strip?

20 A. Yes. I was -- I was
21 there the day we did the RBM test strip, yes.

22 Q. Okay. But you were not
23 there for the SMA test strip?

24 A. I don't recall being
25 there for the SMA test strip, no.

1 Q. So you do not know where
2 the test strip was placed; is that correct?

3 A. I know that's been a
4 topic reviewed and I would have known -- you know,
5 again my memory tells me I know what happens on my
6 project so I would know the location. Again I
7 recall something different I think than others,
8 but I do recall the ramp you were looking for.

9 Q. Okay. So I'm going to --
10 that's fine. I'm going to ask the registrar to
11 pull up RHV93 -- sorry, 930, I guess. So this has
12 been made an exhibit. I'm not sure which one off
13 the top of my head. It might be Exhibit 17. I'll
14 have to check that.

15 Dr. Uzarowski identified the
16 approximate location of the test strip at the Mud
17 Street interchange in red on that document. Does
18 that accord with your recollection or not?

19 A. No, I don't remember it
20 there, no.

21 Q. Where --

22 A. Again, I wasn't present
23 for that. I remember it being pretty much kitty
24 corner to that, so up near the subdivision on the
25 other side is where I recall it. I certainly

1 recall it being discussed and that would be the
2 east to -- east to north ramp I guess.

3 Q. Okay. And if we could --
4 that's Exhibit 22, just for the record. RHV830.

5 Okay. And if we could pull up
6 RHV929. Is that the ramp that's coloured in
7 yellow there? Is that overall the ramp that you
8 were just referring to?

9 A. Yes.

10 Q. And you said you recalled
11 discussions about it but you weren't there for the
12 actual placement; is that right?

13 A. That's right.

14 Q. So I appreciate that
15 that's your recollection, but can you state that
16 Dr. Uzarowski is incorrect in his recollection or
17 no?

18 A. I can't state that.
19 That's what I remember. It was a long time ago.
20 That's what I recall, is that we wanted it on that
21 ramp. It was a little longer. As you can see,
22 the red mark you've seen on the previous exhibit
23 was short, and we were looking to have, if I
24 recall, a little longer test strip to make sure
25 that we could get as much time to make the

1 adjustments to the mix. So we were looking for a
2 bigger test area.

3 Q. If we could make that the
4 next exhibit, please. That's RHV929. I think
5 that's 41.

6 THE REGISTRAR: Noted,
7 counsel. Exhibit 41.

8 EXHIBIT NO. 41: Photo of SMA
9 Test Strip Placement (July 25, 2007), RHV929

10 BY MR. LEWIS:

11 Q. If you could take that
12 down, please.

13 Was it -- you weren't present
14 for the testing of the -- for the SMA test strip.
15 I would have thought that that was something that
16 would be important for you to be at given that
17 there was going to be -- it's in the lead up to
18 the SMA main line paving and that you are
19 ultimately the site supervisor. Do you know why
20 you didn't attend?

21 A. Again, I don't recall,
22 and I don't disagree with what you're saying. I
23 do know it was around my birthday so maybe I had a
24 day off. How dare I, but I may have had a day
25 off. I'm not sure.

1 Q. Do you have any knowledge
2 of whether the vibration setting was used on the
3 rollers for part or all of the test strip
4 placement?

5 A. No, I don't recall that
6 knowledge.

7 Q. Are test strips -- I
8 mean, we know that there were two on this project.
9 Are test strips something that is common in your
10 experience?

11 A. No.

12 Q. How often have you been
13 involved in them, do you recall?

14 A. That might be one of the
15 only two times I've done test strips, to be
16 honest.

17 Q. So if it's an uncommon
18 event to have test strips, and as you know it was
19 a contractual requirement here to do test strips
20 for the RBM and the SMA, did you see those as
21 important steps in the construction in the paving?

22 A. I did, yes. And, you
23 know, I'll be honest, with it being the perpetual
24 asphalt and the rich bottom mix I was more
25 concerned about that because that's something that

1 there was no knowledge of in Ontario at the time
2 to my knowledge, and I was quite curious on how
3 that mix was going to go and how we were going to
4 manage it further down on the main line.

5 So I was very much interested
6 in that. The SMA and the technical expertise of
7 Dufferin and placing and knowledge of the
8 industry, I felt confident in the SMA more so than
9 the RBM.

10 Q. Okay. But as you
11 indicated though, that was still -- it was your
12 first involvement in an SMA placement and to your
13 knowledge it was Dufferin's first --

14 A. Yeah, in my business I
15 have to trust the people that I work with and I
16 trust my technical support.

17 Q. When there was a meeting
18 on-site on July 27th, so a couple of days later,
19 to inspect the test strip, and Dr. Uzarowski has
20 some notes, if we could go to image 54 and OD3.
21 That's in paragraph 109. This is Dr. Uzarowski's
22 notes in the smaller print. He indicates that
23 meeting with Marco Oddi, James DCC and Andro and
24 LU. Do you recall if you were at that meeting or
25 no?

1 A. I don't recall, no.

2 Q. You think you weren't at
3 the meeting?

4 A. I don't believe so. I
5 don't remember.

6 Q. At that meeting we've
7 heard that Dr. Uzarowski indicated that there were
8 issues with the test strip, and as you can see
9 there, he indicates test strip is rejectable and
10 he talks about the test results that -- leading to
11 that. And it refers to James DCC. Is that
12 James Wharrie? Is any other James that would have
13 been?

14 A. I'm assuming it's James
15 Wharrie. I don't remember any other James at that
16 time.

17 Q. And do you recall if the
18 rejection or rejectableness of the test strip or
19 that the test strip has failed, could that -- he
20 says at the top of his note that the test strip
21 has failed, do you recall that being raised with
22 you by Mr. Wharrie or anybody else? There's later
23 correspondence, but do you recall a discussion
24 about this or?

25 A. I don't recall, no. I

1 don't remember.

2 Q. You just don't remember
3 one way or the other?

4 A. Yep.

5 Q. You could take that down,
6 please. The next image, 55. Paragraph 111.

7 So four days later, on
8 July 31st, 2007, Dr. Uzarowski e-mailed
9 Mr. Janicas, Mr. Oddi and Philips. And it's not
10 noted there but you are actually copied on that
11 e-mail. And Dr. Uzarowski refers to issues but --
12 with the SMA test strip. Could you please call
13 that up.

14 A. Okay.

15 Q. Dr. Uzarowski concludes
16 by saying:

17 "The test strip is not
18 acceptable. We recommended
19 that a new test strip be
20 completed. We understand that
21 Dufferin Construction intends
22 to place the SMA mix on the
23 main line tomorrow.

24 Dufferin Construction should
25 be aware that the test strip

1 has not been approved and the
2 paving will be at their entire
3 risk." (As read)

4 Do you recall any discussions
5 leading up to this e-mail, any communications to
6 Golder or the City or Philips about Dufferin's
7 intention to proceed?

8 A. I don't recall any direct
9 communication about this. Again, going from my
10 common practice is I got to think we would be
11 trying to get some insight onto what the City's
12 and Philips' position was on this because
13 ultimately that's where direction is intended, you
14 know, that comes to us would come from the CA, or
15 the City.

16 Q. Right. So that's who you
17 think you would have spoken to or had -- whatever
18 communications with about --

19 A. Yeah. I would not
20 respond directly to Golders on an e-mail that's
21 not very clear to me.

22 Q. Well, I'm thinking about
23 in advance of this, because clearly Golder has
24 been advised of this, and if I understood you
25 correctly, you think that your communication would

1 have been with Philips or Mr. Oddi or both about
2 the Dufferin's intention to proceed; is that fair?

3 A. That's fair, yes.

4 Q. And who made the decision
5 to proceed with the SMA paving on August 1st
6 despite Dr. Uzarowski's comments that we discussed
7 about the meeting on the 27th and this e-mail, do
8 you recall?

9 A. It would have been a team
10 decision. Again, we were very open and
11 communicate amongst our peers and the client in
12 this case, I believe, and we would have made that
13 decision together. And more importantly,
14 Dufferin Construction would have made that
15 decision. It may have been conversations with
16 Paul Janicas, Peter Gamble, Jake Sudac and myself,
17 and we would make that decision together.

18 Q. Okay. And do you know
19 whose -- I appreciate that discussions occurred.
20 Do you know whose actual decision it is? Someone
21 has to make a decision. Do you know?

22 A. Jake Sudac is a district
23 manager and that's who I report to, and
24 ultimately, based on what he had heard, he would
25 make a decision one way or the other.

1 Q. In consultation with you
2 and the others that you described?

3 A. Yes.

4 Q. Okay. And Mr. Gamble
5 testified that the decision to proceed would have
6 been made by Mr. Sudac in consultation with you.
7 Does that sound about right?

8 A. That's correct, yes.

9 Q. And I take it you were
10 aware at the time that the contract indicated that
11 if the test strip was -- did not meet
12 specifications, that the contractor would have to
13 repeat the trial section. Is that something that
14 you knew at the time?

15 A. I would have known what
16 the contract said, yes. I would have known what
17 the contract said, yes.

18 Q. Okay. So if I understand
19 you correctly, while you don't have specific
20 recollection, based on your practice you think you
21 would have had discussions with Mr. Oddi and with
22 the contract administrator about the intention to
23 proceed in any event; is that right?

24 A. Yes.

25 Q. And do you recall being

1 given the okay to proceed?

2 A. I don't recall, but I
3 would say that we would have went ahead with them
4 on board with our -- the confidence that we could
5 make the adjustments required to do the work.
6 Anything we do out there is at our risk, and if we
7 don't give the owner an acceptable standard we
8 would always have that risk that we remove and
9 replace. So whether or not I do another test
10 strip or I put it where it belongs, you know,
11 that's a decision that we felt confident we could
12 do and get to the point where we have an
13 acceptable paving surface out there that the City
14 will accept.

15 Q. And given it was your and
16 Dufferin's first SMA placement, do you recall was
17 consideration given to that fact in deciding to
18 proceed without redoing the test strip?

19 A. I got to think yeah,
20 there would have been consideration to that, but
21 at the same point we -- you know, with the
22 confidence of the team and our technical support,
23 again if we were supplying and placing a mix that
24 wasn't meeting the contract we would have ceased
25 paving for that day or we would have stopped

1 early.

2 Q. And we know that Dufferin
3 did indeed commence the main line SMA paving --
4 sorry, you can take that down, Registrar -- on
5 August 1st and completed it on August 13th. Do
6 you recall the order of paving in terms of the
7 direction of northbound, southbound lanes and
8 where it started and proceeded and then ended?

9 A. I vaguely remember, to be
10 quite honest, and I feel we started in the
11 northbound lanes. I don't know exactly where we
12 started, but I felt we started in the northbound
13 lanes and then circled back southbound. So we
14 might have did it in sections just -- I don't
15 recall exactly.

16 Q. So if I understood you
17 correctly, and I appreciate it's a long time ago
18 and you've done a lot of paving jobs in your
19 recalling, but your best recollection at this time
20 is you think, number one, you started in the
21 northbound lanes. That's number one. Okay. And
22 when you said you did that and then looped around,
23 do you mean you did the northbound lanes and then
24 did the southbound lanes?

25 A. That's right.

1 Q. Like in looped. And do
2 you know which end of the northbound lanes, like
3 the south end proceeding north in the direction
4 that traffic would have gone or the other way
5 around? Do you recall?

6 A. Again, I don't recall
7 specifically, but, you know, I felt like we
8 stopped paving at Barton. So we worked from south
9 to north in the northbound lanes, and I felt like
10 because of, you know, some of the stages of the
11 work at the north end, we circled back at Barton
12 Street and went back up the Red Hill Valley
13 towards --

14 Q. Then you mean --

15 A. Back up towards Mud
16 Street, yes.

17 Q. Right. Proceeding south.
18 So went up north and then went back south in the
19 southbound lanes; is that right?

20 A. That's what I recall.
21 Again, I....

22 Q. I'm not trying to trap
23 you. I'm just trying to get your best
24 recollection.

25 A. Yeah. No, that's my best

1 recollection.

2 Q. Okay. Just give me one
3 moment.

4 And, again, just you talked
5 about your -- about Barton Street. Barton Street
6 wasn't the northernmost limits of this paving,
7 right? It went past -- it went up to the -- where
8 the MTO project ultimately began for the
9 interchange which was at the --

10 A. Just past the Rennie
11 Street landfill there, yeah.

12 Q. Right. Are you saying
13 you think that -- and I think you mentioned
14 because of construction stuff that was going on at
15 that point that you looped back to go south before
16 you hit the northernmost limits; is that right?
17 Does that sound right?

18 A. Yes. Yeah, that's what I
19 kind of remember, yes.

20 Q. Okay.

21 A. That's what I remember.

22 Q. Okay. And then
23 presumably would have completed the last part, the
24 northernmost portion after that; is that right?

25 A. Yes, yes.

1 Q. Okay. I think generally
2 speaking the compaction results that we've seen do
3 support that. We'll have to check back.

4 Now I want to take you to the
5 first nuclear density report, the compaction
6 report from Golder, which is at GOL1718, and if
7 you could pull that up in native, please,
8 Registrar. And, Registrar, if you could just -- I
9 know did -- thank you. You knew where I was
10 going.

11 So what we have here is the
12 Golder August 1st nuclear density test results
13 summary, and you'll see it's got the -- in the
14 third column it refers to the station in the --
15 and its direction NBL, northbound lane. Do you
16 see that?

17 A. Yep.

18 Q. So does that accord with
19 your recollection as you just described to us
20 starting in the northbound lanes?

21 A. Yes.

22 Q. And that -- the 2100
23 that's at the south end, right?

24 A. I don't recall where 21
25 plus 900 is.

1 Q. Okay.

2 A. My apologies.

3 Q. That's fine. Okay. And
4 if -- do you have any recollection? I think we
5 can go to the bottom here. There's reference in
6 this document to -- at the very bottom to the
7 vibration being used for a portion, for
8 1,300 metres and not vibration for 1,950 metres
9 for a total paved of 3,250. Do you see that? Do
10 you have any recollection of whether Dufferin was
11 using vibration on the rollers at that time?

12 A. No.

13 Q. Not one way or the other?

14 A. No, not one way or the
15 other, no.

16 Q. Okay. And is that
17 something that would be at your direction or not
18 at your direction. Who's making the decision
19 on-site at -- you know, at that time to do that or
20 not?

21 A. That would be -- a big
22 part would be Paul Janicas, you know, the paving
23 foreman, and maybe even discussions -- I believe
24 at that time our -- the quality manager was Wade
25 O'Leary, so there would have been some discussions

1 in real time as the operation was progressing and
2 getting confirmation with the results, you know,
3 behind the paving train.

4 Q. Okay. And on subsequent
5 days do you know one way or the other whether
6 Dufferin was using the vibration mode on its
7 rollers or not?

8 A. I do not know, no.

9 Q. And do you recall if
10 there were concerns raised about compaction
11 results in that first number of days of the
12 paving?

13 A. I don't recall, no.

14 Q. Don't recall one way or
15 the other?

16 A. Yeah, I don't remember
17 the concerns.

18 Q. Okay. Do you recall that
19 there were -- there being any changes in the -- in
20 the way in which -- the rolling pattern and the
21 approach to the paving as that proceeded?

22 A. I knew that there was --
23 that, you know, Paul and the team were working to
24 improve it, but, you know, to -- you know, not
25 necessarily dramatic changes, but they were always

1 continually there monitoring it closely and making
2 those adjustments, yes.

3 Q. Okay. So, for example,
4 about -- using an increased number of rollers, do
5 you recall that change being made to the number of
6 rollers?

7 A. I don't recall that, but
8 it's quite possible; that does happen.

9 Q. Or following more closely
10 behind the -- with the rollers behind the paver
11 screed?

12 A. Yeah. That's another
13 thing we do in the industry from time to time,
14 yes.

15 Q. In order to improve the
16 compaction?

17 A. Yeah.

18 Q. Okay. Do you recall any
19 issues being raised with you about the --
20 particular issues about SMA and difficulties with
21 compaction respecting SMA?

22 A. I don't recall.

23 Q. You can take that down,
24 Registrar. And if we could go to overview
25 document 3, image 58.

1 In paragraph 120, you'll see
2 there's an e-mail on August 9th from Mr. Oddi
3 e-mailing to you, Mr. Gamble and James Wharrie
4 along with Philips. And he writes:

5 "This correspondence confirms
6 that the Varennes-DEMIX
7 aggregates have been approved
8 for use in the SMA and
9 Superpave 12.5 FC2 surface
10 course asphalt mixes on the
11 Red Hill Valley Parkway main
12 line paving project. The
13 trial batches for both mix
14 designs met the specified
15 requirements. If you have any
16 questions please call me."

17 (As read)

18 Do you recall receiving this
19 e-mail?

20 A. I don't recall, no.

21 Q. Okay. And do you know
22 why Mr. Oddi sent it to Mr. Gamble, you and
23 Mr. Wharrie and Philips?

24 A. I don't recall. I would
25 say it would be from a conversation on-site and

1 closing the loops from the previous requests that
2 we have within the contract that we
3 (indiscernible).

4 Q. Okay. This is an
5 aggregate approval e-mail. He's specifically
6 referring to aggregates. Would you agree that
7 typically Golder is -- was the point of contact
8 for Dufferin with respect to mix design and
9 aggregate approval? Do you agree with that?

10 A. Yes.

11 Q. Okay. Do you have any
12 insight as to why specifically this was sent to
13 Dufferin and Philips rather than Golder?

14 A. No, I don't know.

15 Q. All right. If we could
16 go to overview document 4 now.

17 I'm going to ask you -- I'm
18 going to show you a few documents about the MTO's
19 skid testing that took place on the Red Hill after
20 paving was completed, and then I'm going to ask
21 you a few questions based on that.

22 A. Sure.

23 Q. I'll take you to a few
24 e-mails first just to place it for you.

25 Image 55 and 56, please.

1 So you'll see on paragraph 126
2 which straddles the two pages, this isn't an
3 e-mail that you're copied on. It's Golder and the
4 MTO. It's talking about friction testing is going
5 to take place on Tuesday, October 9th. We know
6 that eventually it actually took place on the
7 16th, and he's talking about making arrangements
8 for it to be -- for it to take place.

9 And then if you look at
10 paragraph 127 on the top of the next page
11 Mr. Delos Reyes of Golder forwarded that e-mail to
12 Philips and to Dufferin at Mr. Wharrie's e-mail
13 address stating:

14 "Gentlemen, for your
15 information and permission."
16 (As read)

17 And then -- now if we go to
18 Dufferin, DUF2709.01, which is Exhibit 32, already
19 been made an exhibit.

20 You'll see at the bottom is
21 the e-mail I just referred you to where Mr. Delos
22 Reyes says:

23 "Gentlemen, for your
24 information and permission."
25 (As read)

1 Then he sent it to Philips and
2 Mr. Wharrie, and then Mr. Wharrie flips it to you
3 at the top on October 4th, just -- saying:

4 "Please find attached from
5 Andro regarding skid
6 resistance testing to take
7 place on October 9th." (As
8 read)

9 And as I said, it eventually
10 takes place on the 16th. And first of all, why
11 are you being brought into this at that time? Do
12 you recall?

13 A. Yeah. Again, it's our
14 site, and we would have had to make sure there was
15 time and space and people out the way for this
16 testing to occur, so, you know, we would have to
17 make sure we vacated the area for that duration
18 specified.

19 Q. Right. So still a
20 construction site?

21 A. Yeah.

22 Q. Okay. And then going
23 back to overview document 4, Registrar, and
24 image 59.

25 At paragraph 136 at the bottom

1 of the page, this is the day after the MTO skid
2 testing actually took place, Mr. Delos Reyes of
3 Golder e-mails the MTO, Mr. Marciello, and he
4 wrote:

5 "Just a reminder please e-mail
6 test result as discussed.

7 Dufferin and Philips
8 engineering are highly
9 interested." (As read)

10 Do you recall Dufferin's
11 interest in the skid test results?

12 A. I don't recall
13 specifically. Certainly if anybody is doing tests
14 on our work, we would be interested in the results
15 and what the outcome was for sure. I don't
16 remember anything specifically, you know, beyond
17 that.

18 Q. Okay. And you
19 personally, do you recall expressing that
20 interest?

21 A. I don't personally
22 remember that, no.

23 Q. And is skid testing
24 something that you had -- that -- any skid test
25 results that you had any knowledge of or

1 experience with?

2 A. I did have some
3 experience with it prior to this. It was totally
4 a different issue and different owner and, you
5 know, it was -- yeah, all kinds different
6 circumstances. But that's the only other
7 experience I had.

8 Q. Okay. What kind of skid
9 testing was it? Do you recall?

10 A. It was the same thing,
11 but it was a surface that accidentally got TAC
12 coated, and the question was, was the friction
13 good enough to withstand traffic? Could we put it
14 on it, or was it going to have to be subject to
15 some remedial work?

16 Q. What kind of device was
17 used to test the friction? Do you recall?

18 A. I think it was -- it was
19 an MTO job, and I think they brought out their
20 unit. I don't recall exactly, but I'm pretty sure
21 the friction was assessed by their equipment.

22 Q. Okay. So it was MTO,
23 so --

24 A. Yeah.

25 Q. -- their locked-wheel

1 tester?

2 A. Yeah. Yes, so that's
3 right.

4 Q. But that -- okay. So
5 from your reaction there, though, I take it, so
6 you were aware of skid testing. Did you have any
7 particular knowledge or expertise about it?

8 A. Zero, zero. I just --
9 and, again, this was something where we put
10 basically glue on top of an asphalt that wasn't
11 supposed to get it, right. So, you know, a total
12 different situation than what we were testing for
13 here.

14 Q. Right. So it was a
15 contaminant essentially on the asphalt that you
16 needed to then test to make sure it had adequate
17 frictional qualities as a result?

18 A. That's right, yes.

19 Q. Okay. Thank you. And
20 back to the Red Hill skid testing. And did you
21 personally ever receive the results of the skid
22 testing?

23 A. I don't remember
24 receiving them, no.

25 Q. Okay. And do you recall

1 ever being told about the results?

2 A. I vaguely remember that
3 they were -- the results were good, and there was
4 no concerns with the results. Certainly I would
5 have known if there was an issue and that never
6 came forward.

7 Q. Do you recall who advised
8 you of that?

9 A. I do not, no.

10 Q. Do you recall how you
11 were advised? Was it a telephone call? An
12 in-person meeting?

13 A. It could have been in
14 passing on the job, and, again -- or it could have
15 been at the site meeting. I'm not sure if that
16 came out in the minutes of the meeting at all, but
17 it could have been in passing. I know, you know,
18 through -- you know, it could have been through
19 our technical department, Paul or Peter Gamble. I
20 don't recall how I got the message.

21 Q. Okay. So there isn't
22 anything in the site meeting minutes, so I can
23 tell you that. And there isn't --

24 A. Okay.

25 Q. We don't have any e-mail

1 communication like that from Dufferin that would
2 say it. So do you think that it was -- you
3 mentioned through your technical department.

4 Could it also have come from external to Dufferin?

5 A. It may have. It could
6 have been from many -- yeah, it may have come
7 external, but I don't think it was anything formal
8 except there was no concerns, right. You know,
9 and that may of -- you know, I know there was
10 other tours and stuff happening on the job, and,
11 again, I don't know the timing in the industry if
12 it came out on that. I don't know.

13 Q. Okay. Yeah, there were a
14 number of tours and events and so forth that took
15 place. Before the opening there was an OOMPH
16 pavement and other things. But just to summarize
17 your evidence, is it fair to say that you believe
18 that you were advised that the results, the
19 friction test results were good and there were no
20 concerns with it, but you don't recall where you
21 received that information from. Is that a fair
22 summary?

23 A. Yeah, I recall that there
24 was no concerns, that's what I recall, and how
25 that message got to me I do not remember.

1 MR. LEWIS: Okay. It's 20
2 after 11:00, Commissioner. I may have a couple
3 more questions, but I may be done, so I'm
4 wondering -- and also I should confer with counsel
5 just about their time and order for examinations.
6 So perhaps this would be a good time for a break.

7 JUSTICE WILTON-SIEGEL: Okay.
8 That's fine. Then let's stand adjourned until 25
9 to 12:00.

10 --- Recess taken at 11:21 a.m.

11 --- Upon resuming at 11:35 a.m.

12 MR. LEWIS: I don't have any
13 further questions so over to counsel, Jennifer
14 Roberts.

15 MS. JENNIFER ROBERTS:
16 Commissioner, may I begin.

17 JUSTICE WILTON-SIEGEL: Please
18 proceed.

19 MS. JENNIFER ROBERTS: Thank
20 you.

21 EXAMINATION BY MS. JENNIFER ROBERTS:

22 Q. Mr. Hainer, I'm Jennifer
23 Roberts and I'm counsel for Golder, and I have a
24 few questions, and I'm going to take you in a bit
25 of a different direction, so please bear with me.

1 First of all, just to confirm,
2 you are the project superintendent for the grading
3 as well as the paving for the project.

4 A. Yes.

5 Q. Okay. I'm going to take
6 you to the grading -- the grading contract. And
7 just to ask you, in preparing to attend today did
8 you have a chance to look at any of the drawings?

9 A. Not specifically, no.

10 Q. Okay. And I guess I
11 should just observe that the drawings that we have
12 are the issued-for-tender drawings, more recently,
13 and these come from Dufferin, so thank you,
14 Dufferin. More recently Hamilton has found
15 as-constructed and some as-built drawings but not
16 for the main alignment.

17 Can I please ask, Registrar,
18 can you please turn up Dufferin 2535? Can you
19 please go to image 25.

20 So, sir, I'm showing you a
21 drawing of the main line of Red Hill Valley
22 Parkway. This is a drawing prepared by Philips.
23 Were you aware that there were three designers for
24 the three parts of the parkway alignment?

25 A. Yes.

1 Q. And so this is the
2 Philips section, and the evidence the Philips
3 section is basically the middle section in the
4 parkway. Does that fit with your recollection?

5 A. Yes, that's correct.

6 Q. Okay. And I'm showing
7 you the section, and if you look at the top right
8 corner, that shows where on the alignment the
9 larger drawing is; isn't that correct?

10 A. Yes.

11 Q. Okay. And I take it,
12 sir, looking at drawings is something that in your
13 day-to-day work you do all the time?

14 A. Yes.

15 Q. Thank you. Can we please
16 go back to -- sorry, hold on.

17 So the evidence is that this
18 part of the alignment is actually the tightest
19 radius turn on the Red Hill Valley Parkway, and in
20 fact it's a 420-metre radius turn. Is that
21 something that you knew?

22 A. I didn't know the exact
23 radius that was there, but I knew there was a
24 curve there, and that it was significant in
25 alignment, yes.

1 Q. Okay. And when I --
2 looking at these drawings, there are no elevations
3 depicted on them.

4 Registrar, can you just
5 enlarge it a little bit so we don't really impose
6 on Mr. Hainer's eyesight here. Can you make
7 that -- there we go. Okay.

8 And so this is -- this section
9 we're -- we're looking at the turn section. I
10 would expect to see on drawings that the
11 elevations would show the cant of the road, the
12 superelevation of the road. Would that be your
13 usual experience in looking at these drawings?

14 A. No. Generally we would
15 get grading templates and they would be provided
16 at the increments, you know, along the alignment,
17 and they would give us our offsets and elevations
18 from control line. Just, you know, you can see
19 the drawings get quite busy. Again, this is my
20 opinion. The drawings get quite busy, and that's
21 why they don't put elevations on these particular
22 plan drawings.

23 Q. Okay. So I have to say
24 I'm relieved to hear it because I have been
25 looking at these things with my client and trying

1 to figure out how the hell Dufferin actually
2 constructed from this.

3 A. Yeah. Yeah.

4 Q. Okay. So let me just,
5 though, understand just to get a sense of your
6 understanding of what should be shown. So on this
7 turn which -- from the northbound lane, which is
8 the bottom lane here, is going to the right. My
9 understanding is that the higher elevation should
10 be at the top end of this drawing and that there
11 should be a cant flowing down to the bottom of the
12 drawing -- bottom of the alignment on the drawing.

13 A. Yeah, that sounds
14 logical. Typically there is cross sections or
15 typical sections that would kind of come through
16 the curve and would show you those -- the
17 superelevated cross section of this area.

18 Q. Okay. And that's exactly
19 what I was getting after. So the way this turn is
20 actually affected is not only that side to side,
21 but there's a change in the vertical, the
22 elevations to provide a cant so that the slope of
23 the road assists the driver in navigating the
24 turn; is that correct?

25 A. Yeah, those are design

1 elements, and again, you know -- and that is put
2 in and generates the grading templates, and that's
3 what we construct to, whatever is provided in
4 those details.

5 Q. Okay. So we don't have
6 grading templates, so I'm going to have to ask for
7 your description of them. Are they -- they'll be
8 a specific location on the larger drawing, so
9 that's determined, you know -- so it will be
10 showing us a station number to a station number,
11 and they will show the precise elevations at that
12 area. Is that what they do?

13 A. Yeah. If you would take
14 example, you know, take those three arrows on the
15 bottom left corner, and you drew a line through
16 there --

17 Q. Yeah.

18 A. -- you know, at each of
19 those edges of the lane you would get an offset
20 from the control line which I presume is in the
21 centre of the highway here, and you would have an
22 offset, say, of 5 metres, and you would have an
23 elevation given there. And that would -- you
24 would get all the break points in that line, so
25 where it changes in elevation.

1 Q. Okay. That's very
2 helpful in understanding. Thank you.

3 And so -- just so I understand
4 this. So then at each of the layers of the
5 granular as you're building up the road, you're
6 shooting elevations on each level to ensure that
7 the ultimate design elevations will be met. Is
8 that how that works?

9 A. That's correct, yes.

10 Q. Okay. And the
11 contours -- in fact, the superelevation is set
12 from the base layers, these granular layers of the
13 highway. That's correct?

14 A. Yes, that's typical.
15 Yes.

16 Q. Okay. And can you tell
17 me what the tolerances for grading, when the
18 contract is putting down? What's the acceptable
19 variation from the design?

20 A. Yeah, there's the OPSS
21 that we follow. So those grading specifications
22 we follow the tolerances there for, you know, for
23 subgrade granular tolerances.

24 Q. Do you recall off the top
25 of your head what they are?

1 A. I don't recall what they
2 were for this contract.

3 Q. Okay. And was it
4 Dufferin who surveyors would shoot the elevations
5 to confirm that they conformed with what you're
6 telling me is the grading template?

7 A. We would have our
8 Dufferin grade person that would -- he would
9 verify from, you know, the alignment stakes that
10 are provided by the surveyor. They would measure
11 the offset and elevation at those corresponding
12 points with the grading templates.

13 Q. And would that be
14 reviewed by the contract administrator Philips at
15 the time?

16 A. Yeah, they would have --
17 they would have the -- that information available
18 to them whenever they wanted to check, yes.

19 Q. Okay. So they wouldn't
20 necessarily check each of the elevations shot, but
21 they would, I'm assuming do -- they would check
22 some of them for conformance?

23 A. Yeah, and, you know,
24 again, the interval on which they check generally
25 is fairly -- is very often. I don't recall on

1 this job it being any different.

2 Q. Right. And sometimes the
3 case it's the contractor who prepares
4 as-constructed drawings. Do you know whether in
5 this instance Dufferin prepared as-constructed
6 drawings?

7 A. I can't say with
8 certainty. Generally we do provide as-constructed
9 drawings, but I can't say with certainty. And
10 they would detail basically changes to the
11 contract only, so it would red line. For example,
12 if a culvert got extended 2 metres, we would put
13 on there that the culvert got extended 2 metres.

14 Q. Okay. And would the
15 as-constructed drawings show -- well, let me just
16 ask another question. Did Dufferin shoot
17 elevations at the completion of the paving
18 contract?

19 A. I don't recall. I don't
20 recall that.

21 Q. Would that be usual?

22 A. No.

23 Q. Okay. In other words, by
24 the time you get to the paving, you're just --
25 you're paving the specified layers for the

1 different layers of asphalt. That's correct?

2 A. That's correct.

3 Q. So you've got the
4 specified layers on top of where you shot the
5 elevations at the top of the granular. Do I have
6 that right?

7 A. Yes.

8 Q. Okay. And just going
9 back to the point on the as-constructed drawings.
10 Do the as-constructed drawings show the
11 elevations?

12 A. Not normally, no.

13 Q. They wouldn't. Okay. So
14 the only way of telling whether the elevations and
15 ultimately the superelevations were achieved is if
16 you had the grading templates?

17 A. Can you repeat the
18 question, sorry.

19 Q. Yeah. What I'm trying to
20 figure out is how -- what record there would be of
21 the design that at the end of the day Hamilton
22 would have. And so my question is, is the only
23 way that you could tell what the elevations
24 actually were and therefore the superelevations
25 would be by actually having the grading template?

1 A. I would say it would be
2 from determining what the surface of the asphalt
3 was.

4 Q. Okay. So the grading
5 templates would give you the elevations to the top
6 of the granular, it would give you the
7 superelevations -- it would give you the slope of
8 the superelevations, though, wouldn't it?

9 A. It would, yes.

10 Q. Okay. But you're saying
11 that in order to establish where the final design
12 elevations were in the templates you would have
13 had to shoot them when the paving was completed?

14 A. Correct, yes.

15 Q. And unless that was done,
16 you would have to be interpreting from these other
17 documents what the elevations should have been.
18 That's correct?

19 A. Yes.

20 Q. Okay. And so let me just
21 address a piece of evidence. So we've heard
22 evidence from Marco Oddi that he didn't see any to
23 have as-constructed drawings because what was
24 constructed accorded with the design, and Hamilton
25 would therefore know what was constructed.

1 And I suggest to you, just as
2 I have, that you can't -- that not only do these
3 drawings by themselves not tell you what was
4 designed, but they certainly don't tell you what
5 was constructed. You'll agree with that?

6 A. This drawing alone does
7 not tell you what's constructed for cross-fall,
8 no.

9 Q. Okay. Thank you.

10 A. I would agree with that.

11 Q. Okay. Thank you very
12 much for your patience. Thank you, sir. Those
13 are my questions.

14 JUSTICE WILTON-SIEGEL: Okay.

15 MR. LEWIS: Commissioner, I'm
16 not sure if other counsel have any questions.
17 Counsel for the City said they would have no
18 questions; MTO reserved five minutes. Although
19 we're unsure. So, Mr. Bourrier, could you
20 advised?

21 MR. BOURRIER: We don't have
22 any questions for Mr. Hainer. Thank you.

23 MR. LEWIS: Okay. And then
24 that leaves Ms. McAleer for Dufferin.

25 MS. MCALEER: Thank you

1 Mr. Lewis. I just have two questions to ask this
2 witness.

3 EXAMINATION BY MS. MCALEER:

4 Q. Mr. Registrar, could you
5 bring up Golder 3208, please. This is the e-mail
6 of July 31st, 2007 from Mr. Uzarowski to a number
7 of people. If you could just enlarge the 'to' and
8 'from' and 'time' box, please, Mr. Registrar.
9 Thank you.

10 So, Mr. Hainer, you'll recall
11 that Mr. Lewis asked you some questions about this
12 e-mail that was sent by Mr. Uzarowski to a number
13 of people, and you were one of the recipients that
14 we see there in the 'to' line. Do you remember
15 those questions, sir?

16 A. Yes.

17 Q. Okay. And looking at the
18 hour that this e-mail was sent, 5:42 p.m. on
19 July 31st, do you know, Mr. Hainer, whether or not
20 you would have seen this e-mail prior to attending
21 at the site the next morning to commence the
22 paving?

23 A. It would be very unlikely
24 I would see this e-mail during this time frame.
25 We didn't have -- I didn't have a smart phone, so

1 I wouldn't have seen this unless I went and fired
2 up my laptop, so I wouldn't have known this that
3 night or the next morning.

4 Q. Do you say that, sir,
5 because -- did you have a practice of checking
6 your e-mail in the morning before attending at a
7 work site? Do you recall if you did that back in
8 2007?

9 A. Generally I wouldn't. My
10 priority would be the operations that were set up
11 the previous night to make sure things were all
12 flowing correctly and people were where they
13 needed to be, and, you know, later in the morning
14 I would generally get to my office to catch up on
15 any correspondence that was needed.

16 Q. And during this time
17 period -- so August 1st of 2007 -- what time would
18 you typically start paving in the morning, or what
19 time would you be on-site?

20 A. The crews would start
21 paving or be on-site around 6:30 and with
22 operation to start around 7 o'clock
23 (indiscernible).

24 Q. I'm sorry, is that when
25 you would be on-site as well?

1 A. Yeah, it would vary.
2 Sometimes earlier than that, just to drive to the
3 job and, you know -- in my line of work you live
4 on the job, so I, you know, could be there at
5 5:00, 6:00 in the morning well ahead of the
6 start -- planned start time.

7 Q. And I take it, sir, today
8 you have no recollection as to what time you may
9 have actually been on-site on August 1st, 2007?

10 A. No idea, no.

11 Q. Okay.

12 A. I don't know.

13 Q. Right. And you recall
14 that Mr. Lewis asked you who made the decision to
15 proceed with the SMA paving on August 1st despite
16 Dr. Uzarowski's comments at the July 27 site
17 meeting that was about the test strip and his
18 e-mail of July 31st. And you indicated in
19 response it would've been a team decision. Do you
20 remember that, Mr. Hainer?

21 A. I do, yes.

22 Q. Okay. And do you know if
23 the decision to proceed was made before or after
24 Dr. Uzarowski's e-mail of July 31st, taking into
25 account the time at which it was sent?

1 A. It would have been made
2 beforehand. I wouldn't have had communications
3 after 5 o'clock generally. Be very rare.

4 MS. MCALEER: Thank you,
5 Mr. Hainer. Those are all of my questions.

6 THE WITNESS: You're welcome.

7 MR. LEWIS: I don't have any
8 further questions, Commissioner.

9 JUSTICE WILTON-SIEGEL: Okay.
10 Well, first of all, Mr. Hainer, thank you very
11 much for appearing before the inquiry. You're
12 excused, if you want to be.

13 THE WITNESS: Thank you.

14 JUSTICE WILTON-SIEGEL: Now,
15 with respect to the timing, I understand the next
16 witness -- we begin now a section of witnesses of
17 the MTO. Is that correct, Mr. Lewis?

18 MR. LEWIS: That's correct.

19 JUSTICE WILTON-SIEGEL: And
20 the first witness is going to be made available on
21 a full day basis. I also understand that one of
22 the law firms is not available tomorrow in their
23 entirety with the result that we're not sitting
24 tomorrow; is that correct?

25 MR. LEWIS: Tomorrow and

1 Friday.

2 JUSTICE WILTON-SIEGEL: And we
3 will not be sitting on Friday as is the schedule,
4 which means that we would stand adjourned now
5 until Monday morning at 9:30; is that correct?

6 MR. LEWIS: Yes.

7 JUSTICE WILTON-SIEGEL: Okay.
8 So unless there's anything further that we have to
9 do this morning, I don't think there is, we will
10 stand adjourned until 9:30 on Monday morning.
11 Thank you.

12 --- Whereupon at 11:57 a.m. the proceedings were
13 adjourned until Monday, May 16, 2022 at
14 9:30 a.m.

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