

# In the Supreme Court of Pennsylvania

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NO. 9 MAP 2023

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THE BOROUGH OF WEST CHESTER,

*APPELLANT,*

*v.*

PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION, *ET AL.*,

*APPELLEES.*

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REPRODUCED RECORD  
Volume 2 of 4 (573a to 1148a)

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DIRECT APPEAL FROM ORDER OF  
THE COMMONWEALTH COURT OF PENNSYLVANIA  
(DOCKET NO. 260 MD 2018) DATED JANUARY 4, 2023

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**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

THE BOROUGH OF WEST CHESTER,	:	
	:	Original Jurisdiction
Petitioner,	:	
v.	:	No. 260 MD 2018
	:	
PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

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**ORDER**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2021, upon consideration of Respondents’ Motion for Summary Judgment, and any response thereto, it is ORDERED that the motion is GRANTED. It is further ORDERED that judgment is ENTERED in favor of Respondents Pennsylvania State System of Higher Education and West Chester University and the Action for Declaratory Judgment is hereby DISMISSED.

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, J.

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v.	:	No. 260 MD 2018
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PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
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WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

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**RESPONDENTS’ MOTION FOR SUMMARY JUDGMENT**

Respondents Pennsylvania State System of Higher Education (“State System”) and West Chester University of Pennsylvania of the State System of Higher Education (“University” or, collectively with the State System, “Respondents”), by counsel, move for summary judgment pursuant to Pennsylvania Rules of Appellate Procedure 106 and 1517 and Pennsylvania Rule of Civil Procedure 1035.1, *et seq.*

**INTRODUCTION**

1. This is an action for declaratory relief brought by the Borough of West Chester (“Borough”) against Respondents, seeking a ruling that

Respondents' tax immunity does not apply to a charge imposed by the Borough to pay for green infrastructure projects designed to address the environmental effects of stormwater runoff.

2. The issue in this case is whether the charge imposed by the Borough is a tax or a fee for service. If it is a tax, the parties agree that Respondents are immune and cannot be compelled to pay. But if it is a fee for service—akin to a private, contractual obligation—Respondents can be compelled to pay but only if the fee is reasonable and is not used for any purpose beyond providing that service.

3. Denying preliminary objections in this case on procedural grounds, this Court teed up this question and identified the key facts needed to address the tax-versus-fee debate:

[Q]uestions remain, *inter alia*, as to: whether the Borough's Stormwater System provides a discrete benefit to Respondents, as opposed to generally aiding the environment and the public at large; whether the value of the Stormwater System to Respondents is reasonably proportional to the amount of the Stormwater Charge; and, apart from general operation, maintenance and repair of the Borough's Stormwater System, how exactly does the Borough utilize the funds generated by the Stormwater Charge.

Opinion, dated July 15, 2019, at 11.

4. To be entitled to relief in this case, the Borough must “establish that the Stormwater [Tax] constitutes a fee for service that is reasonably proportional to the value of the benefit conferred to Respondents in a quasi-private capacity.” *Id.*

5. Discovery is complete, and summary judgment is ripe for consideration.

### **BACKGROUND**

#### *Prior to the Ordinance, the Borough Built and Maintained a Stormwater Conveyance System, Paid for by Tax Money*

6. For decades, the Borough of West Chester (“Borough”) has maintained a system for collecting stormwater throughout the Borough and transporting it to waterways (the “Stormwater Conveyance System”).<sup>1</sup> Deposition of Michael A. Perrone, dated Oct. 15, 2020 (“Perrone Dep.”),<sup>2</sup> 47:5-23.

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<sup>1</sup> A conveyance or system of conveyances owned by a state, city, town, village, or other public entity to collect and convey stormwater to a waterway is known as a Municipal Separate Storm Sewer System (“MS4”). See U.S. Env’t Prot. Agency, Stormwater Discharges from Municipal Sources, <https://www.epa.gov/npdes/stormwater-discharges-municipal-sources> (last visited June 17, 2021).

<sup>2</sup> Mr. Perrone testified as the designated representative of the Borough pursuant to Pa. R. Civ. P. 4007.1(e). Perrone Dep. 15:21-24 & Ex. University-1.

7. This Stormwater Conveyance System included inlet boxes,<sup>3</sup> underground pipes, connections, headwalls,<sup>4</sup> and culverts.<sup>5</sup> Perrone Dep. 47:5-23.

8. The system had been installed under the Borough's original roads when they were first constructed about 100 years ago. Perrone Dep. 52:23-54:24.

9. Prior to 2016, construction and maintenance of the Stormwater Conveyance System was funded through the Borough's General Fund, which included the Borough's collected tax revenue (including property taxes) and any grants the Borough received. Perrone Dep. 45:20-47:4.

10. During this time, the Borough periodically passed ordinances requiring developers to use stormwater management practices during the development of land, at their own expense. Perrone Dep. 50:6-51:22. For example, when the University constructed dormitories, it was required to provide a stormwater management system as part of the construction plans. Perrone Dep. 51:2-11.

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<sup>3</sup> An inlet box is the portion of the Stormwater Conveyance System that we see from the surface; it is "the connection point for a pipe. . . [which is] open at the end with typically a grate for water to run into and then passes through the pipes or a series of pipes to a lower point." Perrone Dep. 54:12-24.

<sup>4</sup> A headwall is "usually a concrete structure where a pipe will discharge water, typically, to a creek, a river, an ocean." Perrone Dep. 55:3-6.

<sup>5</sup> A culvert is a "depression in the ground" to transport stormwater, sometimes under roadways, and to mitigate the volume and velocity of stormwater. Perrone Dep. 55:20-21.

11. These ordinances did not collect money for the Borough or require the Borough to spend any funds. Perrone Dep. 52:13-18.

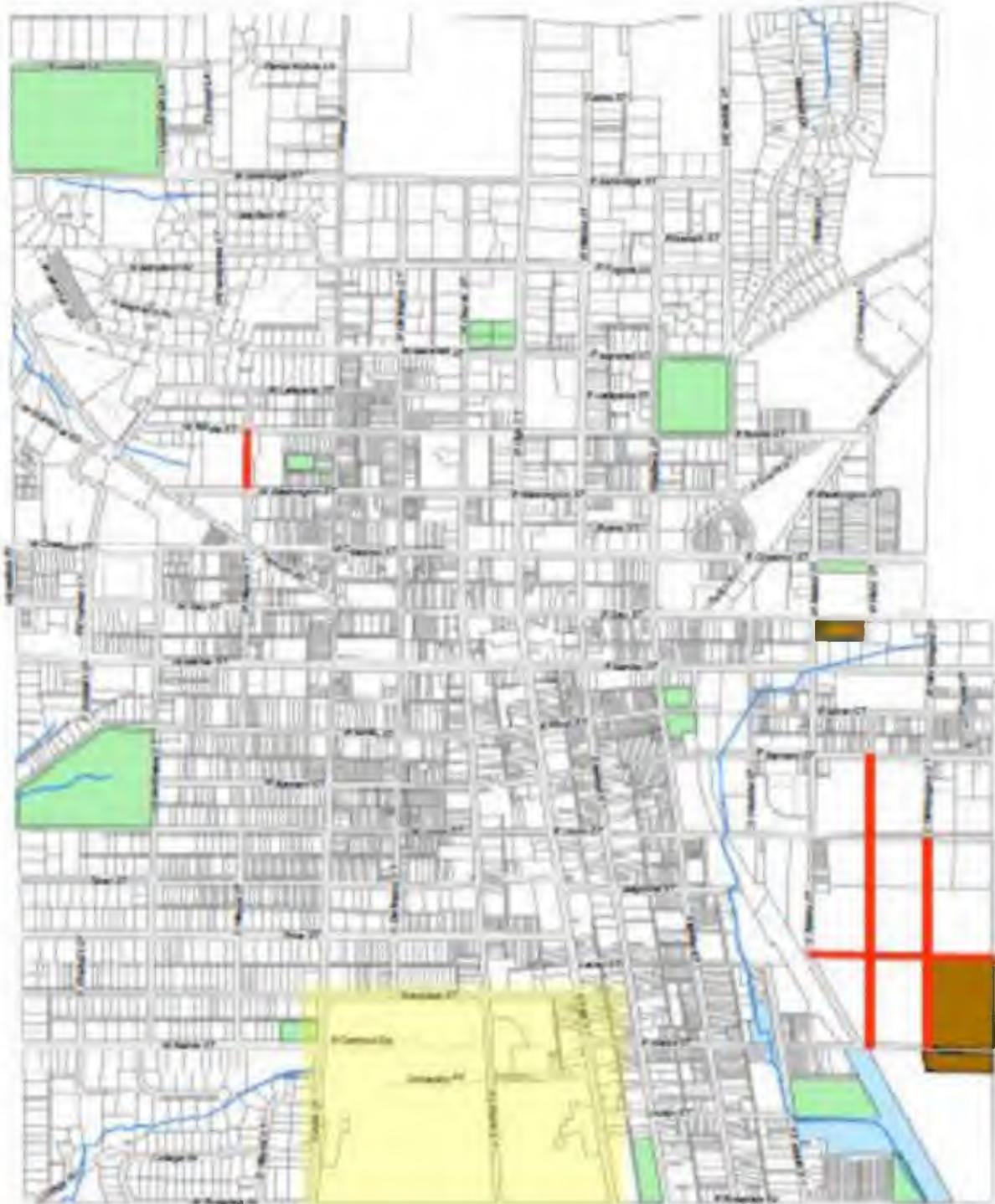
*Stormwater Does, and Always Has, Flowed On, Into, and Out Of the University's North Campus in the Borough*

12. West Chester University (the “University”) is a member institution of the Pennsylvania State System of Higher Education (“State System”) that maintains a campus located, in part, in the Borough of West Chester (“Borough”).<sup>6</sup> Unsworn Affidavit of John Villella, dated July 16, 2021 (“Villella Decl.”), ¶ 5.

13. Specifically, part of the University’s North Campus lies within the south-central part of the Borough. For reference, a map of the Borough, with the portion of North Campus in the Borough roughly highlighted in yellow, follows:

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<sup>6</sup> In this brief, Respondents will be referred to collectively as the University. Although property on North Campus may be technically owned by the University, the State System or the Department of General Services, any such distinction is immaterial here.

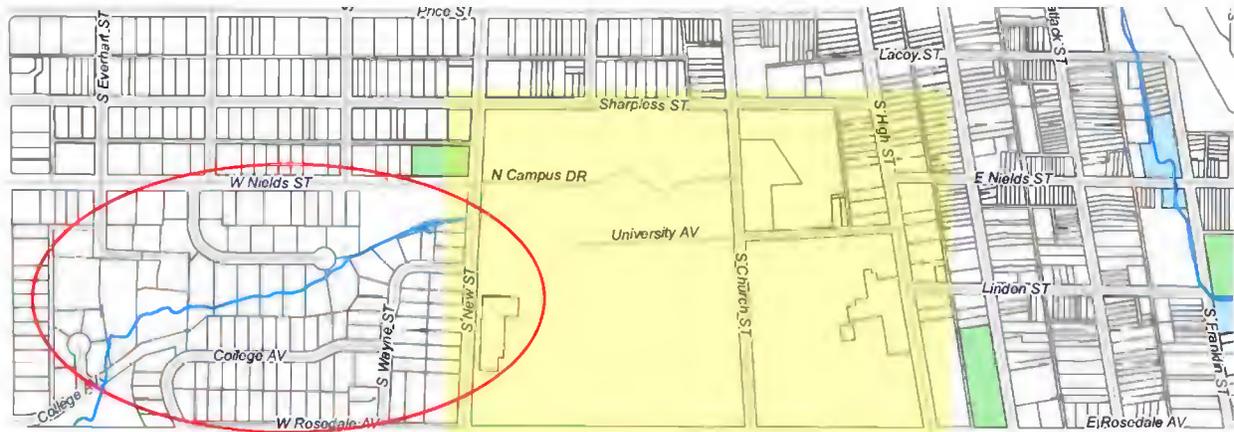


Perrone Dep. Ex. University-3 (highlighting added).

14. Only a portion of North Campus is located in the Borough; the remainder, to the south of North Campus across East and West Rosedale Ave., is

located in West Goshen Township. Deposition of Gary Bixby, dated October 13, 2020 (“Bixby Dep.”), 6:22-9:18.

15. To the west and southwest of campus lies Plum Run, a small waterway circled below. Perrone Dep. 31:4-14.



16. Plum Run begins either under North Campus or just north of it, around the intersection of Sharpless St. and S. Church St., and it passes through North Campus, in an underground pipe owned by the Borough and unmarked on this map. Perrone Dep. 31:15-33:17; Bixby Dep. 107:18-108:6.

17. Plum Run exits the pipe and begins flowing above ground for the first time just west of South New Street. Perrone Dep. 32:23-34:7.

18. While it traverses under North Campus, Plum Run is fed via inlets and pipes under streets and parts of North Campus, some of which are owned by the University and some of which are owned by the Borough. Perrone Dep. 122:8-124:3; Bixby Dep. 98:20-99:13.

19. Plum Run flows west/southwest through the Borough and then continues into neighboring municipalities until it eventually empties into the Brandywine River. Perrone Dep. 33:10-34:1.

20. Stormwater that falls on or near North Campus might end up in a variety of places. Some stormwater infiltrates into the ground naturally on North Campus or is otherwise captured by the University.<sup>7</sup> Perrone Dep. 35:6-21. Some, of course, evaporates. Deposition of Tom Clark, dated Oct. 12, 2020 (“Clark Dep.”), 106:17-107:1. Some enters inlets and pipes on North Campus owned by the University, which eventually connect to Plum Run. Bixby Dep. 107:18-108:6. Some stormwater falls on or flows into the Borough-owned streets that run around and through North Campus, like Church St. Perrone Dep. 35:6-21. Finally, some flows across West Rosedale Ave., either above ground or in underground pipes, into West Goshen Township. Perrone Dep. 35:22-36:5; Bixby Dep. 107:18-108:6.

21. No one knows, or tracks, how much stormwater is captured by the University or how much enters the Borough-owned pipes. Bixby Dep. 105:10-106:22; Clark Dep. 109:19-110:11.

22. Additionally, stormwater falling in the Borough can flow into North Campus. Specifically, stormwater falling north of Sharpless St. tends to flow south

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<sup>7</sup> Stormwater that infiltrates is absorbed into the ground and enters the water table. Deposition of Tom Clark, dated Oct. 12, 2020 (“Clark Dep.”), 61:4-19.

and southwest, toward North Campus. Perrone Dep. 42:16-23. Some of that stormwater from the Borough infiltrates into the ground on North Campus or is otherwise captured there. Clark Dep. 61:4-19. Some of that stormwater enters inlets and pipes—some owned by the University and some owned by the Borough—which take it to Plum Run. Bixby Dep. 211:2-15.

23. When it comes above ground in the Borough west of S. New St., Plum Run contains a mix of some of the stormwater that fell on North Campus and other stormwater that fell elsewhere in the Borough. Bixby Dep. 212:23-214:3.

*The University Developed Its Own Stormwater Management Standards and Procedures, and It Has Its Own Permit for Its MS4*

24. North Campus contains different buildings of various ages; newer buildings tend to have stormwater management strategies while older ones do not. Bixby Dep. 42:11-56:10.

25. Specifically, the University’s recent construction follows the Leadership in Energy and Environmental Design (“LEED”) model, which requires the University to “manage all of the storm water within the boundaries of the project.” Bixby Dep. 115:19-116:12;<sup>8</sup> *see generally* U.S. Green Building Council, LEED Rating System, <https://www.usgbc.org/leed> (last visited June 17, 2021). The

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<sup>8</sup> The deposition transcript mistakenly refers to the “lead” model rather than the LEED model.

University achieves this by installing green roofs, infiltration basins, retention basins, and pervious pavers as part of construction projects. Bixby Dep. 42:19-43:8.

26. The University also utilizes non-engineered stormwater management strategies, like trees and open, grassy areas, to infiltrate stormwater and prevent it from flowing directly into waterways. Bixby Dep. 49:12-19.<sup>9</sup>

27. The University, unlike most private property owners, has its own MS4 system of inlets and pipes, and with it, its own municipal permit and obligations. Bixby Dep. 186:16-191:14.

28. This permit limits the amount of pollutants that can be in stormwater in the University's MS4 system, and it requires the University to measure and monitor the stormwater in its system and to satisfy certain minimum control measures. Bixby Dep. 186:16-187:13.

29. The University's MS4 permit identifies five outfalls—places where stormwater leaves the University's system—on North Campus; four of these outfalls are located in West Goshen Township. Unsworn Affidavit of Todd Murphy, dated July 15, 2021 ("Murphy Decl."), ¶ 6.

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<sup>9</sup> The University's goal is to capture and manage 100% of the stormwater that falls on its campus for any storm, but there is some evidence that it has not yet reached the goal of managing 100% of its stormwater for any storm. This brief will assume that at least some stormwater falls on North Campus and enters the Borough, primarily via Plum Run.

30. For the outfall located in the Borough, *i.e.* the headwall west of New St. where Plum Run begins to flow above ground, the University measures the pollutants contained in that stormwater. Bixby Dep. 212:23-214:3. The University is required by its own MS4 permit to manage and limit the pollutants in that stormwater, which is a mix of stormwater from the Borough and from the University. Murphy Decl. ¶¶ 7-8; Bixby Dep. 212:23-214:3.

31. Although the University assumes the duty of mitigating the pollutants in the Borough’s stormwater, the University has never charged or taxed the Borough for the cost of these efforts. Murphy Dec. ¶ 9.

*The Borough Passed the Ordinance and Created the Stormwater Tax Because Of Increased Regulatory Requirements for Managing the Environmental Effects of Stormwater Runoff*

32. In 2016, the Borough enacted an ordinance requiring all owners of developed property within its boundaries to pay an assessment for stormwater management (“Stormwater Tax”). Pet. for Review ¶¶ 15-18; Ordinance No. 10-2016, Perrone Dep. Ex. University-4 (“Ordinance”).

33. The Stormwater Tax is assessed on the owners of real property within the Borough “where manmade changes have been made which add impervious surfaces to the property.” Pet. for Review ¶ 75. The amount of the Stormwater Tax is determined by the impervious surface on a property—it provides for a base rate

of \$6.70 monthly per 1,000 square feet of impervious surface, which is then further adjusted based on the total square footage of impervious surface on the property.

Pet. for Review ¶¶ 74-87; *id.* Ex. C, §§ 6, 8 & Ex. D. In short, the more impervious surface a property has, the more the owner must pay.

34. In passing the Ordinance, the Borough declared that “[a] comprehensive program of stormwater management is fundamental to the public health, safety, and general welfare of the residents of the Borough.” Ordinance at 1, § 2.D.

35. The Borough observed that improper management of stormwater contributes to flooding, erosion, and sedimentation; it overtaxes surface streams and storm sewers; it increases costs to public facilities; and it increases pollution and harms the “ecological health of the stream biota.” Ordinance at 2, § 2.F.

36. In short, the purpose of the Ordinance was to make the Borough’s waterways cleaner, which makes the public healthier, and to reduce the environmental harms caused by the flow of stormwater. Perrone Dep. 60:14-22.

37. Although the Stormwater Conveyance System had existed for a century paid for by tax dollars, the Stormwater Tax was implemented to fund a variety of new projects.<sup>10</sup> Using the Stormwater Tax, the Borough promotes or

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<sup>10</sup> Other potential funding sources also exist. For example, the Borough can, under state law, recover up to 75% of its costs related to its approved stormwater

performs tree planting, “street sweeping to keep pollutants out of our system,” installations of water-cleaning facilities, regrading of alleys to improve water flow, and relining of storm pipes. Perrone Dep. 102:19-103:23. Other specific examples of projects include planting rain gardens<sup>11</sup> and installing curb extensions.<sup>12</sup> Perrone Dep. 104:23-106:21.

38. One of the largest current projects is an effort to restore the streambank along Plum Run. Perrone Dep. 102:6-15. On a portion of Plum Run downstream and away from the University, in Phase 1 of the project, the Borough is constructing a retaining wall along the stream and installing soil nails.

Deposition of Nate Cline, dated Dec. 21, 2020 (“Cline Dep.”), 26:15-29:12 & Ex. University-6.<sup>13</sup>

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management plan from the Commonwealth through the Department of Environmental Protection. *See* 32 P.S. § 680.17.

<sup>11</sup> A rain garden is a collection of trees, bushes, and plants that can survive in a dry season but also absorb large amounts of water quickly in a storm. Perrone Dep. 105:7-23.

<sup>12</sup> A curb extension extends the curb line out into the street slightly, with a gap allowing water to leave the street, run through vegetation or rock, and then return to the street. Perrone Dep. 106:1-21. The purpose is to slow the flow of water and filter out pollutants. Perrone Dep. 106:1-21.

<sup>13</sup> Like Mr. Perrone, Mr. Cline also testified as the designated representative of the Borough.

39. The purpose of this project is to “protect the embankment from collapsing and the stream from continuing to deteriorate the embankments.” Cline Dep. 29:13-30:19.

40. Phase 2 of the project will install a “green infrastructure,” meaning “riparian buffer plantings, vegetation, rock mirrors . . . making sure the stream is in the proper channels, perfecting utilities, things of that nature.” Cline Dep. 31:15-24.

41. Another major project is at the John O. Green Memorial Park more than a half mile north of the University near Market St. This involves park renovations like “pervious paving . . . tree plantings, vegetation improvements, storm sewer modifications and improvements and similar, in addition to parking, crosswalks, fencing, other maybe non storm water related aspects.” Cline Dep. 41:22-42:21.

42. The Stormwater Tax is also funding numerous similar projects that install “green infrastructure” throughout the Borough. *See generally* Cline Dep. 24:11-49:15.

43. None of the projects currently funded by the Stormwater Tax touch University property or—to use a term supplied by the Borough’s institutional representative at his deposition, *see* Perrone Dep. 70:12-19—provide a “specific benefit” to the University. Perrone Dep. 125:21-127:22. Instead, the University

receives only a “general benefit,” which is a benefit (like cleaner water or a healthier environment) gained by all members of the community and not just those who pay the tax. Perrone Dep. 60:19-22.

44. Although in theory Stormwater Tax funds could be used for maintenance of the Plum Run pipe under North Campus, there are currently no plans to do so. Perrone Dep. 126:3-22 (“There is a list of projects, but that doesn't mean that's it for, you know, forever. Ten years from now we could be doing something in Plum Run along the campus.”).

45. The purpose of the Stormwater Tax, as described by the Borough's representative, is not to fund projects *benefitting* to those who pay the tax, but rather to fund projects remediating the environmental *harm* caused by impervious surfaces on the assessed properties. Perrone Dep. 88:13-91:17. As he described, the reason the Borough calculates the fee based on total impervious surfaces is not because of the benefit that a property owner receives, but because of the harm caused by more impervious surfaces. Perrone Dep. 88:13-91:17.

*Despite Having Never Before Collected Money from the University to Fund the Stormwater Conveyance System, the Borough Attempted to Tax the University*

46. The Borough assessed University property within its jurisdiction in accordance with the scheme set forth by the Ordinance, and it sent invoices to Respondents seeking to collect this Stormwater Tax. Pet. for Review ¶ 91.

47. And the Borough continues to send bills to the University—in 2019, for example, the University received invoices for its properties on North Campus totaling \$117,168.04. Villella Decl. ¶¶ 7-8.

48. The University declined to remit payment, informing the Borough that any such charge was improper under the University’s tax immunity. Pet. for Review ¶¶ 20-25.

**RESPONDENTS ARE ENTITLED TO  
JUDGMENT AS A MATTER OF LAW**

49. Respondents incorporate the preceding paragraphs as if set forth at length.

50. University property is Commonwealth-owned property used for a public purpose, thus subject to tax immunity.

51. Assessing the Stormwater Tax against the University is barred by the University’s tax immunity because the Stormwater Tax is a tax and not a fee.

52. The Stormwater Tax is a tax because the projects it funds, like roads and sewers, are designed to return a “general benefit” and promote “the welfare of all.” *Broad St. Sewickley Methodist Episcopal Church’s Appeal*, 30 A. 1007 (Pa. 1895).

53. Even though the Stormwater Tax funds only a discrete set of infrastructure projects, special assessments are still considered taxes under

Pennsylvania law. *Southwest Del. Cty. Mun. Auth. v. Aston Twp.*, 413 Pa. 526, 531, 198 A.2d 867, 870 (1964).

54. Projects like planting trees, installing rain gardens, building curb extensions, and repairing streambanks are designed for the general benefit of the community at large rather than the specific benefit of individual property owners. These projects, which are being funded by the Stormwater Tax provide a ***general environmental*** benefit, enjoyed by all.

55. Further, even if it could be considered a fee, the Stormwater Tax is not reasonable because it is not proportional to the Borough's cost to maintain the Stormwater Conveyance System. There is no plan to use it to fund the general operation, maintenance, or repair of the Stormwater Conveyance System.

56. And even if it could be considered a fee, the Stormwater Tax is not reasonable because it funds projects other than the general operation, maintenance, or repair of the Stormwater Conveyance System.

57. Because the Stormwater Tax is a tax, it is subject to Respondents' tax immunity, and they are entitled to judgment as a matter of law. Alternatively, if it is a fee, it is unreasonable, and Respondents are entitled to judgment as a matter of law.

Wherefore, Respondents Pennsylvania State System of Higher Education and West Chester University of Pennsylvania of the State System of Higher Education respectfully request that this Court find that the Stormwater Tax is a tax, grant them summary judgment, and dismiss the Borough's Action for Declaratory Judgment.

Dated: July 16, 2021

Respectfully submitted,

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Petitioner,	:	
v.	:	No. 260 MD 2018
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PENNSYLVANIA STATE SYSTEM	:	
OF HIGHER EDUCATION and	:	
	:	
WEST CHESTER UNIVERSITY OF	:	
PENNSYLVANIA OF THE STATE	:	
SYSTEM OF HIGHER	:	
EDUCATION,	:	
	:	
Respondents.	:	
	:	

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day the foregoing Motion for Summary Judgment is being served upon the persons and in the manner indicated below, which service satisfies the requirements of Pa. R.A.P. 121:

Electronic Service via PACFile and/or email

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Dated: July 16, 2021

Respectfully submitted,

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IN THE COMMONWEALTH OF PENNSYLVANIA  
THE BOROUGH OF WEST CHESTER

- - -

THE BOROUGH OF WEST CHESTER, : Original Jurisdiction  
: NO. 260 MD 2018

Petitioner, :

vs. :

PENNSYLVANIA STATE SYSTEM OF HIGHER EDUCATION, :

& :

WEST CHESTER UNIVERSITY OF THE PENNSYLVANIA OF THE STATE SYSTEM OF HIGHER EDUCATION, :

Respondents. :

- - -

October 13, 2020

- - -

SWORN DEPOSITION of GARY BIXBY,  
taken pursuant to notice, held at Directory -  
West Chester University, 201 Carter Drive,  
Suite 300, West Chester, Pennsylvania 19382,  
commencing at 9:33 a.m., before Stephanie  
Weldon, Court Reporter - Notary Public there  
being present:

- - -

ELITE LITIGATION SOLUTIONS, LLC  
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Representing the Respondents

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I N D E X

WITNESS PAGE

GARY BIXBY  
(Witness sworn.)

DIRECT EXAMINATION  
BY: Mr. Gill 4, 214

CROSS-EXAMINATION  
BY: Mr. Kovatis 209

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1 (It is agreed by and between  
2 counsel that the sealing and  
3 certification are hereby waived and  
4 all objections, except as to the form  
5 of the questions, are reserved until  
6 the time of trial.)

7 - - -

8 GARY BIXBY, after having been  
9 duly sworn, was examined and testified  
10 as follows:

11 - - -

12 MR. KOVATIS: Yeah. We will  
13 waive any filing. We'll follow the  
14 state rules of civil procedure, we  
15 will read and sign.

16 MR. GILL: That's fine.

17 - - -

18 DIRECT EXAMINATION

19 - - -

20 BY MR. GILL:

21 Q. Good morning, Mr. Bixby.

22 A. Good morning, sir.

23 Q. My name is Michael Gill, and together  
24 with my law firm at Buckley Brion McGuire &

1 Morris here in West Chester, we represent the  
2 Borough of West Chester generally as solicitors  
3 for the Borough, and have had the pleasure of  
4 doing so since the mid '80s, and specifically  
5 with regard to the litigation in which this  
6 deposition is being taken.

7 I'm going to be asking you some  
8 questions today about that litigation,  
9 specifically with regard to issues which were  
10 raised in a notice of deposition.

11 MR. GILL: I'll have this  
12 marked as Borough-1.

13 (Whereupon, Borough-1 was  
14 marked as of this date and is attached  
15 hereto.)

16 MR. KOVATIS: And I'll note  
17 for the record, this was the same  
18 exhibit that was marked yesterday at  
19 Tom Clark's deposition.

20 MR. GILL: That's correct.

21 MR. KOVATIS: With the same  
22 numbering.

23 BY MR. GILL:

24 Q. Have you seen that document prior to

1 this morning?

2 A. I have.

3 Q. Okay. And it's your understanding that  
4 that is the notice of deposition pursuant to  
5 which this deposition is being conducted?

6 A. Yes, sir.

7 Q. All right. I'm going to ask you some  
8 introductory questions before we get into --  
9 well, let's go over some ground rules first.

10 Today, when I use the term the Borough,  
11 I'm referring to the Borough of West Chester,  
12 Pennsylvania and municipality in which some but  
13 not all of West Chester University is situated.  
14 Do you understand that?

15 A. Yes, sir.

16 Q. When I refer to you, unless the context  
17 clearly indicates otherwise, I'm referring to  
18 the Pennsylvania State System of Higher  
19 Education or West Chester University itself.  
20 Do you understand that?

21 A. Yes, sir.

22 Q. When I refer to North Campus, I'm  
23 referring to that portion of West Chester  
24 University's Campus which is situated within

1 the jurisdictional boundaries of the Borough of  
2 West Chester; and by that, I'm going to ask you  
3 to refer to a document that was marked  
4 yesterday in Mr. Clark's deposition as  
5 Borough-7A, It's a document which bears a stamp  
6 in the lower right-hand corner, WCU 000001, and  
7 I have that out here on the table in front of  
8 us. Do you see that here?

9 A. I do.

10 Q. Okay. So when I refer to North Campus,  
11 I'm referring to the portion of West Chester  
12 University's campus which is bounded on the  
13 west by South New Street except for the South  
14 New Street Parking structure which is located  
15 on the -- on the West Side of South New Street.

16 I'm referring to the property that is  
17 bounded on the north by Sharpless Street except  
18 for the Sharpless Parking structure and a  
19 surface parking lot which is designated as Lot  
20 A, which is located to the north of Sharpless  
21 Street.

22 I'm referring to the property that is  
23 bounded on the east by South High Street except  
24 for a series of buildings which are located on

1 the eastside of South High Street, and which  
2 are identified on Borough-7A as College Arms  
3 Apartments, 701 -- I'm sorry, 703 South High  
4 Street, 701 South High Street and 20 Linden  
5 Street, and I'm also referring to that portion  
6 of North Campus which is bounded on the south  
7 by West Rosedale Avenue. Do you understand  
8 that?

9 A. The last statement got me a little  
10 confused. You're including the south side of  
11 Rosedale --

12 Q. No.

13 A. -- as part of the north --

14 Q. I'm sorry. Go ahead. Sorry.

15 A. Just, if you don't mind clarifying that  
16 last statement for me.

17 Q. I will. I was establishing West  
18 Rosedale Avenue as the southern boundary of  
19 North Campus.

20 A. Okay.

21 MR. KOVATIS: And if I could  
22 get clarification because I don't  
23 think it was totally clear from what  
24 you said. You are including New

1 Street Parking structure, Sharpless  
2 and the buildings east of High Street  
3 within your definition of North  
4 Campus?

5 MR. GILL: That's correct.

6 BY MR. GILL:

7 Q. So do you understand that --

8 A. Yes, sir.

9 Q. -- definition of North Campus?

10 A. Yes, sir. I do.

11 Q. Okay. There are other parts of the  
12 campus of the Borough of West Chester -- excuse  
13 me, there are other parts of the campus of West  
14 Chester University which are depicted on  
15 Exhibit Borough-7A, but those are outside of  
16 the jurisdictional limits of the Borough of  
17 West Chester. Is that your understanding?

18 A. It is.

19 Q. Mr. Bixby, are you familiar with the  
20 declaratory judgment complaint or petition for  
21 review pursuant to which this litigation was  
22 commenced?

23 A. I'm not sure I got all those words.  
24 Could you reduce that into layman terms?

1 Q. Sure. Are you familiar with the  
2 initial filing in court that the Borough of  
3 West Chester filed with Commonwealth Court to  
4 begin this litigation?

5 A. Yes, sir. Familiar, I was not a  
6 participant.

7 Q. Understood. So when I use the term,  
8 stream protection ordinance, I'm giving it the  
9 meaning that's assigned to it --

10 A. Yes.

11 Q. -- in that filing.

12 A. Okay.

13 Q. And when I use the term, stream  
14 protection fee, I'm giving it the meaning  
15 that's assigned in that filing. Do you  
16 understand that?

17 A. Yes, sir. I do.

18 Q. Okay. Have you taken any medications  
19 today which might impair your ability to  
20 understand my questions or the answers that you  
21 will give?

22 A. Since I don't know what the questions  
23 are, I will disclose the medications that I'm  
24 on. I take metoprolol, it is a heart medicine.

1 I take losartan which is a heart and blood  
2 pressure medicine, and I take a lasix, I'm  
3 sorry, I don't know the formal name of it but  
4 it's the essence of a water pill; and so  
5 stating, it does have an affect on me and it  
6 may be that I would ask to be excused for a  
7 moment to moment to go ahead and take care of  
8 that issue.

9 Q. Okay. That's fine. That's absolutely  
10 fine.

11 MR. GILL: Can we actually go  
12 off record for a moment?

13 (Whereupon, a brief discussion  
14 was held off the record.)

15 BY MR. GILL:

16 Q. Thank you for that disclosure, and I'll  
17 ask the same question. So the medications that  
18 you've identified and disclosed in order to  
19 respond to my question about understanding my  
20 questions; now I'll ask, are you taking any  
21 medications which might impair your ability to  
22 give honest and complete and forthright answer  
23 to those questions?

24 A. I don't believe any of my medications

1 would do that.

2 Q. Okay. Seated to your left is Stephen  
3 Kovatis, an attorney with the Office of  
4 Attorney General here in the Commonwealth of  
5 Pennsylvania. Do you know Mr. Kovatis?

6 A. I do.

7 Q. Okay. Do you understand that he is  
8 here representing the Borough -- he's here  
9 representing West Chester University and the  
10 Pennsylvania State System of Higher Education?

11 A. Yes, sir. I do.

12 Q. Now, Mr. Kovatis may raise objections  
13 during the course of our conversation this  
14 morning, if he objects on the basis of  
15 attorney/client privilege, I would like for you  
16 to stop answering the question or not begin  
17 answering the question, and Mr. Kovatis and I  
18 will have a conversations about his objection  
19 regarding attorney/client privilege.

20 He may object on other basis including  
21 the form of the question. If you understand  
22 the question, I would like for you to continue  
23 with your response to the question. Any other  
24 objection that he may raise, I'd like for you

1 to continue to answer the question, however, as  
2 a practical matter of what will likely happen  
3 is, Mr. Kovatis and I will stop and have a  
4 conversation. You understand that?

5 A. I do.

6 Q. If you do not understand a question  
7 which I ask, as you've already done, please  
8 stop me and ask me to rephrase the question or  
9 repeat the question and I will gladly do so.  
10 If you do not stop me and ask me to rephrase or  
11 repeat a question, I will assume that you  
12 understood the question and that the answer  
13 that you give is responsive to my question. Do  
14 you understand that?

15 A. Yes, sir.

16 Q. Do you understand that you are under  
17 oath in this deposition?

18 A. I do.

19 Q. What is your understanding of what it  
20 means to be under oath?

21 A. I have been sworn to tell the truth to  
22 the best of my knowledge.

23 Q. All right. The court reporter who's  
24 seated to your right is taking down in a

1 transcription, everything that's being said  
2 today unless we go off the record. What that  
3 means is that, I will ask you to wait for me to  
4 finish my question before you begin to answer  
5 my question, and likewise, I will wait for you  
6 to finish an answer before I begin asking the  
7 next question.

8 The court reporter is unable to take  
9 down two people speaking at the same time. Now  
10 as a practical matter, sometimes that happens,  
11 and if that happens, we'll attempt to stop  
12 doing that straight away. But any and all  
13 efforts you can make to wait until I'm  
14 finished, and I'll do the same with you, we  
15 should observe that. Do you understand that?

16 A. I do.

17 Q. What is your professional address?

18 A. I beg your pardon?

19 Q. What is your professional address? The  
20 address here at West Chester University.

21 A. My office?

22 Q. Yes.

23 A. My office is 201 Carter, Suite 300.

24 Q. All right. And by what institution are

1       you employed?

2       A.       West Chester University.

3       Q.       Is that your only form of employment?

4       A.       No.

5       Q.       How else are you employed?

6       A.       I'm a motorcycle safety coach.

7       Q.       Do you have any other employment beside  
8       here at the University and as a motorcycle  
9       safety coach?

10      A.       No, sir.

11      Q.       What is your job title here at West  
12      Chester?

13      A.       I'm the associate vice president of  
14      facilities.

15      Q.       And who is your immediate supervisor?

16      A.       Todd Murphy.

17      Q.       And what is Mr. Murphy's title?

18      A.       He's the vice president of finance and  
19      administration.

20      Q.       And who is Mr. Murphy's immediate  
21      supervisor?

22      A.       I believe he reports directly to the  
23      president, Dr. Chris Fiorentino.

24      Q.       Do you have any people who work

1 directly under you in the organizational chart?

2 A. Yes, sir. I do.

3 Q. Who are they?

4 A. Jennifer Loeper, Sue Miller, Patty  
5 Shields.

6 Q. Patty Shields?

7 A. Correct. Dustin Zappone, Tom Clark,  
8 and Nicole Spivitz, and my admin is Beth  
9 Stepanek.

10 Q. All right. What is Ms. -- I'm sorry,  
11 Jennifer Loeper?

12 A. Loeper, L-O-E-P-E-R.

13 Q. What's her job title?

14 A. She's the director of project  
15 management office.

16 Q. And Sue -- I'm sorry, Sue's last name?

17 A. Sue Miller.

18 Q. And what is Ms. Miller's title?

19 A. She's the director of finance for  
20 facilities.

21 Q. And Ms. Shields?

22 A. She's the director for custodial and  
23 ground services.

24 Q. And Mr. Zappone?

1 A. Well, he's acting in the interim  
2 director of operations.

3 Q. And you said Ms. Stepanek is your  
4 administrative assistant?

5 A. That's correct.

6 Q. Okay. Now, you said that you -- are  
7 there any other individuals who work directly  
8 for you?

9 A. I can't think of it, it'll be  
10 embarrassing if I think of them later. But at  
11 the moment, I can't think of anybody else.

12 Q. Okay. What are your duties and  
13 responsibilities in your position as associate  
14 vice president of facilities?

15 A. I have all the responsibility of  
16 anything that happens within the grounds or in  
17 buildings. So from, you know, the grass to the  
18 top of the building and everything in between,  
19 that includes transportation and the motor  
20 pool.

21 Q. Does it include oversight of  
22 construction projects?

23 A. Yes, sir.

24 Q. Okay.

1 A. I'm sorry, I didn't mean to interrupt  
2 you.

3 Q. No, not at all. All together, natural.  
4 That's why we have to be conscious of it, or I  
5 have to be conscious of it.

6 So it does include construction, new  
7 construction at the University?

8 A. And renovation. Yes, sir.

9 Q. And that includes renovation, new  
10 construction, does it involve response -- does  
11 it include responsibilities regarding storm  
12 water management?

13 A. Yes, sir.

14 Q. Can you describe for us that aspect of  
15 your responsibilities?

16 A. Well, there's two tiers that I'm  
17 subject to. One is our MS4 Agreement, and the  
18 second one is our commitment as a strategic  
19 theme for the University for sustainability.  
20 So as we do a project, recognizing the  
21 two-pronged responsibility and we assume that,  
22 one is to comply with the lead model which is  
23 leadership and energy and efficient design --  
24 sufficient energy design which includes

1 managing storm water. So anything we build  
2 that has an impervious platform to it, we  
3 offset it with the equal storm water management  
4 strategies.

5 Q. Okay.

6 A. For the lead side, but it does coincide  
7 with our intent and our commitment for the MS4.  
8 So those two parallel paths kind of walk  
9 together every single project that we do.

10 Q. Okay. And we're going to talk a lot  
11 this morning about storm water management. But  
12 just to make sure that I understand. As it  
13 fits within your duties and responsibilities,  
14 specifically storm water management, you break  
15 down into two tracks, compliance with the  
16 Borough -- I'll stop that before the end of  
17 this, compliance with the University's MS4  
18 permit and fulfilling the University's  
19 commitment and its strategic planning for  
20 sustainability?

21 A. Yes. The sustainability is one of the  
22 themes of our strategic planning which you can  
23 see up here on the chart (indicating).

24 Over here, I'm sorry, this represents

1           our strategic plan, and those five segments.

2                       MR. KOVATIS: Be careful  
3           pointing to things in the room that  
4           aren't exhibits.

5                       THE WITNESS: She can't see  
6           it, right?

7                       MR. KOVATIS: It won't show up  
8           in the transcript. So to the best of  
9           your ability, describe it in words or  
10          refer to documents that Mr. Gill will  
11          give you.

12                      THE WITNESS: I apologize.

13                      MR. KOVATIS: It's okay.

14                      MR. GILL: Not at all. And  
15          for the record, Mr. Bixby pointed to a  
16          poster in the room which is entitled  
17          Student Success. It appears to have  
18          five components. Learning is in the  
19          center, and that is surround by  
20          community engagement, diversity and  
21          inclusion, personal and professional  
22          development and sustainability.

23          BY MR. GILL:

24          Q.           Did I describe it accurately?

1 A. Yes, sir. You did.

2 Q. All right. For how long have you been  
3 employed by West Chester University?

4 A. I was hired November 27th, '18. So  
5 just short of two years.

6 Q. Has the entire -- entirety of your  
7 employment -- scratch that.

8 Is the position which you currently  
9 hold the only position which you've ever held  
10 at West Chester University?

11 A. No. I was initially hired as the AVP  
12 for construction compliance, finance and  
13 construction compliance was the title. And my  
14 primary goal there was to overlook the cost as  
15 they were being overrun in the construction  
16 projects.

17 Q. Were they always overrun?

18 A. I can't speak about eternity but for my  
19 being brought in, I was told that's a typical  
20 history here.

21 Q. I'm sorry, I didn't mean to joke. Just  
22 the way you said it suggested that overruns  
23 were a normal and customary event. And is your  
24 current position a promotion from that prior

1 position?

2 A. I don't believe so, it was a lateral  
3 move.

4 Q. Okay.

5 A. And it was -- it was driven from the  
6 vice president's office.

7 Q. Okay. So the AVP -- the A in AVP  
8 construction compliance refers to associate?

9 A. Yes, sir.

10 Q. Okay. Is there any level on the  
11 organizational chart between associate vice  
12 president and vice president?

13 A. Not that I'm aware of.

14 Q. Okay. So you occupy a position which  
15 is third on the organizational chart underneath  
16 the president, what I'm assuming is a series of  
17 vice presidents, and then a series of associate  
18 vice presidents; is that correct?

19 A. That's what I understand, yes, sir.

20 Q. Did you have any positions here at the  
21 University prior to being the associate vice  
22 president for construction compliance?

23 A. I said that's finance and construction  
24 compliance.

1 Q. Finance and construction.

2 A. No, sir. I did not.

3 Q. Where were you employed prior to your  
4 time here at the University?

5 A. The Community College of Philadelphia.

6 Q. In what capacities?

7 A. Director of facilities, it's almost the  
8 same exact thing I do here but the title is  
9 different.

10 Q. Okay. So the job duties that you  
11 described earlier as being responsibility for  
12 -- having responsibility for the University's  
13 physical facilities, as you described  
14 everything from the ground to the top of the  
15 building, that's a similar job you had --  
16 that's similar to the job you had at --

17 A. Yes.

18 Q. -- Community College of Philadelphia?

19 A. That's correct.

20 Q. And for how long were you there?

21 A. I was there just shy of twelve years.  
22 So eleven years.

23 Q. So approximately twelve --  
24 approximately fourteen, give or take, years

1 between West Chester University and Community  
2 College of Philadelphia; is that correct?

3 A. That's correct.

4 Q. Who occupied your position here at the  
5 University immediately prior to your  
6 incumbency?

7 A. A gentleman by the name of James Louis.

8 Q. And does anybody now occupy your prior  
9 position, associate vice president for  
10 financing and construction compliance?

11 A. It was redefined. There is a person in  
12 the new position, the redefined position. But  
13 the construction part is, you know, it's me.

14 Q. Okay. How is it redefined?

15 A. Well, now they have an AVP that's over  
16 finance and business, I believe their title is.

17 Q. Okay. That person doesn't have any  
18 responsibility for construction activities you  
19 said?

20 A. No construction activities but  
21 ultimately, the finance part of everything  
22 going through appropriate accounting, and my  
23 division supplies that information through Sue  
24 Miller.

1 Q. I'm sorry, what was her name?

2 A. Brenda Small is the AVP of that finance  
3 position.

4 Q. Okay. What is your educational  
5 background?

6 A. I have a BS in mechanical engineering  
7 and technology.

8 Q. And where's that from?

9 A. LeTourneau University.

10 Q. Where is that?

11 A. Long View, Texas.

12 Q. Okay. And is that your only degree?

13 A. Yes, sir.

14 Q. Okay. All right. Thank you for that  
15 background information.

16 A. You're welcome.

17 Q. As I said earlier today, I'm going to  
18 be asking you a series of questions about the  
19 lawsuit that brings us here today, it's a  
20 lawsuit that's docketed in the Commonwealth  
21 Court of Pennsylvania at No. 260 MD 2018. Are  
22 you familiar with that lawsuit?

23 A. Yes.

24 Q. Can you please tell us your

1 understanding of what that lawsuit is about?

2 A. Well, simplified under advice of our  
3 counsel, we refused to pay an invoice that was  
4 submitted by the Borough for what they  
5 determined was some kind of a fee for service.  
6 It was challenged and disputed, and we continue  
7 to hold our position that it's unwarranted and  
8 we're not going to pay.

9 Q. Okay. What, to your knowledge, is that  
10 fee for, or what does the Borough claim that  
11 that fee is for?

12 A. Well, I don't know that I can  
13 differentiate that statement. The position  
14 that we have, the Borough is asking us to help  
15 fund their infrastructure for storm water  
16 infrastructure as a component of some portion  
17 of use. They have a, I don't know, \$6, \$6.75,  
18 some amount per 1,000 foot of usage of the  
19 space, however they have calibrated that, that  
20 is what I believe this -- however they're going  
21 to get these funds from whoever they get them  
22 from. It's to help us set that infrastructure,  
23 maintenance and improvement costs.

24 Q. Okay. Thank you for that understanding

1 or recitation of your understanding of the  
2 lawsuit. Before we jump into the substance  
3 about that lawsuit then, a couple more  
4 background questions or introductory questions.  
5 Have you ever been deposed before?

6 A. Yes, sir.

7 Q. How many times?

8 A. Five, six, seven. Say five because I  
9 can tell you those.

10 Q. All right. Would you please tell me  
11 what those were about?

12 A. They have been involved with  
13 contractors and architects. The latest being  
14 under an architect which was -- it went to  
15 trial.

16 Q. Were all of those depositions that you  
17 referenced, five to seven, were those in your  
18 official capacity?

19 A. At the time, yes, sir.

20 Q. What do you mean by that?

21 A. Well, I didn't have the same level of  
22 title or this title here as you need to -- any  
23 of the other depositions.

24 Q. Fair enough. What I meant was, were

1       you being deposed because you were employed in  
2       a certain position?

3       A.       Yes, sir.

4       Q.       Can you generally tell me when those  
5       depositions occurred?

6       A.       The last one was three years back, that  
7       was the latest one.  And then they've just been  
8       kind of scattered from 2007 until three years  
9       ago.

10      Q.       Okay.

11      A.       So over the ten-year period, every  
12      couple of years, it was one or two.

13      Q.       All right.  Do you recall what courts  
14      those -- those pieces of litigation occurred  
15      in?

16      A.       Only one went to court, that was the  
17      last one, and that was in Philadelphia.

18      Q.       Okay.

19      A.       Everything else seemed to have a way of  
20      getting settle outside of court.

21      Q.       All right.  Now, you said the last one  
22      was three years ago and you've been with the  
23      University since 2018, so can I assume that  
24      each of these items of litigation or pieces of

1 litigation occurred with regard to the  
2 Community College of Philadelphia?

3 A. Yes, that's correct.

4 Q. Okay. So you haven't been deposed or  
5 participated in any litigation in your capacity  
6 as an employee of West Chester University?

7 A. No, sir.

8 Q. And you said those cases were all with  
9 regard to contracts with professional design  
10 consultants such as contractors or engineers?

11 A. The last one that we did, the most  
12 recent one was with an architectural  
13 engineering firm.

14 Q. Okay.

15 A. And then the mix of various contractors  
16 had different levels of claims, got the  
17 different levels of challenges all the way up  
18 to just before going to court.

19 Q. Okay. I understand. Mr. Bixby, did  
20 you meet with anybody to prepare for your  
21 deposition here this morning?

22 A. In the --

23 MR. KOVATIS: And before you  
24 answer, I'll instruct the witness, you

1 can disclose whether or not you met  
2 with counsel, including me. But do  
3 not disclose the contents of any of  
4 those communications which are  
5 protected by privilege. Do you  
6 understand that?

7 THE WITNESS: Yes, sir.

8 MR. KOVATIS: Okay. Go ahead  
9 and answer that question.

10 THE WITNESS: I did.

11 BY MR. GILL:

12 Q. With whom did you meet?

13 A. With our counsel direct and with the  
14 counsel of the Attorney General's Office.

15 Q. And who is your district counsel?

16 A. That would be Joe Miller.

17 Q. Are those the only two individuals with  
18 whom you met to prepare for your deposition?

19 A. I did have a conversation with the vice  
20 president chief of staff, John Villella.

21 Q. When was that conversation?

22 A. It was a phone conversation, Friday.

23 Q. That was October 8th or 9th?

24 A. I believe it was the 9th.

1 MR. KOVATIS: 9th, I believe.

2 BY MR. GILL:

3 Q. That was a telephone conversation?

4 A. Yes, sir.

5 Q. Can you tell me what you and  
6 Mr. Villella discussed?

7 A. I asked him about the process that was  
8 in place prior to me coming onboard, as far as  
9 getting an invoice, how an invoice was  
10 challenged. And then in this particular case,  
11 did he recall the steps that that refusal to  
12 pay went through because that had predated my  
13 time.

14 Q. And was he able to provide you with  
15 that information?

16 A. He was able to state what he believed  
17 it went through, which matches what we do  
18 today.

19 Q. Would you describe that process for me,  
20 please?

21 A. So an invoice comes in, it's checked by  
22 whoever is the recipient of the invoice,  
23 generally, and if I could, just use the path  
24 that would come to me. He would come to me if

1 I don't have a credible purchase order or  
2 there's, you know, an inappropriate charge on  
3 the invoice, it will be challenged, it first  
4 gets challenged. In this case, I do not  
5 believe it was an initial challenge, it  
6 actually went to a legal counsel for review.

7 MR. KOVATIS: And I would  
8 caution the witness not to reveal the  
9 advice of any legal counsel related to  
10 this particular invoice at issue here.

11 THE WITNESS: Okay.

12 MR. GILL: To clarify this,  
13 legal counsel employed the Attorney  
14 General's office, or legal counsel  
15 employed by the University or the  
16 State System of Higher Education.

17 MR. KOVATIS: Correct. The  
18 University's legal counsel or the  
19 State System's legal counsel.

20 BY MR. GILL:

21 Q. Okay. So if you happened to be having  
22 a conversation with a friend who happened to be  
23 a lawyer, that wouldn't be in the -- protected  
24 by attorney/client privilege. But I think Mr.

1 Kovatis' point is clear, if you discussed it  
2 with counsel for the University, I don't want  
3 you to disclose what counsel for the University  
4 said to you.

5 A. Okay.

6 Q. So I'm sorry, so an invoice comes in  
7 and a decision is made by you or within your  
8 department as to whether or not to challenge  
9 that invoice; is that correct?

10 A. It needs to be verified or validated  
11 because lots of people send invoices. So an  
12 invoice needs to be validated against a  
13 legitimate purchase order or contract  
14 agreement. And if it's not, it's challenged.

15 And if I had been in my position, this  
16 invoice would have come to me, I would have  
17 challenged it and said, I have no basis to  
18 authorize a payment. We need to even look  
19 further. It would then be pushed back up at  
20 the executive level, somebody would need to  
21 decide to get legal counsel, then we would make  
22 our decision based on the advice that we got  
23 from the co-counsel and execute that decision.

24 Q. And is that the process that was

1 followed with regard to the stream protection  
2 fee invoices which the Borough sent to the  
3 University?

4 A. Yes, sir. Again, only to the memory of  
5 John Villella, but it matches exactly what we  
6 do now. I was not here when those deps were  
7 taken.

8 Q. Okay. But Mr. Villella told you that  
9 that process was followed, and the invoice was  
10 forwarded up the chain, so-to-speak, and  
11 ultimately to legal counsel, correct?

12 A. Yes, sir.

13 Q. And what is your understanding of what  
14 happened next with regard to the invoices that  
15 the Borough sent for the stream protection fee?

16 A. Well, the invoice is just a continue.  
17 But the process then became a decisionmaking  
18 process where we are a data-driven  
19 decisionmaking institution. We collect all the  
20 data, we make all the decisions, and the  
21 decision was then conveyed to the Borough, that  
22 we do not believe we need to be paying this.

23 Q. And how is that decision related to the  
24 -- related to the Borough?

1 A. My recollection is there was a letter  
2 sent to the Borough.

3 Q. Do you know who sent that letter?

4 A. I believe it was sent on behalf of the  
5 institution or the University by counsel. But  
6 I am not positive, it's just my recollection.

7 Q. Okay. Do you recall that it was  
8 counsel for the State System of Higher  
9 Education, not any local counsel for West  
10 Chester University?

11 A. Yeah. I haven't actually seen  
12 anything, hardly anything from anybody local.

13 Q. Does the University continue to receive  
14 invoices from the Borough for the stream  
15 protection fee?

16 A. I'm not aware of them.

17 Q. Other than Mr. Villella and counsel,  
18 did you speak with anybody to prepare for your  
19 deposition here today?

20 A. No.

21 Q. Was the process for challenging an  
22 invoice the only subject of your conversation  
23 with Mr. Villella?

24 A. No.

1 Q. What else did you discuss with him?

2 A. The location of the statue, the  
3 learning stairs.

4 Q. I'm sorry, the location --

5 MR. KOVATIS: Are you asking  
6 relevant to this lawsuit?

7 MR. GILL: Yes.

8 MR. KOVATIS: Or anything  
9 else?

10 MR. GILL: Well, I rather not  
11 have the witness parse that out. So  
12 even though it might not be relevant,  
13 hopefully it wasn't too long of a  
14 conversation..

15 BY MR. GILL:

16 Q. So if you can tell us what else you  
17 discussed with Mr. Villella.

18 A. Well, you wanted to qualify it by too  
19 long, I don't know what that means. I had a  
20 half hour conversation, I spent probably three  
21 minutes on this subject. The other subjects  
22 included the foundation, fundraising, donors to  
23 statue, transportation.

24 Q. Okay. Fair enough. Was the process

1 for challenging the stream protection fee  
2 ordinances which was followed, or to Mr.  
3 Villella's recollection, followed, the only  
4 thing related to this litigation which you  
5 discussed with Mr. Villella?

6 A. That's correct.

7 Q. Okay. Thank you. Did you speak with  
8 anybody else besides Mr. Villella and counsel?

9 A. No.

10 Q. Did you exchange any correspondence,  
11 electronic or otherwise, with anyone to prepare  
12 for your deposition?

13 A. Other than counsel?

14 Q. Yes.

15 A. No.

16 Q. No e-mails, no internal memos?

17 A. No.

18 Q. Nothing like that?

19 A. No, no.

20 Q. Did you review --

21 A. Can I say, except for getting it on my  
22 calendar. But it's some e-mail back and forth  
23 about confirming the calendar. When the days  
24 were changed, there was e-mails about the

1 change of that.

2 Q. Okay. Fair enough.

3 A. So that helped me prepare for when.

4 Q. Okay. And then, let me personally  
5 thank you for your indulgence in facilitating  
6 the dates for the depositions.

7 A. You're welcome.

8 Q. Did you review any documents to prepare  
9 for your deposition today?

10 A. Yes.

11 Q. What documents did you review?

12 A. Just kind of bringing the MS4, I looked  
13 at our PRP, I looked at the letter that was  
14 sent just to remind me of the letter. I looked  
15 at the answers to the interrogatories that we  
16 did several months ago. So just refreshed my  
17 memory on some of those things that we talked  
18 about, that was months ago. I looked at the  
19 statement of deposition that you showed me  
20 earlier that we marked here as this exhibit.

21 Q. That's Borough-1?

22 A. Yes, sir.

23 Q. Okay.

24 A. And I mean, I just looked at a few

1 things that I thought were pertinent. I don't  
2 know if that was exhaustive but those are the  
3 things that I looked at.

4 Q. Well, you said documents that you  
5 thought would be pertinent, are there any  
6 others besides the MS4, the University's  
7 current MS4 permit itself, the University's  
8 pollutant reduction plan, the letter which was  
9 sent to the Borough, informing the Borough that  
10 the University or the State System wouldn't be  
11 paying the stream protection fee, the notice of  
12 deposition which is identified as Borough-1,  
13 and you said the responses to interrogatories,  
14 I'll have this marked as Borough-2.

15 (Whereupon, Borough-2 was  
16 marked as of this date and is attached  
17 hereto.)

18 BY MR. GILL:

19 Q. Is what's now marked as Borough-2, the  
20 responses to interrogatories to which you made  
21 reference?

22 A. It is.

23 Q. Okay. Did you also review what I'll  
24 ask to be marked as Borough-3?

1 (Whereupon, Borough-3 was  
2 marked as of this date and is attached  
3 hereto.)

4 THE WITNESS: I don't recall  
5 looking at this in review of this  
6 meeting.

7 BY MR. GILL:

8 Q. Have you ever seen Borough-3 before?

9 A. Yes. And I'm sorry, I thought you were  
10 just referring to in preparation for..

11 Q. My question was..

12 A. Okay.

13 Q. Limited to in preparation for your  
14 deposition.

15 A. Thank you.

16 Q. So the MS4 permit, the pollutant  
17 reduction plan, the letter from State System  
18 informing the Borough that State System and WCU  
19 wouldn't be paying the fee, the notice of  
20 deposition being Borough-1, the interrogatory  
21 responses, Borough-2, any other documents that  
22 you reviewed prior to your deposition?

23 A. Not that I can recall.

24 Q. Did you participate in the preparation

1 of the response to the Borough's  
2 interrogatories which is marked as Borough-2?

3 A. Would you help me understand what you  
4 mean, participate? I did not do any of the  
5 typing, I didn't do any of the note-taking but  
6 was part of answering the questions.

7 Q. Okay. Can you describe for us your  
8 involvement in greater detail, did you provide  
9 answers to all of the questions, did you  
10 provide answers to some of the questions?

11 A. I believe it's noted which ones I did,  
12 however, I participated in the entire session  
13 and offered answers where I thought I had  
14 meaningful input. So not all of them did I  
15 have meaningful input for some of the technical  
16 specifics, but where I had meaningful input and  
17 I could represent the institution with  
18 confidence, I did.

19 Q. Okay. Fair enough. Did you  
20 participate in the preparation of what's marked  
21 as Borough-3, the response to the request for  
22 production of documents?

23 A. Only to make sure that we had all the  
24 documents in order to meet the request.

1 Q. Okay. Did you review those documents  
2 in their entirety before they were sent to the  
3 Borough back in, I believe, February or March  
4 of this year?

5 A. To say in their entirety would be  
6 misleading. But certainly, I looked at the  
7 documents to make sure that I understood what  
8 we were sending. To look at the detail and to  
9 confirm the content, I would not be able to say  
10 I did that.

11 Q. Okay. All right. Now I'd like to talk  
12 about storm water management. Are you familiar  
13 with the storm water management collection --  
14 collection and management system which is --  
15 which exists at North Campus?

16 A. We have several different strategies  
17 for that. So the answer I guess would be yes,  
18 but I'm not sure which strategy you might be --

19 Q. I'd like to hear about those  
20 strategies, can you tell us about those  
21 strategies?

22 A. I'll start with the lead model. We use  
23 green roofs, and green roofs are an offset to  
24 some the storm water management. We use

1 infiltration basins, we use retention basins.  
2 Some of the infiltration basins may be referred  
3 to as swales, but they're -- they're part of  
4 it. And then we claim some of the storm water  
5 which we are doing on the latest project, and  
6 we're reusing some of the storm water, or  
7 intend to reuse it, we haven't quite done the  
8 project yet.

9 Q. Okay. So we've got green roofs, the  
10 use of infiltration basins, retention basins  
11 and quality control measures, is that a good  
12 way to describe the cleaning of some storm  
13 water and reuse of it?

14 A. The words are okay, but that's not --  
15 that's not what I was referring to. The reuse  
16 of storm water is in a project that hasn't  
17 happened yet, and it goes through its reuse  
18 protocol which is generally a UV light.  
19 However, the rest of the storm water systems  
20 that we do, they don't have a measurable  
21 output, so-to-speak, that you can say that it  
22 is of this quality. We look at what we  
23 discharge, if there's any overflow from any of  
24 those, and we measure and look at the content,

1 sentiment content or potential pollutant  
2 content of anything that comes out of that.

3 Q. Okay.

4 A. So the quality control part is  
5 determining what is coming out of them that is  
6 discharged out to the open.

7 Q. Okay. I understand that. With regard  
8 to -- I understand that, period. With regard  
9 to the reuse of storm water, is that a project  
10 that's now under construction called the  
11 Science and Engineering Campus Commons?

12 A. No. This was a project that was to be  
13 at the corner of Rosedale and High but it has  
14 been paused.

15 Q. Okay. That's Presidents Walk?

16 A. And the Founders. It's the landscape  
17 master plan Phase I, it includes a fountain  
18 where we intend to reuse rainwater, storm  
19 water, treated storm water.

20 Q. Okay. My understanding from  
21 Mr. Clark's deposition is that the Presidents  
22 Walk and fountain project is temporarily on  
23 hold; is that correct?

24 A. Yes, sir.

1 Q. When does the University anticipate  
2 moving forward with that project?

3 A. I don't believe they are singularly  
4 trying to make the decision about the project.  
5 But that project in the bigger picture of how  
6 they're going to execute funds and how they're  
7 going to spend the money, that we're now very  
8 tight on because of the circumstances.

9 As that funding is available, it's  
10 processed through one of fourteen different  
11 universities, everybody's looking at all their  
12 funding. So I cannot give you an answer that's  
13 just singularly focused on that particular  
14 project because it is one of many.

15 Q. Okay. To clarify, I think we all know  
16 what you're referring to, but when you say  
17 because of the circumstances, you're referring  
18 to budgetary and financial constraints imposed  
19 as a result of the coronavirus crises, correct?

20 A. Yes. On the entire system. So the  
21 system really is being impacted by this  
22 terribly, and we are a member of that system.

23 Q. Understood. I just wanted to make sure  
24 there wasn't some other circumstance that you

1 were referring to.

2 A. No.

3 Q. Other than what we're all thinking of.

4 Okay. So we started talking about how storm  
5 water is managed at campus and you referred to  
6 infiltration -- green roofs, infiltration in  
7 which can include swales, and retention basins  
8 and a possible future of reuse of some storm  
9 water for the fountain component -- or the  
10 fountain in Presidents Walk and fountain but  
11 that project is indefinitely on hold?

12 A. That is correct.

13 Q. So there's no existing or under  
14 construction facility at the campus, at North  
15 Campus where storm water is reused, correct?

16 A. Not to my knowledge. And I wanted to  
17 only add one other thing about pervious and  
18 impervious pavement. So the pervious pavement  
19 is a storm water strategy, but it's  
20 teeny-weeny. You know, we look at, can we get  
21 water through a surface that can be infiltrated  
22 into the ground naturally. So the pervious  
23 pavers, some would want to make sure that that  
24 was included as a standalone item.

1 Q. I understand. And not to get off track  
2 here, but Mr. Clark testified that pervious  
3 pavers are used along as part of the pedestrian  
4 network on campus along South Church Street and  
5 University Avenue, is that testimony -- was his  
6 testimony correct?

7 A. He would know more detail than I, but  
8 I'm surprised that that's the only place we  
9 have it because I think we have a lot of  
10 pervious pavers.

11 Q. Can you tell me using Borough-7A, where  
12 else you understand the pervious pavers to be  
13 located, and Mr. Clark was kind enough to leave  
14 his set of colored pens there --

15 A. Oh, I don't use other people's crayons.  
16 I don't know that I can do that because I just  
17 don't know the detail enough. But I actually  
18 imagined that -- not imagined, I believed it  
19 was all the way down Church Street. If that  
20 was not what Tom said, I would yield to Tom's  
21 memory. But I imagined I would have said it  
22 was all the way down Church Street.

23 Q. Okay. All right. My initial question  
24 was whether or not you are familiar with the

1 storm water collection and management systems  
2 which are in place at campus, and I just want  
3 to make sure we remained on track and on the  
4 same page.

5 You mentioned several strategies, three  
6 of which are in use at -- I'm sorry, you added  
7 pervious pavers. So you mentioned five  
8 strategies, four of which are in use at campus  
9 right now; green roofs, infiltration basins  
10 which can include swales, detention or  
11 retention basins, and by that, I'm referring to  
12 the same type of facility.

13 A. Yes, sir.

14 Q. Or pervious pavers. Are there any  
15 other storm water management techniques or BMPs  
16 which are used at North Campus?

17 A. The BMPs, we have those listed within  
18 our MS4 document. So in the MS4, we have a  
19 response to each of the, what I thought were a  
20 minimum criteria. So the BMPs are listed in  
21 there, and I just, I didn't connect those to  
22 strategies, so I'm struggling a little bit with  
23 that.

24 Q. Let me rephrase the question, and I'll

1 use a different term from BMPs so as to not  
2 confuse a structural BMP with a BMP, that that  
3 term is used in the MS4 permit.

4 A. Okay.

5 Q. Other than green roofs, infiltration  
6 which include swales, infiltration basins which  
7 can include swales, retention or detention  
8 basins or pervious pavers, are there any other  
9 engineered storm water strategies being used at  
10 North Campus?

11 A. I'm not aware of them.

12 Q. Are there any non-engineered storm  
13 water strategies being used in campus other  
14 than the ones that we talked about?

15 A. Well, certainly trees. Trees, grass,  
16 open area. Those are all in our calculation  
17 for storm water. And we are -- we have a very  
18 robust landscape and tree lined campus,  
19 historic trees on our campus.

20 Q. You just mentioned calculations, would  
21 you please describe any calculations that  
22 you're aware of regarding volume of storm water  
23 which discharges from or at North Campus, a  
24 calculation that involves trees?

1           A.        So as we look at, really, it all boils  
2           down to two words, pervious and impervious.  So  
3           if we are taking an impervious surface -- and  
4           I'm sorry, if we're taking a pervious surface  
5           and we're replacing it with an impervious  
6           surface, a building per se, a sidewalk, a  
7           driveway, any of those kinds of things, we need  
8           to offset that same amount of space with some  
9           way of managing the storm water that's  
10          accumulated on the impervious space that we're  
11          adding.  So there is a very linear calculation  
12          to that and it is very straight forward.

13         Q.        All right.  So to clarify, when you  
14          talk about using trees, grass or open areas in  
15          calculations for storm water management  
16          purposes, are you referring only to portions of  
17          campus which undergo redevelopment?

18         A.        Well, no.  One of the neat things here  
19          at this University, they have a program, and I  
20          believe it was a voluntary program to reduce  
21          our storm water discharge to anywhere.  So we  
22          are going through campus and making reductions  
23          to storm water, even in existing areas of the  
24          buildings -- on the campus, not the buildings.

1 Q. All right.

2 A. They're doing that unilaterally which I  
3 am a huge proponent of that.

4 Q. That's good, I think we all are.

5 Using, let's refer to using Borough-7A.

6 Mr. Clark testified with regard to a green roof  
7 at Francis Harvey Green Library. He testified  
8 with regard to pervious pavers along South  
9 Church Street and University Avenue, are you  
10 aware of any other voluntary storm water  
11 management -- structural storm water management  
12 facilities which are in place at North Campus  
13 other than those two? And by voluntary, I mean  
14 structural systems which are put in place which  
15 are not part of a reconstruction -- of a  
16 construction or redevelopment project?

17 A. Well, no, because everything else that  
18 I've been involved with has all been connected  
19 to some other project.

20 Q. Okay. So the voluntary measures that  
21 you mentioned are limited to the green roof at  
22 Francis Harvey Green Library, and the pervious  
23 pavers. Now to backout, you mentioned trees,  
24 grass and open area are all included in

1 calculations for storm water management  
2 purposes.

3 And my question to you was, are those  
4 calculations being done on a project-by-project  
5 basis in order to determine what storm water  
6 management is required in order to comply with  
7 applicable regulatory requirements, or is there  
8 some program of looking at campus on a larger  
9 scale and saying, this is the total amount of  
10 impervious and pervious surface we have at  
11 campus, and this is the total amount of storm  
12 water which we're discharging?

13 A. I don't know that it's an either or.  
14 We have both. So we are deliberate on both.  
15 We don't have a limit to how much we can  
16 voluntarily do. Our goal is not that we've  
17 done two things, we're done. Our goal is a  
18 continual demonstration of sustainability  
19 commitment, and storm water management is one  
20 of those that is easy to demonstrate.

21 So those -- those two are critically  
22 important but neither of them were negotiable.  
23 We're going to do both.

24 Q. I understand completely. I'm trying to

1 understand the whether or not, and let's start  
2 with that. Is there a University or State  
3 System program which is separate and apart from  
4 compliance with regulatory requirements for the  
5 management of storm water? So now, I'm not  
6 talking about MS4 permit and I'm not talking  
7 about NPDES permits or compliance with the  
8 Borough's storm water management ordinance on  
9 reconstruction projects. I'm talking about  
10 looking at North Campus from higher up and  
11 saying, this is the amount of storm water which  
12 is discharged from campus overall. Is there a  
13 program like that in place?

14 A. I don't know how it could be  
15 independent of those. Our MS4 is based on the  
16 NPDES guidelines, and if you're referring to an  
17 acre of disturbance, NPDES comes in whenever  
18 we're doing any of that as a standalone, just..

19 Q. That is what I'm referring to.

20 A. Okay. Well then, the rest of our  
21 property we do know, I believe every square  
22 foot of impervious surface, we know what that  
23 is and we are being very deliberate and  
24 reducing that and making sure that we have an

1 offset of storm water management. I do not  
2 know of a document that enumerates the steps  
3 that we're going to take to do that.

4 MR. KOVATIS: Just to let you  
5 know, NPDES, N-P-D-E-S.

6 MR. GILL: We can go off for a  
7 second.

8 (Whereupon, a brief discussion  
9 was held off the record.)

10 BY MR. GILL:

11 Q. I want to try to keep all of this  
12 well-organized in my mind. So there is --  
13 there are storm water management facilities  
14 which are constructed as part of a new building  
15 or new project at campus. So for instance,  
16 Mr. Clark made reference to the Science and  
17 Engineering Center, also referred to as The  
18 Commons, and there will be post-construction  
19 storm water management facilities constructed  
20 and installed in association with that project,  
21 correct?

22 A. Not necessarily post-construction but  
23 concurrent construction and there will be some  
24 post-construction efforts as well.

1 Q. Okay. What I mean is that any  
2 infiltration basin or detention basin which is  
3 constructed as part of the project will be used  
4 to manage post-construction storm water?

5 A. Yes, sir.

6 Q. Okay. That's what I mean by  
7 post-construction storm water management.

8 A. Okay.

9 Q. So there's that type -- there's that  
10 category of storm water management facility,  
11 and it's something that's installed as part of  
12 a development or redevelopment project?

13 A. Yes, sir.

14 Q. There are minimum control measures  
15 which are required in order to comply with the  
16 University's MS4 permit, and there are BMPs  
17 which are implemented in order to meet those  
18 minimum control measures; is that your  
19 understanding?

20 A. Yes, sir.

21 Q. Okay. Those aren't the BMPs that I am  
22 referring to now. Again, I'm only referring to  
23 structural BMPs?

24 A. Okay.

1 Q. You mentioned that there are voluntary  
2 structural BMPs, and that those are, to your  
3 knowledge, as of right now, limited to the  
4 green roof at Francis Harvey Green Library and  
5 the pervious pavers that we described along  
6 Church Street and University Avenue, correct?

7 A. With my objection to the word limited  
8 because those are not the only strategies we  
9 could employ going forward. I know to this  
10 day, those are the only two we have put in.

11 Q. Okay. What plans are in place or being  
12 discussed to voluntarily manage storm water on  
13 campus going forward, and do you understand  
14 what I mean by voluntarily?

15 A. Yes. So reclaiming water and reusing  
16 it, reclaiming storm water.

17 Q. And where -- can you show me using 7A,  
18 where that is planned to take place?

19 A. Well, you say discussions. We don't  
20 have a plan to target. I have come with  
21 experiences of my past where we were successful  
22 in reclaiming and reusing storm water for  
23 flushing toilets. So I would like to do that  
24 here because we have lots of them and we have

1       lots of area where we can reclaim the rain, and  
2       we could use it for flushing toilets. So that  
3       strategy, we don't have defined but it is one  
4       that I have brought with me that I really would  
5       like to do.

6       Q.       And has that been discussed with  
7       anybody else here at the University?

8       A.       Just my boss because my boss had saw  
9       what I did before.

10      Q.       That's Mr. Murphy?

11      A.       Yes, sir.

12      Q.       And what is the status of that  
13      discussion?

14      A.       Just a discussion at the moment, as  
15      part of our facility planning, campus master  
16      planning.

17      Q.       Okay. Anything other than the  
18      potential reuse of rainwater for plumbing?

19      A.       Well, there is the potential for use  
20      for irrigation.

21      Q.       Okay.

22      A.       And that's also a strategy I've  
23      successfully done in the past.

24      Q.       Okay. Anything else?

1 A. Well, the fountain, we talked about  
2 that already.

3 Q. Okay. So the exhaustive list of storm  
4 -- structural storm water management strategies  
5 includes as we sit here today, one green  
6 roof -- and I don't mean to minimize, just by  
7 way of enumeration.

8 A. Okay.

9 Q. One green roof, infiltration facilities  
10 associated with some new construct -- or with  
11 new construction projects in order to comply  
12 with regulatory requirements, detention or  
13 retention basins at new construction in order  
14 to comply with regulatory requirements, and  
15 pervious pavers in the locations that we've  
16 described earlier, University Avenue and Church  
17 Street, and there is the potential in the  
18 future for the reuse of rainwater for plumbing  
19 and irrigation, or for the fountain which would  
20 be part of Presidents Walk and the fountain  
21 project. Did I capture the universe of  
22 structural storm water management strategies  
23 which are either in place or contemplated for  
24 North Campus?

1 A. Yeah. And again, I sort of, not  
2 object, that's not the right word. The word to  
3 meet a required code, we exceed the code so  
4 it's not just a look at how to -- the minimum  
5 of the code requirement we exceeded to pick out  
6 those outlined areas. So you'll see in many  
7 cases, we've increased the capacity of the  
8 space so that we could continue to improve our  
9 storm water management around campus.

10 Q. Okay. And actually, I'm going to ask  
11 you a series of questions about the individual  
12 redevelopment projects which have taken place,  
13 or are taking place right now.

14 A. Okay.

15 Q. But before we get to that, I'd like to  
16 ask you to take a look at B-4.

17 (Whereupon, Borough-4 was  
18 marked as of this date and is attached  
19 hereto.)

20 BY MR. GILL:

21 Q. Do you recognize that document?

22 A. My first response, it looks like a  
23 little miniature of the North Campus, and it  
24 looks like it was one of our -- of our plan map

1 documents.

2 Q. All right. I'll note that it bears a  
3 stamp of WCU 000820. Is it your understanding  
4 that this document was part of the documents  
5 which the University and Pennsylvania State  
6 System submitted to the Borough in response to  
7 our request for production of documents?

8 A. Yes.

9 Q. Okay. I asked if you had seen -- I had  
10 asked if you knew what this document was, and  
11 you said it appears to be a miniature of, I'm  
12 sorry, can you tell us again what you think it  
13 is?

14 A. No. I said it appears to be a  
15 miniature of our North Campus. So I was just  
16 saying it looks like our campus.

17 Q. Okay.

18 A. My glasses are fogging up, so I'm  
19 having trouble reading any of the details. But  
20 it appears to be a miniature layout of the  
21 North Campus, and I just affirmed that I knew  
22 we submitted something like this as the  
23 documents.

24 Q. Okay.

1 A. -- the documents.

2 Q. I'll represent to you that B-4 is not a  
3 reduction or a reduced scale version of  
4 Borough-7A, these are different --

5 A. Okay.

6 Q. -- documents. They both depict North  
7 Campus and some parts of West Chester's campus  
8 outside of the jurisdictional limits of the  
9 Borough. But they are not -- they are not the  
10 same document. Do you see the reference on the  
11 bottom of B-4 to a light blue shade with the  
12 words, buildings with no structural storm water  
13 management systems next to it?

14 A. I do.

15 Q. All right. With the exception of --  
16 I'm sorry, and buildings which are not shaded  
17 in blue, is it your understanding that those  
18 are buildings at campus which do have  
19 structural storm water management systems  
20 associated with them?

21 A. I do not know that.

22 Q. You do not?

23 A. No, sir.

24 Q. Okay. And I'll clarify as Mr. Clark

1 pointed out in his testimony and so we're clear  
2 here, Reynolds Hall, which is adjacent to Lot B  
3 in the northeastern corner of camp -- of North  
4 Campus should be colored in blue, according to  
5 Mr. Clark's testimony.

6 Are you able, Mr. Bixby, to discuss the  
7 disposition or discharge of storm water from  
8 buildings which according to B-4, do not have  
9 structural storm water management systems  
10 associated with them?

11 A. No, I'm not.

12 Q. Okay. Are you able to discuss the  
13 disposition of storm water from buildings  
14 depicted on B-4 which are not shaded in blue?

15 A. I'm sorry, would you say that again?

16 Q. Are you able to discuss the disposition  
17 and discharge of storm water from buildings  
18 which are depicted on B-4 as not being shaded  
19 in blue?

20 A. No.

21 Q. Are you the individual here at campus  
22 who -- or here at the University who is most  
23 knowledgeable about the storm water systems  
24 which are being constructed as part of The

1 Commons and Science and Engineering Center?

2 A. I would be, yes.

3 Q. Okay. But you're not able then --  
4 you're not able to discuss storm water systems  
5 which are in place for Sharpless Parking  
6 Garage?

7 A. That's correct.

8 Q. Okay. Who would that be?

9 A. Well, it should be noted on our report  
10 that we had, that lists where all of our storm  
11 water issues are, I would defer to Tom first,  
12 and then if he doesn't know, I'd have to go  
13 look it up.

14 MR. GILL: Okay. We'll talk  
15 about that. We can go off for a  
16 second.

17 (Whereupon, a brief discussion  
18 was held off the record.)

19 BY MR. GILL:

20 Q. Is it your understanding, Mr. Bixby,  
21 that there are buildings and other impervious  
22 surfaces at North Campus which do not have  
23 structural storm water management systems  
24 associated with them?

1 A. Other than what's shown here? I'm  
2 sorry, would you repeat that question?

3 Q. Is it your understanding that there are  
4 portions of North Campus, and by that I mean  
5 buildings, parking lots, pedestrian walkways or  
6 any other impervious surface which do not have  
7 structural storm water systems associated with  
8 them?

9 A. Correct.

10 Q. Okay. What is your understanding of  
11 the portions of North Campus which do have  
12 structural storm water facilities associated  
13 with them?

14 MR. KOVATIS: Objection to  
15 form. Go ahead.

16 THE WITNESS: I understand a  
17 green roof that's not shown here on  
18 this -- on FHD, but the green roof, I  
19 certainly understand that strategy. I  
20 don't understand the conveyance from  
21 the building to a system, I don't have  
22 that detail. If you were to look at  
23 the back of BPMC, you would see a  
24 storm water system there that is an

1 infiltration and it's a basin outside,  
2 you would see that. I don't know that  
3 that's marked.

4 BY MR. GILL:

5 Q. Okay. By BPMC, you're referring to the  
6 Business and Professional Management Center?

7 A. That's correct.

8 Q. At the southeast corner of South Church  
9 Street and Sharpless Street?

10 A. It is -- I don't know how you would..

11 Q. It might be easier if you use 7A,  
12 sorry.

13 A. It's bound by Sharpless, so it's up  
14 next to Sharpless. I'm sorry, just my glasses  
15 are fogging up.

16 Q. No, please. Take your time.

17 A. So you'll see BPMC is right here, and  
18 the basin is right here (indicating).

19 Q. Okay. So BPM -- the Business and  
20 Professional Management Center has structural  
21 storm water facilities associated with it?

22 A. It does.

23 Q. According to Borough-4, there are other  
24 buildings at campus which also have structural

1 storm water facilities associated with them,  
2 correct?

3 A. Yes.

4 Q. And according to -- to Borough-4, those  
5 are the Student Recreation Center, the  
6 Sharpless Parking structure and Lot A, the  
7 South New Street Parking structure,  
8 Commonwealth Hall, University Hall, Allegheny  
9 Hall, Merion Science Center, and Brandywine  
10 Hall if I didn't mention it.

11 I'll represent to you that Mr. Clark  
12 testified that he believed that Reynolds Hall  
13 should be shaded in blue on B-4 because there  
14 are not structural storm water facilities in  
15 place with regard to Reynolds Hall.

16 Is it your understanding that with the  
17 exception of the Science and Engineering  
18 Center, The Commons project, everything --  
19 everything I just listed is the extent of  
20 buildings at campus, or portions of campus  
21 excuse me, which had structural storm water  
22 management facilities associated with them?

23 MR. KOVATIS: I might have  
24 missed it, but did you mention the

1 North Campus Drive Parking structure?

2 MR. GILL: I did not. Thank  
3 you.

4 MR. KOVATIS: Okay. So I'll  
5 add that to the list, and now you can  
6 ask that question.

7 BY MR. GILL:

8 Q. Is it your understanding that  
9 everything that I just listed and supplemented  
10 by Mr. Kovatis is the universe of buildings and  
11 portions of North Campus which have structural  
12 storm water facilities associated with them?

13 A. It's my understanding.

14 Q. So everything else at North Campus with  
15 the exception now of the pervious pavers along  
16 South Church Street and University Avenue, and  
17 the green roof at Francis Harvey Green Library,  
18 everything else at North Campus does not have a  
19 structural storm water management system  
20 associated with it, correct?

21 A. That is my understanding, yes.

22 Q. Now you've testified that you're not  
23 familiar with those structural storm water  
24 facilities that are in place with regard to,

1 for instance, the Student Rec Center or  
2 Brandywine Hall or Merion Science Center,  
3 correct?

4 A. That's correct.

5 Q. But you are familiar with the  
6 structural storm water systems which are in  
7 place, or being constructed as part of The  
8 Commons, the Science and Engineering Center and  
9 North Campus Drive Parking structure, correct?

10 A. That's correct.

11 Q. Okay. So let's talk about those. What  
12 storm water management structures will be  
13 implemented as part of The Commons, Science and  
14 Engineering Center, North Campus Drive Parking  
15 structure project, or projects, however -- are  
16 they referred -- are they treated as one single  
17 project?

18 A. Well, yeah. But you're correct in  
19 calling them by three different names because  
20 The Commons is the dining area, the SECC  
21 portion is the Science and Engineering Center,  
22 and then the parking structure, and they are  
23 referred to independently but it's one project.

24 Q. Okay. And to clarify, and I'll ask my

1 question again. But to clarify it, there are  
2 no other ongoing construction projects at North  
3 Campus, correct?

4 A. That's correct.

5 Q. And the only project for which approval  
6 had been obtained or some approvals had been  
7 obtained, but now is on hold is the Presidents  
8 Walk and Fountain, correct?

9 A. Yes.

10 Q. Are there any other project that are in  
11 the approval's pipeline?

12 A. Not yet. We have projects coming but  
13 they aren't in the approval's pipeline yet.

14 Q. Okay. We'll revisit those. So by way  
15 of clarity, we have buildings that are there, a  
16 project composed of three components, The  
17 Commons, SECC, parking structure North -- North  
18 Campus Drive Parking structure, which is being  
19 constructed as we sit here today, and we've got  
20 other projects which may be approved in the  
21 future -- I mean, maybe applied for in the  
22 future?

23 A. Yes, sir.

24 Q. Okay. And we've got the fountain and

1 Walk which has obtained some levels of  
2 approvals but it's on hold for budgetary  
3 reasons?

4 A. Yes.

5 Q. Okay. Now let's talk about the storm  
6 water management structures which will be  
7 implemented for The Commons, Science and  
8 Engineering Center and North Campus Drive  
9 Parking structure. Can you describe for us,  
10 those storm water management systems?

11 A. There's two primary, infiltration  
12 basins and green roofs.

13 Q. And where will the infiltration -- I'm  
14 sorry, you said basins, plural?

15 A. Yes, there's a couple.

16 Q. Where will they be located and, I know  
17 you said you didn't want to use Mr. Clark's  
18 pens, so I will. And I'm going to use the  
19 purple pen to indicate where you tell me the  
20 infiltration basins will be located.

21 A. So we have one here (indicating).

22 Q. And by here, you mean?

23 A. Right in front of the -- right between  
24 Lawrence and the back-end of what will be The

1 Commons.

2 Q. Is that generally what I'm outlining in  
3 purple?

4 A. It may not be to scale but I think you  
5 did pretty good.

6 Q. Okay.

7 A. And there will be green roofs along  
8 this edge (indicating).

9 Q. And I'm going to mark that in purple as  
10 well.

11 A. And then there is a basin, I'd have to  
12 go back and look at the drawing that was done  
13 during Phase I when we took out the boiler  
14 plant, but there's a basin, another basin that  
15 I believe is up in this area. But I'd have to  
16 verify that on the drawings because Phase I is  
17 a couple of years back.

18 Q. But you think it's generally to the  
19 northwest of the building?

20 A. That's what I believe. Yes, sir.

21 Q. I'm going to draw that as sort of a  
22 cloud.

23 A. And it certainly can be verified.

24 Q. Okay. Mr. Clark mentioned an

1 underground detention facility which is to the  
2 west of Hollinger Fieldhouse and to the  
3 northeast of University Hall, and yesterday, we  
4 outlined that in green. Will that detention  
5 facility play any role in the storm water  
6 management associated with The Commons, SECC  
7 and the North Campus Drive Parking structure?

8 A. I do not believe that that was the  
9 original -- that we needed that for the SECC,  
10 however, I can verify that and confirm that.  
11 There is a basin that's there, and certainly,  
12 the interconnections between basins, I'd have  
13 to look at the drawings and let you know if you  
14 needed further affirmation of that.

15 Q. That's possible.

16 A. Okay.

17 Q. But what I'm really trying to do is  
18 gain a holistic understanding of, a drop of  
19 rainwater which falls from the sky onto North  
20 Campus, ultimately, where does that go.

21 All right. So you mentioned  
22 infiltration basins, one of which will be  
23 generally directly in front of Lawrence Center  
24 and between Lawrence Center and The Commons.

1       You mentioned another infiltration basin which  
2       will be north of that first infiltration basin  
3       subject to reserving the right to clarify that.  
4       And you mentioned green roofs which will be  
5       installed upon the northern side of the Science  
6       and Engineering Center, correct?

7       A.       Correct.

8       Q.       Are there any other storm water  
9       management facilities which will be constructed  
10      as part of those three buildings, Commons, SECC  
11      and North Campus Drive Parking structure?

12     A.       We are looking at, when the impact of  
13     adding Peoples, the discharge of the rainwater  
14     off of Peoples roof, and --

15     Q.       By People, you mean the Peoples  
16     Building --

17     A.       That's correct.

18     Q.       -- which is located along South Church  
19     Street at the -- on the northwestern corner of  
20     the intersection of South Church Street and  
21     University Avenue?

22     A.       That's correct.

23     Q.       Okay. Go ahead, you said you were  
24     looking at connecting that building into the

1 storm water management system?

2 A. And yes. So there is some  
3 complications in the conveyances of underground  
4 utilities, and Peoples became a subject of,  
5 should we look at moving the discharge for  
6 Peoples, and at a certain volume and a certain  
7 way and where does it go into. So we are doing  
8 that right now.

9 Q. All right. To what -- are you familiar  
10 with the terms, two-year storm, five-year  
11 storm, ten-year storm?

12 A. Yes.

13 Q. So on and so forth?

14 A. Yes.

15 Q. Can you tell me your understanding of  
16 what those terms mean?

17 A. Well, most of what we talked about is a  
18 100-year storm, and we try to anticipate the  
19 volume of water that 100-year storm would  
20 produce. And if it's produced, for example, on  
21 an impervious roof surface, how do we collect  
22 it and discharge it and allow it to be  
23 infiltrated into the ground.

24 Q. I'm sorry, I want to make sure I

1 understand you. Are you suggesting that the  
2 Borough -- that the University's infiltration  
3 systems are designed to infiltrate the 100-year  
4 storm?

5 A. I would not make that as such a global  
6 statement, but we look at a roof producing X  
7 amount of volume of water that we would need to  
8 be able to manage onsite. It may be  
9 exclusively in an infiltration basin but I  
10 generally don't think it could be done by just  
11 one infiltration basin.

12 Q. Okay. We'll revisit that. Let's come  
13 back to your understanding of what the term,  
14 two-year storm, five-year storm, ten-year  
15 storm, 25-year storm, 50-year storm or 100-year  
16 storm, or for that matter, 500-year storm, to  
17 what do those terms refer?

18 A. Severity of rainfall in a given time  
19 period. So they may have X inches of rain  
20 falling every so many minutes or seconds or  
21 hours or days.

22 Q. Okay. What is your understanding of  
23 regulatory requirement in the Borough of West  
24 Chester for the elimination -- take a step

1 backwards.

2 Is it your understanding that the  
3 regulatory requirement regarding volume of  
4 storm water associated with construction  
5 activities is that the property owner must  
6 manage onsite or eliminate onsite, the  
7 difference between the rainfall leaving the  
8 site from the two-year storm in a  
9 predevelopment condition, and the rainfall  
10 leaving the site in the post-development  
11 condition from a two-year storm; is that your  
12 understanding of the regulatory requirement?

13 A. Except during construction, we are  
14 required to eliminate or not discharge any  
15 sediment from the construction site. And that  
16 is not a determinant of the two or five years  
17 that I know of.

18 Q. Okay. And I'm talking about post  
19 construction.

20 A. So post, and I'm going to be as candid  
21 and as clear as I can, our intent is to manage  
22 storm water off of our property regardless of  
23 two or five years or 100 years. Our plan and  
24 our design is to take whatever storm we're

1 given and try to manage it all on our property.

2 Q. Okay. So I want to be clear, has the  
3 University designed the infiltration basins and  
4 the rainwater and the green roofs for the  
5 Commons, SECC and Campus Drive, has the  
6 University designed those infiltration  
7 facilities and green roofs to eliminate storm  
8 water onsite for the 100-year storm?

9 A. Not eliminate the storm water because  
10 it's always going to rain, but to eliminate us  
11 discharging it off of our property.

12 Q. Okay. And is that the design which has  
13 been approved by the Borough of West Chester?

14 A. We go through L&I, and West Chester  
15 Borough would have to look at it before we were  
16 even permitted to begin construction. So I was  
17 not here during those review times, so I don't  
18 know who at the Borough or what the procedure  
19 for Borough -- the Borough is, but certainly,  
20 we had to send our plans to L&I and they have  
21 to be approved. And part of that approval  
22 process is the local agency, the agency having  
23 jurisdiction.

24 Q. Okay. Mr. Bixby, is it also your

1 testimony that the plans which according to  
2 your testimony, will manage onsite, the storm  
3 water from the -- and I'm taking here about  
4 volume..

5 A. Mm-hmm.

6 Q. The volume of storm water from the  
7 100-year storm are the plans which either  
8 Chester County Conservation District or DEP  
9 approved for issuance of the NPDES permit for  
10 post-construction storm water management for  
11 these three projects -- for these projects  
12 composed of three different buildings, it's  
13 your testimony that nothing up to and including  
14 the 100-year storm, no volume of storm water up  
15 to and including the 100-year storm will be  
16 discharged from North Campus from this project?

17 A. Well, North Campus, we've already  
18 agreed that there are some surfaces that we  
19 don't have storm water management.

20 Q. I'm only talking about these projects.

21 A. Just the project, every project we do,  
22 that would be our goal. And I would also ask  
23 because I wasn't here during the design stage,  
24 to make sure that that -- I can empirically

1 show you that data. But I don't -- at the  
2 moment, I don't have that data that I can show  
3 you right now. Empirical is not a right word  
4 because we aren't going to show you what was --  
5 already happened in a 100-year storm because we  
6 haven't had that.

7 Q. I'm not asking you about what actually  
8 happens with regard -- what actually will  
9 happen when these buildings are completed and  
10 the site is stabilized and turned to its  
11 post-construction status. I'm asking you about  
12 the design.

13 A. Okay. And I would have to verify  
14 because the design predates me. But it is my  
15 conversations that I've had and my expectation,  
16 we will meet the 100-year storm. But I would  
17 like to confirm that unequivocally for you.

18 Q. Okay. I hate to belabor this point but  
19 I do want to make sure that we're speaking the  
20 same language now.

21 A. I believe that we are.

22 Q. Okay. Let's be clear, the regulatory  
23 predevelopment condition of a site, of this  
24 particular site were The Commons, SECC, and

1 North Campus Parking structure are being  
2 constructed, according to the Borough of West  
3 Chester Storm Water Management Ordinance and  
4 DEP regulations, there is a regulatory volume  
5 of storm water associated with the site in the  
6 predevelopment condition?

7 A. Yes, sir.

8 Q. And that regulatory volume of storm  
9 water is calculated for the two-year storm, and  
10 your testimony is that the University also  
11 calculated it for other storm events over and  
12 above the two-year storm, correct?

13 A. Yes, sir.

14 Q. There then is an engineering  
15 calculation done to determine the volume of  
16 storm water in the post-development condition  
17 for this site, and we're talking about here,  
18 SECC, Commons and parking structure, and your  
19 testimony is that the University calculated the  
20 volume of storm water which will -- which would  
21 in the absence of storm water control  
22 facilities, leave the site in that  
23 post-construction status for the two-year storm  
24 and for storm events over and above the

1 two-year storm; is that your testimony?

2 A. Except that we, the University, relied  
3 on our architect and engineering firms to give  
4 us those calculations and projections.

5 Q. Either the University or some agent of  
6 the University --

7 A. Yes.

8 Q. -- performed those calculations?

9 A. Yes.

10 Q. And it's your testimony that these  
11 storm facilities are designed and approved to  
12 not only manage onsite, the delta between the  
13 predevelopment and the post-development  
14 conditions for the two-year storm but are  
15 actually designed and approved to manage  
16 onsite, and again, I'm talking about volume, to  
17 eliminate onsite, the volume between the two --  
18 predevelopment and post-development condition  
19 for all storm events up to the 100-year storm.

20 MR. KOVATIS: Objection to  
21 form. Go ahead.

22 THE WITNESS: That is my  
23 belief, but I was asking for  
24 permission to confirm that this design

1           did match that. That is what I have  
2           said and yes, I want to confirm it.

3 BY MR. GILL:

4 Q.       Are you able to obtain that  
5       confirmation by returning to your office or  
6       would it be a conversation that you would need  
7       to have?

8 A.       The most expedience would be our  
9       conversations because I could call the  
10      architect and say, what levels does storm water  
11      management design to.

12 Q.      Well..

13 A.      I mean, I was not here when they did  
14      those deign details.

15 Q.      Okay. Let's continue.

16 A.      Okay.

17 Q.      Our conversation up to this point has  
18      been with regard to the volume of storm water  
19      and not with regard to the rate at which storm  
20      water is discharged from the site, is that your  
21      understanding?

22            You understand that our prior  
23      discussion on this subject was limited to  
24      volume and not rate of discharge?

1 A. Well, the storm is defined on volume  
2 rate -- and rate.

3 Q. Understood. When you were answering my  
4 questions about the facility's being designed  
5 to eliminate onsite storm water between the  
6 predevelopment and post-development conditions,  
7 were your answers with regard to the volume of  
8 storm water generated or with regard to the  
9 rate at which storm water is discharged?

10 A. They're together. The volume and the  
11 rate, and that is how they defined the  
12 different levels of severity of a storm.

13 Q. I understand that. I'm asking you --

14 A. And we're managing that rate and  
15 volume.

16 Q. Okay. So your testimony subject to  
17 clarification, your testimony is that not only  
18 is the rate being controlled for storm events  
19 up to the 100-year storm but the volume of  
20 storm water is being eliminated onsite, and by  
21 that I mean, no storm water is being discharged  
22 from the site for storm events up to the  
23 100-year storm?

24 A. That is --

1 MR. KOVATIS: Objection to  
2 form. What do you mean by the site?

3 MR. GILL: I'm talking -- all  
4 of my questions now are referring to  
5 The Commons, the SECC and the North  
6 Camps Drive Parking struct --

7 MR. KOVATIS: So even if it's  
8 managed elsewhere on West Chester's  
9 property?

10 MR. GILL: If you can clarify  
11 that. I think what Mr. Bixby  
12 testified is that, the only storm  
13 water facilities associated with these  
14 projects or project are the two  
15 infiltration basins and the green  
16 roof.

17 THE WITNESS: But you had  
18 asked about this, that you highlighted  
19 in green.

20 BY MR. GILL:

21 Q. No, that's not what -- you testified  
22 that you didn't believe that that was a  
23 facility associated with The Commons?

24 A. Except for their interconnectivity, and

1       that's the point I was trying to make earlier.  
2       Certainly, they could share some conveyance as  
3       they -- they're so close to each other. Again,  
4       that's -- I can't say just based on the  
5       footprint of all that construction that all the  
6       storm water management strategy is in that.  
7       But the strategies that we put in when we  
8       designed it and how it was designed are the  
9       ones that I've talked about, they're there in  
10      the green roof.

11      Q.       Okay. So is it your testimony that  
12      there was some storm water from storm events up  
13      to the 100-year storm might leave the  
14      infiltration basins, that that storm water  
15      would be then discharged into other storm water  
16      management facilities on Campus?

17      A.       That's correct. However, I didn't get  
18      so detailed as to that. There may be a point  
19      that there's enough water in this basin that it  
20      overflows and it's a design to overflow into  
21      another space.

22      Q.       But that would be a space on campus?

23      A.       Yes, sir.

24      Q.       So let's sort of take a step backward

1 and look at possible discharges off campus. Is  
2 it your testimony that no storm water up to the  
3 100-year storm event will leave North Campus --  
4 no storm water from The Commons, SECC and North  
5 Campus Parking structure project will leave --  
6 up to the 100-year storm event will leave  
7 campus?

8 A. That's my belief. Yes, sir.

9 Q. Okay. To clarify, SECC, The Commons,  
10 and North Campus Drive Parking structures --  
11 Parking structure is the only project to which  
12 you can testify regarding the design of the  
13 post-construction storm water management  
14 facilities, correct?

15 A. That's correct.

16 Q. With regard to portions of campus for  
17 which there are no storm water management  
18 facilities in place, what is your understanding  
19 of the disposition, ultimate discharge of my  
20 example, raindrop falls on Anderson Hall, what  
21 happens to that raindrop? I guess take us  
22 through its life.

23 A. Well, part of it gets evaporated. But  
24 as it would go onto our property or anywhere

1       that's impervious, it would have to travel down  
2       into some point where it's either going to go  
3       into a basin or into some kind of management  
4       strategy. There, it would set and go into  
5       either the Earth, absorbed into the Earth, or  
6       if that basin's full, it goes into the overflow  
7       and that overflow goes into another area where  
8       it has another chance to be absorbed into the  
9       Earth. Every raindrop that comes onto our  
10      property, we are trying to tell it needs to  
11      return to the Earth and it is our intent to  
12      have that raindrop get to the Earth in  
13      someplace.

14      Q.       Okay. And you will find no bigger fan  
15      of that goal than I, myself, and the Borough of  
16      West Chester. I'm not asking you about what  
17      the intent is or what the hope is, I'm asking  
18      for as we sit here today, what happens to those  
19      raindrops? Let's give him friends.

20                So now we've got multiple raindrops,  
21      they fall on Anderson Hall, you testified that  
22      they would fall on the building, that they  
23      would be collected presumably through a gutter  
24      or other means of capture?

1 A. Mm-hmm.

2 Q. And that they would travel from that  
3 gutter or other means of capture to a  
4 management strategy. But Mr. Bixby, according  
5 to Borough-4, Anderson Hall doesn't have any  
6 structural management systems associated with  
7 it.

8 A. Correct.

9 Q. So our raindrop and his or her friends,  
10 isn't going into a management structure after  
11 they've landed on Anderson Hall, correct?

12 A. I don't know that that's correct. It  
13 could go into a system that takes it to a  
14 structure that's not directly connected to  
15 Anderson.

16 Q. Okay. Are you familiar with what  
17 Borough-7A is?

18 A. Yes, I'm sorry.

19 Q. Do you know what this is? Do you know  
20 where it comes from?

21 A. I believe we generate this as part of  
22 our overall pollution and reduction plan, and I  
23 believe this was generated even in light of our  
24 reports with the MS4.

1 Q. Okay. I'll represent to you my  
2 understanding that it is a submission that is  
3 made to the Department of Environmental  
4 Protection as part of the MS4 permitting and  
5 permit implementation process.

6 A. Okay.

7 Q. I'll also represent to you that I  
8 recognize it as, and that the University and  
9 the State System have represented it to be a  
10 map of the storm water collection system here  
11 on North Campus.

12 A. Okay.

13 Q. Can you -- and I'll also represent to  
14 you that Mr. Clark confirmed that the green  
15 lines which are shown on 7A, are storm water  
16 conveyance pipes that are running from inlets  
17 to other pipes that are located on South Church  
18 Street or University Avenue or elsewhere, South  
19 New Street, do you see those green lines on the  
20 plan?

21 A. Well, my glasses keep fogging up so I'm  
22 having a little trouble seeing that. But if  
23 you're talking about lines that look like they  
24 come off the end of Anderson, go down Church

1 Road, these little teeny green lines?

2 Q. Yes. That's what I'm talking about.

3 A. I see those.

4 Q. So Rainy and her friends, this story is  
5 getting, by the end of all this, they'll have  
6 moved to West Chester and enrolled at West  
7 Chester University.

8 MR. KOVATIS: Off the record.

9 (Whereupon, a brief discussion  
10 was held off the record.)

11 BY MR. GILL:

12 Q. The raindrops that fall on Anderson  
13 Hall, they -- show me where there's a  
14 connection from Anderson Hall to a structural  
15 storm water management facility, such as an  
16 infiltration basin or a detention basin?

17 A. Well..

18 Q. Or any other structural facility.

19 A. Well, I don't -- at this moment, this  
20 is not a map of detail but it does show  
21 pathways. So certainly, there is a pathway to  
22 a target area here between Ruby Jones and  
23 recitation, that to me, I would want to believe  
24 would be some kind of a basin, where it would

1 go from.

2 Q. Mr. Bixby, Mr. Clark testified, and I  
3 believe it's the case that these squares are  
4 what he referred to as yard inlets, and storm  
5 water flows into them, and then from then --  
6 from there, excuse me, along through the pipe,  
7 that these are not -- that there is no  
8 structural storm water facility in between  
9 Anderson Hall and Ruby Jones Hall?

10 A. And I believe this is all grass.

11 Q. Okay. Again, where is the connection  
12 from Anderson Hall to the grass area?

13 A. On this map, there's not anything  
14 shown.

15 Q. Okay.

16 A. That I can see.

17 Q. Do you have any reason to doubt the  
18 accuracy of Borough-4, reporting that the  
19 building's shaded in blue other than Reynolds  
20 Hall, do not have structural storm water  
21 facilities associated with them?

22 A. No. And I would rely a lot on Tom  
23 Clark's understanding of that.

24 Q. Okay. If Mr. Clark testified that as

1 to buildings and other surfaces, impervious  
2 surfaces that don't have structural storm water  
3 facilities associated with them, that rainfall  
4 to those portions of campus ultimately is  
5 disposed of or is conveyed, excuse me, in one  
6 of three ways, and I'll tell you the three ways  
7 that he testified, and Mr. Kovatis I'm sure  
8 will correct me if I'm wrong.

9 But either that rainfall is going into  
10 a gutter that is discharged at ground level or  
11 at grade, and then that storm water flows  
12 overland, what I call -- what I'll call sheet  
13 flow overland. That's one possible  
14 disposition, I'll come back to that in a  
15 second. Another possible disposition is that  
16 the storm water enters a gutter and that gutter  
17 is, instead of discharging at grade, is  
18 connected underground to a storm water  
19 conveyance pipe.

20 And the third he described was with  
21 regard to buildings that had at grade or below  
22 grade windows, that there would be window wells  
23 associated with those windows and rainwater  
24 would be collected and captured in there, and

1       that there would be a stone layer within the  
2       window well and the rainwater would trickle  
3       down through the stone layer.

4               With regard to storm water discharging  
5       from a gutter system at grade, Mr. Clark  
6       testified that some of that storm water might  
7       infiltrate as it flows over pervious surface,  
8       and of some of that storm water would reach  
9       either an inlet on campus, what he called a  
10      yard inlet, or would flow into the street. Is  
11      there anything that I just described that you  
12      have reason to disagree with?

13      A.       No. And the only thing I would add  
14      would be scupper. So, but the essence is the  
15      same description except a scupper, the water  
16      just runs out and falls off the side. So  
17      sometimes they're connected to downspouts,  
18      sometimes they're not.

19      Q.       I'm sorry, what's a scupper?

20      A.       It's just a relief on a roof for where  
21      water can escape from the roof through the  
22      parapet.

23      Q.       Okay. And in that situation, the --

24      A.       Would just --

1 Q. -- would be collected in a downspout --

2 A. Yes, sir.

3 Q. -- what I'm calling a gutter?

4 A. Yes.

5 Q. Or it would just flow over the side of  
6 the --

7 A. Correct.

8 Q. -- building?

9 A. Generally onto brush or bushes  
10 underneath because otherwise, it would erode  
11 the ground next to the building.

12 Q. Okay. Would you agree with me that  
13 that's generally the same concept --

14 A. Yes.

15 Q. -- as the first category Mr. Clark  
16 described?

17 A. Yes, sir.

18 Q. Okay. Are you aware of any other way  
19 that our raindrops get from the roof of  
20 Anderson Hall or any other building doesn't  
21 have -- or any other pathway that our raindrops  
22 have from getting from the roofs of buildings  
23 that don't have storm water systems associated  
24 with them or other impervious surface that

1 doesn't have storm water systems associated  
2 with it, or has Mr. Clark captured it all  
3 subject to your addition of scuppers?

4 MR. KOVATIS: Other than  
5 evaporation that both witnesses,  
6 including Mr. Clark mentioned.

7 BY MR. GILL:

8 Q. That is correct. Other than  
9 evaporation?

10 A. That is exactly what I was going to  
11 say.

12 Q. Okay. That's it? That's the whole  
13 universe? That's the -- we've exhausted the  
14 potential life cycle of the raindrop, at least  
15 in terms of getting from roof to ground?

16 A. At best, I can think.

17 Q. Okay. And if these buildings aren't  
18 ultimately connected to an --

19 A. I'm sorry.

20 MR. KOVATIS: You can  
21 certainly clarify an answer.

22 BY MR. GILL:

23 Q. Please, I want you to.

24 A. So the raindrop could hit the side of

1 the building and run down the side of the  
2 building without a conveyance or a collector or  
3 anything. So it would then sit in window  
4 wells, but it is subject to evaporation more  
5 than it is for collection.

6 Q. Okay.

7 A. So that volume of space could be, you  
8 talked about sheet run off horizontal but it  
9 could also be vertical.

10 Q. Okay. And come back to evapo --  
11 evaporation in just a moment. If Anderson  
12 Hall, by our example, or any other building or  
13 surface which isn't connected to a structural  
14 storm water facility, if that storm water  
15 doesn't get captured and conveyed to a  
16 structural storm water facility, would you  
17 agree with me that that storm water is either  
18 going to get to -- is going to, subject to  
19 evaporation, is going to flow into the street  
20 where on which the building has frontage or  
21 some other street?

22 A. Not necessarily.

23 Q. Can you explain that?

24 A. Well, if you want to use the term, an

1 inlet, so there's an inlet here but this is all  
2 impervious, so all of the water that runs down  
3 into this direction, not all of it is going to  
4 go into the inlet because it'll be absorbed  
5 into the pervious surroundings.

6 Q. Okay. I'll qualify my question again.  
7 Other than through evaporation or infiltration,  
8 because storm water is sheet flowing over  
9 pervious areas.

10 A. Okay.

11 Q. And that's what I was referring to  
12 earlier. So other than water that's flowing  
13 over pervious areas and possibly infiltrating,  
14 and other than water which is evaporating for a  
15 building which does not have -- or other  
16 impervious surface which does not have  
17 structural storm water systems associated with  
18 it, would you agree with me that that storm  
19 water is ultimately reaching the one of two  
20 things, either an inlet or the street?

21 A. Yes.

22 Q. Okay. Does West Chester University own  
23 the streets which run through and along North  
24 Campus?

1 A. No.

2 Q. Who does?

3 A. Well, I believe a section of it is the  
4 Borough.

5 Q. Okay. In fact, the entire length of  
6 South Church Street is owned by the Borough,  
7 correct?

8 A. As far as I know. Yes, sir.

9 Q. Is the same true with regard to  
10 Sharpless Street?

11 A. It's my understanding, yes.

12 Q. And is the same true with regard to  
13 Rosedale Avenue?

14 A. That, I don't know because it seems  
15 like Rosedale splits townships.

16 Q. Fair enough. With regard to the  
17 northern side of Rosedale Avenue, it's owned by  
18 the Borough of West Chester?

19 A. That's my understanding, yes.

20 Q. Okay. And the green lines that are  
21 shown along South New Street and South Church  
22 Street, Mr. Clark testified, and I think you  
23 said you didn't have any reason to disagree,  
24 but those green lines represent storm water

1 conveyance pipes, correct?

2 A. That's correct.

3 Q. What's your understanding of the  
4 ownership of those storm water conveyance  
5 pipes?

6 A. I understood we owned them.

7 Q. The pipes within South New Street, you  
8 think the University owns those?

9 A. Well, you weren't limiting that to  
10 South New Street, so in the street, it's the  
11 Borough or the Township.

12 Q. Okay.

13 A. Anywhere else, I believe we own them.

14 Q. Okay. I'm going to show you what  
15 Mr. Clark highlighted in blue, see following  
16 this blue line along Borough-7 -- yeah, Exhibit  
17 Borough-7A?

18 A. Yes.

19 Q. Do you have any understanding of what  
20 that is?

21 A. Well, I didn't think it was exposed.  
22 But over here is what I was calling Plum Run,  
23 so I believe this, on -- there's a parking  
24 structure over here -- I'm sorry, I don't have

1 my glasses on. But this should be -- well, it  
2 even says it.

3 So this is Plum Run, and then there's  
4 an underground pathway that Plum Run takes  
5 under our property and it discharges out here.  
6 I am not aware of what this represents up here.

7 MR. KOVATIS: And when you say  
8 here, it discharges here, you are  
9 referring to around the spot that's  
10 marked WCU NC 001?

11 THE WITNESS: That is correct.  
12 And up here, there's a tag that says  
13 Lot A by Sharpless Parking structure.  
14 I don't know what that represents up  
15 here.

16 BY MR. GILL:

17 Q. All right. Is it your understanding  
18 that the blue line represents a pipe through  
19 which Plum Run runs as it crosses under North  
20 Campus?

21 A. That's correct. That's what I  
22 understand, yes.

23 Q. And who owns that pipe?

24 A. What's under our property, I'm going to

1 say we would own that.

2 Q. Okay. If in fact -- you're not 100  
3 percent certain of that, are you?

4 A. I am not 100 percent certain.

5 Q. Okay. You see that storm water  
6 conveyance pipes coming from Tyson Hall and  
7 Goshen Hall and Warren Center, Mr. Clark  
8 testified that those conveyance pipes connect  
9 into the pipe through which Plum Run runs,  
10 correct?

11 A. Correct.

12 Q. Okay. Ultimately, the identifying  
13 marker here along, at the western terminus of  
14 the blue line that Mr. Clark colored on 7A, is  
15 something identified as WCU NC 001, what is  
16 that, do you know?

17 A. I do not. It's a marker where I  
18 believe we were taking water samples but I  
19 don't know what that nomenclature means. It's  
20 an identifier of that spot.

21 Q. Okay. So if it was the case that the  
22 collect -- the conveyance system shown in green  
23 lines throughout North Campus connect to green  
24 lines within the roadways, through and adjacent

1 to North Campus, if it was the case that the  
2 green lines in the roadways, or the blue line  
3 shown on 7A are owned by the Borough, you would  
4 agree with me that storm water that is flowing  
5 through the University's collection and  
6 conveyance system as depicted on 7A, is  
7 discharged to facilities -- storm water pipes,  
8 excuse me, that the Borough owns, correct?

9 A. Yes, sir.

10 Q. And you would agree with me that there  
11 is what appears to be a point of connection or  
12 point of discharge to what is identified as WCU  
13 NC 001, which is just south of the South New  
14 Street Parking structure, correct?

15 A. Yes.

16 Q. Earlier, you mentioned that some storm  
17 water, or you agreed with me that some storm  
18 water that flows from portions of campus that  
19 don't have structural storm water management  
20 systems associated with them, would either  
21 evaporate or infiltrate. Do you remember that?

22 A. Yes, sir.

23 Q. I'm not asking you about infiltration  
24 tests that were done for purposes of this

1 question, I'm not asking you about infiltration  
2 tests that were done for new construction, and  
3 I'm not asking you about infiltration tests  
4 that were done for the pervious pavers along  
5 South Church Street and University Avenue.

6 Subject to those exclusions, are you  
7 aware of any testing which has been done to  
8 determine the permeability or infiltration  
9 capacity of soils at North Campus over which  
10 storm water might flow from portions of campus  
11 that don't have structural storm water  
12 facilities associated with them?

13 A. None that I know of during my time  
14 here. I'd have to look if there was history of  
15 that.

16 Q. Okay. So when you say that it's your  
17 expectation that storm water or raindrops  
18 coming from Anderson Hall or elsewhere, our  
19 raindrops are reaching a pervious surface and  
20 flowing over that pervious surface. When you  
21 say that there's some infiltration of that  
22 storm water before it reaches an inlet or the  
23 street, you're not aware of any reports or data  
24 or studies that can establish whether or not

1 any of that storm water actually is  
2 infiltrating, and if it is, what the amount of  
3 infiltration is, correct?

4 A. I'm not aware of any of that  
5 information. Besides the obvious, because if  
6 it rains on grass, grass absorbs the rain. But  
7 we don't have any data that shows how much it  
8 absorbs.

9 Q. But you would agree with me that there  
10 are some soils through which storm water  
11 doesn't infiltrate, correct?

12 A. Yes.

13 Q. Okay. And those are clay soils or low  
14 permeability soils, correct?

15 A. Yes.

16 Q. Okay. And that's the end of me playing  
17 engineer.

18 A. That was pretty good, though.

19 Q. Just enough to be dangerous. And  
20 returning now to -- so we're not aware of any  
21 -- go ahead.

22 THE WITNESS: Could we pause  
23 for just enough --

24 MR. GILL: Absolutely.

1 THE WITNESS: -- to run to the  
2 restroom real quick?

3 MR. GILL: Yes.

4 MR. KOVATIS: Absolutely.

5 MR. GILL: Absolutely. Great  
6 idea.

7 (Whereupon, a recess was  
8 taken.)

9 BY MR. GILL:

10 Q. All right. So we established that  
11 there are no studies that you're aware of that  
12 measure the impermeability or infiltration  
13 capacity of soils at North Campus other than  
14 with regard to studies that would have been  
15 done for new construction, correct?

16 A. That's correct.

17 Q. Are there any studies that have been  
18 done to measure the volume of storm water. And  
19 again, here, I'm talking about the raindrops  
20 that fall on an area, don't have -- areas that  
21 don't have structural facilities associated  
22 with them, that they reach grade, storm water  
23 reaches grade. Now they're theys, it's really  
24 it, reaches grade, potentially some of it's

1 going to infiltrate. Potentially, a component  
2 of it is going to reach an inlet and  
3 potentially some it's going to evaporate,  
4 correct?

5 A. Yes, sir.

6 Q. Are there any studies that have been  
7 done to measure the volume of that storm water  
8 which evaporates?

9 A. I mean, off of our -- there are studies  
10 about water evaporation.

11 Q. I'm asking if the University has done  
12 any studies --

13 A. I am not aware of it.

14 Q. -- to measure that?

15 A. I'm not aware of --

16 Q. Had the University -- are you done?

17 A. I'm not aware of that specifically.

18 Q. Okay. Has the University relied upon  
19 any studies that the University didn't do to  
20 determine the volume of storm water which is  
21 evaporating?

22 A. Not that I know of, not in my time.

23 Q. Okay. So we can agree that either  
24 through evaporation, infiltration or -- let me

1 stop there, actually. Is the University  
2 relying upon any studies that have been done by  
3 others to determine the volume of storm water  
4 which is infiltrating in this situation that  
5 I'm describing here?

6 A. I am not aware of that.

7 Q. Okay. So we can agree then, through  
8 evaporation, infiltration, or ultimately  
9 reaching an inlet, that we've exhausted the  
10 potential travel path of that storm water,  
11 correct?

12 A. Yes.

13 Q. Okay. What is your understanding of  
14 the -- well, do you know the water courses to  
15 which storm water from North Campus ultimately  
16 is discharged?

17 A. No.

18 Q. Okay. Do you know if all storm water  
19 from North Campus is discharge to one receiving  
20 water course or is it multiple receiving water  
21 courses?

22 A. My understanding is there is a portion  
23 of North Campus that makes its way up to Plum  
24 Run. But I do not believe it's the North

1 Campus in entirety.

2 Q. Okay. Do you know where the other  
3 storm water goes?

4 A. My recollection is Plum Run is in this  
5 corner, and the other corner is headed down  
6 towards Goshen Township.

7 Q. Okay. As part of the contemplation --  
8 well, let me ask this, when the University is  
9 in a decisionmaking process or in a design  
10 process about whether and how to build a new  
11 building at campus, can you take us through  
12 that decisionmaking and design process, and I'd  
13 like for you to specifically focus on the size  
14 of the building, the -- do you need to take  
15 that?

16 (Whereupon, a brief discussion  
17 was held off the record.)

18 BY MR. GILL:

19 Q. I was asking you to take me through the  
20 discussion and design process by which the  
21 University determines the size of a new been  
22 building, the amount of impervious cover that  
23 can be constructed, and what the storm water  
24 facilities associated with that new

1 construction are going to be. Can you walk us  
2 through that process?

3 MR. KOVATIS: Objection to  
4 form. Go ahead.

5 THE WITNESS: I can only walk  
6 you through the process that I have  
7 brought to the institution. They have  
8 done many things prior to my approval  
9 that I cannot say that I know the  
10 process they went through.

11 BY MR. GILL:

12 Q. Okay.

13 MR. KOVATIS: That really does  
14 make a difference.

15 BY MR. GILL:

16 Q. Which buildings then can you speak  
17 authoritatively to?

18 A. The design of every project that  
19 predates me.

20 Q. I'm sorry, you cannot speak  
21 authoritatively to designs which predate you,  
22 correct?

23 A. Correct.

24 Q. Okay. You can speak authoritatively

1 with regard to projects that were approved  
2 during your employment, correct?

3 A. Right. So since then, we've already  
4 said, I have several projects that have not  
5 gotten full approval yet but we have gone  
6 through those initial steps.

7 Q. Okay. Can you tell me what those  
8 projects are, and referring to 7A if necessary.

9 A. Okay. There's a couple of projects  
10 that we are currently looking at, and the  
11 design steps start with a concept of use. And  
12 once the concept of use is determined, there  
13 will be some initial schematic designs that are  
14 made about the concept of use.

15 The schematic designs will be reviewed  
16 and we'll start touching on some of the  
17 information that would be required to get a  
18 plan approved through the agencies having  
19 jurisdiction. A little more detail is put  
20 together, it brings it to design to development  
21 and design detail, and there, we will be  
22 getting more specific information about what  
23 would we need to do to accommodate the entire  
24 program as well as the building, as well as its

1 foundation and its surface area that it would  
2 take up, that it would also include discussions  
3 about parking and our commitment to the lead  
4 model and how we might limit parking, where  
5 there'd be decisions made about encouraging use  
6 of bicycles, following the lead model as much  
7 as is possible.

8           Once those have been finalized, then it  
9 would go from design detail to actual  
10 development or construction documents. Once we  
11 got complete construction documents we  
12 submitted for final plan approval, it would go  
13 through either the Borough, the County and the  
14 State, meaning the State Labor & Industry, so  
15 there would be three tiers of review, I have  
16 not yet stood before a Borough counsel to  
17 explain a project, but I am imagining that  
18 would be, you know, part of this process as we  
19 get closer to get the project in the dirt.

20           Once we have approvals, then those  
21 approvals go out for bid, we get corrections,  
22 RFIs from the bidders, then we recreate the  
23 drawing -- well, I shouldn't say recreate, we  
24 revise the drawings to what's called a conform

1 set, then that conform set then gives the final  
2 details for how those buildings actually can be  
3 constructed and every element of the building.

4 Q. Okay. And then you proceed to  
5 construction?

6 A. Yeah, at that point, we are prepared to  
7 proceed. There may be a reason for us not to,  
8 but we would be prepared to proceed.

9 Q. Okay. You mentioned an RFI, is that a  
10 request for information?

11 A. Yes, sir.

12 Q. Okay. I'd like to focus on one aspect  
13 of the process that you just described and  
14 that's plan approval. You testified that you  
15 seek approval from the municipality in which  
16 the project is located or going to be located  
17 for land development approval, correct? Or is  
18 it your testimony that you seek land  
19 development approval from the --

20 A. I'm sorry, go ahead.

21 Q. From the municipality in which the  
22 project is going to be located?

23 A. Yeah. I was really trying to focus on  
24 agencies having jurisdiction, so those agencies

1           might be many more than just the Borough and  
2           the Township.

3           Q.           Understood.  But the Borough -- or one  
4           -- the Township is one of them?

5           A.           Yes, sir.

6           Q.           And that depends upon where the project  
7           is, right?

8           A.           Yes, sir.

9           Q.           Okay.  And you also mentioned Chester  
10          County Conservation District?

11          A.           I don't know that I mentioned them but  
12          certainly, that would be one of the areas  
13          having jurisdiction -- agencies, I think,  
14          jurisdiction.

15          Q.           In what role does Chester County  
16          Conservation District play in the approval's  
17          process?

18          A.           Certainly, they're another avenue of  
19          review for disturbance, ground disturbance, and  
20          there's a strong parallel in connection through  
21          the DEP or EPA with the conservation districts.  
22          I have personally not yet dealt with Chester  
23          County Conservation District, so I don't know  
24          all that they require.

1 Q. Okay. But it's your understanding that  
2 their review is with regard to erosion and  
3 sedimentation control during construction and  
4 the management of storm water  
5 post-construction?

6 A. It is my understanding that they look  
7 at in totality, I don't know that it is  
8 segmented, but I know that they look at in  
9 totality.

10 Q. But those are the issues that Chester  
11 County Conservation District is --

12 A. To my knowledge. As I said, I have not  
13 presented to them, so I don't know if they have  
14 other criteria but that's my knowledge.

15 Q. Okay. And as part of the municipal  
16 approval, what role does storm water management  
17 play in the municipal approval?

18 A. It's a component of how they look at it  
19 from a municipality and the municipality,  
20 again, not having presented yet to them, but in  
21 the past, a municipality's going to look at our  
22 addition to their storm water burden are ready,  
23 if we are going to add something. But again,  
24 the lead model keeps us from adding anything to

1 their systems.

2 Also talked about height restrictions  
3 and -- I mean, how tall a building is, how many  
4 parking spaces are dedicated, the impact of  
5 traffic, how traffic flows in and out, the  
6 impact of pedestrian traffic, the impact to the  
7 community at large for additional pedestrians  
8 or bicyclists or a vehicular traffic being  
9 added. They also talked to us often about  
10 construction traffic, about managing the impact  
11 of debris on their roadways or damage to the  
12 roadways, there's a lot of conversations that  
13 happen at a municipal level.

14 Q. Okay. I want to drill down on storm  
15 water management. Is it your testimony that in  
16 order to obtain municipal approval of a  
17 storm -- of a land development plan -- I'm  
18 sorry, strike that.

19 Is it your testimony that in order to  
20 obtain lead certification, that the project  
21 cannot add any storm water -- or cannot  
22 discharge any storm water to the municipal  
23 storm system, or did I misunderstand you?

24 A. I don't believe that's how I said that.

1 The lead model would have us manage all of the  
2 storm water within the boundaries of the  
3 project.

4 Q. What do you mean when you say, all  
5 storm water?

6 A. So the rain -- again, I use the  
7 100-year storm, so if we have a storm of some  
8 value up to the 100-year storm, in order to  
9 achieve the greatest statement of  
10 sustainability in storm water management, none  
11 of that water goes anywhere other than into our  
12 own management practices.

13 Q. All right. And would you agree with me  
14 that if storm water enters an infiltration  
15 facility, some of it is going to infiltrate  
16 into the aquifer, but not all it's going to  
17 infiltrate, correct?

18 A. Potentially.

19 Q. Potentially what?

20 A. Potentially all of it might not. The  
21 intent is that it would. But if something goes  
22 wrong, it overflows, there is no potential for  
23 that overflow.

24 Q. Okay. So again, and if you can answer

1       it, great, if not, then not. But I direct your  
2       attention for instance, to Basin -- what's  
3       labeled as Basin A and Basin B for the Student  
4       Recreation Center on Exhibit-7A.

5       A.       Okay.

6       Q.       Does that have lead certification?

7       A.       That, I do not know.

8       Q.       If it does have lead certification at  
9       the highest level, is it your testimony that  
10      Basin A and Basin B are infiltrating all of the  
11      storm water associated with that project up to  
12      the 100-year storm?

13      A.       I do not know all of the storm water  
14      strategies, I don't know. You're pointing to  
15      two, I don't know if that's everything that was  
16      considered. Again, there may be trees, there  
17      may be grass, there may be impervious surface  
18      that they are considering in that space.

19      Q.       Okay. But you can speak  
20      authoritatively with regard to The Commons, the  
21      SECC and North Campus Drive. And again, I want  
22      to make sure I understand -- well, will the  
23      University pursue lead certification for those  
24      projects?

1 A. Yes.

2 Q. To what level?

3 A. Right now, we're gold.

4 Q. You've already achieved that?

5 A. Well, that's a very good question and  
6 I'm sorry I misled. Right now, we are  
7 accumulating points and will present for at  
8 least a gold level project, and our calculation  
9 is we are achieving points equal to a gold  
10 level certification.

11 Q. And is the gold level certification the  
12 one that requires that you not discharge any  
13 storm water from up to and including the  
14 100-year storm project site?

15 A. I don't know that it's, you need to --  
16 gold. I believe from certified to silver to  
17 gold to platinum, they all have that as a  
18 fundamental I believe, but I'm not a lead  
19 expert, per se.

20 Q. All right. To what extent does the  
21 ability to discharge storm water to the  
22 municipal storm collection system and  
23 conveyance system, to what extent does that  
24 ability play a role in the design of a

1 building, or other projects on campus?

2 A. It's just a necessary evil because if  
3 we can't manage it, the water has to go  
4 somewhere.

5 Q. Okay. So you would agree with me for  
6 those projects which can't manage storm water  
7 onsite or don't manage storm water onsite, that  
8 the ability to connect to the municipal system  
9 is a component of site design?

10 A. Yes.

11 Q. Okay. And in the absence of the  
12 ability to connect, but if you couldn't connect  
13 to the municipal system, how would that change  
14 the design of a project?

15 A. If the -- I'm not sure that's a  
16 contiguous thought. The project is designed  
17 with no intent to discharge to any place other  
18 than to manage it onsite. If there is a  
19 failsafe, the failsafe is, it's got to go  
20 somewhere. So we never would intend a design,  
21 we can use part of this to go to the  
22 municipal's conveyance system, that would never  
23 be how we do a project.

24 If the municipality said to me today,

1 we are shutting off everything, you can no  
2 longer use our system, I'd say fine, we'll  
3 manage it on our property. If we're not  
4 already doing that very, very closely, it would  
5 certainly be an incentive for us to take it to  
6 that next step, and we do have the capacity and  
7 the resources to move in that direction because  
8 we're already moving in that direction.

9 Q. Okay. You said a lot there, and I want  
10 to unpack that. If I understand you, the  
11 ability to connect to -- and let's start first  
12 with The Commons, SECC and North Campus Drive.  
13 It's your testimony that the size of that  
14 project and the amount of impervious cover  
15 associated with that project, were settled upon  
16 without any expectation that there would be a  
17 connection -- a storm water connection to the  
18 municipal system; is that your testimony?

19 A. I would have to confirm the decision,  
20 the design decision that was made. But that is  
21 how I have taken it from the day I've been  
22 here. So that is my assumption based on the  
23 design decisions that were made.

24 Q. What do you mean by manage? We keep

1 using the word, manage storm water onsite.

2 What do you mean when you say manage storm  
3 water onsite?

4 A. So it's either infiltrated, it's  
5 reused, it's evaporated, it's put in a green  
6 roof which is infiltrated. So however we do  
7 it, or it has a collection basin of some sort,  
8 we try to keep every raindrop and all of her  
9 friends and family members together in a space  
10 within our campus, and that is the conviction  
11 and the commitment of this institution.

12 Q. Okay. That's a laudable goal again,  
13 but to what extent does that intention or  
14 conviction match up with reality, specifically  
15 with regard to the SECC, the Commons and North  
16 Campus Drive?

17 A. I don't know how to calibrate intention  
18 to periodical data. I don't know how to do  
19 that.

20 Q. Okay.

21 A. You know, it is in what we do.

22 Q. So if I was -- I'm sorry, were you  
23 done?

24 A. Yes, sir.

1 Q. If I was to show you a land development  
2 plan set for The Commons, SECC and North  
3 Parking -- North Campus Drive Parking structure  
4 which contemplated a discharge of storm water,  
5 and here, I'm talking about the delta between  
6 the pre and post condition, that showed you a  
7 discharge of storm water for the five-year  
8 event and above, to the municipal system, your  
9 testimony is that would be a surprise to you?

10 A. I would be highly disappointed.

11 Q. Okay. Would it be surprising?

12 A. Well, because I don't know what they  
13 did prior to me getting here, and nothing has  
14 surprised me. But I'd be very, very  
15 disappointed.

16 Q. And would the same apply if I was to  
17 show you similar plans that show discharges of  
18 storm water with regard to any of the other  
19 buildings that are shown on B-4, except  
20 Reynolds Hall that are not shaded in blue? If  
21 I were to show you land development plans that  
22 showed discharges to the municipal system,  
23 would you be similarly disappointed?

24 A. Yes. However, I have said that at some

1 point, if there's a failsafe, it has to  
2 discharge out of the failed system.

3 Q. And by failsafe, you mean if the system  
4 itself physically fails or we have a storm  
5 event over the 100-year storm, is that what  
6 you're referring to as failsafe?

7 A. I didn't say that, but yes, that's  
8 exactly how I would say that, convey that, yes.

9 Q. Okay. The second part of what you said  
10 a moment ago was that if the University found  
11 itself unable to connect to the municipal storm  
12 system, that that would not effect -- well, is  
13 it your testimony that that would not effect  
14 the developmental ability of North Campus?

15 A. Absolutely.

16 Q. Okay. Can you explain that to me?  
17 Where would that storm water go if it can't be  
18 discharged to the municipal system?

19 A. In our management practices, the storm  
20 water management practices of building basins  
21 that do better infiltration, getting spaces on  
22 campus that have better percolation values, we  
23 would then start aiming for places that we can  
24 get infiltration into the ground and give back

1 to the aquifer, it has to be. I mean, it's  
2 just nature.

3 So this whole conveyance system here is  
4 because we violated nature. So our  
5 violation -- well, we can fix that. And we --  
6 and what's so unique here, we have the  
7 wherewithal to do that and we are already  
8 getting very, very close to okay, clog them all  
9 up, we still manage our storm water and we'll  
10 do it affectively on our campuses. And I'm not  
11 -- I'm not, you know, hugging the tree and  
12 swinging things around, I'm just saying this is  
13 the commitment of this institution, and I can  
14 absolutely say that and be happy of this  
15 institution.

16 Q. And again, it's a very laudable goal.  
17 You testified earlier that you're not aware of  
18 any studies of the permeability or infiltration  
19 capacity of soils at campus. But now you  
20 testify that if you had to, you could  
21 infiltrate storm water -- you could continue to  
22 build out campus with new buildings, and that  
23 you could infiltrate storm water associated  
24 with that construction somewhere on campus, how

1 do you know that if you haven't done those  
2 studies?

3 A. Those studies have to be done before we  
4 do any development. And I don't know that I've  
5 said we have this plan for a massive  
6 development. Our plan is to maximize the green  
7 space, and if we were forced to manage every  
8 raindrop and all of its friends and family  
9 members, we could not discharge ever into  
10 somebody else's system, we will find a way to  
11 manage it on campus.

12 But we will need to have data, I  
13 believe I did say this is a data-driven  
14 decisionmaking institution, I will get the  
15 data, we'll have our geo technical evaluations  
16 made, we will look at what we can do with areas  
17 that are there, we'll dig out areas that have  
18 that clay stuff that we talked about. We will  
19 make a bed that will help infiltrate the water  
20 back into the ground. We have that capability  
21 here within this institution.

22 Q. What would be the costs associated with  
23 onsite management of all of that storm water if  
24 the municipal system was not available?

1 MR. KOVATIS: Objection to  
2 form. Calls for speculation. And for  
3 clarification, when you say the system  
4 not being available, does that mean  
5 Plum Run doesn't exist?

6 MR. GILL: I'm asking if the  
7 University were to find itself unable  
8 to discharge storm water through the  
9 municipal system.

10 MR. KOVATIS: Are you counting  
11 the existence of Plum Run within the  
12 municipal system?

13 MR. GILL: Yes. I'm counting  
14 the point of discharge, ultimately, if  
15 the University could find some other  
16 place to discharge storm water.

17 MR. KOVATIS: Okay.

18 MR. GILL: Some other way of  
19 getting to Plum Run than using the  
20 municipal system, then --

21 MR. KOVATIS: But the..

22 MR. GILL: But he hasn't  
23 presented that, that's --

24 MR. KOVATIS: Right. But you

1           said getting to Plum Run. Are you  
2           counting the existence, the pipe that  
3           is Plum Run, underneath campus, are  
4           you counting that?

5                   MR. GILL: I'm including that  
6           pipe within the municipal --

7                   MR. KOVATIS: Okay.

8                   MR. GILL: -- system.

9                   MR. KOVATIS: That's my  
10          question.

11         BY MR. GILL:

12         Q.         So, do you understand my question or  
13         would you like me to rephrase it?

14         A.         Please rephrase it.

15         Q.         Sure. Your testimony is that if we all  
16         wake up tomorrow and the Borough has said, no  
17         more discharges of storm water from North  
18         Campus to any infrastructure, storm water  
19         infrastructure which the Borough owns, that's  
20         the condition that we're talking about here.

21                 Your testimony is that it's your  
22         expectation that that would not impede the  
23         develop ability of North Campus because you  
24         would simply manage -- I'm going to ask you to

1 repeat your understanding of what manage means.  
2 But you would simply manage onsite, meaning on  
3 campus, all of the storm water which would  
4 otherwise be discharged to the municipal  
5 system.

6 And I've asked you what -- I've asked  
7 you where that would take place, and you  
8 testified that -- I think you testified that  
9 you don't know because you haven't done  
10 studies. But you're confident that it could be  
11 the case and if you found yourself unable to  
12 infiltrate, you would scoop out those bad soils  
13 and replace them with modified or amended  
14 soils. And I asked you for a cost estimate or  
15 some notion of what the costs associated with  
16 that onsite management would be in lieu of  
17 discharge to the municipal system.

18 A. Thank you for clarifying.

19 MR. KOVATIS: Objection to  
20 form. So what exactly is the  
21 question?

22 BY MR. GILL:

23 Q. What is the cost, so it's your  
24 estimate.

1 MR. KOVATIS: Okay.

2 BY MR. GILL:

3 Q. It's your estimation, what would be the  
4 cost associated with managing all of that storm  
5 water onsite as opposed to being able to  
6 discharge to the Borough's system?

7 MR. KOVATIS: Objection to  
8 form. Go ahead.

9 THE WITNESS: And I understand  
10 you to say in the development of North  
11 Campus, what does it cost, and the  
12 development to then avoid going into  
13 anything to do with the Borough..

14 BY MR. GILL:

15 Q. That's my question.

16 A. Okay. So that is built into the  
17 construction costs and it would vary depending  
18 on the type of soils that we found under it.

19 Q. Okay. But you agree with me that there  
20 would be some increase in the construction  
21 costs associated with that condition,  
22 management onsite as opposed to discharge to  
23 the municipal system?

24 A. Sure. And we would design it from the

1 ground, up, that way, so it would not be an  
2 additional expense to the institution because  
3 we would have to do that no matter what we did.

4 Q. Well, I asked you if you agreed with me  
5 that that would be a cost to the University,  
6 and you said sure. But then you said, but it  
7 wouldn't be an additional cost.

8 A. Right. It's within the construction  
9 cost of developing any section of property on  
10 the campus.

11 Q. So if, for instance, The Commons,  
12 Science and Engineering Center and North Campus  
13 Drive is a \$50 million project, and there's  
14 some component of that cost associated with  
15 storm water management, and let's say that cost  
16 is \$2 million, and that \$2 million is  
17 associated with the construction of basins that  
18 are sized the way they are with the  
19 understanding that some of the storm water from  
20 the project will be discharged to the municipal  
21 system. So in my example, we've got a \$2  
22 million storm water component of the \$50  
23 million project.

24 Now I want you to assume with me, as I

1 think you already have, that that point of  
2 discharge to the municipal system is no longer  
3 available, which means that the storm water  
4 which would have been discharged to the  
5 municipal system, now needs to going somewhere.  
6 And in the condition that we're discussing,  
7 that storm water would be managed somewhere  
8 onsite, on campus, and that management would  
9 consist of reuse in plumbing or irrigation, or  
10 it would be conveyed to some infiltration  
11 facility elsewhere on campus, are we on the  
12 same page?

13 A. With one slight interpretation. The  
14 amount of discharge that you're doing into any  
15 of the systems owned by the Borough is so  
16 miniscule, we don't have data that says this is  
17 how much we have actually discharged into that.  
18 It is my opinion that we would have very little  
19 trouble getting the rest of this water to be  
20 managed on our campus.

21 As we do development, we do development  
22 with the intent of managing everything within  
23 the project and the overflow of failed project,  
24 we would then have to have overflow to a

1 different kind of a management system if we  
2 were not permitted to go in there, and that  
3 would be so small, it would make an appreciable  
4 difference to what we're doing.

5 Q. And that's based on your understanding  
6 or expectation that the -- that there is no  
7 discharge of storm water except for the, over  
8 the 100-year storm and the failed condition,  
9 that there is no discharge of storm water to  
10 the municipal system from projects that have  
11 storm water management facilities associated  
12 with them, correct?

13 A. That were designed to those standards,  
14 yes.

15 Q. Okay. But you can't tell us that the  
16 buildings that do have systems associated with  
17 them were designed to that standard?

18 A. That's correct, I cannot.

19 Q. Okay. So your answer to my question  
20 regarding the relative cost of a \$2 million  
21 storm water system which does discharge to the  
22 system, to the municipal system versus the cost  
23 of managing either through evaporation --  
24 either through reuse or infiltration elsewhere

1 on campus, your statement that there wouldn't  
2 be a significant or appreciable increase in  
3 cost is based entirely on the assumption that  
4 under existing conditions, there is no  
5 discharge to the Borough system, correct,  
6 except in those failed and over 100-year storm  
7 conditions?

8 A. I believe the term I used was  
9 miniscule.

10 Q. Okay. So the cost associated with  
11 finding another place on campus to infiltrate  
12 storm water, which otherwise would be  
13 discharged to the system, your testimony is  
14 that -- again, I want to make sure I understand  
15 it. Your testimony is because there's such a  
16 miniscule amount being discharged to the  
17 Borough system today, that that cost isn't  
18 appreciable, or wouldn't be appreciable?

19 A. Okay. So now you've taken it out of  
20 develop of another purpose. So we just -- we  
21 went from, we're developing the North Campus as  
22 a component of the development, the amount of  
23 cost for a rainwater management system is in  
24 that project.

1           But what I just understood from you,  
2           and please correct me if I misunderstood, we're  
3           now talking about, we already have all of our  
4           projects and I have a half a cup of water  
5           that's going into the Borough system, do I have  
6           to now spend money to manage that half a cup of  
7           water that's going into that system, I am going  
8           to say yes, there will be a cost to do that if  
9           it's outside the development of a planned  
10          project. So if now you shut us off and  
11          tomorrow, I have to manage anything, that half  
12          a cup of water, I have to manage it, I will  
13          find a way to get that water managed on campus.

14          Q.           We're going to get to the second part  
15          of that. But I'm specifically talking about,  
16          and I'm going ask that we continue to use these  
17          infiltration basins associated with The  
18          Commons, SECC and North Campus Parking  
19          structure. My condition to you is that, in a  
20          \$50 million project, we've got a \$2 million  
21          line item for storm water, and that \$2 million  
22          is the costs associated with the construction  
23          of these basins, these infiltration basins and  
24          the green roof. And I'm positing to you that

1 it is less than the 100-year storm, that these  
2 infiltration basins are designed to infiltrate,  
3 which means necessarily that the storm water  
4 which isn't infiltrating and isn't evaporating  
5 is being discharged to the Borough system.

6 That's the condition that I've asked you to  
7 talk with me about.

8 A. Okay.

9 Q. Your testimony is that you would be  
10 very disappointed to find that to be the case,  
11 but you can't tell me that that's not the case?

12 A. That is correct.

13 Q. Okay. I'm asking you that, if in fact,  
14 these basins are designed to something than the  
15 100-year storm, which means again, that that  
16 storm water is going to the municipal system,  
17 storm water over and above whatever the design  
18 storm is, is going to the municipal system, and  
19 let's say that that is everything above the  
20 five-year storm, that that volume which is  
21 being discharged to the municipal system in the  
22 approved condition would then have to be  
23 managed onsite. Would that not -- would that  
24 management onsite of that volume not increase

1 the storm water-related expenses associated  
2 with this project from \$2 million to something  
3 more than \$2 million?

4 A. Potentially.

5 Q. Why potentially, why not certainly?

6 A. Well, because it's just not those  
7 basins. Remember, we talked about the green  
8 roof, we talked about the areas in addition to  
9 this, so it may be we just tapped into an area  
10 right next to it, so that we can manage the  
11 space right next to it.

12 Q. Okay.

13 A. We have options --

14 Q. And --

15 A. Also -- I'm sorry?

16 Q. Go ahead.

17 A. I want to be clear, a site that's  
18 designed appropriately has several things  
19 happening because you're digging out  
20 foundations, while when you're digging out  
21 foundations, you're going to learn a lot about  
22 what that soil is like, and your basins then  
23 can be designed and put in with these new  
24 discoveries of what the Earth is like

1        underneath.

2                So it's a multiple level of things that  
3        happen there, so it's not like I have to go dig  
4        this storm basin, it is a planned strategy for  
5        while we are doing this other exercise  
6        foundations, whatever we're needing to do in  
7        this space, this then becomes kind of a second  
8        tier use of that space, so that the cost is not  
9        just making the basin, it's basins -- it's a  
10       foundation.

11                It's taking the dirt from here to here,  
12        it's taking bad dirt -- it's the orchestrations  
13        of this whole land development strategy that  
14        keeps us from saying, we're just going to do  
15        expenses related only to storm water  
16        management.

17        Q.        Okay. And again, I don't want to  
18        belabor this point, but we have to make sure  
19        that we understand each other. Is it your  
20        testimony that if you -- if you couldn't  
21        discharge and you had to return the storm water  
22        to campus that while you were in construction,  
23        you could then figure out another way to manage  
24        the storm water which otherwise would have been

1 discharged to the municipal system?

2 A. Yes.

3 Q. If it's being implemented and  
4 discovered during construction, then how is it  
5 part of the design process which necessarily  
6 predates construction?

7 A. All right. So the design process would  
8 never anticipate a municipality shutting things  
9 off for us in the middle of the construction.

10 Q. I'm not talking about in the middle of  
11 construction. I'm talking about during design?

12 A. I'm sorry, I thought you said during  
13 construction. So during design, we will only  
14 have geo technical information from board  
15 drillings and we'd be making decisions based on  
16 only the data we got from the board drillings.

17 Q. Okay. But if during design, you -- so  
18 we're setting up again, two separate scenarios,  
19 during design, you're aware that the municipal  
20 system exists and you can connect to it?

21 A. Yes, sir.

22 Q. Cost of the storm water management  
23 facilities is \$2 million, and that includes  
24 knowledge of the municipal system and the fact

1 that you can connect to it?

2 A. Yes.

3 Q. During design, you're aware that the  
4 municipal system is not available and you can't  
5 connect to it. Your testimony is that you  
6 would have to manage that volume of storm water  
7 elsewhere onsite?

8 A. Yes, sir.

9 Q. And I'm asking you, and you said -- I  
10 forget the exact word you used, I think it was  
11 something like, potentially or possibly. I'm  
12 asking you, is it your testimony that that  
13 management onsite of the storm water which  
14 otherwise would have been discharged to the  
15 municipal system, so we've got some volume now  
16 that needs to be managed, that that would not  
17 add any cost to the \$2 million line item for  
18 storm water management at -- for the project?

19 A. It potentially could.

20 Q. Potentially mature.

21 A. It potentially could. But in keeping  
22 with the design strategies for underground,  
23 what we're doing with the underground design  
24 elements, that's where we would take advantage

1 of making a change like that.

2 Q. Okay. If you were to build a storm  
3 water facility -- take an open space on campus,  
4 if you were to build a storm water facility --  
5 well, let's take one that actually exists.  
6 You've built storm water facilities under the  
7 oval in the Academic Quad, correct?

8 A. Yes.

9 Q. Does that render the Academic Quad, and  
10 I'm not talking about the design and whether  
11 it's a good idea or a bad idea from a site  
12 layout perspective, I'm just talking about the  
13 availability of the ground for future  
14 development. The availability of that ground  
15 for future development is now precluded because  
16 there are underground storm water basins  
17 located there, correct?

18 A. No.

19 Q. Why not?

20 A. It just means we need to account for  
21 the storm water management strategy in a  
22 different way. It would be silly for us to do  
23 such a thing with very near-sighted planning.  
24 But in the event that we needed to do some

1 development, a storm water strategy can be  
2 relocated, can be reprocessed, we can use a  
3 different management strategy instead of just  
4 that kind of infiltration area.

5 Q. You mean, you could move those basins  
6 somewhere else on campus?

7 A. No. I redefine the strategy for the  
8 equivalent amount of storm water management.

9 Q. What does that mean?

10 A. Well, I'll just use the example of  
11 reuse. So in this case, we're going to build a  
12 building there, and all that storm water  
13 management strategy was there, I would then  
14 collect it and I'd reuse it.

15 Q. What would be the cost associated with  
16 that?

17 MR. KOVATIS: Objection to  
18 form. Go ahead.

19 THE WITNESS: Yeah. Without  
20 having a definition of that, certainly  
21 it is the statement that I'm trying to  
22 make is a project development would  
23 not be prevented from going there. It  
24 just means we would need to redefine

1           how we're going to manage that  
2           equivalent amount of storm water  
3           space.

4       BY MR. GILL:

5       Q.       Would you agree with me that a project  
6       development couldn't go there while those  
7       basins remained in place and functioning as  
8       infiltration basins?

9       A.       Yes, sir. Absolutely.

10      Q.       Okay. So that infiltrated storm water  
11      would need to be managed in some other way, and  
12      one of the ways you've suggested would be  
13      reuse?

14      A.       Yeah, a different strategy, yes.

15      Q.       Okay. And that would be storm water in  
16      excess of the storm water that would be  
17      associated with the new construction, correct?

18      A.       Potentially.

19      Q.       Why potentially?

20      A.       Well, the new project may have its  
21      storm water strategy that includes the  
22      redefined strategy of that basin that's there.

23      Q.       Are you familiar with requirements  
24      either through DEP, the Conservation District

1 or municipality for the perpetual maintenance  
2 of storm water facilities?

3 A. I'm going to say I don't know that I am  
4 familiar with the specifics but they got to be  
5 pretty common with the rest of the industry.

6 Q. Okay. Would it surprise you to learn  
7 then that the installation of storm water  
8 management for post-construction storm water  
9 management facilities require that the owner  
10 commit to perpetually maintain those  
11 facilities?

12 A. Yes.

13 Q. It would surprise you to learn that?

14 A. No, sir. I would believe that would be  
15 the statement, yes.

16 Q. Okay. So your testimony that you could  
17 simply remove those facilities and deal with  
18 the storm water in some other way, is that  
19 taking into account the requirement for  
20 potential maintenance?

21 A. I don't believe I was saying remove, a  
22 new strategy would need to be put in place to  
23 maintain our agreement for perpetual  
24 maintenance.

1 Q. Well, I'm not sure I understand you  
2 because you agreed with me that the  
3 infiltration component of -- or the  
4 infiltration function couldn't be sustained  
5 while also building buildings on top of the  
6 Academic Quad..

7 A. That is correct.

8 Q. How would you build the building and  
9 still maintain the infiltration functionality  
10 which is required by the perpetual maintenance  
11 obligation?

12 MR. KOVATIS: Objection to  
13 form. Go ahead.

14 THE WITNESS: I would  
15 certainly need to better understand  
16 that perpetual obligation because it's  
17 my understanding that we would be  
18 committed to managing the equivalent  
19 amount of storm water, the strategy is  
20 not what I thought was the commitment,  
21 it was the volume of storm water and  
22 the strategy. How we do it might  
23 change year after year. Well, not  
24 year after year, it may change over

1           the years.

2           BY MR. GILL:

3           Q.       All right.  So by way of recap, it's  
4           your testimony that the Borough passes an  
5           ordinance, it says if you're not going to pay  
6           this stream protection fee, you can't utilize  
7           the system, that would not -- it could  
8           potentially but wouldn't necessarily increase  
9           the costs associated with storm water  
10          management for ongoing projects?

11          A.       That is my testimony.

12          Q.       Okay.  And it's your testimony that,  
13          putting that -- managing that storm water which  
14          otherwise could be discharged to the municipal  
15          system elsewhere on campus wouldn't necessarily  
16          limit the develop ability or the build out of  
17          campus because you could simply find other  
18          strategies for disposing of that storm water,  
19          correct?

20          A.       Yes.  Assuming development is just  
21          random, but we have a campus master planning  
22          process, so we're not just trying to develop,  
23          we're trying to make this have some sense and  
24          continuity to our purpose here as an

1 institution.

2 Q. But you would agree with me that over  
3 the last 15 or 20 years, campus has undergone  
4 growth in terms of the amount -- the number of  
5 buildings at campus, correct?

6 A. Sure, yes.

7 Q. Okay. So there has been development or  
8 redevelopment of campus?

9 A. Yes.

10 Q. During that time frame?

11 A. Yes, sir.

12 Q. And the student population has  
13 increased to approximately 18,000 now?

14 A. Well, I know it has surpassed 17,000  
15 but I don't know the details.

16 Q. And do you know what it was, say, in  
17 the year 2000?

18 A. No, sir.

19 Q. Would you agree with me that it was  
20 less than it is now?

21 A. Yeah. I would imagine it to be.

22 Q. And is it the University's intent to  
23 continue to grow the student population?

24 MR. KOVATIS: Objection to

1 form. I'm not sure Mr. Bixby's an  
2 expert in future student enrollment  
3 projection -- not an expert, but I'm  
4 not sure that's his position here, or  
5 within the scope of the notice. But  
6 go ahead, if you know.

7 THE WITNESS: I do not know.

8 MR. GILL: Okay. As to the  
9 scope of the notice, we did notice  
10 about future development at campus.

11 MR. KOVATIS: Sure. The  
12 objection was specifically the student  
13 population and enrollment of the  
14 students.

15 THE WITNESS: Yeah, and  
16 enrollment -- I'm sorry.

17 BY MR. GILL:

18 Q. Let's talk about future development of  
19 campus. So I believe you've made reference to  
20 projects that are either under consideration  
21 but not yet applied for. I think we captured  
22 the built campus, the beam-built campus which  
23 is The Commons, SECC and North Campus Drive,  
24 and the possibly future to-be-built portion of

1 campus be fountain and the Walk, the Presidents  
2 Walk.

3 What other projects are currently under  
4 discussion or consideration by the University  
5 or the State System but just not yet into the  
6 approval's process?

7 A. Limited to the North Campus?

8 Q. Yes.

9 A. There's discussions about -- well, 2830  
10 Rosedale is not -- not on that side.

11 Q. I'm sorry, where is that?

12 A. Yeah. It's on this (indicating), the  
13 Goshen side. I mentioned Peoples, that's in  
14 front of the SECC, we will be looking at some  
15 demolition of 1315 University, that's on the  
16 other side, so that doesn't apply. We are  
17 doing some renovations to both Tyson and Goshen  
18 Halls. And it looks like the other things that  
19 we're talking about are all on the other side  
20 of Rosedale, outside of your defined boundary.

21 Q. So within North Campus, Peoples  
22 Building, what's going to happen there?

23 A. It'll undergo a renovation and maybe a  
24 facade change.

1 Q. Will there be any increase to the  
2 impervious cover at that building or its  
3 immediate surroundings?

4 A. No. But what I had mentioned earlier,  
5 we are looking at the entire run off of the  
6 Peoples property and bringing it through the  
7 system and the SECC, we are doing that now.

8 Q. Okay. The SECC storm water system, has  
9 that been designed to accommodate that storm  
10 water flow for Peoples, or would the system  
11 need to be altered or upgraded in anyway?

12 A. We're looking at all of that right now,  
13 it has -- I don't think we finalized that last  
14 decision.

15 Q. Okay. Do you know if the University  
16 informed the Borough and Chester County  
17 Conservation District about that possible  
18 connection at the time that approval is  
19 obtained for The Commons, Science -- SECC and  
20 North Campus Drive?

21 A. I believe the connection was already  
22 there, we're just redefining how we're going to  
23 use it and how we're going to direct it.

24 Q. Okay. Would there be any new storm

1 water management facilities or structures  
2 associated with the renovation of Peoples?

3 A. No.

4 Q. 1315 University Avenue is where?

5 A. It's up the street. It's right at the  
6 corner.

7 Q. Oh, right. What's the plan there?

8 A. A demolition.

9 Q. Any new construction in its place?

10 A. Nothing's been defined.

11 Q. Why is the building being demolished?

12 A. It leans. That's inappropriate.

13 MR. KOVATIS: Seems like a  
14 good reason.

15 MR. GILL: Perfectly good  
16 reasons. I have to remember that.

17 THE WITNESS: And that's quite  
18 an exaggeration. The building has  
19 outlived its useful life.

20 BY MR. GILL:

21 Q. Is it the intention to return that area  
22 to a green space?

23 A. It hasn't been defined but that would  
24 certainly be the wish.

1 Q. Your wish?

2 A. Yes.

3 Q. And this is one of those situations  
4 where I'm using your to mean you specifically  
5 and --

6 A. Yes, sir.

7 Q. -- not the University.

8 A. I understood.

9 Q. And what's going to happen at Tyson and  
10 Goshen Halls?

11 A. Well, we had a couple of different  
12 projects, we reconfigured the interiors for new  
13 bedding systems and we're putting in curtain,  
14 curtain walls. So the Goshen project is  
15 halfway through, so the curtain, curtain walls  
16 are going to go up and finish that project in  
17 the next few months.

18 Q. Will there be any increase in  
19 impervious covers associated with that work?

20 A. No, sir.

21 Q. Is there any intention to do voluntary  
22 storm water management associated with that  
23 work?

24 A. No, sir.

1 Q. Have we captured the entire universe of  
2 the physical plant of campus from existing --  
3 from existing status to under construction, to  
4 approved but delayed to possibly contemplated,  
5 are there any other structures or projects that  
6 you're aware of that the University is  
7 undertaking within the scope of North Campus,  
8 or thinking about undertaking?

9 A. Those are -- you've heard everything  
10 that I'm aware of at the moment.

11 Q. Okay. I want to return to --

12 MR. GILL: Are you okay, do  
13 you need a break? Actually, we can  
14 take a break.

15 (Whereupon, a recess was  
16 taken.)

17 MR. KOVATIS: So the witness,  
18 during the break -- we have talked  
19 about that we will produce the plans,  
20 the storm water plans for the SECC  
21 building. During the break, the  
22 witness looked at one particular  
23 drawing of that plan and it refreshed  
24 his recollection as to the purple that

1 we had been looking at on Borough-7.

2 MR. GILL: 7A.

3 MR. KOVATIS: I'm sorry, 7A.

4 It is too big, quite frankly, to bring  
5 in here right now. Do you want to  
6 clarify that testimony?

7 THE WITNESS: Where I was  
8 talking about here, this is the  
9 detention basin, so we actually have  
10 quite an elaborate structure here, and  
11 I had talked about the green roof  
12 being just this section. Actually,  
13 this green roof is most of this  
14 building, and it covers most of this  
15 building only. This corner of the  
16 building does not have green roof on  
17 it.

18 BY MR. GILL:

19 Q. Okay. So to clarify, if I understand  
20 correctly, what previously was identified as an  
21 infiltration basin, and I drew a rectangle in  
22 between Lawrence Center and The Commons, you're  
23 clarifying that that's a detention facility?

24 A. Yes. That's labeled as a detention.

1 Q. I'm going to write the word, DETEN with  
2 a period there, what previously had been a  
3 small rectangle on the north side of the  
4 building to illustrate -- or identify, excuse  
5 me, the green roof is actually -- I'm sorry,  
6 what?

7 A. It covered most of this whole end of  
8 the building.

9 Q. So the --

10 A. All the way down this whole end.

11 Q. Okay. So essentially, the eastern  
12 two-thirds of the building, would you agree  
13 with that?

14 A. Certainly a little more than half. And  
15 then there's an additional, and I totally  
16 forgot about the green roof that's on this end.  
17 So only about where my finger is, my finger is  
18 non-green roof space.

19 Q. Okay. So I'm going to use another  
20 colored pen, light blue, to draw generally the  
21 green roof over The Commons (indicating).

22 A. Over that half of The Commons, that's  
23 correct.

24 Q. That's correct? Okay. And I'm going

1 to write GR there and GR on the Science and  
2 Engineering Center component of the green roof.  
3 And this area that we made sort of a purple  
4 cloud, is that anything?

5 A. That's amended soils, and it's not  
6 designated as a storm water basin or retention,  
7 but it does have amended soils.

8 Q. Okay. And I've marked that with AS.  
9 So where is the infiltration component of the  
10 storm water design for The Commons, Science and  
11 Engineering Center and North Campus Drive  
12 Parking structure?

13 A. Well, the infiltration then goes into  
14 the green roof. So we have two different  
15 depths of green roof, we have a 4 inch and a 6  
16 inch, and then also the detention basin is a  
17 network of perforated pipe. So that as water  
18 collects in there, it can ease into the ground  
19 underneath it. But it's actually pipe, long  
20 lengths of pipe that are installed, perforated  
21 pipe.

22 Q. Okay. And we'll look at the plans as  
23 produced. I'm going to come back to the use of  
24 detention facilities in a little bit, in one

1 specific instance. But let me -- we ended our  
2 discussion before the break, talking about what  
3 would happen if, as to new construction, new  
4 design, the Borough were to say, you're no  
5 longer able to connect to the Borough storm  
6 water collection and conveyance system, and we  
7 had what I think is an informative and active  
8 discussion about how that would effect design  
9 decisions regarding storm water for new  
10 construction; you recall that?

11 A. Yes, sir.

12 Q. Okay. Now, I'd like to talk about that  
13 condition with regard to existing parts of  
14 campus for which there are no storm water --  
15 structural storm water facilities in place.

16 A. Okay.

17 Q. So there is no -- in this situation,  
18 there is no prior design process, the buildings  
19 are there.

20 A. Right.

21 Q. And the impervious surface is there in  
22 the walkways or in the driveways, et cetera.  
23 What would the University do if it was no  
24 longer able to discharge storm water from parts

1 of campus that don't have structural storm  
2 water facilities under design and to be  
3 implemented in the future, what would the  
4 University do with regard to storm water in  
5 that situation?

6 A. We would --

7 MR. KOVATIS: Objection to  
8 form. Go ahead.

9 THE WITNESS: We would devise  
10 a means to manage storm water within  
11 our campus property.

12 BY MR. GILL:

13 Q. What would that look like?

14 A. Any number of the strategies that we  
15 talked about.

16 Q. Okay. I'm going to ask you to -- do  
17 you have B-4 there?

18 A. I do.

19 Q. Do you see down at the bottom of B-4,  
20 it says Borough of West Chester, portion of WCU  
21 -- these aren't the exact words, but it says  
22 portion of WCU within the Plum Run watershed,  
23 54.1 acres; do you see that?

24 A. Yes, sir.

1 Q. And you see it says, portion of West  
2 Chester University, again, paraphrasing here,  
3 not located in Plum Run watershed but still  
4 within the Borough of West Chester?

5 A. Yes.

6 Q. You see that red line?

7 A. Yes.

8 Q. And as we discussed with Mr. Clark  
9 yesterday, there's a portion of North Campus as  
10 we've defined it, that is not within either the  
11 red outline or the blue outline, and it is  
12 those buildings across South High Street, 701  
13 South High, 20 Linden, 703 South High, College  
14 Arms Apartments; would you agree with me that  
15 those buildings don't have structural storm  
16 water management facilities associated with  
17 them?

18 A. To the best that I know.

19 Q. Okay. Can we agree that there are,  
20 including The Commons, the Science Center and  
21 North Campus Drive, there are -- excuse me,  
22 well, let me just identify them rather than  
23 count them.

24 At the buildings which do have

1 structural facilities, storm water facilities,  
2 again, are Sharpless Parking structure and its  
3 associate, Lot A, the Business and Public  
4 Management Center, North Campus Drive Parking  
5 structure, Science and Engineering Center and  
6 Commons together, Student Rec Center, South New  
7 Street Parking structure, Commonwealth Hall,  
8 University Hall, Brandywine Hall, Allegheny  
9 Hall, Merion Science Center, and what I'm  
10 noticing here, appears to be identified as  
11 Anthro Lab.

12 A. Anthropology Lab.

13 Q. Anthropology Lab. But otherwise, I  
14 think we've agreed and you've testified before,  
15 that the rest of these buildings that are  
16 shaded in blue don't have storm water  
17 facilities associated with it, would you agree  
18 with me that that's approximately two-thirds,  
19 without doing the math, approximately  
20 two-thirds of the buildings on North Campus  
21 don't have structural storm water facilities  
22 associated with them?

23 A. If we're just being very liberal with  
24 the definition of two-thirds, yes.

1 Q. Okay. It's a majority of the buildings  
2 on campus?

3 A. Yes, sir. Thank you. I appreciate  
4 that.

5 Q. And yet, it's your testimony that if --  
6 and I'm sorry, and you testified earlier and  
7 you agreed with me, that storm water which  
8 falls on those portions, whether buildings or  
9 otherwise, other impervious surface, that  
10 doesn't have structural storm water management  
11 facilities associated with it, that I think we  
12 agreed that we exhausted the sort of half of  
13 rain hitting those portions of campus which  
14 would be either infiltration, discharge to the  
15 municipal system or evaporation, right?

16 A. Yes, sir.

17 Q. If we were to simply remove the second  
18 of those options now in this condition that  
19 we're discussing, connection to the municipal  
20 system, we're left with infiltration or  
21 evaporation, correct?

22 A. Yes.

23 Q. Okay.

24 A. Or reuse, we also talked about reuse.

1 Q. Or reuse. I'm going to show you what's  
2 marked -- we'll mark this as Borough-6.

3 (Whereupon, Borough-6 was  
4 marked as of this date and is attached  
5 hereto.)

6 BY MR. GILL:

7 Q. Take a moment to look at it and let me  
8 know if you've seen that document prior to your  
9 testimony here.

10 A. Yes, I have seen it.

11 Q. Can you tell us what it is?

12 A. It's a -- it's a tabulation showing  
13 pervious and impervious area feeding into Plum  
14 Run.

15 Q. Okay. And it re -- it states that the  
16 total area feeding into Plum Run is 54.1 acres,  
17 correct?

18 A. Yes.

19 Q. And now taking a look back at Exhibit  
20 Borough-4, see the reference to that portion of  
21 WCU located in the Plum Run watershed is also  
22 identified at 54.1 acres; is that correct?

23 A. That is correct.

24 Q. Do you know when -- first of all, do

1 you know who prepared Borough-6?

2 A. No, sir.

3 Q. Do you know when it was prepared?

4 A. No, I do not know when it was prepared.

5 Q. When did you see it prior to your  
6 testimony?

7 A. Just in my due process of the work,  
8 looking at the MS4 submittal. Last year, the  
9 year before, it was submitted by John Brill,  
10 this year, we were putting things together of  
11 which something like this was part of that  
12 report.

13 Q. Okay. I'm going to ask you to assume  
14 with me that the numbers reported on B-6 are --  
15 were accurate at least as late as 2018.  
16 Possibly this document was prepared prior to  
17 2018 -- or 2017 or '18, but I'll ask you that,  
18 to agree with me that at least as to when it  
19 was created, these numbers were accurate?

20 A. I would have no reason to doubt that.

21 Q. Okay. Now Borough-6 reports that in  
22 the two-year storm event, 372,699 cubic feet of  
23 storm water are generated in the two-year storm  
24 at the impervious cover, or at the entire

1 campus but using the impervious cover  
2 calculation of 31.5 acres. Do you see that?

3 A. I do.

4 Q. So I want to return to the condition  
5 that we were talking about. Can you show me  
6 where on campus the University would  
7 accommodate the management, and by that I mean,  
8 elimination of all storm water, because in this  
9 condition there's no discharge to the municipal  
10 system, where the municipality would manage  
11 372,699 cubic feet of storm water?

12 A. This is all hypothetical because we  
13 don't have plans to manage that yet, but if  
14 we're going to be forced into doing that or we  
15 volunteer to do that..

16 Q. Well, you've testified that you believe  
17 it's possible, so I'm asking you to show me  
18 where that would possibly occur?

19 A. So any space that we have open land,  
20 you could definitely put in storm water  
21 management strategies, any place that we have  
22 open land where we're going to demo a building,  
23 where we are doing things outside of your  
24 jurisdiction, we can certainly do things on

1       this side, we have space to do it on this side.  
2       So we could be very deliberate and intentional  
3       in getting it away from your system and putting  
4       it on systems outside of your jurisdiction.

5       Q.       You could be?

6       A.       Sure, we --

7       Q.       Say you could be. But you haven't  
8       conducted any studies to confirm it?

9       A.       Correct.

10      Q.       And you haven't examined the  
11      permeability or infiltration capacity of any of  
12      the soils that would have to be used, or any of  
13      the areas that would have to be used for that  
14      purpose, correct?

15      A.       That's correct.

16      Q.       And you mentioned demolishing  
17      buildings. So your testimony is that if you  
18      had to, if you couldn't connect to the Borough  
19      system, you would demolish buildings in order  
20      to create green space for storm water  
21      management, correct?

22      A.       I don't know that I said that we would  
23      do that. That certainly, we would look at  
24      keeping more green space available just for

1 green space. However, demolishing buildings  
2 takes impervious surface, and allows us to make  
3 it pervious.

4 Q. Okay. And would the use of the green  
5 space in this situation that we're discussing,  
6 that would preclude the use of that area for  
7 future building, correct?

8 A. It would insist that we redefine the  
9 strategy for managing storm water if a building  
10 was going to go there at a later date.

11 Q. Okay. And would that be consistent  
12 with the notion that you could simply find  
13 someway to manage the storm water that would be  
14 managed in an open area, you would simply find  
15 some other way to manage it?

16 A. Yeah, within the realms that we've  
17 spoken about, yes.

18 Q. Okay. And those would be either reuse  
19 for plumbing or irrigation?

20 A. Reuse is one of those, certainly we  
21 could do an evaporative system, we could do  
22 infiltration, we could do retention, we could  
23 do redistribution so it goes to a different  
24 direction. We have a lot of options.

1 Q. And all of those options would have  
2 costs associated with them, correct?

3 A. There would be some, yes.

4 Q. Okay. And that's not costs that could  
5 be incorporated into the overall larger  
6 construction budget because in this situation,  
7 we're not talking about new construction,  
8 correct?

9 A. You were not talking about that, that  
10 is correct.

11 Q. Well, are you talking about new  
12 construction?

13 A. Well, I'm --

14 Q. Because I'm not.

15 A. Okay. I'm just trying to keep out the  
16 you, I don't mean to be flipping.

17 Q. No, and neither do I. Neither do I.

18 A. So without development and just  
19 answering, tomorrow, you're going to shut us  
20 off, I will then need to make some decisions on  
21 how we are going to manage storm water here,  
22 and that management of storm water has several  
23 options that we could use to get that water  
24 managed.

1 Q. Okay. And you'll agree with me that  
2 none of those options would be -- that all of  
3 those options, excuse me, would have some costs  
4 associated with it?

5 A. That's correct.

6 Q. To clarify, you don't know who prepared  
7 B-6, correct?

8 A. I do not.

9 Q. Okay. And therefore, can I presume  
10 that you don't know the factors that went into  
11 these calculations, that are reported on B-6?

12 A. That's correct.

13 Q. So you're just taking B-6 at its  
14 face-value, and again, you're assuming that the  
15 data reported there are correct?

16 A. Yes, sir.

17 Q. Okay.

18 (Whereupon, Borough-5 was  
19 marked as of this date and is attached  
20 hereto.)

21 BY MR. GILL:

22 Q. Take a moment to review what's been  
23 marked as Borough-5.

24 A. Okay.

1 Q. Have you seen that prior to your  
2 testimony here today?

3 A. Yes.

4 Q. Can tell us what it is?

5 A. This is a list of buildings as they are  
6 setup for the amount of square footage per  
7 building, and you'll see the footprint of the  
8 building on the left, and you'll see on the  
9 right, the new code requirements for buildings  
10 that are subject to the new coding  
11 environments, and this is the list of those  
12 buildings and their different conditions.

13 So at the left, square footage with no  
14 storm water management, to the right, either  
15 the buildings have been demoed and taken  
16 offline, ie, the Porter Plant, and then to the  
17 far right is the new building construction. So  
18 you'll see all three of those.

19 Q. Okay. Is it your understanding that  
20 with the exception of Reynolds Hall, that  
21 what's reported on B-5 as on the left-hand  
22 column, existing building with no storm water  
23 management installed is consistent with the  
24 buildings shaded in blue on B-4?

1 A. I did not do a comparison to this list  
2 but I'll do so quickly.

3 Q. Please, sure.

4 A. Appears to.

5 Q. Okay. So B-5 reports that there's at  
6 least 361,385 square feet of building footprint  
7 which drains to the Plum Run outfall for which  
8 there are no storm water management structures  
9 or facilities in place, correct?

10 A. I don't know that it's specifically  
11 linear but yes, that is a correct statement.

12 Q. And this does not include -- B-5 does  
13 not include any of the buildings that are  
14 outside of Plum Run that drained to the other  
15 watershed that you mentioned without naming it,  
16 correct?

17 A. That is correct.

18 Q. Okay. And again, it's your testimony  
19 that if connection to the Borough system wasn't  
20 available, that as for all of the campus -- but  
21 my question is, here, is specifically with  
22 regard to the -- these at least 361,385 square  
23 feet, that the University would simply find  
24 spaces on campus to manage that storm water; is

1       that correct?

2       A.       That is correct.

3       Q.       But you can't tell us that there are  
4       any plans or studies that have been done in  
5       that regard, correct?

6       A.       That is correct.

7       Q.       And you can't tell us that what the  
8       cost associated with that -- with that would  
9       be, correct?

10      A.       Correct.

11      Q.       But you agree with me that there would  
12      be some costs associated with it?

13      A.       Yes, sir.

14      Q.       Okay. And you agree with me that that  
15      cost is not something that the University has  
16      to incur because connection to the municipal  
17      system is available, correct?

18      A.       Not necessarily.

19      Q.       Can you explain that?

20      A.       Sure. Because we're voluntarily trying  
21      to go through all of these exercises, we're  
22      trying to make ourselves totally independent of  
23      anything to manage all of our storm water  
24      onsite. So those costs, we're going to incur

1           regardless, whether you shut us off or not shut  
2           us off, we're going to still incur those costs.

3           Q.           As we sit here today, those facilities  
4           are not in place; is that correct?

5           A.           That is correct.

6           Q.           And you're describing a voluntary  
7           situation, correct?

8           A.           That is correct.

9           Q.           Okay. Are you familiar with the stream  
10          protection ordinance?

11          A.           Somewhat. Superficially, maybe.

12          Q.           Okay. Are you aware of the, I think  
13          you alluded to it when I asked you to describe  
14          your understanding of the litigation, but are  
15          you aware of the basis for the -- how the fee,  
16          the stream protection fee is calculated based  
17          on impervious cover?

18          A.           I just remember seeing a mathematically  
19          equivalent, and I'm -- I don't know the basis  
20          of that mathematical or the derivative of that.

21          Q.           Okay. Are you familiar with the credit  
22          system that is in place with regard to the  
23          stream protection fee?

24          A.           No, I am not.

1 Q. Okay. Were you aware that the  
2 ordinance includes the availability of credits  
3 which property owners can take against the  
4 stream protection fee?

5 A. In Philadelphia, I am. Here, I am not.

6 Q. Okay. Well, I'm only talking about the  
7 stream protection ordinance as defined.

8 A. Don't want to muddy it up.

9 Q. Okay. So you're not aware that the  
10 stream protection ordinance includes a, or the  
11 implementation of the stream protection  
12 ordinance includes the availability of credits,  
13 correct?

14 A. I was not aware of it, correct.

15 Q. Okay. Would it surprise you then to  
16 learn that the nature of the credit system is  
17 such that if a property owner can demonstrate  
18 that they are not using the Borough system,  
19 Borough storm water collection and conveyance  
20 system at all, that the property owner can  
21 obtain a credit in its entirety against the  
22 stream protection fee?

23 A. I would not be surprised.

24 Q. Okay. If you assume with me that that

1 is the case, then the voluntary -- the  
2 obtaining of the voluntary goal which you've  
3 described which is to voluntarily disconnect  
4 from the municipal system entirely, would have  
5 the effect of the University not paying any  
6 stream protection fee at all, correct?

7 MR. KOVATIS: Objection to  
8 form. Go ahead.

9 THE WITNESS: Well, up to  
10 right now, I've never heard that the  
11 institution was making any decision  
12 based on any credit. That has not  
13 ever been discussed with me.

14 BY MR. GILL:

15 Q. What is the institution making its  
16 decision based on, to your understanding?

17 MR. KOVATIS: Objection to  
18 form. Go ahead.

19 THE WITNESS: Our commitment  
20 to sustainability. And really, if you  
21 look at the theme of our strategic  
22 plan, it includes community  
23 engagement -- and community  
24 engagement, an element of that is

1           being good stewards to our community  
2           neighbors, and we do not want to be  
3           doing anything against the community  
4           neighborhood, and our sustainability  
5           statement is one that this institution  
6           has highly committed to.

7           BY MR. GILL:

8           Q.           Okay. Again, that's a laudable goal  
9           and we all acknowledge it. I'm asking about  
10          existing conditions, not future planning goals.  
11          And my question to you was, if you agree with  
12          me that there is a credit system in place that  
13          allows for a complete reduction in the credit  
14          to 0 -- the fee to 0 if a property owner can  
15          demonstrate that they are no longer -- that  
16          they are not discharging storm water to the  
17          municipal system, would that have the effect  
18          then, if the University accomplished its goal  
19          of not discharging any storm water, would that  
20          have the effect of the University not paying  
21          any stream protection fee?

22                           MR. KOVATIS: Objection to  
23                           form.

24                           THE WITNESS: I am totally

1           unfamiliar with how the credit works,  
2           so I can't speak to that. I can say  
3           that the commitment to not being  
4           involved in anything with the outside  
5           of our campus is a very strong  
6           commitment. So I don't know of any  
7           motivation that would say, do these  
8           more buildings because you're going to  
9           get a credit of X, I have never had  
10          that conversation since I've been  
11          here.

12        BY MR. GILL:

13        Q.        Okay. So the impetus for the  
14        University taking these voluntary measures is  
15        stewardship of the environment, correct?

16        A.        That is all that I know of. If there  
17        is another one, another one in two-years,  
18        they'll send it to me.

19        Q.        Okay. Fair enough. But to be clear,  
20        the only voluntary measures which exist right  
21        now are the green roof at Frances Harvey Green  
22        Library and the pervious pavers along South  
23        Church Street and University Avenue, correct?

24        A.        In the context of our conversation,

1       yes.

2       Q.       And though there have been some  
3       discussions between you and Mr. Murphy about  
4       reuse of storm water, there are no plans in  
5       place or being developed for any other  
6       voluntary storm water reduction measures,  
7       correct?

8       A.       Whether reuse is also going to be  
9       involved in the fountain.

10      Q.       I'm sorry.  Other than the fountain,  
11      the pervious pavers along South Church Street  
12      and University Avenue and the green roof at  
13      Francis Harvey Green Library, there are no  
14      other voluntary measures in place or planned at  
15      this point in time, correct?

16      A.       As far as I know.

17      Q.       Is there anybody else who would know?

18      A.       I don't believe so.

19      Q.       Are you familiar with -- excuse me, are  
20      you aware of any flooding events at North  
21      Campus as a result of storm water, or caused by  
22      storm water?

23      A.       Yes.

24      Q.       Can you take us through those flooding

1 events?

2 A. Well, on the project, on the SECC, when  
3 we broke through the drain line coming out of  
4 Peoples, we inadvertently blocked it up and it  
5 -- all the storm water that came off the roof  
6 went in the basement.

7 Q. Okay. That was a human error caused  
8 flooding event, correct?

9 A. Yeah. And I'm sorry, I didn't realize  
10 you were differentiating.

11 Q. And I didn't. But now I will.

12 A. Okay. So other than that, I'm not  
13 aware of any flooding that was not triggered by  
14 some other event in addition to a storm water  
15 event.

16 Q. Okay. Let's make sure we're on the  
17 same page. Why don't you just take us through  
18 all of the flooding events that you're aware  
19 of.

20 A. We've had -- I think you referred to  
21 inlets and window wells, where the window wells  
22 were clogged and they filled up and flooded  
23 through into the basement, that would be a  
24 flood. Where a water line or a drain line has

1 broken inside a building and it's filling up  
2 either by pressure or by drain of a storm water  
3 line that's broken, that's happened. But it  
4 flooded a lot when it was a pressure line that  
5 cracked. But the other one was just a crack in  
6 a storm line that was aged and it failed, and  
7 the water came in, didn't flood a building but  
8 it did create quite a mess, we call it a flood.

9 Q. Where was that?

10 A. Stirrs Baker [ph] which is in South  
11 Campus.

12 Q. All right. I'm only talking about  
13 North Campus.

14 A. Okay. Well, they're the only two that  
15 I can connect to at North Campus, is Philips  
16 and Peoples.

17 Q. Peoples was the human error caused  
18 break in the water line?

19 A. That's correct.

20 Q. The drain line, and Philips is the one  
21 that you referred to where window wells were  
22 clogged and flooded?

23 A. Right. And the downspouts backed up  
24 into the basement.

1 Q. Okay.

2 A. Again, multiple factors, not just a  
3 storm.

4 Q. Did all of the storm water go into the  
5 basement?

6 A. No, sir.

7 Q. Where -- some it went into the  
8 basement, where else did it go?

9 A. On the roof, the ground, everywhere.  
10 The storm water didn't -- wouldn't fall just in  
11 a normal little spot at the window well, so  
12 it's a storm that's like, over the whole  
13 campus, so just that part that backed up in the  
14 window well is also what I was referring to.

15 Q. Okay. And some of that went into the  
16 basement?

17 A. Yes.

18 Q. And some of it..

19 A. Just because --

20 Q. Because of the backup -- because of the  
21 backup of the drain, of the gutter, storm water  
22 wasn't able to enter the gutter and drain down  
23 through the gutter, correct?

24 A. Well, there was a backup in the window

1 well where the water actually came through the  
2 window well pocket and came into the basement.  
3 But the rest of the property, it was still  
4 raining around the rest of the property.

5 Q. Okay. So storm water that would have  
6 gone into the.. okay.

7 A. The drain system, yes, sir.

8 Q. The storm water would have gone into  
9 the drain system and wasn't able to go into the  
10 drain system because the drain system was  
11 blocked, that storm water simply hit the roof  
12 and flowed off of the roof, correct?

13 A. The window wells, what I was referring  
14 to, but.

15 Q. Hit the window wells and then it flowed  
16 out of the window wells. And did any of that  
17 storm water enter either University Avenue or  
18 South High Street?

19 A. No. It was contained inside the  
20 basement of Phillips.

21 Q. I understand, okay. Has the University  
22 ever received neighbor complaints about storm  
23 water discharging onto neighboring property  
24 owners -- or onto neighboring properties?

1 A. Not that I'm aware of.

2 Q. Okay. Was it your testimony that all  
3 storm water from the Presidents Walk project  
4 would either be reused, again, I'm talking  
5 about post construction and storm water, all  
6 storm water from the Presidents Walk project  
7 and the fountain project would either be reused  
8 in the fountain or managed and eliminated  
9 onsite, is that your testimony?

10 A. Yes, sir.

11 Q. Okay. Are you familiar with the  
12 approvals process, the municipal approval's  
13 process for the Presidents Walk project?

14 A. I did not attend, no.

15 Q. Okay. But you're familiar with the  
16 storm water management plans for that project?

17 A. Yes, sir.

18 Q. Okay. As a matter of fact, that went  
19 through the municipal approval process just  
20 this past summer in 2020, correct?

21 A. That is correct.

22 Q. The University sought two waivers for  
23 that -- or during that land development review  
24 process, correct?

1 A. Yes.

2 Q. Was one of those a waiver to combine  
3 preliminary and final land development into one  
4 process?

5 A. That's my understanding, yes.

6 Q. Was another of those waivers to allow  
7 for the managed release concept for storm water  
8 instead of infiltration?

9 A. If that was connected to the reuse,  
10 then yes.

11 Q. Okay. What if it wasn't connected to  
12 the reuse -- strike that question.

13 Are you familiar with the managed  
14 release concept as it relates to storm water  
15 management?

16 A. No.

17 Q. Okay. Would it surprise you to learn,  
18 if it was the case, would it surprise you to  
19 learn that some storm water from the Presidents  
20 Walk and the fountain project was proposed to  
21 be discharged to the municipal system?

22 A. I would be extremely disappointed.

23 Q. Okay. And that's because it's your  
24 goal that all storm water up to and including

1 the 100-year storm be managed onsite, correct?

2 A. No, sir. It's because I have  
3 personally stood before the executive team and  
4 the donor, and said this was our plan and this  
5 is what we were going to accomplish, to learn  
6 otherwise would be extremely disappointing.

7 Q. Okay. Did you review the land  
8 development plans with regard to Presidents  
9 Walk and fountain?

10 A. No, sir.

11 Q. Do you know who the University's  
12 engineer was for that project?

13 A. I believe we used Chester Valley  
14 Engineering.

15 Q. Okay. Is that the only project for  
16 which you were the incumbent in your position  
17 during the entirety of the design and approvals  
18 process?

19 A. Yes, sir.

20 Q. So SECC, Commons and North Campus  
21 Drive, those projects were started from a  
22 design perspective and approval's perspective  
23 before your employed with the University?

24 A. That's correct.

1 Q. Okay. Are you aware that in this  
2 litigation, the University and the State System  
3 have taken the position that the University is  
4 taking active steps to reduce the amount of  
5 storm water that flows to the Borough municipal  
6 storm water system?

7 A. Yes, sir.

8 Q. Is the universe of those efforts  
9 limited as we sit here today, I'm not talking  
10 about aspirationally, as we sit here today, is  
11 the universe of those efforts limited to the  
12 storm water facilities there in place with  
13 regard to new construction, or which are shown  
14 on Exhibit B-4 as being buildings that have  
15 storm water facilities associated with them, is  
16 that one element of how the University is  
17 limiting the amount of flow to the Borough  
18 system?

19 MR. KOVATIS: Objection to  
20 form. Go ahead.

21 THE WITNESS: Yes. From what  
22 I understood your question to be.

23 BY MR. GILL:

24 Q. Okay. Do you need me to rephrase or

1 repeat the question?

2 A. No.

3 Q. Is another component of these efforts  
4 to reduce the flow of storm water, the  
5 voluntary efforts that we've described, being  
6 the green roof on the library and the pervious  
7 pavers on South Church Street and University  
8 Avenue?

9 A. Those are components we talked also  
10 about potential recreation of green space. So  
11 if I do a demolition of the building, we talked  
12 about that green space being a potential source  
13 for us to do that.

14 Q. Okay. I'm not talking about what might  
15 potentially happen in the future, I'm talking  
16 about things for which construction is done or  
17 things which are currently in process.

18 A. Those are those. Those are they.

19 Q. What other -- well, is that the entire  
20 universe of efforts that the University is  
21 taking, as we sit here today, to reduce the  
22 flow of storm water into the Borough system?

23 A. At this time, yes.

24 Q. Okay. So other than complying with

1 regulatory requirements for new construction  
2 over the last 15 or so years, and these two  
3 voluntary measures, green roof, pervious  
4 pavers, there's nothing else that the  
5 University is doing to reduce the flow of storm  
6 water into the Borough system?

7 A. As of this day, that is my  
8 understanding.

9 MR. KOVATIS: Could we go off  
10 for a second?

11 (Whereupon, a recess was  
12 taken.)

13 BY MR. GILL:

14 Q. Welcome back, Mr. Bixby.

15 A. Thank you.

16 Q. I'd like to just continue with some  
17 questions regarding the Borough's -- the  
18 University's MS4 permit.

19 A. Okay.

20 Q. Are you familiar with that permit?

21 A. I am.

22 Q. Can you tell us -- can you tell me what  
23 is covered by that permit? What's allowed  
24 pursuant to that permit?

1 A. I'm sorry, quantitatively?

2 Q. Qualitatively.

3 A. So we are -- we're limited to the  
4 amount of discharge pollutants that we can be  
5 putting into the two or three different  
6 categories that we are servicing in our  
7 outlets, like Plum Run and down on the south  
8 side of campus. So we measure and monitor the  
9 amount of pollutants that we are discharging,  
10 or that is coming out of the pipe, whether we  
11 are the originator of it or not, we measure it,  
12 and we are bound to the practices that are  
13 listed in there.

14 Q. Okay. And to your understanding, is  
15 that there are six, what are called MCMs or  
16 minimum control measures?

17 A. Yes, sir.

18 Q. And that in order to meet each of those  
19 minimum control measures, University has to  
20 implement certain BMPs?

21 A. Yes, sir.

22 Q. And here I'm asking, do you understand  
23 that here, we're referring to BMPs as something  
24 different than a structural storm water

1 facility?

2 A. Yes, sir.

3 Q. What is your understanding of BMP as  
4 it's used related to the MS4 permit?

5 A. Basic management practices, I believe  
6 is what the actual letters stand for.

7 Q. Okay.

8 A. And they are statements of how we  
9 demonstrate more meeting the objective of the  
10 MCM.

11 Q. Okay. And are you -- is it your  
12 understanding that as part of the MS4  
13 permitting process that the Borough -- that the  
14 University is required to map its storm water  
15 collection system?

16 A. Yes.

17 Q. And is what has been marked as  
18 Exhibit-7A, the most recent version of that  
19 mapping as have been submitted to the  
20 Department of Environment Protection?

21 A. There's a lot of qualifiers on that,  
22 but this is the latest that I'm aware of.

23 Q. Okay. Did you understand my question?

24 A. I thought I did. Yes, sir. This is

1 the latest I'm aware of.

2 Q. Okay. Are you familiar with the annual  
3 reports which are completed annually with  
4 regard to the MS4 permit which the University  
5 has?

6 A. Yes. We submit them on our fiscal  
7 years.

8 Q. Okay. Is the most recent submission  
9 the one that was done for the 2018, 2019 fiscal  
10 year?

11 A. It should have been this last '19, '20,  
12 we should have had one in July -- by July  
13 1st -- - I'm sorry, June 30th of this summer,  
14 that should have been the last one.

15 MR. GILL: Okay. I just need  
16 to stop --

17 MR. KOVATIS: Check on that,  
18 yeah, that may have been after we've  
19 made our production.

20 MR. GILL: I think it was.

21 MR. KOVATIS: Yeah.

22 THE WITNESS: So we did them  
23 annually on our fiscal year. Our  
24 fiscal year ends June 30.

1 BY MR. GILL:

2 Q. Okay. I'm going to make reference to  
3 the 2018, 2019 annual report.

4 A. Okay.

5 Q. Without asking you to take a look at  
6 it. The date of the last update to the map  
7 revision, according to the 2018, 2019 report is  
8 one dated August 21st, 2014 as revised through  
9 July 19th, 2018. So again, is that consistent  
10 with what's shown as 7A?

11 A. I believe it was but I'll double check.  
12 This has as revision date of March 14, 2016,  
13 where it's been reviewed.

14 Q. I'll ask you to take a look down at the  
15 bottom, the block there right where your finger  
16 is.

17 MR. KOVATIS: There.

18 THE WITNESS: So this drawing  
19 date shows July 19th of '19, and  
20 revision predates that, that's a  
21 little bit odd. And that is the date  
22 that's listed at the bottom of this.

23 BY MR. GILL:

24 Q. Okay.

1 A. And I thought the question was about  
2 revisions and the revision table shows a March  
3 14, '16 date.

4 Q. Well, the MS4 annual report shows a  
5 revision date of July 19, 2019.

6 A. Which reflects the date on the top of  
7 block.

8 Q. Okay. So can we agree that what we're  
9 look at as 7A, again, is the version of the  
10 University storm collection system mapping that  
11 was most recently submitted to DEP?

12 A. Yes, sir.

13 Q. And when I say submitted to DEP, I mean  
14 as part of the MS4 permitting purpose?

15 A. Yes, sir. Understood.

16 Q. All right. We've talked a lot today  
17 about what's shown on Exhibit-7A, I want to  
18 make sure that I understand your testimony.  
19 It's not your testimony, or is it your  
20 testimony that Exhibit-7A, is not current in  
21 any way?

22 MR. KOVATIS: Objection to  
23 form.

24 MR. GILL: I'll rephrase.

1 Poorly phrased question.

2 MR. KOVATIS: Thanks.

3 BY MR. GILL:

4 Q. Is it your testimony that Exhibit-7A is  
5 not just the most recent plan that was  
6 submitted to the Department of Environmental  
7 Protection but is in fact, current and accurate  
8 as of today's date?

9 A. With the exception of our annotations  
10 for the current construction project.

11 Q. Okay. I'll also point out to you that  
12 the Academic Quad oval does not appear to show  
13 any storm water management structural  
14 facilities, however, is it your understanding  
15 that there are storm water -- structural storm  
16 water management facilities in that location?

17 A. Yes, sir. That's my understanding.

18 Q. Okay. Other than with regard to the  
19 oval at the Academic Quad and the structural  
20 facilities that you mentioned at The Commons,  
21 SECC and North Campus Parking structure as  
22 being somewhat out of date on this plan,  
23 Exhibit-7A? Is Exhibit-7A current and accurate  
24 as of today's date?

1 A. To the best of my knowledge, yes.

2 Q. Is there anybody else who would know  
3 whether it is or is not?

4 A. I would yield to Tom Clark who might  
5 have a more detailed opinion.

6 Q. Okay. The MS4 annual report states  
7 that there are 18 outfalls from the  
8 University's MS4 system, and that those have  
9 all been mapped. Are you able to point out on  
10 Exhibit-7A, where those 18 outfalls are  
11 located?

12 MR. KOVATIS: And that  
13 includes both the North Campus and the  
14 rest of the campus, right?

15 MR. GILL: I'm only referring  
16 -- thank you. I'm only referring to  
17 those outfalls which would be located  
18 on North Campus.

19 THE WITNESS: No, I'm sorry.  
20 I do not believe there's 18 outfalls  
21 on North Campus.

22 BY MR. GILL:

23 Q. Okay. Can you show us where the  
24 outfalls on North Campus are located?

1 A. We identified an outfall here for Plum  
2 Run.

3 MR. KOVATIS: And when you say  
4 here, just describe for the record --

5 THE WITNESS: WCU NC 001 of  
6 the, we had talked about that earlier.  
7 And I believe that's the only outflow  
8 from this North Campus area that goes  
9 to Plum Run.

10 BY MR. GILL:

11 Q. Okay. To make sure I understand, it's  
12 your testimony that all 17 other outfalls as  
13 reported in the annual report are elsewhere on  
14 campus other than North Campus?

15 A. I'm going to be very specific. It's my  
16 ignorance that limits my identity of this, this  
17 is our second outfall, I don't know of anything  
18 else other than this. So I cannot -- I cannot  
19 account to 17 other locations. I know this is  
20 the one outfall to Plum Run.

21 Q. Okay. Is there anybody else in the  
22 employ of the University or the State System of  
23 Higher Education who would be able to identify  
24 the locations of the other 17 outfalls?

1           A.           Again, I would defer to Tom because  
2           he's got quite a history here.

3                       MR. GILL:   Go off for a  
4                       second.

5                               (Whereupon, a brief discussion  
6                       was held off the record.)

7           BY MR. GILL:

8           Q.           All right.  I'm going to show you  
9           without marking pages 6 and 7 from the 2018,  
10          2019 annual report, and these bear stamps on  
11          them, WCU 000-- 000777 and 000778.  And I'll  
12          represent to you that the Borough obtained  
13          those as part of its -- pursuant to its request  
14          for production of documents.

15                       Are you familiar with those pages?

16          A.           I have seen them before, but to say I'm  
17          familiar with them, I'd have to look at them.

18          Q.           Please, take your time.

19          A.           And I apologize for pulling my mask  
20          down just a little bit, my glasses continue to  
21          fog up.  Okay.  Without digesting in minute  
22          detail.

23          Q.           Okay.  Do you understand that that is a  
24          recitation of sustainability-related measures

1       which the University has undertaken during the  
2       reporting period which is fiscal year 2018,  
3       2019?

4       A.       In compliance with the BMP, yes.

5       Q.       Okay. Can you, using those pages as  
6       you see fit, can you describe for us how any of  
7       those measures has the effect of reducing the  
8       flow of storm -- the volume of storm water  
9       which is discharged from North Campus to the  
10      Borough's municipal storm water system?

11      A.       Again, it doesn't differentiate where  
12      these are -- whether North Campus or South  
13      Campus, but when it talks about employing a  
14      green roof intern, if we assume that's at the  
15      FHD, the intern is the one that makes sure that  
16      the green roof is properly maintained, and that  
17      the green roof is operating at or above its  
18      designed condition. Same thing with trees.  
19      Campus tree committee, identifying the proper  
20      tree maintenance so that we maintain the leaf  
21      spread that is a healthy tree, that we get rid  
22      of dead trees that aren't absorbing water, or  
23      doing the things that they are being counted on  
24      to do. So certainly, the tree committee

1 involvement is extremely helpful. Research day  
2 including participation from our faculty where  
3 they have additional research that they can  
4 share to our community. If you notice on our  
5 strategic themes, it also includes professional  
6 development and personal development, with that  
7 being part of our themes and our strategic  
8 strategies, we include those kinds of efforts  
9 to help us maximize our understanding. If our  
10 understanding's improved, so then will be our  
11 sensitivity to it, then we will then be able to  
12 improve some of the other strategies. Taking a  
13 tour for the North Campus sustainability,  
14 having the community as part of our community  
15 engagement strategy, be involved in some of  
16 these things, having our students be involved  
17 in that, as far as an educational program, the  
18 more people that we have involved with  
19 understanding what we are doing, the more  
20 people are also involved in helping us identify  
21 areas that we can improve on.

22 So one of the coolest things about  
23 education is once you give people some basic  
24 information, they apply it to forward thinking

1 and say, hey, you're doing this here, why  
2 aren't you doing it over here. So that is a  
3 component of us improving our surface -- I  
4 mean, improving our sustainability efforts.

5 Q. I'm sorry, Mr. Bixby, my question was,  
6 how the measures which are recited in the  
7 annual report, 2018, 2019 annual report have  
8 the effect of reducing the volume of storm  
9 water which enters the Borough's municipal  
10 storm system?

11 A. On this report, there is no empirical  
12 data that shows the results of the things that  
13 I've just described.

14 Q. Okay. How do any of the activities  
15 identified in that -- on those pages -- excuse  
16 me, on those pages increase the -- or effect,  
17 excuse me, the quality of storm water which is  
18 entering the Borough storm water system?

19 A. The goal is not to have any of our  
20 water regardless of its quality go into the  
21 Borough's system, and these strategies here are  
22 in line with minimizing the amount of water  
23 that's going anywhere other than on campus.

24 Q. Okay. So you stated numerous times

1       that the goal is to not have storm water leave  
2       campus. And I think you agree with me that  
3       that's an aspirational goal and not necessarily  
4       consistent with what's going on?

5       A.       Well, in light of --

6       Q.       Naturally going on.

7       A.       Okay. I'm sorry. In light of this  
8       particular --

9                       MR. KOVATIS: Objection to  
10                      form but go ahead.

11                     THE WITNESS: There is no  
12                      empirical data that quantifies these  
13                      efforts.

14       BY MR. GILL:

15       Q.       Okay. I'll take those back. Other  
16       annual reports with regard to the MS4 permit  
17       which have been produced in this litigation,  
18       identify educational activities that are  
19       conducted to inform the campus community about  
20       storm water and the proper management of storm  
21       water, are you familiar with those efforts?

22       A.       Some. I don't know that it's  
23       exhaustive but I have some.

24       Q.       Can you tell me what your knowledge is

1 of those efforts?

2 A. Well, we have quite a group in our  
3 sustainability, we have a whole team of  
4 sustainability, we have a green study in our  
5 academics so that they have some exposure to  
6 environmental sustainability strategies,  
7 tactics, the purpose, how it effects all of the  
8 elements of the globe and climates, all of  
9 those things, we have studies of all of that.  
10 Education is what we do, so it is focused  
11 highly on across my team. So my team is also  
12 given professional development on some of the  
13 strategies that effects sustainability.

14 Q. My question was with regard to storm  
15 water management and education of the campus  
16 community regarding storm water management, are  
17 you familiar with those efforts?

18 A. To the extent --

19 Q. Specifically --

20 A. I'm sorry, I apologize.

21 Q. I was just going add, specifically with  
22 regard to storm water management?

23 A. Yeah. To the extent that it's limited  
24 only to that, I don't know.

1 Q. Okay. So if the MS4 annual reports  
2 over a number of years, talk about education  
3 and outreach to the campus community to inform  
4 the campus community about the importance of  
5 storm water management, you wouldn't have any  
6 knowledge of the content of those outreaches?

7 A. Not predate.

8 Q. Okay.

9 A. That those would predate me.

10 Q. Okay. Has there been any campus  
11 community education regarding storm water  
12 management during the time that you'd been  
13 employed by the University?

14 A. We were developing that for the  
15 fountain because that was going to be a very  
16 strong statement of the Presidents Walk and the  
17 fountain, whether it be a huge educational  
18 component of storm water management and the  
19 strategies for storm water.

20 Q. Okay. When did you start at the  
21 University?

22 A. November of 2018.

23 Q. Okay.

24 A. Could I add one other thing?

1 Q. Please.

2 A. Because we have mention of an intern,  
3 the intern that was so integral now to our  
4 green roof maintenance is quite a bit of  
5 education pivoting around the understanding of  
6 the green roof and how it works, and why it's  
7 important for it to be maintained at its design  
8 standard. So there's education involved in  
9 that particular component.

10 Q. Okay.

11 A. And the maintenance of our storm water  
12 management strategies, we have to maintain  
13 them.

14 Q. Is the intern engaged in any campus  
15 education or campus outreach in his or her own  
16 right regarding --

17 A. That, I do not know. I do not know  
18 that.

19 Q. And who is responsible for supervising  
20 that intern?

21 A. He is under the ground's department, so  
22 that fall under the custodian grounds director  
23 which is Patty Shields and the director of her  
24 grounds is Josh Baird, B-A-I-R-D.

1 Q. Okay. Other versions of -- or other  
2 iterations, excuse me, of the annual report  
3 that's submitted to DEP pursuant to the MS4  
4 permit make reference to the WCU storm water  
5 website, are you familiar with that website?

6 A. I am not.

7 Q. Since you've mentioned the grounds  
8 department and custodial staff, let's move onto  
9 that. Specifically with regard to maintenance  
10 of the on campus collection, storm water  
11 collection system as depicted on Exhibit  
12 Borough-7A, is that the department which is --  
13 or the group which is responsible for the  
14 physical maintenance of the system that's  
15 depicted on Exhibit Borough-7A?

16 A. Yes.

17 Q. Okay. And how often -- excuse me, I'll  
18 ask the question first, do they conduct regular  
19 inspections of the collection system as  
20 depicted on 7A?

21 A. I do not know that their inspections  
22 are directed directly at this. As a checkpoint  
23 on this, I have not seen any matrix that does  
24 that but I know they make regular inspections

1 of facilities and strategies for the storm  
2 water management.

3 Q. Okay. What do those regular  
4 inspections entail?

5 A. Is the basin still working, is the, you  
6 know, the area where the water's supposed to  
7 flow in, blocked or in some way, restricted with  
8 water flow going into the strategy, whatever  
9 its strategy happens to be. A perfect example  
10 would be up at BPMC where we have, now it's  
11 been reconstructed, I mean, that was done by an  
12 outside contractor, but it's been reconstructed  
13 to the design intent, and now just needs to be  
14 maintained.

15 Q. Okay. So when you talk about them, the  
16 grounds and custodial staff doing regular  
17 inspections and maintenance, you're referring  
18 only to structural facilities which have been  
19 built for those portion of campus which are  
20 identified on Borough-4 as having structural  
21 facilities associated with them?

22 A. They are responsible for that as well  
23 as regular lawn care which we count lawn care  
24 as pervious.

1 Q. Okay. Has any group or individual at  
2 the University charged with the responsibility  
3 for inspecting and maintaining the conveyance  
4 pipes which are shown on Exhibit Borough-7A  
5 which aren't associated with structural storm  
6 water facilities?

7 A. I don't know.

8 Q. Okay. Who would know that?

9 A. Maybe somebody in our trades  
10 department. That would be in our, whatever  
11 preventative maintenance strategies of which  
12 I'm not aware of.

13 Q. In this litigation, the University and  
14 the State's System have made the contention  
15 that, quote, the University also cleans inlet  
16 boxes within the boundaries of the Borough, are  
17 you familiar with that contention?

18 A. Yes.

19 Q. Can you tell me what it is that the  
20 University is referring to in making that  
21 contention?

22 A. Well, there's a good example right out  
23 front our door where you'll see there's an  
24 inlet grate, our grounds department comes in,

1       clears out the grate, clears out the inlets so  
2       there's no obstruction to anything going into  
3       that inlet, that happens around campus in the  
4       fall when all the leaves are there, we're out  
5       purging and getting everything out of the  
6       inlets.

7       Q.       So the reference to cleaning inlet  
8       boxes within the boundaries of the Borough is  
9       limited to inlet boxes that are on North  
10      Campus, as far as within the scope of our  
11      discussion, correct?

12     A.       Yes, yes.

13     Q.       Okay. They're not cleaning inlet boxes  
14      off campus, correct?

15     A.       Well, they're cleaning inlet boxes  
16      outside of the North Campus, yes.

17     Q.       I understand. But with regard --

18     A.       Within the contents to the north  
19      Campus, they are cleaning inlet boxes in North  
20      Campus.

21     Q.       Okay. Do they -- do they clean any  
22      inlet boxes which would be located within the  
23      Borough-owned streets?

24     A.       On the streets, I don't know. I don't

1 think we do the streets.

2 Q. Okay.

3 MR. KOVATIS: Do you mean the  
4 Borough and streets within campus or  
5 boarding North Campus, in other words,  
6 South Church Street and University  
7 Avenue or are you talking about --

8 MR. GILL: I was referring to  
9 through campus and adjacent to campus.

10 BY MR. GILL:

11 Q. So, do you understand, that's what I  
12 meant?

13 A. I did. My answer remains the same.

14 Q. Okay. And I'll ask the same question,  
15 not just with regard to Borough-owned streets  
16 but storm water facilities or conveyance  
17 facilities within, which the Borough might own  
18 located within PennDOT right away, the  
19 University's not doing anything with regard to  
20 those inlets --

21 A. Not that --

22 Q. -- boxes, correct?

23 A. -- I'm aware of.

24 Q. Give me a second here. To clarify,

1       it's your testimony that you're not aware of  
2       any discussions, planning documents, reports,  
3       studies or plans that examined what the scope  
4       of development of a project at the University  
5       -- at North Campus would look like without the  
6       ability to connect to the Borough system,  
7       correct, the University hasn't done any  
8       analysis in that regard, correct?

9       A.       To my knowledge.

10      Q.       And again, with regard to questions --  
11      questions regarding the storm water that leaves  
12      North Campus associated with any facility for  
13      which any building or site for which there are  
14      storm water management facilities in place, and  
15      here, I'm talking about the calculation of the  
16      volume of that storm water or the rate at which  
17      that storm water is discharged, or the quality  
18      of that storm water, you're not able to speak  
19      to that, correct?

20      A.       That's correct.

21      Q.       Okay. With regard to storm water that  
22      flows from that portion of the North Campus  
23      which is not within the Plum Run watershed,  
24      it's your testimony that you don't know the

1 ultimate disposition of that storm water,  
2 correct?

3 A. That is correct.

4 MR. GILL: That's all I have.

5 MR. KOVATIS: I might have a  
6 couple.

7 - - -

8 CROSS-EXAMINATION

9 - - -

10 BY MR. KOVATIS:

11 Q. Mr. Bixby, you were asked a number of  
12 questions based on the hypothetical scenario in  
13 which the University's ability to access and  
14 use the Borough storm water management system  
15 had been cut off or stopped; do you recall that  
16 testimony?

17 A. Yes, sir.

18 Q. And do you recall that we clarified at  
19 the beginning of that discussion, that that  
20 included shutting off access to Plum Run?

21 A. Yes, sir.

22 Q. And were all of your answers based on  
23 that assumption, that the University would not  
24 have access to Plum Run?

1 A. Yes.

2 Q. Where -- as Plum Run runs -- does Plum  
3 Run run through North Campus?

4 A. The top corner.

5 Q. Is it depicted on 7A?

6 A. It's hand drawn in there and the  
7 accuracy of it, it just is hand drawn, it's  
8 across this top corner here (indicating).

9 Q. Well, I believe -- and Mr. Gill will  
10 correct me if I'm wrong, that the blue line  
11 that you were just referring to, we were  
12 actually tracing a fainter blue line that was  
13 on there previously.

14 A. Well, it's subterranean.

15 Q. Meaning, that Plum Run runs underground  
16 through North Campus?

17 A. In that section, yes.

18 Q. In that section.

19 A. It discharges into the open over on New  
20 Street, by the New Street parking garage, I'm  
21 sorry.

22 Q. No, go ahead.

23 A. I was just saying, that's the only  
24 place that you can literally see that section

1 of it.

2 Q. Does the University own underground  
3 piping underneath North Campus?

4 A. Except where it is clearly the  
5 Borough's.

6 Q. Does the University's owned underground  
7 pipes, do those pipes connect to Plum Run?

8 A. I don't know that I know the answer to  
9 that.

10 Q. Do those pipes discharge water to Plum  
11 Run?

12 A. They could, yes.

13 Q. Do they?

14 A. At a small amount of whatever's in  
15 there, yes.

16 Q. And if the University were to be able  
17 to continue to discharge water to Plum Run, and  
18 if the Borough were to otherwise shut off  
19 access to its underground pipes, would that  
20 change any of your answers about the steps that  
21 the University might take?

22 MR. GILL: Objection as to  
23 form.

24 THE WITNESS: I would only

1           want to comment that if they were to  
2           shut it off there, it would hurt the  
3           Borough more than it would hurt us  
4           because the Borough has water that's  
5           flowing into Plum Run. So I would not  
6           imagine that would be a tactic they  
7           would want to do. But if they did,  
8           the problem's created uphill from that  
9           would be difficult for them to deal  
10          with.

11       BY MR. KOVATIS:

12       Q.       If the Borough were to shut off access  
13       to its inlets tomorrow, what would happen to  
14       that storm water that would otherwise go in  
15       those inlets from North Campus?

16       A.       It would have no boundaries, it's just  
17       going to go wherever it runs down the street,  
18       goes to wherever it goes. It would have no  
19       boundaries, it would just go wherever.

20       Q.       Would the University be forced to deal  
21       with that storm water immediately?

22       A.       No.

23       Q.       We discussed Plum Run and we earlier  
24       looked at the outfall of Plum Run that's

1 labeled on 7A as WCU NC 001; do you remember  
2 that?

3 A. Yes, sir.

4 Q. First of all, the water that comes in  
5 on Plum Run, that enters North Campus, where'S  
6 that water from?

7 A. The Borough, I mean, it's coming from  
8 north of us.

9 Q. Right. And north of North Campus is  
10 the Borough of West Chester?

11 A. Yes.

12 Q. So the water that comes out of that  
13 outfall, does that include water from the  
14 Borough of West Chester?

15 A. Yes.

16 Q. Who manages that outfall?

17 A. We do.

18 Q. We, meaning West Chester University?

19 A. Yes, sir. West Chester.

20 Q. Does that include water from the  
21 Borough of West Chester?

22 A. Yes, that includes bank restoration.

23 Q. What sort of steps and management do  
24 you take at that outfall, meaning the West

1 Chester University?

2 A. We're observing erosion and we're  
3 measuring pollutant content.

4 Q. Anything else?

5 A. I'd have to look at the report but we  
6 have it listed in the report.

7 MR. KOVATIS: I don't have any  
8 further questions.

9 MR. GILL: Just by way of  
10 clarification, Mr. Bixby.

11 - - -

12 BY MR. GILL:

13 Q. As I stated and I think you  
14 acknowledged earlier, Mr. Bixby testified that  
15 Tyson Hall, Goshen Hall and Lawrence Center  
16 have direct connections from those sites to the  
17 pipe which runs through North Campus which in  
18 response to Mr. Kovatis' question, you  
19 acknowledged is Plum Run as piped, correct?

20 A. I'm sorry, you referred to a place  
21 called orange center, I don't know what that  
22 is.

23 Q. Lawrence Center.

24 A. Oh, Lawrence. I'm sorry. That is

1 correct.

2 Q. Okay. It's your understanding,  
3 correct, that what's shown here in blue is not  
4 a free flowing stream but rather an underground  
5 pipe stream, correct?

6 A. That's correct.

7 Q. Okay. And who owns that pipe?

8 A. I believe there's sections of it that  
9 are owned totally by the University. But up  
10 above at the top, I believe that's owned by the  
11 Borough.

12 Q. I want to make sure I understand your  
13 testimony. It's your testimony that as that  
14 pipe runs through North Campus, that that is  
15 not entirely owned by the Borough of West  
16 Chester?

17 A. That is my understanding. I'd have to  
18 verify it with ownership.

19 Q. Which parts are owned by the  
20 University?

21 A. This is the part that I would say was  
22 owned by the Borough that's coming out here,  
23 because this goes into the Borough and whatever  
24 connects up here, and then this is the section

1 that I believed we owned (indicating).

2 Q. Okay.

3 A. And --

4 MR. KOVATIS: And just if you  
5 could, Mr. Bixby, use words. Just  
6 when you say this and that, just  
7 describe what you're referring to.

8 THE WITNESS: So the section  
9 that's bound by -- gosh, I can't see  
10 anything without my glasses, I'm  
11 sorry. The section that's on South  
12 Church, that goes down South Church  
13 and goes all the way across here,  
14 this, I believe is totally by the  
15 college.

16 In Sharpless, there's a  
17 section of this that I believe is  
18 owned by Borough -- by the Borough.  
19 And then we own that section that goes  
20 up under the parking garage and then  
21 it goes out into the Borough that I  
22 believe they owned. But the -- the  
23 ownership of that, would have  
24 validated by a deed or something,

1           because mine is only based on our  
2           conversations and assumptions.

3       BY MR. GILL:

4       Q.       One second here. You stated that if  
5       the Borough were to shut off access to the  
6       Borough-owned inlets tomorrow, that the  
7       University would not be forced to deal in  
8       response to Mr. Kovatis' question about the  
9       Borough shutting off the Borough-owned inlets,  
10      tomorrow, you testified that that storm water  
11      would simply flow wherever it's going to flow,  
12      correct?

13      A.       I'm sorry, I thought his question was  
14      if you shut it off, would I require immediate  
15      attention, and my answer I thought was no.

16      Q.       That a following question. His first  
17      question is, what would happen to that storm  
18      water.

19      A.       So if it's raining, the storm water's  
20      just going to run over the streets and down  
21      wherever it goes.

22      Q.       Okay. And if it runs into the streets,  
23      it's going to flow into -- ultimately, it's  
24      going to flow into some capture system

1        somewhere along those streets, correct?

2        A.        Somewhere, yes.

3        Q.        Does the University own any captured  
4        systems within the streets?

5        A.        Not within streets, no, sir.

6        Q.        Okay. So that storm water is  
7        ultimately going to flow to some inlet or  
8        overland, to some receiving watercourse,  
9        correct?

10       A.        To someplace the body can be -- that  
11       the water can be disbursed, absorbed.

12       Q.        And you said that the University  
13       wouldn't be forced to deal with that situation  
14       immediately. Is it your testimony that the  
15       University in that situation would simply let  
16       the storm water flow wherever it's going to  
17       flow without capturing it and managing it?

18       A.        No. My response is there would not be  
19       required, an immediate reaction from the  
20       University. We would first need to do a study  
21       of how much water is actually going, where it's  
22       going and what we would need to mitigate it, if  
23       anything. We may find that it doesn't pose a  
24       threat to us at all, which would be what I

1 would personally believe, it would be a minimal  
2 threat, if in fact we couldn't use your systems  
3 anymore.

4 Q. Okay. And that's because, again, you  
5 could capture that storm water and manage it  
6 somewhere onsite?

7 A. Well, if it's -- if all those inlets  
8 are closed, the water running somewhere, I  
9 don't know where it's going, we would need to  
10 make some determination on where it's going.

11 Q. So if a storm water's coming -- I want  
12 to make sure I had understand. If the storm  
13 water's coming from North Campus and it's  
14 flowing into, or toward what is a Borough-owned  
15 inlet, and the Borough -- will you agree with  
16 me that that is storm water generated from  
17 North Campus?

18 A. Generated from the sky and it's running  
19 through North Campus, yes.

20 Q. Okay. It's falling onto North Campus  
21 and then flowing to a Borough-owned inlet?

22 A. Yes, potentially.

23 Q. Okay. So it's storm water that's  
24 flowing over North Campus?

1 A. Yes.

2 Q. Falling from the sky onto North Campus  
3 and its flowing?

4 A. Right.

5 Q. Borough shuts off the inlets, do you  
6 disagree with -- do you agree with me that that  
7 is storm water which the University at that  
8 point in time, should be managing?

9 MR. KOVATIS: Objection to  
10 form.

11 BY MR. GILL:

12 Q. You agree with me -- all right. I'll  
13 ask the question again. Do you agree with me  
14 that that -- is that storm water within the  
15 scope of what you said, the University could  
16 otherwise manage onsite?

17 A. I'm sorry, I'm a little confused on the  
18 question.

19 Q. So rain falls on Anderson Hall, under  
20 existing conditions, that rain reaches an inlet  
21 on campus -- or I'm sorry, reaches -- flows  
22 from Anderson Hall, reaches an inlet that is in  
23 South Church Street, let's say. The Borough  
24 says, we're shutting off that inlet in South

1 Church Street.

2 A. Okay. So let me make sure that I have  
3 the complete understanding. The cooperative  
4 agreement that allowed us to first use those  
5 inlets, the Borough would back away from and  
6 say you can no longer use those inlets, that we  
7 were required -- that we were using as part of  
8 our MS4 strategy, is that -- were we starting  
9 there, saying that we're going to violate all  
10 the way back to even the intent on how we're  
11 going to use the conveyances provided in place  
12 already by the Borough?

13 Q. What cooperative agreement are you  
14 referring to?

15 A. It's not necessarily a cooperative  
16 agreement, but when we created our MS4, we  
17 created it with the understanding that we were  
18 able to use the conveyances that were already  
19 in place.

20 Q. Ah, I understand.

21 A. So if those conveyances are now not  
22 permitted to be part of our MS4, then they  
23 would be a different kind of a conversation  
24 that we needed to have.

1 Q. Okay. So now, this gets back to a  
2 question I asked you earlier, and that was with  
3 regard to the design of structural facilities.  
4 You've now offered something different, I want  
5 to make sure I understand you.

6 MR. KOVATIS: Objection. Go  
7 ahead.

8 MR. GILL: As to the form or?

9 MR. KOVATIS: Yeah. As to the  
10 form of the question, as to the  
11 characterization of his testimony.  
12 But go ahead.

13 MR. GILL: Okay.

14 BY MR. GILL:

15 Q. Is it your testimony now that when the  
16 University applied for its MS4 permit, it  
17 assumed that it would be able to discharge  
18 storm water into the Borough-owned collection  
19 system?

20 A. I cannot speak to the assumptions that  
21 were made when this MS4 application was made.

22 Q. Okay. Now nevertheless, you referred  
23 to some cooperative agreement and an assumption  
24 that the Borough-owned system would be

1 available for purposes of the University's MS4,  
2 correct?

3 A. My -- yes. And if I am stating that  
4 there was a testing to some communication  
5 between the University and the Borough, I  
6 cannot do that. I can only say that the MS4  
7 strategy that we have in place has in it a  
8 means of conveyance that's using the Borough's  
9 conveyance mechanism.

10 Q. Okay. And that's what I'm getting at.  
11 The University's MS4 permit is at least in  
12 part, predicated upon the ability to discharge  
13 storm water through the Borough-owned system?

14 A. Yes, sir.

15 Q. Okay.

16 MR. GILL: That's all I have.

17 Thank you.

18 THE WITNESS: You're very  
19 welcomed.

20 MR. KOVATIS: Thank you.

21 - - -

22 (Whereupon, the deposition  
23 testimony of GARY BIXBY, was concluded  
24 at 3:02 p.m.)

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C E R T I F I C A T I O N

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I, Stephanie Weldon, Court Reporter and Notary Public, do hereby certify that the proceedings and evidence are contained fully and accurately in the stenographic notes taken by me on Tuesday, October 13, 2020, and that the foregoing testimony was taken in shorthand by myself and reduced to typing under my direction and control and that this is a correct transcript of the same.

-----  
Stephanie Weldon  
Notary Public

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.)

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ACKNOWLEDGMENT OF DEPONENT

I, [GARY BIXBY], do hereby  
certify that I have read the foregoing  
pages, and that the same is a correct  
transcription of the answers given by me  
to the questions therein propounded,  
except for the corrections or changes in  
form or substance, if any, noted in the  
attached errata sheet.

DATE

\_\_\_\_\_

Subscribed and sworn to before me.

Stephanie Weldon

Notary Public

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IN THE COMMONWEALTH COURT  
OF PENNSYLVANIA

- - -

THE BOROUGH OF WEST : Original Jurisdiction  
CHESTER, :  
Petitioner : 260 MD 2018  
:   
vs. :   
:   
PENNSYLVANIA STATE :  
SYSTEM OF HIGHER :  
EDUCATION :  
& :  
WEST CHESTER UNIVERSITY  
OF PENNSYLVANIA OF :  
THE STATE SYSTEM OF :  
HIGHER EDUCATION, :  
Respondents :

- - -  
Monday, October 12, 2020  
- - -

Oral Deposition taken of  
witness TOM CLARK, taken pursuant to notice,  
held at the offices of West Chester  
University Facilities Design and  
Construction, 201 Carter Drive, Suite 300,  
West Chester, Pennsylvania 19383 beginning  
at 9:32 a.m., on the above date, before  
MARIA N. DAMIANI-CAMPISANO,  
A Registered Merit Reporter, Certified  
Realtime Reporter, Certified  
CaseViewNet Reporter, Certified  
LiveNote Reporter, Certified Court  
Reporter (NJ License No. 30XI00224100;  
DE License No. RPR-117; PA; NY; DC)  
and a Notary Public.

- - -

ELITE LITIGATION SOLUTIONS, LLC  
1617 J.F.K. Boulevard  
One Penn Center, Suite 340  
Philadelphia, Pennsylvania 19103  
www.elitelslc.com ~ (215) 563-3703

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7  
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11 - Represents the Respondents

12  
13  
14 ALSO PRESENT:

15 Jonathan M. Miller, Esquire  
16  
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18  
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I N D E X

- - - - -

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E X H I B I T S

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DEPOSITION SUPPORT INDEX

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5 - Read/Sign

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None

Confidential Portions  
Page

None

1                    (It is hereby stipulated, by  
2                    and among counsel, that the sealing,  
3                    filing, and certification are hereby  
4                    waived, and that all objections,  
5                    except as to the form of the  
6                    question, are reserved until the time  
7                    of trial.)

8                    - - -

9                    TOM CLARK, after having been  
10                    duly sworn, was examined and  
11                    testified as follows:

12                    - - -

13                    E X A M I N A T I O N

14                    - - -

15                    MR. GILL: Usual stipulations?

16                    MR. KOVATIS: Yeah, good, and  
17                    we will read and sign.

18 BY MR. GILL:

19                    Q.        Good morning, Mr. Clark.

20                    A.        Good morning.

21                    Q.        My name is Michael Gill and I am an  
22                    attorney with the law firm of Buckley Brion  
23                    McGuire & Morris here in West Chester,  
24                    Pennsylvania.

1           We represent The Borough of West  
2 Chester generally as the solicitors and I am  
3 counsel for The Borough in a lawsuit that has  
4 been filed by the Borough in the Commonwealth  
5 Court of Pennsylvania. That lawsuit is  
6 docketed at Number 260 MD 2018, and the  
7 lawsuit is by the Borough of West Chester  
8 against the Pennsylvania State System of  
9 Higher Education and West Chester University;  
10 two separate entities are named as  
11 Respondents in the lawsuit.

12           I'm going to be asking you a series  
13 of questions today about that lawsuit and  
14 during that I'm going to be referring at some  
15 points to documents which the Pennsylvania  
16 State System and The University turned over  
17 to the Borough in what is called a discovery  
18 process specifically with regard to a request  
19 for production of documents and  
20 interrogatories or written questions that the  
21 Borough submitted to The State System and to  
22 The University.

23           Are you familiar with the litigation  
24 that I just described?

1 A. I am.

2 Q. Can you describe for me your level of  
3 familiarity?

4 A. With the litigation?

5 Q. Yes.

6 A. Okay. I have read the litigation. I  
7 have read all the documents that The  
8 University has submitted as -- as per the  
9 request.

10 Q. Okay. So you read the original  
11 filing, the declaratory judgment complaint or  
12 petition for review; is that correct?

13 A. If it is the same documents that Mr.  
14 Kovatis has submitted to me, then yes.

15 MR. KOVATIS: Without revealing  
16 the contents of any attorney/client  
17 communications, the witness may not  
18 know or recall the exact title of the  
19 documents.

20 MR. GILL: All right. Fair  
21 enough.

22 THE WITNESS: Yes.

23 BY MR. GILL:

24 Q. And you said that you reviewed the

1 response to the Interrogatories and the  
2 response to the Requests for Production of  
3 Documents?

4 A. Yes.

5 Q. Okay. Have you ever been deposed  
6 before?

7 A. Yes.

8 Q. How many times?

9 A. Once.

10 Q. And was that in your official  
11 capacity or in a personal capacity?

12 A. Official capacity.

13 Q. When was that?

14 A. Hmm. To my best recollection, 2012.

15 Q. And was that in a lawsuit in the  
16 Court of Common Pleas of Chester County?

17 A. I believe so. I can't say for sure.  
18 Uhm, it was a slip-and-fall case against The  
19 University from a private entity.

20 Q. Mr. Clark, did you meet with anybody  
21 to prepare for your deposition here today?

22 MR. KOVATIS: And I will object  
23 and instruct the witness that you can  
24 answer that question, but in

1           answering that do not reveal the  
2           contents of any conversations that  
3           you had with counsel.

4                   MR. GILL: To be clear, I'm not  
5           asking you about the contents of any  
6           conversations with counsel. I'm only  
7           asking you if you met with anybody to  
8           prepare for your deposition.

9                   MR. KOVATIS: And you can  
10          answer that question.

11                   THE WITNESS: Yes.

12          BY MR. GILL:

13           Q.       With whom did you meet?

14           A.       Mr. Kovatis and Mr. Miller.

15           Q.       Did you meet with -- or speak with  
16          anybody else to prepare for your deposition?

17           A.       I spoke with Mrs. -- Ms. Svetz for a  
18          clarification from one of the documents that  
19          were submitted.

20           Q.       Which document was that?

21           A.       Uhm, if I might, it was this document  
22          here. (Indicating.)

23           Q.       Okay.

24           A.       And I didn't understand who had

1 prepared this document and so I just asked  
2 who had prepared that document.

3 Q. Okay. And who did prepare it?

4 A. According to Ms. Svetz, it was  
5 prepared by the former Director of  
6 Environmental Health and Safety, Gail  
7 Fellows.

8 MR. KOVATIS: Do you want to  
9 put that in the record since we just  
10 referred to it?

11 MR. GILL: Yeah, let's mark  
12 this as Borough 6.

13 - - -

14 (Whereupon, Exhibit Borough-6  
15 was marked for identification.)

16 - - -

17 BY MR. GILL:

18 Q. Mr. Clark, not to get off track, but  
19 the document that you referred to a moment  
20 ago as being prepared by the former Director  
21 of Environmental Health and Safety Gail  
22 Fellows --

23 A. Yes.

24 Q. -- is that the document that's now

1     been marked as Borough Exhibit 6?

2     A.     That's correct.

3     Q.     Who occupies that position now?

4     A.     Uhm, I believe that position is  
5     vacant.

6     Q.     Who is performing the duties of that  
7     position now?

8     A.     Uhm, I cannot answer that question.  
9     I'm not familiar with that -- that role.

10    Q.     Okay.  When did Ms. Fellows leave the  
11    employment of The University?

12    A.     To the best of my knowledge, I  
13    believe it was around 2018, but I'm -- that's  
14    -- that's a guess.

15    Q.     Has the position been vacant since  
16    then?

17    A.     To the best of my recollection, yes;  
18    however, I am not aware of whether that  
19    position has been filled or remains vacant.

20    Q.     Okay.  If we turn to some of the  
21    introductory questions now.

22    A.     Uh-huh.

23    Q.     You said you spoke to Ms. Svetz,  
24    S-V-E-T-Z, for clarification, regarding

1 Borough 6. Did you speak with anyone else?

2 A. No.

3 Q. Did you exchange correspondence,  
4 electronic or otherwise, with anybody to  
5 prepare for your deposition?

6 A. No.

7 Q. You have already mentioned that you  
8 reviewed the responses to Interrogatories and  
9 the responses to Requests For Production of  
10 Documents?

11 A. Yes.

12 MR. GILL: And we are going to  
13 have those marked as Borough 2 and 3  
14 respectively.

15 - - -

16 (Whereupon, Exhibit Borough-2  
17 was marked for identification.)

18 - - -

19 (Whereupon, Exhibit Borough-3  
20 was marked for identification.)

21 - - -

22 BY MR. GILL:

23 Q. You have been handed Exhibits Borough  
24 2 and 3. Are those the documents which you

1 reviewed and to which you made reference a  
2 moment ago?

3 A. (Reviewing.) Yes.

4 Q. And to clarify, those are the only  
5 documents that you would say that you  
6 reviewed prior to your deposition here today  
7 in preparation for your deposition?

8 A. These two?

9 Q. Yes.

10 A. No, I reviewed all of these  
11 attachments and the submissions.

12 Q. Okay. Understood.

13 All of the attachments and  
14 submissions that were made in addition --  
15 along with the responses?

16 A. Yes. Yes.

17 Q. Got you. Okay. Thank you.

18 A. Yes.

19 MR. GILL: I would ask that  
20 this be marked as Borough 1.

21 - - -

22 (Whereupon, Exhibit Borough-1  
23 was marked for identification.)

24 - - -

1 BY MR. GILL:

2 Q. Do you recognize that?

3 A. I do.

4 Q. Can you tell us what it is?

5 A. Uhm, well, the title of it is the  
6 notice of -- of deposition and it appears to  
7 be 16 issues related to this deposition.

8 Q. Okay. And it's your understanding,  
9 Mr. Clark, that the Pennsylvania System of  
10 Higher Education and West Chester University  
11 have designated you as the designee for those  
12 entities to answer some of those questions;  
13 is that correct?

14 A. That's correct.

15 Q. Is that correct?

16 A. Yes.

17 Q. Staying with some introductory  
18 matters, and just to make sure we are on the  
19 same page going forward from this point, when  
20 I refer to "the Borough" during this  
21 deposition, I'm talking about the Borough of  
22 West Chester. When I refer to "The State  
23 System" or "PASSHE," I'm referring to the  
24 Pennsylvania State System of Higher

1 Education, and when I refer to "The  
2 University" or "WCU" or any other common name  
3 for West Chester University, I'm referring to  
4 West Chester University, West Chester  
5 University being a constituent university in  
6 the State System of Higher Education.

7 If I use the term "you" and the  
8 context clearly means you individually, then  
9 I'm referring to you individually, but most  
10 times I will be referring to The University  
11 or The State System of Higher Education.

12 Do you understand that?

13 A. I do.

14 MR. KOVATIS: And I'm sure you  
15 will get to this, but I just want to  
16 remind the witness that your answers  
17 can't be uh-uh and uh-huh, it has to  
18 be a verbal "yes" or "no."

19 THE WITNESS: Yes, thank you.

20 Yes.

21 BY MR. GILL:

22 Q. All right. And when I refer to  
23 "North Campus" I am using that term to mean  
24 that portion of West Chester University's

1 campus which is located within the  
2 jurisdictional limits of the Borough of West  
3 Chester; by that generally I mean the area  
4 bounded on the west by South New Street, on  
5 the north by Sharpless Avenue, on the west by  
6 South High Street, although there are  
7 portions of North Campus within the Borough  
8 that are on the other side of High Street.  
9 As to those portions of North Campus which  
10 are on the other side of High Street I'm  
11 including them within the term "North Campus"  
12 and the area bounded on the south by West  
13 Rosedale Avenue.

14 Is that your understanding of the  
15 reference to North Campus?

16 A. Yes.

17 Q. When I refer to the "stream  
18 protection ordinance," I'm giving that term  
19 the meaning which it has in the petition for  
20 review or the declaratory judgment action  
21 that The Borough filed to begin this case.

22 Do you understand that?

23 A. Yes.

24 Q. And when I refer to the "stream

1 protection fee" I mean the same document, the  
2 meaning it has under that same document, the  
3 petition for review or the declaratory  
4 judgment action?

5 A. Yes.

6 Q. All right. Mr. Clark, have you taken  
7 any medications today which may impair your  
8 ability to understand my questions and to  
9 provide complete, honest and forthright  
10 answers?

11 A. No.

12 Q. Is it your understanding that Mr.  
13 Kovatis is here today representing The State  
14 System of Higher Education and West Chester  
15 University, both respondents?

16 A. Yes.

17 Q. Okay. Mr. Kovatis may raise  
18 objections during the course of the  
19 deposition. If he objects due to an  
20 attorney/client privilege, I don't want you  
21 to answer my question. I just want you to  
22 stop and Mr. Kovatis and I will have a  
23 conversation about his objection.

24 If he objects on any other basis you

1 may continue to answer the question, but I'm  
2 sure there will be a conversation at that  
3 point in time as well, but I'd like for you  
4 to answer any questions that Mr. Kovatis does  
5 not object to unless that objection has to do  
6 with attorney/client privilege.

7 A. Yes.

8 Q. If you don't understand a question  
9 that I ask, I would like for you to stop me  
10 and ask me to repeat the question or to  
11 clarify the question. If you don't  
12 understand a question and you don't ask me to  
13 stop and clarify or rephrase the question, I  
14 will assume that you understood the question  
15 and that the answer that you give is  
16 responsive to the question that I have asked.

17 Do you understand that?

18 A. Yes.

19 Q. Okay. Do you understand that you're  
20 under oath in this deposition?

21 A. Yes.

22 Q. Do you understand what it means to be  
23 under oath?

24 A. Yes.

1 Q. What does it mean to you?

2 A. Uhm, it means that my answers must be  
3 truthful and forthright.

4 Q. Okay. In that regard I will ask you  
5 to join in my understanding that it also  
6 means not to omit any information which is  
7 necessary to make the answer not confusing or  
8 misleading.

9 Do you understand that?

10 A. Yes, I do.

11 Q. Now, the court reporter who is here  
12 with us this morning is transcribing  
13 everything that's said during this deposition  
14 and, therefore, as Mr. Kovatis said a moment  
15 ago, all of your answers need to be  
16 verbalized, yes or no or otherwise. You  
17 cannot give a head nod or an uh-huh or  
18 anything related to that.

19 Is that your understanding?

20 A. Yes, it is.

21 Q. Okay. Finally, I will do my best to  
22 wait for you to finish any answer to a  
23 question that you are offering. And I will  
24 ask you to -- and before I ask you a

1 follow-up question I will ask you to wait  
2 until I am finished asking a question before  
3 you begin your answer, that way the court  
4 reporter can transcribe everything that is  
5 being said.

6 A. Yes.

7 Q. All right. Mr. Clark, can you  
8 confirm your professional address for the  
9 record?

10 A. I am the Executive Director of  
11 Facilities Design and Construction Interim.

12 Q. And by what institution are you  
13 employed?

14 A. By West Chester University and The  
15 State System of Higher Education.

16 Q. And is that your only form of  
17 employment?

18 A. That is correct.

19 Q. I'm sorry, your only form of  
20 employment is your position as the interim  
21 director; correct?

22 A. Yes, uh-huh.

23 Q. Okay. Would you please describe for  
24 us your duties and responsibilities in your

1 current position?

2 A. I have a staff of, uhm, at this time  
3 six professional employees and I manage the  
4 design and construction of most but not all  
5 projects at the West Chester University  
6 campus.

7 Q. Who are your six employees?

8 A. Joe Slagle, S-L-A-G-L-E, Kathleen  
9 Sotolotto, S-O-T-O-L-O-T-T-O, Yeda Arcscott,  
10 Y-E-D-A, A-R-S-C-O-T-T, and Val Flounders as  
11 it's pronounced, and Nathan Mastrangelo,  
12 M-A-S-T-R-A-N-G-E-L-O.

13 Let's see. We have had some  
14 retirees, but I believe that's it if, in  
15 fact, that count is correct.

16 Q. I have one, two, three, four, five:  
17 Mr. Slagle, Ms. Sotolotto, Ms. Arcscott, Ms.  
18 Flounders and Mr. Mastrangelo?

19 A. Mastrangelo. There's one more I  
20 forgot, Tiffany Bailey, B-A-I-L-E-Y.

21 Q. And what are their --

22 Well, let's start with Mr. Slagle.  
23 What's his job title?

24 A. Project Manager.

1 Q. Ms. Sotolotto, her job title?

2 A. Interior Designer.

3 Q. Is it Ms. Arscott?

4 A. Ms.

5 Q. What's her job title?

6 A. Project Manager.

7 Q. Ms. Flounders?

8 A. Project Manager.

9 Q. Mr. Mastrangelo?

10 A. Intern.

11 Q. And Ms. Bailey?

12 A. Interior Designer.

13 Q. Okay. Does The University or The  
14 State System have on staff any civil  
15 engineers? Not in a faculty function, I mean  
16 in a construction function.

17 A. No.

18 Q. So all civil engineering work with  
19 regard to construction projects at The  
20 University is handled by outside engineering  
21 firms; is that correct?

22 A. That's correct.

23 Q. Is there a specific firm with which  
24 The University works?

1       A.       We work with a variety of firms, no  
2 one specific firm.

3       Q.       How is an engineering firm selected  
4 on? Are they selected on a  
5 project-by-project basis or are they selected  
6 for periods of time?

7       A.       Both. We have open-ended contracts  
8 that are negotiated through RFPs and then we  
9 do specific RFPs for very large projects over  
10 a certain dollar amount.

11      Q.       Okay. And who are the -- what  
12 engineering firms are currently on open-ended  
13 contracts?

14      A.       I will have to refer to my list for  
15 an exact count. I know Chester Valley  
16 Engineers is one of our open-ended civil  
17 engineering contractors, uhm, but I'd have to  
18 refer to my open-ended list to give you an  
19 exact count.

20      Q.       Okay, but so there might be others  
21 besides Chester Valley Engineers?

22      A.       Yes, one or two others. I'm not  
23 exactly sure of their names at this point.

24      Q.       Are there others and you just do not

1 know their names or do you not know if there  
2 are others?

3 A. I believe there are others. I just  
4 have to refer to that list. It's a revolving  
5 list and some expire and I -- I just may not  
6 be up-to-speed as to what -- who has a  
7 current contract.

8 Q. And we are going to talk later this  
9 morning about ongoing construction projects  
10 at The University --

11 A. Okay.

12 Q. -- but let me ask you now, is the  
13 only ongoing construction project at The  
14 University right now The Commons Building?

15 A. According to the land development, we  
16 have interior projects so are you asking  
17 about --

18 Q. I'm not. I am talking about  
19 earth-moving projects.

20 A. Okay, okay. Give me a second to  
21 reflect.

22 Q. Take your time.

23 A. Are you including anticipated  
24 projects that have not commenced?

1 Q. I was going to ask you that, but for  
2 the purposes of efficiency, let's combine the  
3 questions, and I am talking about ongoing and  
4 anticipated.

5 A. Okay. And only related to North  
6 Campus?

7 Q. Yes.

8 A. Okay.

9 Q. Yes.

10 A. There are none other than the Science  
11 and Engineering Center, also called the SECC  
12 project.

13 Q. And SECC stands for Science and  
14 Engineering and Campus Comments; is that  
15 correct?

16 A. Yes.

17 Q. And is that the project that is going  
18 on right now at the location of the former  
19 boiler plant down over by Lawrence Hall?

20 A. That is correct. There is a pending  
21 project that has achieved land development  
22 approval, but it has been cancelled.

23 Q. What project is that?

24 A. That's the President's Walk and

1 Fountain.

2 Q. Where was that going to be located?

3 A. On North Campus at the intersection  
4 of South High Street and West Rosedale  
5 Avenue.

6 MR. GILL: Let me go ahead and  
7 have this marked. Bear with me  
8 because we are going to make  
9 reference to it.

10 THE WITNESS: Sure.

11 - - -

12 (Whereupon, Exhibit Borough-7  
13 was marked for identification.)

14 - - -

15 BY MR. GILL:

16 Q. You have nodded a couple of times  
17 during your answers so far to a plan that I  
18 have unfolded on the table in front of us.  
19 It is a document that bears the stamp WCU  
20 00001. I might have missed a zero there.

21 Is that the same -- no, I have that  
22 in large form unfolded here on the table. Is  
23 that the same document that was just handed  
24 to you that's marked as Borough 7?

1 A. Yes, yes.

2 Q. Okay.

3 A. Yes.

4 Q. We are going to come back to this  
5 document substantively, but as we talk about  
6 the campus just for points of reference we  
7 can use Borough 7 for locational purposes as  
8 well.

9 Now, you were referencing The  
10 President's Walk.

11 A. Uh-huh, yes.

12 Q. Where was that going to be located  
13 again?

14 A. The corner of South High Street and  
15 West Rosedale Avenue. (Pointing.)

16 Q. So is that to the Southeast of the  
17 Francis Harvey Green Library?

18 A. Yes.

19 Q. And there's a sign there along High  
20 Street as you come into West Chester that  
21 says "West Chester University"?

22 A. Yes.

23 Q. Okay. What was that project going to  
24 entail?

1       A.       There were two parts to that project;  
2       one was from the corner of South High Street  
3       and West Rosedale Avenue, a continuous  
4       walkway up to our quad and a fountain plaza,  
5       a pervious paver plaza that incorporated a --  
6       uhm, a fountain.

7       Q.       Where was that going to be?

8       A.       At that corner of South High Street  
9       and Rosedale Avenue.

10      Q.       Why has that project been cancelled?

11      A.       Funding issues related to our COVID  
12      experience.

13      Q.       Do the duties of your position  
14      include a familiarity with all campus  
15      development, construction and stormwater  
16      management?

17      A.       Mostly. I am not the director of  
18      certain projects that are being, uhm,  
19      constructed.

20      Q.       And which projects are those?

21      A.       The SECC.

22      Q.       Okay.

23      A.       That is the current list.

24      Q.       Okay. Who's the director of that

1 project?

2 A. Gary Bixby.

3 Q. And is Mr. Bixby your immediate  
4 superior?

5 A. Yes.

6 Q. What is his title?

7 A. Associate Vice President of  
8 Facilities.

9 Q. Do you know why there's a division of  
10 responsibility whereby Mr. Bixby would be  
11 responsible for that project and not you?

12 A. Uhm, I am in this position for  
13 approximately two years and this -- this  
14 project started prior to my position, uhm,  
15 and it was simply too large of a project to  
16 be able to be handed over to me at my new  
17 duties.

18 Q. Okay. Were you in any positions with  
19 West Chester prior to your current position?

20 A. I was.

21 Q. What was that?

22 A. Director of Facilities Planning.

23 Q. What were your duties in that  
24 position?

1       A.       Uhm, a variety of database updates  
2       for, uhm, campus infrastructure and  
3       interrelation with PASSHE, long-term funding  
4       streams for maintenance and for capital  
5       projects, and miscellaneous project  
6       management as necessary.

7       Q.       Who occupies the Director of  
8       Facilities Planning role now?

9       A.       I do.

10      Q.       Ah.

11      A.       Those positions have been combined  
12      obviously.

13      Q.       And was Mr. Bixby, prior to his  
14      service as the associate vice president of  
15      facilities, was he the incumbent in your  
16      current position?

17      A.       No.

18      Q.       Who was the incumbent in your current  
19      position?

20      A.       A gentleman by the name of Jim Lewis.

21      Q.       And is Mr. Lewis still employed by  
22      The University?

23      A.       No.

24      Q.       Did he retire?

1 A. No.

2 Q. When did he separate from The  
3 University?

4 A. Hmm. To the best of my knowledge,  
5 2019, perhaps February.

6 Q. Did he move on to another position  
7 elsewhere?

8 A. He did.

9 Q. All right. That then leads to  
10 questions of how long have you been employed  
11 in whatever role, various roles by The  
12 University?

13 A. 20 years.

14 Q. So I have got your current role, the  
15 interim director position. I have got your  
16 prior role, director of facilities planning.  
17 Were there any roles before that?

18 A. Yes, Manager of Campus Projects.

19 Q. And I hope the answer isn't still the  
20 same, but who occupies that position now?

21 A. It's vacant, yeah.

22 Q. Okay. What were your duties in that  
23 position?

24 A. Project manager in a management

1 position. All other project managers under  
2 my staff are union positions.

3 Q. Okay. Was that -- just for my  
4 understanding, was that a change in the  
5 nature of employment of project managers or  
6 are there still project managers at The  
7 University who operate in a management  
8 function?

9 MR. KOVATIS: Objection to the  
10 form.

11 Go ahead.

12 THE WITNESS: Uhm, currently  
13 there are no management positions  
14 occupied in a -- in a project manager  
15 position.

16 BY MR. GILL:

17 Q. Okay. Are all of the project  
18 managers employed at West Chester University  
19 with regard to construction and development?

20 A. Yes.

21 Q. Are all of those under your -- are  
22 all of those the individuals that you  
23 described -- you identified earlier, Mr.  
24 Slagle, Ms. Arscott, and Ms. Flounders, or

1 are there other project managers?

2 A. In Construction there are none. In  
3 Operations and Maintenance there are.

4 Q. Okay.

5 A. But in Construction, as per your  
6 question, there are not.

7 Q. What do you mean by "Operations and  
8 Maintenance" in the context of your answer  
9 there?

10 A. Replacement of an inkind exhaust fan,  
11 for example, that would be a management  
12 position of a project manager, but that's not  
13 construction, that's maintenance.

14 Q. Are there any project managers who  
15 are involved with maintenance of stormwater  
16 facilities who you did not already identify?

17 A. No.

18 Q. Okay.

19 A. No.

20 Q. Was the Manager of Campus Projects  
21 your first position with The University?

22 A. Yes.

23 Q. So we have got three -- you have had  
24 three separate job titles, your current job

1 title, director of facilities planning before  
2 that, and that was from when to when?

3 A. Uhm...

4 Q. Generally.

5 A. Okay, thank you. Generally, I would  
6 say it was from 2010 until 2018.

7 Q. And you said that you have been with  
8 The University for about 20 years?

9 A. Correct.

10 Q. So were you employed as the Manager  
11 of Campus Projects from 2000 to 2010?

12 A. Yes.

13 Q. Where did you work prior to West  
14 Chester University?

15 A. In a general contracting company in  
16 Philadelphia.

17 Q. And what was your position there?

18 A. I was a project manager.

19 Q. What duties did you have in that job  
20 title?

21 A. I managed projects from \$10,000 to \$5  
22 million.

23 Q. Managed?

24 A. Construction projects, yes.

1 Q. Okay. Are you a civil engineer?

2 A. I have -- have a civil engineering  
3 degree. I do not have a civil engineering  
4 license.

5 Q. Did you ever have a civil engineering  
6 license?

7 A. No.

8 Q. Okay. What is your educational  
9 background?

10 A. I have a B.S. in Civil Engineering  
11 from Lafayette College.

12 Q. And when did you graduate?

13 A. 1983.

14 Q. All right. Mr. Clark, is it fair to  
15 state that you are familiar with the systems  
16 that are in place at North Campus for the  
17 collection, conveyance and management of  
18 stormwater?

19 A. Yes.

20 Q. Are you familiar -- you are familiar  
21 with Borough 7?

22 A. Yes, uh-huh.

23 Q. Using -- well, first of all, can you  
24 tell us what Borough Exhibit 7 is?

1       A.       Borough 7 is a mapping of the  
2 existing and newly installed stormwater  
3 management of our campus on both North Campus  
4 and below the Borough line of North Campus.

5       Q.       When you say "below the Borough line"  
6 do you mean everything south of Rosedale  
7 Avenue?

8       A.       And west of South New Street.

9       Q.       Okay. So, again, we are talking  
10 about the area bounded generally by New  
11 Street, Sharpless Street, High Street and  
12 West Rosedale Avenue; correct?

13      A.       Yes, that's correct.

14      Q.       But you still understand that we are  
15 also referring to buildings which are on the  
16 east side of High Street?

17      A.       That is correct.

18      Q.       And I will identify those  
19 specifically using Borough 7.

20             College Arms Apartments?

21      A.       Yes.

22      Q.       701 South High Street?

23      A.       Yes.

24      Q.       20 Linden Street?

1 A. Yes.

2 Q. And then coming up north of Sharpless  
3 Street the Sharpless Parking Structure?

4 A. Yes.

5 Q. Okay. And you said this is a mapping  
6 of stormwater conveyance systems on west --  
7 on north campus; correct?

8 A. Yes.

9 Q. Does it also identify BMPs?

10 A. Uhm, I -- I -- I don't -- uhm, such  
11 as underground retention basins, is that --

12 Q. Yes, by "BMP" I'm referring to best  
13 management practices on stormwater  
14 facilities.

15 A. Yes, it does.

16 Q. Where are those identified?

17 A. It appears that there's one at the  
18 Student Recreation Center.

19 Q. Is that what is shown as infiltration  
20 basins, basin A and basin B?

21 A. Yes.

22 Q. Okay.

23 A. I would have an easier time looking  
24 at a larger plan.

1 Q. Yes, please.

2 A. Thank you.

3 The rainwater garden at the Business  
4 and Public Management Center.

5 Q. Is that the area that I am  
6 highlighting right now?

7 A. Yes.

8 Q. And I will mark that as -- I will  
9 just mark that with an asterisk.

10 A. Okay.

11 Q. Okay, go ahead.

12 A. Commonwealth Hall, underground  
13 retention basin there as well.

14 Q. Okay. So I'm coloring in there and I  
15 will mark that again with an asterisk.

16 A. Uh-huh. And at Wayne Hall near the  
17 parking lot in the area between Killinger  
18 Hall and Wayne Hall.

19 Q. And what type of facility is that?

20 A. That appears to be a underground  
21 stormwater basin.

22 Q. We'll mark that with an asterisk sort  
23 of in between them.

24 A. Yes.

1           And not clearly shown here are two  
2 large underground stormwater retention basins  
3 in the oval. I'm not sure why they are not  
4 part of this plan, but they are certainly  
5 there, and I can supply that information at a  
6 later time.

7           Q.       And by the "oval" do you mean the  
8 oval-shaped feature that's in the center of  
9 the academic quad?

10          A.       Yes.

11          Q.       Down there by Philips Memorial  
12 Building, Ruby Jones Hall, Main Hall, Francis  
13 Harvey Green Library, Old Library and  
14 Recitation Hall; correct?

15          A.       That's correct.

16          Q.       Okay, I will mark that.

17          A.       The BMPs for the North Campus parking  
18 structure and The Commons will need to be  
19 given to you by Gary Bixby. They have not  
20 been added to this plan because they were not  
21 installed prior to this plan being developed.  
22 This plan anticipates those BMPs being here,  
23 but, uhm, uhm, the definitive answer would be  
24 given by Gary Bixby.

1 Q. All right.

2 A. And a bio retention basin area  
3 between Lawrence Center and the Student  
4 Recreation Center.

5 Q. Is that what I am highlighting here?

6 A. That is correct.

7 Q. I will mark that with an asterisk as  
8 well.

9 A. That is to the best of my knowledge.

10 Q. So to clarify, to the best of my  
11 knowledge, the areas that you just identified  
12 on Borough 7 are all of the existing onsite  
13 stormwater management facilities on North  
14 Campus; correct?

15 A. That is correct.

16 Q. And in addition to those there will  
17 be facilities associated with the Science and  
18 Engineering, the SECC, and the North Campus  
19 parking structure; correct?

20 A. That's correct. And I do believe  
21 that one of our submissions to the Borough  
22 did highlight the stormwater management in  
23 this oval as I remember I reviewed those  
24 documents, so just so that it appears that

1 everything is -- has been disclosed, just not  
2 on this map.

3 Q. Okay.

4 MR. KOVATIS: Can we go off for  
5 a housekeeping matter?

6 MR. GILL: Sure. Yeah.

7 - - -

8 (Whereupon, there was a  
9 discussion held off the record at  
10 this time.)

11 - - -

12 MR. KOVATIS: Back on.

13 MR. GILL: The large version of  
14 7 will be marked as 7(A).

15 - - -

16 (Whereupon, Exhibit Borough-7A  
17 was marked for identification.)

18 - - -

19 MR. GILL: And what we have  
20 been marking has been what we have  
21 now marked as Exhibit 7A, or Borough  
22 7A.

23 BY MR. GILL:

24 Q. Now, the facilities that you just

1 described are stormwater management  
2 facilities; correct?

3 A. Yes.

4 Q. They are not, however, stormwater  
5 conveyance facilities; correct?

6 A. Uhm, they are part of the conveyance  
7 system because the conveyance system is  
8 interrupted by the BMP and then after it  
9 fills that retention basin, underground  
10 storage basin, then the conveyance system  
11 continues.

12 Q. Okay. Does Exhibit Borough 7A show  
13 the outfalls from the system you just  
14 described?

15 A. Yes.

16 Q. And where are those shown on Exhibit  
17 7A?

18 A. Uhm, there is one outfall which is  
19 labeled WCUNC 001 to the south of the South  
20 New Street parking structure.

21 Q. Okay.

22 A. Uhm, there is another outfall that is  
23 below the area identified as North Campus  
24 Borough of West Chester.

1 Q. When you say "below" you mean south  
2 of?

3 A. South of, yes.

4 Q. Okay. All right. So Borough 7A  
5 shows two outfalls, one of which is  
6 identified as WCUNC 001. That's by the South  
7 New Street parking structure. That's within  
8 the jurisdictional limits of the Borough;  
9 correct?

10 Is this outfall that I am pointing to  
11 NC 001, is that within the Borough of West  
12 Chester?

13 A. You know, I would have to check --  
14 I'm sorry, I think -- I think so. I think  
15 the Borough of West Chester continues to the  
16 west of South New Street. If, in fact, it  
17 does, then yes.

18 Q. Okay. But to clarify, WCUNC 002  
19 which is to the southwest of the tennis  
20 courts or what's identified on this plan as  
21 tennis courts, I believe now it's a parking  
22 facility --

23 A. Yes.

24 Q. -- that is within another

1 municipality; correct?

2 A. That's correct.

3 Q. Okay. I see identified adjacent to  
4 -- and, again, I'm referring to Borough 7A,  
5 and I see adjacent to WCUNC 001 which I  
6 previously had circled in red, I see a  
7 reference to Plum Run; is that correct?

8 A. That is correct.

9 Q. Not all stormwater from North Campus  
10 flows to Plum Run; correct?

11 A. That is correct.

12 Q. Okay.

13 A. Yes.

14 Q. Where else does stormwater flow to,  
15 what other water course?

16 A. I'm not sure of the water course, but  
17 we have an outflow going to the east of South  
18 High Street. I don't know if that goes to  
19 Plum Run. It would appear that Plum Run is  
20 to the south and west of our campus.

21 Q. Okay. All right.

22 MR. GILL: I'm going to -- this  
23 will be Borough 4.

24 - - -

1                   (Whereupon, Exhibit Borough-4  
2                   was marked for identification.)

3                   - - -

4 BY MR. GILL:

5       Q.       Following up on the question that I  
6       just asked and you answered, the document  
7       marked as Borough 4 bears a stamp WCU 000820.  
8       Is it your understanding that this document  
9       was part of the document production made in  
10      response to our discovery requests?

11      A.      Yes.

12      Q.      All right. The area shown with a  
13      blue border around it is identified as the  
14      WCU Plum Run watershed; correct?

15      A.      Yes.

16      Q.      And in the area with the red boundary  
17      around it is identified as not located in  
18      Plum Run watershed; correct?

19      A.      Yes.

20      Q.      Is the area not located in the Plum  
21      Run watershed according to Borough 4 be the  
22      same area that you were just describing as  
23      flowing to an outfall to the east?

24      A.      To the east and to the south. Uhm...

1 Q. I'm sorry, you said "uhm." I thought  
2 you were going to add something.

3 A. I was, but I chose not to.

4 Q. Oh, okay.

5 The buildings that are on the east  
6 side of High Street that we referred to  
7 earlier, College Arms Apartments, 701 South  
8 High Street, 20 Linden Street, where does  
9 stormwater from those properties flow to?

10 A. I am unsure because we purchased  
11 those buildings intact and they may have not  
12 had stormwater on them. They are not  
13 represented on this map so I can't identify  
14 where those outfalls go.

15 Q. Okay. Let's pick up on something  
16 that you just made reference to.

17 Staying on Borough 4, there are  
18 buildings that are identified -- I'm sorry,  
19 there are buildings that are shaded in blue  
20 and there are some buildings that are not  
21 shaded in blue. Do you see that?

22 A. Yes.

23 Q. All right. The buildings that are  
24 shaded in blue are identified as having no

1 structural stormwater management systems;  
2 correct?

3 A. Yes, that is correct.

4 Q. Okay. And the buildings that are not  
5 shaded in blue are identified as -- well,  
6 they are not identified at all.

7 What is your understanding of the  
8 fact that they are not shaded in blue, the  
9 importance of that?

10 A. Those buildings were constructed,  
11 uhm, with land development requirements for  
12 stormwater management. Uhm, the ones that  
13 were shaded in blue conversely were  
14 constructed prior to stormwater management  
15 regulations at the time. Those are your old  
16 buildings versus your new buildings.

17 Q. Okay. So the Sharpless Parking  
18 Structure, the Business and Public Management  
19 Center, the Student Recreation Center, the  
20 South New Street Parking Structure,  
21 Commonwealth Hall, Merion Science Center,  
22 University Hall, Allegheny Hall and  
23 Brandywine Hall are existing buildings;  
24 correct?

1 A. Yes.

2 Q. And those buildings have structural  
3 stormwater management systems associated with  
4 them; correct?

5 A. Yes.

6 Q. None of the other buildings on campus  
7 except for The Commons and the North Campus  
8 Drive Parking Structure which are under  
9 construction, none of the other buildings on  
10 North Campus have stormwater systems  
11 associated with them; correct?

12 A. To the best of my knowledge, that is  
13 correct due to their age, yes.

14 Q. I'm going to ask you to keep Borough  
15 4 handy, we'll come back to it, and I will  
16 ask this be marked as Borough 5.

17 - - -

18 (Whereupon, Exhibit Borough-5  
19 was marked for identification.)

20 - - -

21 BY MR. GILL:

22 Q. Have you seen Borough Exhibit 5  
23 before?

24 A. Yes.

1 Q. It bears the stamp WCU 00818?

2 A. Yes.

3 Q. Is it your understanding this was  
4 included within the documents that were  
5 produced in response to The Borough's request  
6 for production of documents?

7 A. Yes.

8 Q. What is Borough Exhibit 5?

9 A. Borough 5 is a listing of the  
10 existing buildings with no storm management  
11 installed, which are our older buildings. It  
12 also lists buildings that have been removed  
13 from this map due to demolition. And then it  
14 also lists new buildings or sites that had  
15 stormwater management infrastructure  
16 installed because of code requirements.

17 Q. Okay. Is the listing of buildings  
18 with no stormwater management installed, is  
19 that listing co-extensive with the  
20 identification of buildings shaded in blue on  
21 Borough 4?

22 A. Uhm, it appears so, but if you give  
23 me a minute I will cross-reference.

24 Q. Please.

1       A.       This list does not include the  
2 buildings to the east of South High Street.  
3 It appears that this list was created from  
4 Borough 4 within the outlines of the blue --  
5 the blue lines.

6       Q.       Within the outlines of the blue  
7 lines, so it doesn't include Main Hall,  
8 Francis Harvey Green Library?

9       A.       And Old Library, that is correct.

10      Q.       Old Library?

11      A.       That's correct.

12      Q.       It doesn't include College Arms  
13 Apartments, 703 South High Street, 701 South  
14 High Street or 20 Linden Street; correct?

15      A.       Right.   Apparently from the title of  
16 Borough 5, which is the Plum Run outfall  
17 related to the Borough.   Apparently.

18      Q.       Okay.   And you stated earlier that  
19 stormwater from the non Plum Run outfall goes  
20 to the east and the south; correct?

21      A.       That is correct.

22      Q.       But you can't tell us where  
23 ultimately that's discharged?

24      A.       That is correct.

1 Q. I'm sorry, to what water course  
2 that's ultimately discharged?

3 A. That is correct.

4 Q. Okay. The buildings that are not  
5 shaded in blue on Exhibit Borough 4, we have  
6 already discussed that those are buildings  
7 which do have stormwater management --  
8 structural stormwater management systems  
9 associated with them; correct?

10 A. Correct.

11 Q. Using Exhibit Borough 7A can you  
12 match up stormwater management facilities  
13 with the buildings that are not shaded in  
14 blue on Borough 4?

15 A. I'm sorry, can you repeat that  
16 question?

17 Q. Sure. Borough 4 shows buildings not  
18 shaded in blue, and you have stated that  
19 those are buildings which have stormwater  
20 management systems associated with them?

21 A. Yes.

22 Q. I'm asking you to show us using  
23 Exhibit 7A where those stormwater management  
24 facilities are? In other words, you already

1 pointed out on 7A stormwater management  
2 facilities, and I am asking for you to  
3 confirm that the stormwater management  
4 facilities that you already showed us, are  
5 those associated with the non-shaded  
6 buildings on 4, and if they are not, tell us  
7 where those stormwater management facilities  
8 associated with the buildings are associated.

9 A. Understood. Okay.

10 MR. KOVATIS: Objection to the  
11 form.

12 Go ahead.

13 THE WITNESS: So the Student  
14 Rec. Center that we have identified.

15 BY MR. GILL:

16 Q. The Student Rec. Center, the  
17 stormwater from that building goes to what's  
18 identified as basin A and basin B just to the  
19 east of High Street -- I'm sorry, of South  
20 New Street; correct?

21 A. I'm sorry, again?

22 Q. I was just asking you to confirm that  
23 the Student Rec. Center stormwater goes to  
24 what's identified as basin A and basin B just

1 to the east of South New Street?

2 A. That is correct.

3 Q. Okay.

4 A. Yes.

5 Q. Okay.

6 A. University Hall, Brandywine Hall and  
7 Commonwealth Hall go to this stormwater  
8 facility here.

9 Q. That's the one that is located to the  
10 east of Commonwealth Hall and just north of  
11 Schmidt Hall; correct?

12 A. Yes. I'm a little confused about  
13 this one here because of the age of this  
14 plan. This may also be related to University  
15 Hall. I just am unaware.

16 Q. Okay. You're referencing an area  
17 that you stated earlier Mr. Bixby would have  
18 to talk about that you thought that was  
19 stormwater management, a facility associated  
20 with The Commons; correct?

21 A. Yes. Because of the age of this plan  
22 it may be, in fact, associated with  
23 University Hall's stormwater management.

24 Q. Okay.

1       A.     It's just unclear from this plan as  
2     to whether that was related to University  
3     Hall.

4       Q.     Okay.

5       A.     Hmm. This stormwater facility may  
6     also be related to Merion Science Center due  
7     to the distribution from Merion Science  
8     Center to this area.

9       Q.     You are referencing the same facility  
10    that you were just referring to as possibly  
11    associated with University Hall?

12    A.     Yes, that's correct.

13    Q.     All right.

14    A.     And the Business and Public  
15    Management Center, the stormwater garden  
16    immediately north of the building.

17    Q.     Okay.

18    A.     I believe that is all of the non blue  
19    buildings.

20    Q.     Okay. Now, I understand that you  
21    were speculating, and I don't want you to  
22    speculate, but just to clarify, you earlier  
23    stated that some stormwater or stormwater  
24    from -- a stormwater management facility

1 which is shown on 7A as being east of  
2 Lawrence Hall and north of University Hall  
3 and west of Hollinger Fieldhouse might handle  
4 stormwater from Merion Science Center,  
5 Allegheny Hall and University Hall; is that  
6 correct?

7 A. In different phases, that is correct.  
8 So it may have been existing for Merion Hall  
9 and expanded for University Hall which came  
10 after Merion Science Center.

11 Q. But Borough 4 shows Merion Hall,  
12 University Hall and Brandywine Hall and, for  
13 that matter, Commonwealth Hall as not having  
14 structural stormwater facilities; correct?

15 A. I'm sorry, can you say that again?

16 Q. Yeah. Borough 4 shows Merion Science  
17 Center, Allegheny Hall, University Hall and  
18 Brandywine Hall and, for that matter,  
19 Commonwealth Hall as not having structural  
20 stormwater facilities associated with them?

21 MR. KOVATIS: Objection.

22 THE WITNESS: No, it's the  
23 converse.

24 MR. GILL: Oh. I'm sorry.

1           Excuse me. Thank you.

2                   THE WITNESS: Do you want to  
3           restate?

4                   MR. GILL: Yes, I do.

5                   THE WITNESS: Okay.

6                   MR. GILL: Actually, no, I  
7           don't. I will move on.

8                   THE WITNESS: Okay.

9                   MR. GILL: I'm sorry, brain  
10          freeze there for a moment.

11       BY MR. GILL:

12       Q.       Okay. So the storm facilities that  
13       you have identified on 7A are the ones that  
14       you have told us are associated with the  
15       various buildings, and possibly some  
16       stormwater is flowing to the facility that I  
17       described west of Hollinger Fieldhouse, east  
18       of Lawrence Center and north of University  
19       Hall; correct?

20       A.       Yes.

21       Q.       To where does stormwater from the  
22       Sharpless Parking Structure flow?

23       A.       Hmm. This plan does not reference  
24       where that stormwater flows.

1 Q. Okay. Do you know where it flows  
2 without reference to 7A?

3 A. Without reference, no.

4 Q. Okay. Okay. What's your  
5 understanding of the origin of what's now  
6 marked as 7A? Do you know why this plan was  
7 prepared?

8 A. This was part of our infrastructure  
9 and also required for our MS-4 permit  
10 submission.

11 Q. We'll come back to the MS-4 later.  
12 The buildings without stormwater  
13 management facilities associated with them,  
14 you'll agree with me that they are not  
15 impervious to -- bad choice of words -- you  
16 will agree with me that they are not immune  
17 from the fact that rain falls on them;  
18 correct?

19 MR. KOVATIS: Objection to the  
20 form.

21 Go ahead.

22 MR. GILL: We can agree that  
23 rain doesn't just fall on parts of  
24 campus which have stormwater

1 structures associated with them;  
2 correct?

3 THE WITNESS: Rain falls  
4 everywhere, that's correct.

5 MR. GILL: Okay.

6 BY MR. GILL:

7 Q. To where does rain fall -- to where  
8 does stormwater flow from those buildings on  
9 campus which do not have stormwater  
10 facilities associated with them?

11 A. It depends on the building. It is  
12 possible that there's a gutter system that  
13 runs to the adjacent grade. It is possible  
14 that it has a rain water conveyance system  
15 from the roof that feeds into the stormwater  
16 distribution system. Uhm, it is possible  
17 that it has another system depending on the  
18 age of the building, and we have buildings  
19 from 1874 to 1974. So a variety of different  
20 possibilities.

21 Q. So a blue-shaded building on Exhibit  
22 Borough 4, stormwater which falls on to that  
23 building is either going to go into a gutter  
24 system which would then run to existing

1 grade -- and let's talk about that. What do  
2 you mean "runs to existing grade"?

3 A. The lawn areas outside of the  
4 building.

5 Q. Okay. Or it might drain to the  
6 stormwater system, the campus stormwater  
7 pipes; is that what you mean by that?

8 A. Yes.

9 Q. How would that -- how would that  
10 happen?

11 A. It would be a direct connection from  
12 the roof of the building to the downspout of  
13 the building and then into the existing  
14 stormwater conveyance system in the roadways  
15 most probably.

16 Q. And by "roadways" what do you mean,  
17 south -- any of the roadways that run through  
18 or adjacent to North Campus?

19 A. Any of the municipal roadways, that  
20 is correct.

21 Q. Okay. And then you said that it  
22 might have another system. What do you mean  
23 by "another system"?

24 A. Oh, it might have a dry well. For

1 example, in a -- uhm, uhm, in Anderson Hall,  
2 for instance, as water enters the windows  
3 that are below grade there's a dry well, and  
4 so as rain water falls into those window  
5 wells there's a dry well beneath it, and so  
6 the rain water is not pumped out of those  
7 window wells, but there's a stone base under  
8 those window wells which then permeates the  
9 rain into the ground water.

10 Q. Those are not engineered systems  
11 though, right, sticking with the dry wells?

12 A. I would say that's correct.

13 Q. Okay.

14 A. Yes.

15 Q. And so we have got three  
16 possibilities: A gutter system, a drain  
17 which is going to deposit stormwater at  
18 grade?

19 A. Uh-huh.

20 Q. And a drain which is going to be  
21 connected to the piping system?

22 A. Uh-huh.

23 Q. Or dry wells?

24 A. Yes.

1 Q. Are there any other possibilities?

2 A. Let me think. Of the age of those  
3 buildings, not to my knowledge.

4 Q. All right. Stormwater which is  
5 deposited at grade -- starting with the first  
6 of those, stormwater which is deposited at  
7 grade would then sheet flow over surface;  
8 correct?

9 A. Unless it was infiltrating into the  
10 ground.

11 Q. Okay. Fair enough. Some portion of  
12 that stormwater as it flows over vegetated  
13 surface is going to infiltrate into the  
14 ground; correct?

15 A. That's correct.

16 Q. Not all of it will infiltrate into  
17 the ground; correct?

18 A. It depends on the severity of the  
19 rain.

20 Q. Okay. There are some rain events  
21 where some stormwater flowing from a gutter  
22 system and being deposited at grade will not  
23 infiltrate into the ground; correct?

24 A. I think the answer to that is

1 different for every building. I can't say  
2 definitively yes or no.

3 Q. Okay. Based on your experience will  
4 all of the stormwater which is deposited at  
5 grade from a gutter system infiltrate into  
6 the ground in every storm event?

7 A. Based on my experience I think I am  
8 -- I cannot give a professional answer to  
9 that question, and I am not trying to evade  
10 you.

11 For example, in a hundred-year storm  
12 everything goes out the window. If we are  
13 talking about a two-year storm or a five-year  
14 storm, I think the answer is different for  
15 each building and each lawn.

16 Q. There are some buildings, however,  
17 where the stormwater will -- not all of the  
18 stormwater from any storm event will -- not  
19 all of that stormwater is going to be  
20 infiltrated into the ground from, and here  
21 I'm only talking about buildings that have  
22 gutters that are connected that are  
23 discharging at grade?

24 A. I can't answer that professionally.

1 Q. Okay. The stormwater -- the second  
2 of the alternatives for buildings without  
3 structural stormwater systems you said is  
4 gutters that are connected directly into the  
5 stormwater piping system; correct?

6 A. Yes.

7 Q. And I see a series of green lines on  
8 Exhibit 7A and it seems to be -- there seem  
9 to be in some places numbers associated with  
10 the green lines or, I'm sorry, what appear to  
11 be inlets associated with the green lines.

12 Do you see that?

13 A. I do.

14 Q. Okay. Is the -- are the green lines  
15 on Exhibit 7A, is that the piping system that  
16 you're talking about?

17 A. Correct.

18 Q. Okay. So The University has mapped  
19 its entire stormwater conveyance piping  
20 system; correct?

21 A. To the best of its ability at this  
22 time. For example, I did see we have a  
23 missing piece here, but we have other  
24 information that supplements that.

1 Q. Okay. But is 7A the most recent  
2 version of the storm collection system map  
3 which has been submitted with the Borough --  
4 I'm sorry, with The University's MS-4 permit?

5 A. Uhm, it would appear so. I did not  
6 submit it myself, so I would not be able to  
7 answer that definitively, but judging by the  
8 date of this plan being '19, it would appear  
9 so.

10 Q. Okay. Okay. So when we talk about  
11 stormwater coming from a -- the second of the  
12 alternatives that you described, the  
13 stormwater coming from a drain system or a  
14 gutter system, and those gutters are  
15 connected directly into the piping system --

16 A. Uh-huh.

17 Q. -- we are talking about being  
18 connected into the green lines that are shown  
19 on Exhibit 7A?

20 A. That's correct.

21 Q. Okay. And then that stormwater  
22 ultimately flows to discharge points;  
23 correct?

24 A. Yes.

1 Q. By "discharge points" I mean  
2 discharging from The University's conveyance  
3 system to some other system; is that your  
4 understanding?

5 A. I would have to qualify that it is  
6 The University's distribution system.

7 Q. Okay. How does that differ from what  
8 I said?

9 A. Uhm, inlets in the Borough roadways  
10 are not the University's conveyance system.  
11 So as we attach to the Borough's conveyance  
12 system, then we would attach our building to  
13 The University -- or, excuse me, to the  
14 Borough's conveyance system. This plan shows  
15 Borough's conveyance system in addition to  
16 The University's tie into the Borough's  
17 conveyance system.

18 Q. Okay. Is the Borough's system  
19 differently identified on 7A from The  
20 University's conveyance system?

21 A. It is not.

22 Q. Okay. So are you unable then to tell  
23 us of the various green lines which indicate  
24 piping, according to your testimony, which

1 parts of the -- which are part of The Borough  
2 system and which are part of The University  
3 system?

4 A. Well, an easy answer would be  
5 anything that isn't a roadway would be a  
6 Borough conveyance system, the inlets and the  
7 piping cross roadways.

8 Anything that is in the inbound lines  
9 of The University of those Borough streets  
10 would be The University system.

11 So this is a plan of all of the  
12 conveyance systems. For example, the piping  
13 that goes from -- uhm, which actually is not  
14 shown here, through the northwest part of our  
15 campus is a Borough underground conveyance  
16 system attaching there to Plum Run.

17 Uhm, I -- I believe -- I believe this  
18 might be that line. You can see it's blue.

19 Q. Yeah, we are going to come to that in  
20 just a moment.

21 A. Great, great.

22 Q. So do I understand your testimony  
23 then to be that there are -- there are  
24 locations on campus where stormwater is being

1 collected from a building's gutter system.  
2 That gutter system is then connected to the  
3 piping system. Are there points of  
4 connection that meet that description which  
5 -- where the point of connection is directly  
6 from a university-owned pipe into a  
7 Borough-owned -- into a Borough-owned pipe?

8 A. Yes.

9 Q. Okay. Where are those located?

10 A. I would have to go by each building,  
11 but here's a good example.

12 MR. GILL: Let's go off the  
13 record.

14 - - -

15 (Whereupon, there was a  
16 discussion held off the record at  
17 this time.)

18 - - -

19 (Whereupon, there was a recess  
20 held at this time, 10:44 a.m. to  
21 10:51 a.m.)

22 - - -

23 MR. GILL: Back on the record.

24 BY MR. GILL:

1 Q. Do we have an orange colored marker  
2 now?

3 A. Yes.

4 Q. And I believe we were discussing  
5 points of connection between the --  
6 specifically with regard to buildings that  
7 have downspouts or gutters that collect  
8 stormwater, convey it to the underground  
9 piping system and then discharge that to some  
10 point, and you were going to identify where  
11 those points are.

12 A. Philips Memorial have the direct  
13 connection.

14 Q. And that's a direct connection to The  
15 Borough-owned stormwater pipe within  
16 University Avenue?

17 A. Correct.

18 Q. Okay.

19 A. Main Hall has a connection.

20 Hold on a second. Oh, excuse me.

21 Francis Harvey Green Library has a  
22 connection.

23 Q. And where does that go?

24 A. Uhm, to -- to the inlet pipe east of

1 South High Street.

2 Q. Would you mind just tracing that  
3 route? You started it in orange there coming  
4 out of the library.

5 A. I can, but it also picks up other  
6 areas outside of the library. Is that okay?

7 Q. No, I'd rather not combine those two.

8 A. Right.

9 Q. So -- but Francis Harvey Green  
10 Library has a pipe that comes from the  
11 library site and then ultimately connects to  
12 a Borough-owned pipe that is where?

13 A. In Linden Street.

14 Q. Okay. So it crosses under High  
15 Street?

16 A. Yes.

17 Q. Okay.

18 A. Uhm, Goshen Hall has a pipe that  
19 connects to a municipal service going down to  
20 the outflow and Tyson Hall.

21 Q. Is that the same pipe, Tyson and  
22 Goshen?

23 A. The same main pipe.

24 Q. I'm sorry, they both connect to that

1 same Borough-owned pipe?

2 A. That is correct.

3 Q. Okay.

4 A. Okay. And Lawrence Hall, Lawrence  
5 Center connects to a pipe directly to the  
6 outflow.

7 Q. So Lawrence Center connects to a pipe  
8 that -- I'm sorry, did you say Lawrence  
9 Center connects to that same what you  
10 described earlier as a municipal service  
11 pipe, the one that Goshen and Tyson connect  
12 to?

13 A. Yes, it does appear from that plan  
14 that it does connect to the same pipe.

15 Q. Okay.

16 A. Hmm. Wayne Hall connects to the same  
17 municipal pipe.

18 Q. I'm sorry, you say "the same," Wayne  
19 connects to the same pipe?

20 A. I'm sorry, it connects to the  
21 municipal system, but it's the same pipe.

22 Q. And is that true also for Lawrence,  
23 it connects to the municipal system, but not  
24 necessarily the same pipe as Goshen?

1 A. Correct -- oh, no, Lawrence does  
2 appear to connect to the same pipe --

3 Q. Same pipe?

4 A. -- as Tyson and Goshen. Wayne Hall  
5 is a different pipe.

6 Q. Oh, okay. I understand.

7 A. Anderson Hall.

8 Q. Where does the pipe -- where is the  
9 municipally-owned pipe that Anderson Hall  
10 connects to?

11 A. It connects to the municipal piping  
12 in South Church Street.

13 Q. So where is the municipally-owned  
14 pipe that Wayne Hall connects to?

15 A. That goes through our campus quite  
16 extensively and, uhm, then connects to The  
17 Borough through a -- a whole series of pipe  
18 connections to -- let me see if I can flesh  
19 this out -- eventually to the same pipe that  
20 Goshen, Tyson and Lawrence Center connect to.

21 Q. Okay.

22 A. That is all this plan shows. Uhm, I  
23 -- I would have to do an exhaustive study of  
24 each existing construction plan to give exact

1 information, but that's what this plan shows.

2 Q. Do construction plans exist for all  
3 of these buildings?

4 A. Some, but not all.

5 MR. GILL: To the extent those  
6 exist, we will supplement our  
7 request.

8 MR. KOVATIS: Yes.

9 (Request made by counsel.)

10 BY MR. GILL:

11 Q. Now, I don't want you to speculate,  
12 but I just want to review for sake of  
13 clarity, you talked about the Wayne Hall, you  
14 talked about Lawrence Center, Tyson Hall and  
15 Goshen Hall?

16 A. Yes.

17 Q. You mentioned Anderson?

18 A. Yes.

19 Q. And you mentioned Philips?

20 A. And the like.

21 Q. And Francis Harvey Green Library and  
22 Main Hall?

23 A. I did not mention Main Hall.

24 Q. I'm sorry.

1 A. Yes. Sorry.

2 Q. Then scratch Main Hall.

3 A. Yes.

4 Q. So putting aside dry wells capturing  
5 rainwater falling at grade for windows that  
6 -- or for buildings that have windows at or  
7 below grade, putting aside those or that  
8 stormwater, if there isn't a building that  
9 you just described as having a pipe  
10 connection to The University -- I'm sorry, to  
11 the Borough-owned piping system, are all of  
12 those buildings then within the first  
13 category that you described of having gutters  
14 that are simply discharging stormwater at  
15 grade?

16 A. It would appear so. I would have to  
17 look at each and every building and then  
18 cross-reference our plan, but we have two  
19 categories, either they dump the water onto  
20 the lawn adjacent to the building or they  
21 must pipe that water into the stormwater  
22 distribution system.

23 Q. Okay. And with regard to the  
24 buildings across, just to make sure we are

1 capturing everything, the buildings across  
2 South High Street, College Arms Apartments,  
3 703 South High, 701 South High and 20 Linden,  
4 is the same true, either they are connecting  
5 to a pipe system or they're discharging at  
6 grade?

7 A. Yes.

8 Q. Okay.

9 A. Uh-huh.

10 Q. Now, I also see on 7A a series of --  
11 a lot of what appear to be rectangles that  
12 are located either at junctions along the  
13 green piping system or are connected in some  
14 -- connected to the green piping system.

15 Do you see those? They all appear to  
16 be -- on my version they are very tiny  
17 squares.

18 A. Yes.

19 Q. What are those?

20 A. Those are yard inlets.

21 Q. What's a yard inlet?

22 A. A yard inlet is in a low area of a  
23 lawn where water might flow to in a very  
24 heavy storm that would capture that water and

1 then divert it into the distribution system.

2 Q. Okay. So what role, if any, does an  
3 inlet play with -- related to the first  
4 category that we talked about, which is  
5 gutters on a building and stormwater being  
6 discharged at grade, what role does an inlet  
7 play in that system?

8 A. An inlet is a direct connection to  
9 the distribution system, but in the lawn area  
10 versus a, uhm -- a -- like being connected to  
11 the roof and downspout system.

12 Q. Okay. So stormwater hits the top the  
13 Schmidt Hall, flows into the gutters on the  
14 -- along the side of the roof of Schmidt  
15 Hall, and that gutter system discharges at  
16 grade we can surmise perhaps because you  
17 didn't include it as one of the ones directly  
18 connected to the piping system, and then that  
19 stormwater flows over land, and is it -- is  
20 it the case then that some of that stormwater  
21 is going to flow into one of these yard  
22 inlets?

23 A. It's conceivable.

24 Q. Okay. Is it also conceivable some of

1 that stormwater is going to flow directly  
2 into South New Street or West Rosedale  
3 Avenue?

4 A. It is conceivable.

5 Q. Okay. Where else would it go other  
6 than infiltrating? Where else would it go?

7 A. It would appear that those would be  
8 the two avenues.

9 Q. Okay. And if I was to visit each  
10 building on campus in turn that you didn't  
11 describe as being connected directly to an  
12 inlet -- I'm sorry, to a piping system or  
13 that's not shaded in blue, would you agree  
14 with me that that stormwater is either  
15 flowing to a road system, to a yard inlet, or  
16 is infiltrating into the soil?

17 A. Did you include direct piping to the  
18 municipal system?

19 Q. I carved that out?

20 A. Okay, then yes.

21 Q. Okay. There's no -- nowhere -- the  
22 University doesn't have some magical way of  
23 disposing of water other than what I just  
24 described; correct?

1 A. It does.

2 Q. With regard to buildings that don't  
3 have structural stormwater facilities?

4 A. It does.

5 Q. And what are those?

6 A. They are actually listed on a  
7 voluntary stormwater management system. I  
8 don't see it here.

9 The green roof would be one of those  
10 systems. There's a green roof on the FHG  
11 Library. And there is an extensive pervious  
12 paver installation along South Church Street  
13 and University Avenue.

14 Those were voluntary stormwater  
15 management constructions by the West Chester  
16 University not mandated by any building  
17 project. We have others, but they are  
18 outside of the purview of this discussion.

19 Q. Okay. I'm going to ask you, and  
20 forgive me for the silliness of the question  
21 perhaps, but is stormwater from Schmidt Hall  
22 reaching the green roof at the library?

23 A. No.

24 Q. Is stormwater from Schmidt Hall

1 reaching the pervious pavers along South  
2 Church and University Avenue?

3 A. No.

4 Q. Lawrence Center, is that -- I'm  
5 sorry, let me carve out that.

6 Hollinger Fieldhouse, Ehinger  
7 Gymnasium, is that stormwater reaching the  
8 green roof at the library?

9 A. No.

10 Q. Some of it might perhaps reach  
11 through over land flow to pervious pavers;  
12 correct?

13 A. Yes.

14 Q. Some of it will not; correct?

15 A. Yes.

16 Q. Okay. So we've got -- I want to make  
17 sure we were capturing everything here.

18 A. Uh-huh.

19 Q. We have got buildings that have  
20 structural stormwater systems associated with  
21 them?

22 A. Yes.

23 Q. And we'll come back to those in a  
24 moment.

1           We have then buildings that don't  
2 have structural stormwater systems associated  
3 with them?

4       A.     Yes.

5       Q.     There's no other categories of  
6 building, right? Either it does have or  
7 doesn't have structural stormwater  
8 facilities; correct?

9       A.     Yes.

10      Q.     Okay. Sticking with the second  
11 category, the buildings that don't have  
12 structural stormwater facilities associated  
13 with them, the stormwater associated with  
14 that building is going either through a roof  
15 drain system that is connected directly into  
16 The University piping system and ultimately  
17 being discharged to The Borough piping  
18 system; correct?

19      A.     Yes.

20      Q.     And that's the second category that  
21 we discussed earlier?

22      A.     Yes.

23      Q.     The first category we discussed  
24 earlier is a roof drain system which is

1 discharging stormwater at grade; correct?

2 A. Yes. Yes.

3 Q. And then the third category is a dry  
4 well, but that's only capturing stormwater  
5 that would fall into the window well for a  
6 window that's at or below grade; correct?

7 A. Yes.

8 Q. Coming back to the discharge at grade  
9 and the stormwater is either it's flowing  
10 over land; correct?

11 A. Yes.

12 Q. And some of that stormwater is going  
13 to infiltrate --

14 A. Yes.

15 Q. -- into the lawn?

16 A. Yes.

17 Q. And some of that stormwater is going  
18 to reach what you called a yard inlet?

19 A. Depending on the severity of the  
20 rain, correct.

21 Q. And some of that stormwater and a  
22 third option if it doesn't the reach yard  
23 inlet and it doesn't infiltrate is ultimately  
24 going to flow into The Borough street;

1 correct?

2 A. Depending on the severity of the  
3 rain, correct.

4 Q. Okay. Finally you mentioned some  
5 voluntary stormwater improvements, including  
6 the green roof at Francis Harvey Green  
7 Library?

8 A. Yes.

9 Q. And you mentioned pervious pavers  
10 along South Church Street at University  
11 Avenue?

12 A. And University Avenue.

13 Q. Oh, along, but I'm sorry --

14 A. Yes.

15 Q. -- along both?

16 A. Yes. Yes, uh-huh.

17 Q. Have we accounted for the ultimate  
18 disposition of all stormwater which falls on  
19 North Campus?

20 A. Uhm, with the clarification that a  
21 portion of the southeast portion of the what  
22 we call our main block flows outside of West  
23 Chester Borough as per Borough 4.

24 Q. Okay. To clarify, you said some of

1 that stormwater is flowing to the east and  
2 some of it is flowing to the south?

3 A. That's correct. That which flows to  
4 the east does enter The Borough system. That  
5 which flows to the south does not enter the  
6 Borough system.

7 Q. And as to the portion that flows to  
8 the east, you are unable to tell us where  
9 that point of discharge to The Borough system  
10 is, right?

11 A. That's correct.

12 Q. Okay.

13 A. Yes.

14 Q. Who would be able to tell us that?

15 A. The Borough I believe. It's  
16 somewhere down Linden Street, but past our  
17 property line.

18 Q. Okay. Is that stormwater flowing --  
19 I'm sorry. You already answered my question,  
20 that none of the buildings on the east side  
21 of South High Street are connected via pipe  
22 to The Borough system; correct?

23 A. Those were preexisting buildings when  
24 we purchased them and we did not get, uhm,

1 plans that identified the stormwater.

2 Q. Okay.

3 A. Based on the age of those buildings,  
4 I -- I just can't speculate.

5 Q. Okay. Can you get any other colors?

6 A. I can.

7 - - -

8 (Whereupon, there was a  
9 discussion held off the record at  
10 this time.)

11 - - -

12 BY MR. GILL:

13 Q. Mr. Clark, you now have a blue  
14 marker. And using the blue marker you made  
15 reference earlier to a municipal services  
16 line that -- I'm sorry, to which Lawrence,  
17 Tyson and Goshen Halls are connected;  
18 correct?

19 A. Yes.

20 Q. Lawrence Center, Goshen Hall and  
21 Tyson Hall; correct?

22 A. Yes.

23 Q. And that pipe ultimately connects to  
24 what's identified as WCUNC 001; correct?

1 A. Yes.

2 Q. And that's the outfall that you think  
3 because you said if The Borough boundary is  
4 further west than South New Street, and I  
5 will represent to you that it is, that WCUNC  
6 001 would be within Borough boundaries;  
7 correct?

8 A. That's correct, yes.

9 Q. And the municipal -- sorry.

10 And the municipal service pipe to  
11 which you made reference being a point of  
12 connection for Tyson Hall, Goshen Hall and  
13 Lawrence Center --

14 A. Yes.

15 Q. -- is connected to WCUNC 0001?

16 A. Yes.

17 Q. And that line runs north of Lawrence  
18 Center, south of the Student Recreation  
19 Center, I'm tracing it back now from its  
20 point of connection to the outfall, and it  
21 runs just north of what's identified as a  
22 water tower; correct?

23 A. Yes.

24 Q. And then it runs easterly to a point

1 that is just southeast of the southernmost  
2 tip of Goshen Hall; correct?

3 A. Yes.

4 Q. And from there it turns northerly in  
5 a northeasterly direction, and it crosses the  
6 intersection of South Church Street and  
7 Sharpless Street; correct?

8 A. Yes.

9 Q. And then it connects to the Sharpless  
10 Parking Structure; correct?

11 A. I do not know whether it connects to  
12 the Sharpless Parking Structure.

13 Q. I'm sorry, I misspoke. It connects  
14 to inlets that are in the road to the west  
15 and the south of the Sharpless Parking  
16 Structure; correct?

17 A. That's correct.

18 Q. Can you trace that line on 7A for us?

19 A. Certainly. (Witness complies with  
20 request.)

21 7A already actually has it in blue,  
22 but it's very faint. Okay?

23 Q. Oh, okay. All right. And we all  
24 acknowledge or we can both agree then that

1 the line that you just highlighted in blue is  
2 a Borough-owned pipe; correct?

3 A. To the best of my knowledge.

4 Uhm, if I might add to that, I don't  
5 know how The Borough would drain the  
6 connection to this pipe without The Borough  
7 having installed the pipe. That's  
8 speculation. Uhm, but it seems probable.

9 Q. Okay. Do you know the diameter of  
10 that pipe?

11 A. I do not; however, I believe that the  
12 diameter is marked on this plan. It is very  
13 hard to read. I believe that this says 76 by  
14 48.

15 Q. Okay. All right.

16 MR. KOVATIS: What unit would  
17 that be?

18 THE WITNESS: Oh, good point.  
19 Inches.

20 MR. KOVATIS: 76 by 48.

21 THE WITNESS: Thank you.

22 BY MR. GILL:

23 Q. Okay. So unless you disagree we -- I  
24 think we have captured rainwater falling onto

1 North Campus, the ultimate disposition of all  
2 of that rainwater. Do you agree?

3 A. I believe so, yes.

4 Q. Okay. I'd like then to revisit the  
5 buildings which do have structural stormwater  
6 facilities associated with them, and to  
7 recap, those are the Sharpless Parking  
8 Structure?

9 A. Could I clarify?

10 Q. Sure.

11 A. The Borough of West Chester  
12 constructed the Sharpless Parking Structure.  
13 Okay?

14 Q. Yep.

15 A. Okay.

16 Q. As long as you raised that point, let  
17 me ask you, who do you -- do you have any  
18 knowledge of who is responsible for  
19 maintaining that garage?

20 A. The Borough of West Chester  
21 transmitted that structure to The Borough, or  
22 excuse me, to The University approximately  
23 two years ago. At this point West Chester  
24 University does by title. Prior to two years

1 ago it was The Borough of West Chester.

2 Q. Okay. Thank you for clarifying that.

3 A. Uh-huh.

4 Q. So we are talking about buildings at  
5 North Campus that have structural stormwater  
6 facilities associated with them, university  
7 or state system or Commonwealth owned.

8 A. Uh-huh.

9 Q. And those are as of now --  
10 Do you need to take that?

11 A. No.

12 Q. Please take your time.

13 MR. GILL: Off the record.

14 - - -

15 (Whereupon, there was a  
16 discussion held off the record at  
17 this time.)

18 - - -

19 BY MR. GILL:

20 Q. The buildings which do have  
21 structural stormwater facilities associated  
22 with them, the Sharpless Parking Structure,  
23 the Business and Professional Center --  
24 Business and Public Management Center, excuse

1 me --

2 A. Uh-huh.

3 Q. -- North Campus Parking Structure  
4 which is being constructed, The Commons which  
5 is being constructed, the Student Recreation  
6 Center, South New Street Parking Structure,  
7 Merion Science Center, and I am going to come  
8 back to the residence halls in a moment, but  
9 those include Commonwealth Hall, University  
10 Hall, Brandywine Hall and Allegheny Hall;  
11 correct?

12 A. Yes.

13 MR. KOVATIS: It looks like you  
14 missed Reynolds Hall right underneath  
15 Business and Public Management  
16 Center.

17 MR. GILL: Oh.

18 THE WITNESS: Oh, that is  
19 correct.

20 MR. GILL: Ah, forgive me.

21 Was Reynolds Hall connected to  
22 this stormwater management system  
23 when the public administration was  
24 built?

1 THE WITNESS: Boy oh boy.

2 MR. GILL: I know Reynolds is  
3 older.

4 THE WITNESS: It would appear  
5 that Reynolds Hall should be in the  
6 blue. That's a good catch. Since it  
7 appears that -- since that is an  
8 existing building I would say that  
9 that should have been marked blue.

10 BY MR. GILL:

11 Q. Okay. Mr. Clark, I'm going to ask  
12 you to indulge me for a moment, and I don't  
13 mean to get us off track, but before we  
14 venture into -- and I apologize, but before  
15 we do venture into buildings that do have  
16 structural systems associated with them, I  
17 would like to visit at-grade parking  
18 facilities.

19 A. At grade?

20 Q. Yes.

21 A. Okay.

22 Q. There is at least one at-grade  
23 parking facility, or excuse me, there used to  
24 be at least one at-grade parking facility on

1 North Campus; correct?

2 A. Actually two.

3 Q. Two? Where is the other one? I'm  
4 thinking of the one that's now the location  
5 of the Science and Engineering Center?

6 A. Yes.

7 Q. Are you going to tell me if the other  
8 one is around Reynolds Hall?

9 A. No, it's at lot A, which is adjacent  
10 to the Sharpless Parking Structure. It's a  
11 small lot.

12 Q. Ah. The stormwater lot A, is that  
13 managed in the same facility that is used to  
14 manage the Sharpless Parking Structure?

15 A. I would surmise, yes. That seems  
16 like a very logical conclusion.

17 Q. Okay. I mentioned an at-grade  
18 parking facility that is behind 25 University  
19 Avenue, sort of adjacent to it and around  
20 Reynolds Hall. Does that parking facility  
21 still exist?

22 A. It does. And, excuse me, then the  
23 answer would have been three, lot B and lot  
24 A.

1 Q. Is lot B the one around Reynolds  
2 Hall?

3 A. Yes.

4 Q. Okay. To where does stormwater from  
5 lot B flow?

6 A. Uhm, well, let's see what this plan  
7 shows. Lot B flows into -- hmm. This plan  
8 does not definitively show where it flows  
9 into, but my guess would be it flows into the  
10 Reynolds Alley -- the Reynolds Alley street.

11 Q. Okay. Is there a municipally-owned  
12 pipe in Reynolds Alley or does it simply  
13 flow?

14 A. This plan does not show. I cannot  
15 answer that question professionally.

16 Q. Well, if there's not a pipe there  
17 would it simply flow into Reynolds Alley and  
18 then down Reynolds Alley to Sharpless or down  
19 Reynolds Alley in the other direction --

20 A. To University Avenue.

21 Q. -- depending upon the grade?

22 A. To the -- yes. Correct.

23 Q. And were there stormwater facilities  
24 associated with the parking lot that was

1 previously to the east of Lawrence Center and  
2 north of Hollinger Fieldhouse?

3 I'm sorry, I asked you to assume a  
4 fact that we didn't establish. But there  
5 used to be an at-grade parking lot to the  
6 east of Lawrence Center; correct?

7 A. Yes.

8 Q. And that parking lot is not there  
9 anymore, is it?

10 A. That's where the SECC building is.

11 Q. Is there going to be any at-grade  
12 parking associated with that?

13 A. Not at that site, aside from the  
14 North Campus Parking Structure.

15 Q. All right. So we are surmising that  
16 stormwater that falls on lot A, which is just  
17 east of the Sharpless Parking Structure, is  
18 managed by the same stormwater facility which  
19 manages stormwater for the Sharpless Parking  
20 Structure itself; correct?

21 A. Yes.

22 Q. And your testimony is that based on  
23 what you can tell us from 7A, that stormwater  
24 which falls on lot B flows to Reynolds Alley,

1 and then depending upon grade, either off of  
2 Reynolds Alley or down Reynolds Alley to  
3 Sharpless?

4 A. Based on the lack of piping  
5 information on 7A.

6 Q. Okay. Now, we can agree, and again,  
7 I don't want to beat this horse, but we agree  
8 that 7A represents the most recent submission  
9 by The University, along with its MS-4  
10 permit, to the Department of Environmental  
11 Protection; correct?

12 A. Yes.

13 Q. Okay. Is there any reason that you  
14 have to conclude that the information which  
15 is depicted on 7A is incorrect in any way?

16 A. Aside from the quad, which we have  
17 submitted on supplemental documents.

18 Q. And by "quad" you mean the oval  
19 within the academic quad?

20 A. That's correct, yes.

21 Q. Let's talk briefly about walkways and  
22 then we'll come back to buildings with  
23 structural systems.

24 There are -- there's an extensive

1 walkway system throughout campus; correct?

2 A. Correct.

3 Q. Okay. And by "extensive" I mean you  
4 can -- a pedestrian can get from any one  
5 point on campus to another walking along an  
6 internal pathway system; correct?

7 A. Correct.

8 Q. Does that internal pathway system  
9 have stormwater facilities associated with  
10 it, stormwater management facilities  
11 associated with it?

12 A. Some do, some do not.

13 Q. Okay. Are you able to tell us which  
14 parts of the internal pathway pedestrian  
15 network do have stormwater facilities and  
16 which ones don't?

17 A. Yes. And in a comprehensive manner  
18 any walkway on the lot that has a structural  
19 -- or building with a structural storm  
20 management system would also include the  
21 impervious surfaces on that lot.

22 For example, for the Student  
23 Recreation Center, all of the pathways on  
24 that entire lot would have been in the

1 calculations for the stormwater management  
2 upgrades required for that particular  
3 building, so it follows pretty closely with  
4 Borough 5.

5 Q. Okay. When you say "the lot," the --  
6 when The University submits a land  
7 development plan to The Borough and to  
8 Chester County Conversation District what  
9 does it identify as the development site?

10 A. The area of disruption. For example,  
11 the Student Recreation Center would go out to  
12 the very boundaries of where the disruption  
13 of that site would occur. It may or may not  
14 be the exact lot dimensions as per purchase  
15 and as per title, because we are obviously --  
16 we purchase a lot of different things that  
17 are quilted together to make our campus.

18 So however the Student Recreation  
19 Center, the limit of development which would  
20 have been where we start tearing up turf in  
21 order to create that building would be the  
22 extent of that lot and the extent of the  
23 requirements for the Chester County District  
24 for stormwater management on that lot.

1 Q. Okay. And if there is a pathway or a  
2 portion of the pedestrian network that's  
3 going to be within that area of disturbance,  
4 that would be included within the new  
5 stormwater structures or stormwater  
6 management facilities?

7 A. Yes.

8 Q. But areas of existing pathway  
9 pedestrian network which are outside of that  
10 would not be included within the new  
11 stormwater management facilities; correct?

12 A. That's correct.

13 Q. Okay. So stormwater that falls and  
14 hits the pedestrian pathway, we already  
15 covered buildings, we talked about parking  
16 facilities with regard to stormwater which  
17 falls on pedestrian walkways that are outside  
18 of a new area of disturbance, does that  
19 stormwater -- is that stormwater ultimately  
20 disposed of in one of the ways that you  
21 talked about earlier, meaning it either is  
22 flowing through over land to a yard inlet and  
23 from there through a pipe to the Borough  
24 system, or it is -- some component of it is

1 being infiltrated? Any other options?

2 A. If it's constructed of pervious  
3 material, then it would be infiltrated along  
4 the same manner as if it flowed outside of  
5 non -- impervious material to the lawn  
6 adjacent, yes.

7 Q. Are there any other portions of The  
8 University's pedestrian network other than  
9 along University Avenue and South Church  
10 Street which are constructed using pervious  
11 material?

12 A. No.

13 Q. Now, and again, thank you for  
14 indulging me in turning back, before we get  
15 to structural systems, but most of the  
16 roadway network that flows through and around  
17 campus is municipally owned or owned by  
18 PennDOT; correct?

19 A. Correct.

20 Q. Okay. But there are driveways that  
21 come on to campus off of the public roads;  
22 correct?

23 A. Correct.

24 Q. And is one of those driveways, does

1 it run in between Lawrence Center and the  
2 Student Recreation Center?

3 A. Yes, that's labeled as North Campus  
4 Drive.

5 Q. North Campus Drive?

6 A. Uh-huh.

7 Q. Are there any others?

8 A. Uhm, uhm, formerly -- well, not any  
9 longer. There -- there previously was a  
10 driveway going towards the SECC, but that has  
11 been abandoned. That was formerly called  
12 College Avenue, but at this point in time  
13 that roadway is gone --

14 Q. Okay.

15 A. -- due to the SECC project.

16 Q. Okay, okay.

17 A. Other -- no, only driveway entrances.  
18 No other roadways -- well, let me just make  
19 sure -- that is correct.

20 Q. All right. And to be clear, when we  
21 talk about, for instance, Wayne Hall, when  
22 you talk about the Wayne Hall site are you  
23 including the driveway in front of Wayne  
24 Hall?

1 A. Yes.

2 Q. And the same for Schmidt Hall?

3 A. Yes.

4 Q. That includes this driveway?

5 A. That's correct.

6 Q. So I want to make sure we are  
7 capturing every square inch of campus.

8 A. Yes.

9 Q. North Campus Drive, does that have  
10 stormwater management facilities associated  
11 with it?

12 A. Uhm, I would have to -- I don't know.  
13 I would suspect not based on its age, but I  
14 am unaware. That was built in the '70s,  
15 along with Goshen and Tyson Hall, so if it  
16 has inlets you would have to check those  
17 construction plans. None are shown on this  
18 plan and that's why I can't reference whether  
19 there are.

20 Q. If it doesn't have stormwater  
21 facilities associated with it, can we agree  
22 that the stormwater which falls on North  
23 Campus Drive would ultimately be disposed of  
24 in one of the ways we talked about earlier,

1 either through an inlet that is connected to  
2 the Borough-owned system or to -- or it would  
3 flow -- sheet flow from North Campus Drive on  
4 to some pervious area and be infiltrated?

5 A. Yes.

6 Q. There is no other place for that  
7 stormwater to go; correct?

8 A. That's correct.

9 Q. Okay. All right. Now I'd like to  
10 talk about buildings for which there are  
11 structural systems.

12 A. Uh-huh.

13 Q. Are you familiar with Chapter 102 of  
14 the Pennsylvania code, Title 25, Chapter 102  
15 of the Pennsylvania code?

16 A. Not definitively, no.

17 Q. Do you have any idea what it refers  
18 to?

19 A. No.

20 Q. All right. Nevertheless, are you  
21 familiar with the Pennsylvania requirements  
22 for stormwater management for the two-year  
23 storm?

24 A. No.

1 Q. You made reference earlier to storm  
2 events, such as the two-year storm or the  
3 five-year storm or the one-hundred-year  
4 storm?

5 A. Yes.

6 Q. Can you tell me what you mean when  
7 you're using those references?

8 A. Certainly. Every two years by  
9 someone's calculations a certain amount of  
10 rain falls in a given event, maybe an inch,  
11 maybe two inches. The probability of that  
12 happening is once every two years. Of course  
13 once every five years they take a larger  
14 amount of rain, it's a less frequent event,  
15 and it may have twice the amount of the  
16 two-year storm or whatever the calculation  
17 is. And then there are fifty-year storms and  
18 a hundred-year storms.

19 Municipalities choose a matrix of  
20 what storm you should calculate to based on  
21 where they are. For example, if you are in  
22 Erie, Pennsylvania, and you have lake  
23 effects, everything may be designed to a  
24 hundred-year storm. If you're in Arizona, it

1 may be a two-year storm.

2 So municipalities pick the frequency  
3 and the duration of rain in order to  
4 calculate the volume of rain that must be  
5 treated in the stormwater management system.

6 Q. Okay.

7 MR. KOVATIS: I will add that  
8 these questions that, Tom, the  
9 witness does not know the answer to,  
10 but tomorrow's witness may be able --  
11 Gary Bixby, he may be able to answer  
12 these questions --

13 THE WITNESS: Yes.

14 MR. KOVATIS: -- in response to  
15 the Notice of Deposition.

16 MR. GILL: All right. Thank  
17 you. Fair enough.

18 BY MR. GILL:

19 Q. Along those lines, Mr. Clark, let me  
20 just ask you this: Is it your understanding  
21 that the structural stormwater facilities  
22 that are constructed and associated with the  
23 non-shaded buildings except for Reynolds  
24 Hall, the non-shaded buildings on Exhibit

1 Borough 4 do not --

2 A. Okay, yeah.

3 Q. -- do not eliminate all stormwater  
4 from all storm events from entering The  
5 Borough system from those portions of campus?

6 MR. KOVATIS: Objection to the  
7 form. There are a lot of negatives  
8 in there, but go ahead.

9 THE WITNESS: Okay. I would  
10 have to check each and every building  
11 plan to determine the exact answer to  
12 that question; however, it has been  
13 my experience that stormwater on a  
14 new development is kept mostly onsite  
15 underground and treated as  
16 infiltration, but there are always  
17 overflow devices. It will be  
18 foolhardy not to have an overflow  
19 device.

20 The overflow device is then  
21 what connects to the municipal  
22 system. That's a general  
23 understanding of -- of municipal  
24 development for any facility.

1                   Uhm, so I would have to answer  
2                   specifically that that's my general  
3                   understanding.

4                   MR. GILL:   Okay.

5   BY MR. GILL:

6       Q.       What role do you play -- in your  
7       current position what role do you play in  
8       interacting with the civil engineers who are  
9       selected to design a land development plan?

10      A.       We negotiate their contracts.  We  
11      oversee their contracts.  Uhm, we get project  
12      estimates for them.  We seek out funding.  We  
13      seek out permitting.  However, all of the  
14      scientific nature of the design is in their  
15      house, it is not done by The University.

16              Uhm, however, we'll oversee what  
17      their plans are, so that's how I have a  
18      general understanding of any development, is  
19      that there's always an overflow connection  
20      from any onsite stormwater management  
21      facility in connecting into the municipal  
22      system which then, uhm, delivers the water to  
23      an outflow.

24              MR. GILL:  Steve, will Mr.

1 Bixby be the person then to talk  
2 about that -- those discussions with  
3 civil engineers regarding the design  
4 storms and assumptions that are  
5 made -- assumptions regarding  
6 developability that are made based on  
7 the type of systems that need to be  
8 designed and the connections to the  
9 Borough system?

10 MR. KOVATIS: I believe so.

11 MR. GILL: All right.

12 MR. KOVATIS: If he cannot,  
13 then we'll talk about it at that  
14 point.

15 MR. GILL: All right.

16 BY MR. GILL:

17 Q. All right. Now, earlier, and I think  
18 we have established it but correct me if you  
19 disagree, but I think we established that we  
20 -- that rainwater which falls on to North  
21 Campus ultimately either infiltrates or is  
22 discharged to the municipally owned -- the  
23 Borough-owned stormwater collection system;  
24 correct?

1 A. Or evaporates.

2 Q. Fair enough.

3 A. Okay? Yes.

4 Q. Has The University conducted any  
5 studies to determine the volume of stormwater  
6 which evaporates?

7 A. No.

8 Q. Other than with regard to buildings  
9 for which there are structural stormwater  
10 facilities in place or being constructed, has  
11 The University conducted any studies to  
12 determine the volume of stormwater which  
13 infiltrates?

14 A. Uhm, excuse me. May I?

15 Q. Yes, please. I'm not sure we marked  
16 that yet.

17 A. Yeah, I don't think we did.

18 This is just a runoff calculation so  
19 this is not -- that is not an infiltration,  
20 so to the best of my knowledge, no.

21 MR. KOVATIS: It's Borough 6.

22 We marked it at the very beginning,  
23 so why don't we do that again  
24 referring to Borough 6.

1 BY MR. GILL:

2 Q. If you want to -- go ahead.

3 A. Borough 6 talks about runoff volume  
4 calculation, but it does not specifically  
5 address infiltration calculation.

6 Q. Okay. So as we sit here today, The  
7 University is unable to state of the volume  
8 of stormwater that falls from the sky in a  
9 two-year storm event, a five-year storm event  
10 or any storm event, The University is unable  
11 to identify or quantify what volume of that  
12 stormwater infiltrates, what volume of that  
13 stormwater evaporates or what volume of that  
14 stormwater reaches the municipally-owned  
15 systems?

16 A. Let me see this again. Okay. If I  
17 may.

18 Q. Sure.

19 A. Borough 6 talks about the square  
20 footage of impervious surface times rainfall  
21 depth. Okay?

22 So, conversely, uhm, the area that is  
23 pervious would represent the volume of  
24 rainwater that has been infiltrated so it's

1 not directly on here, but the calculations  
2 are -- appear to be available.

3 I'm not sure who created Borough 6  
4 which is why I asked Nicole why that was  
5 created, but Borough 6 talks about the runoff  
6 of impervious surface. The converse would be  
7 the total area of the campus minus the  
8 impervious surface which would be the  
9 pervious surface.

10 So, conversely, you could multiply  
11 the pervious surface by the same in -- or the  
12 same volume rates on two-year and five-year  
13 storms and get that calculation of  
14 infiltrated rainfall.

15 Q. Okay. And you would agree with me  
16 that, though, Borough 6 is only referring to  
17 the two-year and the five-year storms?

18 A. Yes.

19 Q. And you would agree with me that no  
20 soil studies have been conducted unless we  
21 are talking about an area for --

22 A. Development.

23 Q. -- for new structures --

24 A. Yes.

1 Q. -- no soil studies have been  
2 conducted to determine the level of  
3 infiltration which is -- which soils are  
4 capable of, say, on the lawn out front of  
5 Killinger Hall, there's been no infiltration  
6 studies done there; correct?

7 A. To the best of my knowledge.

8 Q. And, likewise, you know, the lawn in  
9 front of Ruby Jones Hall, there haven't been  
10 any infiltration studies there; correct?

11 A. To the best of my knowledge.

12 Q. So your statement that -- you would  
13 agree with me it's not necessarily true that  
14 simply stating that rain falling on a  
15 pervious area is infiltrating; correct?

16 A. I'm sorry, can you say that again?

17 Q. It's not necessarily true that all  
18 rain which falls on a pervious area is  
19 infiltrated; correct?

20 A. Uhm, I would say that depends on the  
21 rain event.

22 Q. Okay. Well, if we have a rain event  
23 that is more severe in terms of the volume of  
24 stormwater flowing or the rate at which the

1 rain is falling, some of that stormwater is  
2 going to infiltrate presumably unless the  
3 soils are incapable of infiltration?

4 A. Uh-huh.

5 Q. And some of that stormwater --  
6 You said yes?

7 A. I'm sorry, yes.

8 Q. And some of that stormwater is going  
9 to sheet flow over the pervious area;  
10 correct?

11 A. Depending on the soil infiltration  
12 rate, that is correct.

13 Q. Okay.

14 A. It's hard to make a general statement  
15 to your question.

16 Q. Fair enough. But there haven't been,  
17 to your knowledge, any studies of the  
18 infiltration capacity of soils across North  
19 Campus generally?

20 A. To the best of my knowledge, that is  
21 correct.

22 Q. Okay. Given everything that we've  
23 talked about here this morning so far, let me  
24 step back -- strike that, please.

1           In this litigation so far The State  
2 System and The University have made the claim  
3 that West Chester University, quote, does not  
4 utilize the Borough's MS-4 to manage  
5 stormwater runoff.

6           Based on everything that we've talked  
7 about here so far this morning, that  
8 statement is not correct, is it?

9           MR. KOVATIS: Objection to the  
10 form.

11           Go ahead.

12           THE WITNESS: I'm sorry?

13 BY MR. GILL:

14       Q.     In other words, this statement that  
15 West Chester University, quote, does not  
16 utilize the Borough's MS-4 to manage  
17 stormwater runoff, that statement is belied  
18 by your testimony that stormwater from North  
19 Campus does, in fact, discharge to The  
20 Borough system; correct?

21           MR. KOVATIS: Objection.

22           Go ahead.

23           THE WITNESS: I'm understanding  
24 your question as to whether we

1 reference the Borough's MS-4 permit  
2 in our permit, and there we do not.

3 BY MR. GILL:

4 Q. Oh, so that's the distinction?

5 A. The permit.

6 Q. The permit, not the system?

7 A. Right, because you said the MS-4,  
8 which to me is a permit, not the system.

9 Q. Okay. The MS-4 is defined to be  
10 the -- for the purposes of my question here  
11 today, the MS-4 is defined to be the  
12 municipal straight storm sewer system, the  
13 system itself.

14 A. Okay, okay. I have always used it as  
15 the permit so I appreciate the clarification.

16 Q. Thank you for the clarification.

17 A. Yes.

18 Q. Okay.

19 A. And I believe that that's how we  
20 answered the question is in the context of a  
21 permit. So did you want to ask that question  
22 again?

23 Q. No, you clarified your response.

24 A. Okay. Great.

1 Q. Now, along those lines are you the  
2 individual who is able to answer questions  
3 regarding The University's MS-4 permit?

4 A. No.

5 Q. Who is that?

6 A. That would be Nicole Svetz.

7 Q. Okay. All right.

8 MR. KOVATIS: And Gary Bixby.

9 THE WITNESS: And Gary Bixby.

10 BY MR. GILL:

11 Q. All right. I'd like to visit the --  
12 I'm sorry, the residential quad, as I  
13 understand it's referred to, just to make  
14 sure we are on the same page, and thank you,  
15 you're indicating an area that is bounded by  
16 Allegheny Hall, University Hall, Brandywine  
17 and Commonwealth Hall; correct?

18 A. Yes.

19 Q. My understanding, Mr. Clark, is that  
20 The University -- neither The University, nor  
21 The State System constructed those buildings.  
22 Is that your understanding?

23 A. Yes.

24 Q. Who did construct them?

1       A.     The West Chester University  
2     Foundation, University Student Housing, USH.

3       Q.     And those are two separate entities?

4       A.     No, they are one entity, University  
5     of Student Housing which is an entity of West  
6     Chester University Foundation.

7       Q.     Okay.  Is University Student Housing  
8     part of West Chester University?

9       A.     No.

10      Q.     Okay.  And it's not an agency or  
11     entity of the Commonwealth of Pennsylvania,  
12     to your knowledge?

13      A.     That's correct.

14      Q.     Earlier you said that stormwater from  
15     Commonwealth Hall is managed at the facility  
16     to the east of Commonwealth Hall that we have  
17     marked with an asterisk; is that correct?

18      A.     It appears so from 7A, yes.

19      Q.     And that facility is -- that's  
20     identified on 7A as "subsurface detention  
21     basin"; correct?

22      A.     Correct.

23      Q.     What's a detention basin?

24      A.     Detention basin detains the water

1 prior to -- to entering into a municipal  
2 system. So it's filled with stone and it  
3 detains the flow, and in a low flow it will  
4 continue to infiltrate to the subsurface and  
5 then it's connected to the municipal system  
6 only in a very large rain event for overflow.

7 Q. Is it your testimony that this  
8 detention basin that we're referring to now  
9 has an infiltration capacity or infiltration  
10 component?

11 A. By design, yes.

12 Q. Okay. Can you tell us what volume of  
13 stormwater infiltrates through that system?

14 A. No, I cannot.

15 Q. Now, you said some of the stormwater  
16 is detained.

17 A. Uh-huh.

18 Q. And then I think your testimony was  
19 that that stormwater is ultimately discharged  
20 to the municipal system?

21 A. Only upon overflow.

22 Q. Okay. But you can't tell us what  
23 volume constitutes overflow; correct?

24 A. Correct.

1 Q. Okay. The facility -- I'm sorry.  
2 Does the stormwater from Commonwealth Hall  
3 flow anywhere else other than to that  
4 detention facility?

5 A. Hmm. It does not appear so on this  
6 plan.

7 Q. Okay. So your testimony is that, at  
8 least according to Exhibit 7A, which is the  
9 most recent version of The University  
10 collection system that has been submitted to  
11 DEP, your testimony is that all of the  
12 stormwater from Commonwealth Hall is managed  
13 through that detention basin?

14 A. There are yard inlets on the other  
15 side of Commonwealth Hall towards South New  
16 Street that appear on this plan to collect --  
17 to connect directly to a municipal pipe  
18 running down South New Street to the outflow.  
19 I will point them out to you right here.

20 Q. Thank you.

21 Earlier we discussed a -- what  
22 appears to be a stormwater management  
23 facility west of Hollinger Fieldhouse, north  
24 of University Hall, east of Lawrence Center,

1 and you testified that it appears that  
2 stormwater from Merion Science Center and  
3 Allegheny Hall is reaching that facility;  
4 correct?

5 A. Yes.

6 Q. I'm sorry, can you -- did you testify  
7 earlier as to what type of facility that is?

8 A. That's an underground detention basin  
9 as well.

10 Q. Okay, so I'm going to circle that in  
11 green.

12 And you said that's an underground  
13 detention facility?

14 A. Yes.

15 Q. Okay. I'm going to just write  
16 "underground detention."

17 Does that facility have an  
18 infiltration component?

19 A. Most likely. I would have to check  
20 the plans and refer to the -- I would have to  
21 refer to the calculations, but that's the  
22 purpose of an underground detention facility  
23 is to infiltrate into the ground and then to  
24 have overflow.

1 Q. Depending upon the storm event, some  
2 stormwater then from University Hall and  
3 Merion Science Center is ultimately being  
4 discharged to the municipal system; correct?

5 A. I would have to check the exact plans  
6 to give a specific answer.

7 MR. KOVATIS: I think the  
8 witness testified earlier that Gary  
9 Bixby may be more familiar with  
10 particularly this detention facility.

11 MR. GILL: Well, because that's  
12 a facility that's associated with The  
13 Commons and the science center as  
14 well?

15 THE WITNESS: That's correct.

16 MR. GILL: Okay. All right.  
17 Fair enough.

18 THE WITNESS: Yes. Yes. Yes.

19 BY MR. GILL:

20 Q. Where does stormwater from Brandywine  
21 Hall flow?

22 A. Let's see here. It appears that  
23 Brandywine Hall also connects to this same  
24 underground detention basin based on the

1 lines from 7A.

2 Q. Okay. Is the same true of Allegheny  
3 Hall?

4 A. Yes. Yes.

5 Q. Who is responsible for maintaining  
6 that underground detention facility?

7 A. West Chester University.

8 Q. What agreements exist, if you're  
9 aware of them, what agreements exist between  
10 West Chester University and the Foundation  
11 University Student Housing regarding  
12 maintenance of that facility?

13 A. Everything outside a five-foot line  
14 around the building is maintained by West  
15 Chester University.

16 Q. Okay. So these privately-owned  
17 facilities -- they are privately-owned;  
18 correct?

19 A. Privately constructed.

20 Q. And who owns them?

21 A. The bondholders, not The University.  
22 The University owns the land. We have leased  
23 the land for private construction.

24 Q. Okay. Okay. Who collects the

1 revenue from the -- in a normal academic year  
2 who is collecting the revenue from the  
3 occupancy of these four buildings that are  
4 owned by University Student Housing?

5 A. University Student Housing.

6 Q. Does any of that revenue ever flow to  
7 The University?

8 A. Not directly.

9 Q. Does any of that revenue flow to the  
10 Commonwealth of Pennsylvania?

11 A. I'm not privy to their books.

12 Q. Okay. What role, if any, does The  
13 University play in the occupancy of those  
14 privately-owned residents' halls other than  
15 providing a source of prospective tenants?

16 A. Those are private negotiations  
17 between USH and the students.

18 Q. Okay. Then The University does  
19 occupy portions of those buildings for  
20 academic purposes; correct?

21 A. Uhm, the first floor of Commonwealth  
22 Hall, the first floor of Allegheny Hall and  
23 the first floor of Brandywine Hall. Nothing  
24 in University Hall.

1 Q. What agreements, if any, exist  
2 between The University and USH for that  
3 occupancy?

4 MR. KOVATIS: I'm going to  
5 object. This is getting a little  
6 outside the scope of the notice and  
7 maybe outside of the scope of the  
8 witness's ability to speak on behalf  
9 of The University --

10 THE WITNESS: I'm unaware.

11 MR. KOVATIS: -- and the state  
12 system.

13 THE WITNESS: I'm unaware.

14 MR. GILL: Fair enough. Okay.

15 BY MR. GILL:

16 Q. We started with Exhibit Borough 6 and  
17 you testified a little bit about it. I just  
18 want to round this out.

19 You said this was prepared by Ms.  
20 Fellows?

21 A. Uh-huh.

22 Q. And you are unable to say when it was  
23 prepared; correct?

24 A. Unless there's a date on this

1 document, that is correct. It does not  
2 appear to be a date.

3 Q. So when you said Ms. Fellows ended  
4 her employment with The University, when was  
5 that?

6 A. Around 2018. I'm not understanding  
7 the specific date.

8 Q. But it's fair to state then that this  
9 document was prepared prior to 2018?

10 A. It would appear so, yes.

11 Q. And there's -- there have been  
12 changes to campus since 2018; correct?

13 A. Uhm, aside from the SECC, no.

14 Q. Okay.

15 A. Okay?

16 Q. But, again, we don't know if this was  
17 prepared in 2018 or 2010?

18 A. Correct.

19 Q. Okay. Nevertheless, not to belabor  
20 the point, the document shows that or at  
21 least asserts that 372,699 cubic feet of  
22 stormwater is generated -- I'm sorry, is  
23 flowing from impervious surfaces in a  
24 two-year storm event; correct?

1       A.     If that's what that document says,  
2 then yes.

3       Q.     Well, do you have it there?

4       A.     I don't. I'm sorry. Oh, thank you.  
5             Did you say?

6       Q.     372,699 cubic feet in a two-year  
7 storm event?

8       A.     Yes.

9       Q.     And 468,731 cubic feet in a five-year  
10 storm event?

11      A.     Yes.

12      Q.     And based on your understanding of  
13 the classification of storm events, those  
14 numbers for a ten-year storm event, the  
15 number for a ten-year storm event would be  
16 higher than 468,731?

17      A.     That is my understanding.

18      Q.     And so on and so forth, for a  
19 fifty-year event it would be higher than  
20 that?

21      A.     Yes.

22      Q.     And for a hundred-year event it would  
23 be higher than that?

24      A.     Yes.

1 Q. Mr. Clark, are there stormwater  
2 management facilities on campus to handle  
3 372,699 cubic feet of stormwater from a  
4 two-year storm event?

5 A. I'm unaware of that or I cannot  
6 answer that professionally.

7 MR. KOVATIS: That may again be  
8 a question for Mr. Bixby.

9 MR. GILL: Okay.

10 BY MR. GILL:

11 Q. Not being the author, is it your  
12 testimony that you're unable to take us  
13 through whatever Ms. Fellows would have  
14 considered in determining what is pervious  
15 area and what is impervious area?

16 A. I was aware of a plan that I do not  
17 see in front of me here of a map and a  
18 calculation of pervious versus impervious  
19 surface, uhm, but I have not seen that as  
20 part of the documents here today. It would  
21 be my guess is that document would then feed  
22 this calculation.

23 Q. Okay. Do you recall when you saw  
24 that map?

1 A. Uhm, six to eight months ago.

2 Q. Was it as part of the response to The  
3 Borough's discovery requests?

4 A. I believe it was because I think it  
5 was the appendix to this calculation. I'm  
6 not sure how else this calculation would have  
7 been made, and I do remember the document  
8 from some portion of --

9 Q. Bear with me one second.

10 A. Sure.

11 Q. This is the only copy of this I have,  
12 but is the document bearing the stamp WCU  
13 000817 the plan to which you are referring?  
14 And I will tell you that the handwriting on  
15 there is mine.

16 A. Uhm, no. This is additional  
17 information. This is the voluntary  
18 stormwater improvements of which I had  
19 referred to previously, but this is not the  
20 document that shows the pervious versus  
21 impervious calculation for North Campus.

22 MR. GILL: I'm not aware of any  
23 other land if one exists.

24 MR. KOVATIS: I will check with

1           the witness afterwards. I produced  
2           everything he's given me and --

3                   MR. GILL: Okay.

4                   MR. KOVATIS: -- we will see if  
5           we can get that sorted out.

6                   MR. GILL: Okay.

7 BY MR. GILL:

8       Q.       Mr. Clark, when contemplating a new  
9       building on campus, on North Campus, can you  
10      take me through the process by which The  
11      University identifies what the maximum  
12      build-out of that building is going to be; in  
13      other words, what is the building footprint,  
14      what factors are taken into consideration in  
15      determining how large of a building can be  
16      constructed?

17      A.       Certainly. There are several  
18      requirements. One is a zoning requirement.  
19      Whatever the municipality allows for pervious  
20      versus pervious surface. Setbacks, also a  
21      zoning requirement which may limit the  
22      footprint of the building.

23                There are height restrictions, also a  
24      municipal zoning requirement. All of those

1 will get us into the basic form of a  
2 building, how big it can be, how tall it can  
3 be, how wide it can be, et cetera.

4 And then there's the whole  
5 calculation based on the building that is  
6 municipally approved, how we then manage the  
7 stormwater for that particular building, the  
8 footprint in the impervious surface, et  
9 cetera, et cetera. And then of course  
10 there's the cost on top of all of that. So  
11 if all of those requirements also meet the  
12 costs, then we would have a go and if it  
13 doesn't meet the cost then of course the  
14 building volume would shrink.

15 Q. Okay. And maybe this is for Mr.  
16 Bixby as well.

17 When making those decisions,  
18 specifically with regard to stormwater  
19 management, does the fact that The University  
20 can connect into the Borough's  
21 municipally-owned stormwater system play any  
22 role?

23 A. That's part of the design of the  
24 stormwater management system. Uhm,

1 ultimately we provide what the code requires,  
2 with one caveat.

3 Our strategic plan talks about  
4 environmental sustainability. In the most  
5 recent land development for The President's  
6 Walk we added two rainwater gardens that were  
7 not required because of a billboard for  
8 sustainability that we went above and beyond  
9 the requirements of the County's stormwater  
10 requirement infiltration rates in order to  
11 advertise our stormwater management as above  
12 and beyond what the code required.

13 So we -- we don't build to the code  
14 because of our strategic plan and because of  
15 our mission statement, we build beyond the  
16 code. We absolutely have to meet the code  
17 and we are not going to build a single thing  
18 without meeting the code, but The University  
19 goes beyond the code, and especially shown as  
20 per the voluntary submissions for impervious  
21 surface, and in most recent land development  
22 we did that as well, we went above and beyond  
23 the code.

24 Q. And that's for the SECC?

1 A. President's Walk.

2 Q. President's Walk, excuse me.

3 A. Yes.

4 Q. The President's Walk is not being  
5 constructed in any capacity as of right now,  
6 right?

7 A. Not currently. Not currently. It  
8 has been deferred.

9 Q. Okay. Your testimony is that the  
10 knowledge that The University can connect to  
11 the municipal system and discharge overflow  
12 into the municipal system is a factor that  
13 The University considers when designing  
14 stormwater management facilities or designing  
15 a building on campus?

16 A. We have to have an overflow.

17 Q. Okay.

18 A. That is part of the design.

19 Q. Okay. Have there ever been any  
20 studies or analyses or discussions, to your  
21 knowledge, of the scope of the developability  
22 which would be available without the ability  
23 to connect to the municipal system?

24 A. Well, I'm unaware of that

1 specifically for any development that has  
2 occurred.

3 Q. Okay. Does The University have its  
4 own ability, independent of the municipal  
5 system, to ultimately discharge stormwater to  
6 a receiving water course?

7 A. That is -- the answer to that is site  
8 specific as to where the most adjacent  
9 outflow would be. Currently aside from the  
10 South New Street Parking Structure The  
11 University does not own property adjacent to  
12 an outflow to Plum Run.

13 MR. KOVATIS: These sort of  
14 planning questions would fall within  
15 Mr. Bixby's knowledge.

16 MR. GILL: All right. Okay.

17 THE WITNESS: Uh-huh.

18 MR. GILL: Could we take a  
19 break? I will review and see if  
20 there's anything else.

21 MR. KOVATIS: Absolutely.

22 MR. GILL: Ten minutes?

23 MR. KOVATIS: Sure.

24 - - -

1                   (Whereupon, there was a recess  
2                   held at this time, 12:05 p.m. to  
3                   12:14 p.m.)

4                   - - -

5                   MR. GILL: Just a couple of  
6                   follow-up questions here, Mr. Clark.

7 BY MR. GILL:

8       Q.       Am I -- there's been no update of the  
9       -- of Exhibit B6. Just to clarify, there's  
10       been nothing done to update that calculation  
11       regarding the difference between the ratio of  
12       pervious to impervious surface at The Borough  
13       on a campus-wide basis; correct?

14       A.       An update of this particular  
15       document?

16       Q.       Yes.

17       A.       Not of which I am aware. This  
18       appears to be from the MS-4 permit so Nicole  
19       would have to answer that question.

20       Q.       Okay.

21       A.       Okay?

22       Q.       Are you aware of any -- outside of  
23       the MS-4 permit, are you aware of any campus  
24       planning that's been done, whether at the

1 professional level or, you know, perhaps a  
2 student-run program or project to calculate  
3 the amount of impervious and pervious surface  
4 at campus?

5 A. I am aware of a North Campus map that  
6 developed the calculations that are on this  
7 document.

8 Q. Uh-huh.

9 A. I just looked in my server folder and  
10 couldn't find it, but given a little bit of  
11 time I think I could find that.

12 Somebody had to develop these numbers  
13 and that could have only been from that plan,  
14 so I believe that that plan is relevant to  
15 this document.

16 Q. Okay. Then if we were looking at an  
17 evolution of impervious surface at North  
18 Campus over time, other than Borough 6 and  
19 the plan which Borough 6 is apparently based  
20 on, we would be looking at that on a  
21 project-by-project basis; correct?

22 A. That's exactly right.

23 Q. A land development plan for each  
24 project?

1       A.     With one exception, the voluntary  
2 stormwater management that we had installed.

3       Q.     Okay.  Are there plans for those  
4 voluntary stormwater management facilities?

5       A.     Let me think.

6             You have of course the plan that  
7 shows the extent of it, and then I have a  
8 section of it that would be the extent of the  
9 plans for that work, a section --

10            The Borough document which talks  
11 about the voluntary stormwater management  
12 shows the extent of it on a horizontal basis.  
13 I can provide a section through showing the  
14 pervious pavers and the stormwater bed below  
15 it.  Between those two, the horizontal and  
16 the vertical, you would have all the  
17 documentation of that project.

18       Q.     And are those -- is that the extent  
19 of the plans that were delivered to the  
20 contractor for construction purposes?

21       A.     That's correct.

22       Q.     Okay.

23             MR. GILL:  I'm not sure if we  
24 have those.

1 MR. KOVATIS: I will check with  
2 him.

3 MR. GILL: Okay.

4 (Request made by counsel.)

5 BY MR. GILL:

6 Q. Do those plan documents include  
7 calculations of the amount of stormwater that  
8 is expected to infiltrate through those  
9 voluntary facilities?

10 A. No, that calculation could be done  
11 similar to Borough 6. Is this 6?

12 MR. KOVATIS: Yes, Borough 6.

13 MR. GILL: Yes.

14 THE WITNESS: Borough 6.

15 BY MR. GILL:

16 Q. Was there infiltration testing done  
17 of the soil within the project area, within  
18 the voluntary project area to determine  
19 whether or not stormwater could actually be  
20 expected to infiltrate?

21 A. I do not believe so, but I cannot  
22 rule that out.

23 Q. Okay. Do the voluntary stormwater  
24 facilities have overflow mechanisms, for lack

1 of a better word, in the event that the  
2 stormwater does not infiltrate?

3 A. Hmm. Let me think. I would have to  
4 check the plans. I can't answer certainly.

5 Q. Okay. And again, to be sure we are  
6 on the same page, when we talk about  
7 voluntary facilities we are talking about the  
8 pervious pavers along University Avenue and  
9 South Church Street?

10 A. Yes.

11 Q. And we are talking about the green  
12 roof on the library?

13 A. That's correct.

14 Q. Okay. No others?

15 A. On North Campus in The Borough of  
16 West Chester.

17 Q. On North Campus in The Borough of  
18 West Chester?

19 A. Yes.

20 Q. Okay. President's Walk has not been  
21 scrapped, it's simply been deferred; correct?

22 A. Correct.

23 Q. Other than President's Walk, are  
24 there any capital projects that The

1 University is or The State System or the  
2 Commonwealth, to your knowledge, is presently  
3 contemplating or are presently contemplating  
4 at North Campus?

5 A. Gary Bixby will have to answer that  
6 question.

7 Q. Okay, okay, okay. Are you the  
8 individual who is --

9 MR. GILL: Is Mr. Clark the  
10 individual who can talk about  
11 flooding?

12 MR. KOVATIS: From a practical  
13 perspective, yes.

14 MR. GILL: Okay.

15 MR. KOVATIS: From a practical  
16 historical perspective.

17 MR. GILL: Okay.

18 BY MR. GILL:

19 Q. Are you aware of the occurrence of  
20 any flooding events on North Campus as a  
21 result of storm fall events?

22 A. Yes.

23 Q. Can you take us through a history of  
24 those since 2016?

1       A.     It revolves around a single issue.  
2     It is whether the inlets have been covered  
3     with the falling leaves from autumn.

4                     - - -

5                     (Whereupon, there was a  
6     discussion held off the record at  
7     this time.)

8                     - - -

9                     THE WITNESS:  When the existing  
10    stormwater inlets are covered with  
11    leaves you get flooding.  When the  
12    leaves are removed there is no  
13    flooding.

14                    So all of the flooding that has  
15    been associated in my experience has  
16    been related to the street inlets  
17    being covered with leaves.

18  BY MR. GILL:

19       Q.     And when you say "the street inlets"  
20    you mean inlets actually within the roadway;  
21    correct?

22       A.     Yes, outside of the curb line of the  
23    streets, that's correct.

24       Q.     And those inlets are owned by The

1 Borough of West Chester?

2 A. That is correct.

3 Q. How does The University maintain the  
4 inlets on campus?

5 A. With periodic cleanings, leave  
6 cleanings specifically there might be debris,  
7 so as part and parcel of the grounds  
8 maintenance, the inlets are kept free of  
9 obstructions which then permits their use and  
10 operation.

11 Q. Okay. To be clear, the only  
12 instances of flooding on campus from  
13 stormwater were the result of the municipal  
14 system not being available due to leaves  
15 clogging the inlets; correct?

16 A. From my experience. I'm not the  
17 grounds manager, but that's been my  
18 experience.

19 MR. GILL: Okay. I think  
20 that's all I have for you, Mr. Clark,  
21 given the -- given what Ms. Svetz can  
22 talk about and what you said Mr.  
23 Bixby can talk about.

24 MR. KOVATIS: Okay.

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No questions for me.

- - -

(Witness excused.)

(Deposition concluded at  
approximately 1:36 p.m.)

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C E R T I F I C A T E

I, Maria N Damiani, a Registered Merit Reporter, Certified Real Time Reporter, Certified Live Note Reporter, Certified Court Reporter, certify that prior to the commencement of the examination, TOM CLARK, duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I do further certify that the foregoing is a verbatim transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth, to the best of my ability.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

---

Maria N Damiani, RMR, CRR, CLR, CCR

Notary number: 1034904  
Notary expiration: 12/3/2020  
CSR Number Delaware: RPR-117  
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Dated: October 24, 2020

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INSTRUCTIONS TO WITNESS

Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

After doing so, please sign the errata sheet and date it.

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Borough 1  
11.10.18

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER, :  
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 Petitioner, : Original Jurisdiction  
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 v. : 260 MD 2018  
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 :  
 PENNSYLVANIA STATE SYSTEM :  
 OF HIGHER EDUCATION, :  
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 & :  
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 :  
 WEST CHESTER UNIVERSITY :  
 OF PENNSYLVANIA OF THE :  
 STATE SYSTEM OF HIGHER EDUCATION, :  
 :  
 :  
 Respondents. :

NOTICE OF DEPOSITION

To: Corporate Designees of the  
**Pennsylvania State System of Higher Education and  
West Chester University of Pennsylvania  
of the State System of Higher Education**

c/o Stephen R. Kovatis, Esquire  
Deputy Attorney General  
Commonwealth of Pennsylvania  
21 South 12<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Philadelphia, Pennsylvania 19107-3603  
[skovatis@attorneygeneral.gov](mailto:skovatis@attorneygeneral.gov)

PLEASE TAKE NOTICE that the deposition of the Corporate Designee for Respondents **Pennsylvania State System of Higher Education and West Chester University of Pennsylvania of the State System of Higher Education** (collectively the “Respondents”) will be taken on a date or dates mutually agreed by the parties before a Notary Public or such other officer authorized by law pursuant to the Pennsylvania Rules of Civil Procedure.

Capitalized terms used, but not defined, in this Notice of Deposition have the meanings ascribed thereto in the Petition for Review.

Respondents are directed, pursuant to Pa.R.C.P. Rule 4007.1(e), to designate one or more officers, directors, managing agents, or other persons who will testify on their behalf. Respondents are directed to produce the person or persons most knowledgeable about the topic(s) set forth below. The Corporate Designee(s) should be prepared to discuss all matters related to this civil action including but not limited to:

1. Respondents' current and anticipated future use of the Borough Stormwater Collection and Conveyance System.
2. The discharge or sheetflow of stormwater from North Campus between 2015 and the present.
3. The anticipated future discharge or sheetflow of stormwater from North Campus.
4. Respondents' contention that "[t]he University . . . does not utilize the Borough's MS4 to manage stormwater runoff."
5. Respondents' contention that they, either of them, or North Campus itself do (or does) not benefit from Respondents' use of the Borough Stormwater Collection and Conveyance System.
6. Respondents' refusal to pay Stream Protection Fee, the individuals and entities involved in making that determination, on all facts Respondents considered in reaching the determination to refuse to pay the Stream Protection Fee.
7. Respondents' contention that, with the Stream Protection Fee, the Borough is not seeking a payment reasonably proportional to the value of services provided.
8. Respondents' contention that Stream Protection Fee is not a charge for actual services rendered.
9. The amount of impervious surface area on North Campus at all times between 2015 and the present.

10. Construction and other earth-moving activities at North Campus between 2015 and the present and the manner in which post-construction stormwater associated with such activities is managed, controlled, eliminated, and/or conveyed to a receiving watercourse.

11. Respondents' plans for future development at North Campus.

12. Any instances of flooding at North Campus between 2015 and the present associated with rainfall events.

13. Any claim of Respondents' ability to cease discharging stormwater to the Borough Stormwater Collection and Conveyance System and the costs associated therewith.

14. Any alleged benefits to the "general community" which derive from and MS4 Permit which Respondents, or either of them, now holds or previously held.

15. Measures taken by Respondents to decrease the amount of stormwater which is discharged or sheetflows from North Campus into the Borough Stormwater Collection and Conveyance System and any credits against the Stream Protection Fee which Respondents, or either of them, claim or may claim.

16. Respondents' contention that "the University also cleans inlet boxes within the boundaries of the Borough."

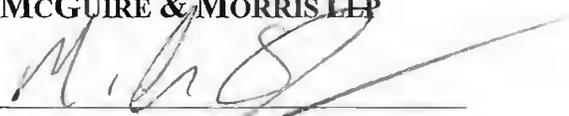
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The oral examination will continue from day to day until concluded. You are invited to attend and participate in this examination.

**BUCKLEY, BRION,  
MCGUIRE & MORRIS LLP**

Dated: September 22, 2020

By:

  
Michael S. Gill, Esquire  
Anthony M. Brichta, Esquire

Attorneys for Petitioner  
The Borough of West Chester

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER, :  
 :  
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 Petitioner, : Original Jurisdiction  
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 :  
 v. : 260 MD 2018  
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 :  
 PENNSYLVANIA STATE SYSTEM :  
 OF HIGHER EDUCATION, :  
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 & :  
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 WEST CHESTER UNIVERSITY :  
 OF PENNSYLVANIA OF THE :  
 STATE SYSTEM OF HIGHER EDUCATION, :  
 :  
 Respondents. :

PROOF OF SERVICE

Undersigned counsel hereby certifies that the foregoing Notice of Deposition was served upon the following recipient in the manner set forth below.

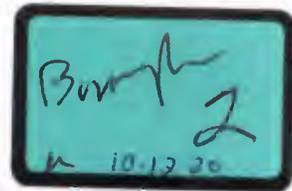
Stephen R. Kovatis, Esquire  
Deputy Attorney General  
Commonwealth of Pennsylvania  
Office of the Attorney General  
21 South 12<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Philadelphia, Pennsylvania 19107-3603  
(Service via electronic mail)

BUCKLEY, BRION,  
MCGUIRE & MORRIS LLP

Dated: September 22, 2020

By:   
Michael S. Gill, Esquire  
Anthony M. Brichta, Esquire

Attorneys for Petitioner  
The Borough of West Chester



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

THE BOROUGH OF WEST CHESTER, :  
: Original Jurisdiction  
Petitioner, :  
v. : No. 260 MD 2018  
: PENNSYLVANIA STATE SYSTEM :  
OF HIGHER EDUCATION and :  
: WEST CHESTER UNIVERSITY OF :  
PENNSYLVANIA OF THE STATE :  
SYSTEM OF HIGHER :  
EDUCATION, :  
Respondents. :  
:

**RESPONDENTS' RESPONSES AND OBJECTIONS TO  
PETITIONER'S INTERROGATORIES**

Respondents Pennsylvania State System of Higher Education (“State System”) and West Chester University of Pennsylvania of the State System of Higher Education (“University” or, collectively with the State System, “Respondents”), by counsel, hereby responds to Plaintiff’s Interrogatories pursuant to Pennsylvania Rule of Civil Procedure 4006.<sup>1</sup>

<sup>1</sup> Respondents object to Plaintiff’s Instructions and Definitions to the extent they differ from or alter the Pennsylvania Rules of Civil Procedure.

1. Please state with specificity any facts which relate to, refer to, refute, or support your claim made in Paragraph 14 of the New Matter that “[i]n executing the projects named in the Pollutant Reduction Plan, the Borough does not act for the benefit of property owners in a proprietary or quasi-private capacity.”

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the Pollutant Reduction Plan of West Chester Borough, which is attached to the Complaint as Exhibit H and incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b). Respondents further state that the facts underlying this claim are in the knowledge of the Borough.

2. Please identify all individuals and/or entities having any knowledge of any of facts and circumstances relating to the allegation raised in Paragraph 14 of the New Matter, as aforesaid, and identify with particularity the substance of their knowledge.

**RESPONSE:**

Respondents state that the individuals having knowledge of the facts set forth in the Borough’s Pollutant Reduction Plan are within the knowledge of the Borough.

3. Please identify all oral or other communications between or among Respondents (or any representative thereof) and between or among Respondents (or any representative thereof) and anyone else which refers to or relates to any of the facts alleged in Paragraph 14 of the New Matter, as aforesaid.

**RESPONSE:**

Respondents state that any communications regarding the facts set forth in the Borough's Pollutant Reduction Plan are in the possession of the Borough.

4. Please state with specificity any facts which relate to, refer to, refute, or support the claim made in Paragraph 24 of the New Matter that "[i]n executing the projects named in the TMDL Plan, the Borough does not act for the benefit of property owners in a proprietary or quasi-private capacity."

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the TMDL Plan for West Chester Borough Goose Creek MS4, which is attached to the Complaint as Exhibit I and incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b). Respondents further state that the facts underlying this claim are in the knowledge of the Borough.

5. Please identify all individuals and/or entities, by name, address and telephone number, having any knowledge of any of facts and circumstances relating to the allegation raised in Paragraph 24 of the New Matter, as aforesaid, and identify with particularity the substance of their knowledge.

**RESPONSE:**

Respondents state that the individuals having knowledge of the facts set forth in the Borough's TMDL Plan are within the knowledge of the Borough.

6. Please identify all oral or other communications between or among Respondents (or any representative thereof) and between or among Respondents (or any representative thereof) and anyone else which refers to or relates to any of the facts alleged in Paragraph 24 of the New Matter, as aforesaid.

**RESPONSE:**

Respondents state that any communications regarding the facts set forth in the Borough's TMDL Plan are in the possession of the Borough.

7. Please state with specificity any facts which relate to, refer to, refute, or support the claim made in Paragraph 26 of the New Matter that the Stream Protection Fee “does not fund any projects that would improve real property owned by the University or State System.”

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the ordinance enacting the Stream Protection Fee (or Stormwater Tax), which is attached to the Complaint as Exhibit C and incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b).

8. Please identify all individuals and/or entities, by name, address and telephone number, having any knowledge of any of facts and circumstances relating to the allegation raised in Paragraph 26 of the New Matter, as aforesaid, and identify with particularity the substance of their knowledge.

**RESPONSE:**

Respondents state that the individuals having knowledge of the facts regarding the location of projects funded by the Stormwater Tax are within the knowledge of the Borough.

9. Please identify all oral or other communications between or among Respondents (or any representative thereof) and between or among Respondents (or any representative thereof) and anyone else which refers to or relates to any of the facts alleged in Paragraph 26 of the New Matter, as aforesaid.

**RESPONSE:**

Respondents state that any communications regarding the location of projects funded by the Stormwater Tax are in the possession of the Borough.

10. Please state with specificity any facts which relate to, refer to, refute, or support the claim made in Paragraph 27 of the New Matter that “[t]he University . . . does not utilize the Borough’s MS4 to manage stormwater runoff.”

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the Borough’s MS4, which is in the possession of the Borough, and the University’s MS4s Reports (WCU000146-WCU000791), which will be produced in this litigation and are incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b).

11. Please identify all individuals and/or entities, by name, address and telephone number, having any knowledge of any of facts and circumstances relating to the allegation raised in Paragraph 27 of the New Matter, as aforesaid, and identify with particularity the substance of their knowledge.

**RESPONSE:**

Respondents state that the following individuals have knowledge of the facts and circumstances relating to the University's MS4:

- Gary Bixby, Associate Vice President for Facilities
- Thomas Clark, Executive Director of Construction
- Nicole Svetz, Environmental Health and Safety Specialist

All are current University employees and can be contacted via undersigned counsel.

12. Please identify all oral or other communications between or among Respondents (or any representative thereof) and between or among Respondents (or any representative thereof) and anyone else which refers to or relates to any of the facts alleged in Paragraph 27 of the New Matter, as aforesaid.

**RESPONSE:**

Respondents object to this request on the grounds that a request seeking all communications related to the scope and use of the University's MS4 Reports is overly broad and unduly burdensome, in that it is not limited by time, person, or discrete and relevant issue.

13. Please state with specificity any facts which relate to, refer to, refute, or support the claim made in Paragraph 28 of the New Matter that “[m]easures taken by the University on its campus at its own expense decrease the amount of storm water runoff that must be managed by the Borough storm water management system” and identify with particularity the substance of their knowledge.

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the University’s MS4 Reports (WCU000146-WCU000791), the University’s NPDES Permits (WCU000032-WCU000125), the University’s Pollution Reduction Plan (WCU000126-WCU000145), and the University’s NPDES Notice of Intent (WCU000002-WCU000031), which will be produced in this litigation and are incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b).

14. Please identify all individuals and/or entities, by name, address and telephone number, having any knowledge of any of facts and circumstances relating to the allegation raised in Paragraph 28 of the New Matter, as aforesaid, and identify with particularity the substance of their knowledge.

**RESPONSE:**

Respondents state that the following individuals have knowledge of the facts and circumstances relating to the University's MS4 Reports, the University's NPDES Permit, the University's Pollution Reduction Plan, and the University's NPDES Notice of Intent:

- Gary Bixby, Associate Vice President for Facilities
- Thomas Clark, Executive Director of Construction
- Nicole Svetz, Environmental Health and Safety Specialist

All are current University employees and can be contacted via undersigned counsel.

15. Please identify all oral or other communications between or among Respondents (or any representative thereof) and between or among Respondents (or any representative thereof) and anyone else which refers to or relates to any of the facts alleged in Paragraph 28 of the New Matter, as aforesaid.

**RESPONSE:**

Respondents object to this request on the grounds that a request seeking all communications related to the University's MS4 Reports, the University's NPDES Permit, the University's Pollution Reduction Plan, and the University's NPDES Notice of Intent is overly broad and unduly burdensome, in that it is not limited by time, person, or discrete and relevant topic.

16. Please state with specificity any facts which relate to, refer to, refute, or support the claim made in Paragraph 30 of the New Matter that “[t]he Stream Protection Ordinance provides no credit to Respondents for their own stormwater maintenance projects that they pay for separate and apart from the Borough's MS4.”

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the University's MS4 Reports (WCU000146-WCU000791), the University's NPDES Permits (WCU000032-WCU000125), the University's Pollution Reduction Plan (WCU000126-WCU000145), and the University's NPDES Notice of Intent (WCU000002-WCU000031), which will be produced in this litigation and are incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b). Respondents further state that information related to the fact that the Borough does not recognize or credit the substantial stormwater reduction efforts by the University is within the knowledge of the Borough.

17. Please identify all individuals and/or entities, by name, address and telephone number, having any knowledge of any of facts and circumstances relating to the allegation raised in Paragraph 30 of the New Matter, as aforesaid, and identify with particularity the substance of their knowledge.

**RESPONSE:**

Respondents state that the following individuals have knowledge of the facts and circumstances relating to the University's MS4 Reports, the University's NPDES Permit, the University's Pollution Reduction Plan, and the University's NPDES Notice of Intent:

- Gary Bixby, Associate Vice President for Facilities
- Thomas Clark, Executive Director of Construction
- Nicole Svetz, Environmental Health and Safety Specialist

All are current University employees and can be contacted via undersigned counsel.

18. Please identify all oral or other communications between or among Respondents (or any representative thereof) and between or among Respondents (or any representative thereof) and anyone else which refers to or relates to any of the facts alleged in Paragraph 30 of the New Matter, as aforesaid.

**RESPONSE:**

Respondents object to this request on the grounds that a request seeking all communications related to the University's MS4 Reports, the University's NPDES Permit, the University's Pollution Reduction Plan, and the University's NPDES Notice of Intent is overly broad and unduly burdensome, in that it is not limited by time, person, or discrete and relevant topic.

19. Please identify all projects, buildings, and/or structures located on the portion of North Campus situated within the Borough for which stormwater management systems are in place.

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the chart of Storm Water Improvements by Campus Site (WCU000818), which will be produced in this litigation and is incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b).

20. Please identify the following dates relative to each of the projects, buildings, and/or structures named in your Response to Interrogatory 19:

- a. the date land development plans with regard to such project, building, and/or structure were submitted to the Borough;
- b. the date on which such land development plans were approved by the Borough;
- c. the date construction commenced; and
- d. the date construction was completed.

**RESPONSE:**

Respondents object to this interrogatory as overly broad, unduly burdensome, and not relevant to the subject matter of the pending action. This case concerns whether the Stream Protection Fee is a fee based on current, not historical, services rendered by the Borough.

21. Please identify the stormwater management systems in place relative to each of the projects, buildings, and/or structures named in your Response to Interrogatory 19, including the location of the identified stormwater management system, the type of each identified stormwater management system, the date each identified stormwater management system was put into operation, and a description of the quantity and quality of stormwater runoff each identified stormwater management system is designed to manage.

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the chart of Storm Water Improvements by Campus Site and accompanying campus maps (WCU000001, WCU000817-WCU000824), which will be produced in this litigation and are incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b).

22. Please identify all projects, buildings, and/or structures located on the portion of North Campus which lies within the Borough for which structural stormwater management systems are not in place.

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the chart of Storm Water Improvements by Campus Site (WCU000818), which will be produced in this litigation and is incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b).

23. Please identify each stormwater inlet located on or adjacent to from the portion of North Campus which lies within the Borough.

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the map of North Campus (WCU00001), which will be produced in this litigation and is incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b).

24. Please identify each watercourse to which stormwater from the portion of North Campus which lies within the Borough flows.

**RESPONSE:**

Respondents state that stormwater from the portion of North Campus which lies within the Borough that stays within the Borough flows to Plum Run.

Respondents further state that stormwater from a portion of North Campus which lies within the Borough does not stay within the Borough and flows to West Goshen Township.

25. Please describe the quantity of flow of storm water runoff which flows to the receiving waters of the Commonwealth named in your Response to Interrogatory 24 and the route such storm water takes to reach such waters.

**RESPONSE:**

Respondents object to this interrogatory on the grounds that it is vague and ambiguous. The “quantity of flow of storm water runoff” cannot be fully described and is not actively measured by the University.

Subject to and without waiving this objection, Respondents state that any information they have regarding the quantity of flow of storm water runoff which flows to the receiving waters of the Commonwealth may be derived or ascertained from an examination, audit, or inspection of the University’s MS4 Reports (WCU000146-WCU000791), the University’s Pollution Reduction Plan (WCU000126-WCU000145), and the chart of runoff calculations (Bates WCU000819), which will be produced in this litigation and are incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b).

26. Please identify all parking areas on the portion of North Campus which lies within the Borough.

**RESPONSE:**

Respondents state that the answer to this interrogatory may be derived or ascertained from an examination, audit, or inspection of the map of North Campus (WCU000001), which will be produced in this litigation and is incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b).

27. Please describe the quantity of flow of storm water runoff from each of the parking areas named in your Response to Interrogatory 26 to the receiving waters of the Commonwealth and the route such storm water takes to reach such waters.

**RESPONSE:**

Respondents object to this interrogatory on the grounds that it is vague and ambiguous. The “quantity of flow of storm water runoff” cannot be described and is not actively measured by the University.

Subject to and without waiving this objection, Respondents state that any information they have regarding the quantity of flow of storm water runoff which flows to the receiving waters of the Commonwealth may be derived or ascertained from an examination, audit, or inspection of the University’s MS4 Reports (WCU000146-WCU000791), the University’s Pollution Reduction Plan (WCU000126-WCU000145), and the chart of runoff calculations (Bates WCU000819), which will be produced in this litigation and are incorporated into this response pursuant to Pennsylvania Rule of Civil Procedure 4006(b).

28. Identify all persons whom you have consulted with respect to or concerning the Stream Protection Fee and, for each such person, state the following:

- a. name, last-known address, and electronic mail address;
- b. purpose for which the person was consulted;
- c. work or services performed; and
- d. identity of all documents otherwise evidencing, recording or summarizing any information contained in your answer to this Interrogatory.

**RESPONSE:**

Respondents object to this interrogatory on the grounds that it is vague and ambiguous, overly broad and unduly burdensome, and seeks information that is not subject to discovery under the Pennsylvania Rules of Civil Procedure.

Subject to and without waiving this objection, Respondents state that the following individuals provided information relevant to interrogatory responses:

- Gary Bixby, Associate Vice President for Facilities
- Thomas Clark, Executive Director of Construction
- Nicole Svetz, Environmental Health and Safety Specialist

All are current University employees and can be contacted via undersigned counsel.

29. Identify all persons who have information or knowledge which is relevant to the subject matter of this litigation or that may lead to the discovery of information relevant to the subject matter of this litigation and, for each such person, state the following:

- a. name, last-known address, and electronic mail address;
- b. describe in detail the nature of the information or knowledge relevant to the subject matter or this appeal; and
- c. identify all documents evidencing, recording, or summarizing any information contained in your answer to this Interrogatory.

**RESPONSE:**

Respondents object to this interrogatory on the grounds that it is vague and ambiguous, overly broad and unduly burdensome, and seeks information that is not subject to discovery under the Pennsylvania Rules of Civil Procedure.

Subject to and without waiving this objection, Respondents state that the following individuals provided information relevant to interrogatory responses:

- Gary Bixby, Vice President of Facilities
- Thomas Clark, Executive Director of Construction
- Nicole Svetz, Environmental Health and Safety Specialist

All are current University employees and can be contacted via undersigned counsel.

30. Identify all persons (except expert witnesses) whom you expect to call as witnesses at trial, and, for each such person, please give the following information:

- a. the name, address, and electronic mail address of the witness;
- b. the facts to which each witness will testify; and
- c. the basis of the witness's knowledge of such facts.

**RESPONSE:**

Respondents object to this interrogatory as premature. Trial witnesses will be identified in a time and manner directed by any order of the Court and/or at a reasonable time in advance of any trial scheduled in this matter.

31. Identify all documents or exhibits which you anticipate using at trial in this litigation.

**RESPONSE:**

Respondents object to this interrogatory as premature. Trial exhibits will be identified in a time and manner directed by any order of the Court and/or at a reasonable time in advance of any trial scheduled in this matter.

32. Identify all persons whom you expect to call as expert witnesses at trial in this litigation. For each expert witness you intend to or may call at trial in this litigation appeal, identify:

- a. the name, address, and electronic mail address of such witness;
- b. the occupation or title of such witness, and if they specialize in a particular field, designate their area of specialization;
- c. the qualifications of such witness, including a list of all publications written by such witness;
- d. the subject matter on which such witness is expected to testify;
- e. the specific factual information, assumptions, investigations, tests, inspections, studies, examinations, photographs, plans, documents, and conditions upon which said expert opinion(s) are based; and
- f. the substance of the expert opinions of such witness, including a summary of the grounds for such expert opinion( s) and supporting references and documents relied upon in forming such opinions.

**RESPONSE:**

Respondents object to this interrogatory as premature. Expert witnesses will be identified in a time and manner directed by any order of the Court and/or at a reasonable time in advance of any trial scheduled in this matter.

33. Identify all documents responsive to the Borough's Requests for Production of Documents which are being withheld by you or which you are not producing and state the reason for withholding or not producing these documents.

**RESPONSE:**

Respondents object to this interrogatory as improper under the Pennsylvania Rules of Civil Procedure. Respondents will identify any responsive documents withheld on the basis of an asserted privilege; Respondent cannot and will not identify documents that may be responsive to an objectionable request but cannot be readily identified because of the objectionable nature of the request.

Dated: February 10, 2020

Respectfully submitted,

JOSH SHAPIRO  
Attorney General

BY:   
STEPHEN R. KOVATIS (Pa. No. 209495)  
Senior Deputy Attorney General  
Attorney-in-Charge

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skovatis@attorneygeneral.gov

KAREN M. ROMANO  
Chief Deputy Attorney General  
Civil Litigation Section

**CERTIFICATE OF SERVICE**

I hereby certify that on this day the foregoing Responses and Objections to Petitioner's Interrogatories are being served upon the persons and in the manner indicated below:

Service via Email and U.S. Mail

Kristin S. Camp, Esq.  
Michael S. Gill, Esq.  
Ellen B. Koopman, Esq.  
BUCKLEY, BRION, MCGUIRE, & MORRIS LLP  
118 West Market Street  
West Chester, PA 19382  
kcamp@buckleyllp.com  
gillm@buckleyllp.com  
ekoopman@buckleyllp.com

*Counsel for Petitioner Borough of West Chester*

Dated: February 10, 2020



---

Stephen R. Kovatis

Borough 3  
M 10 10 20

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

THE BOROUGH OF WEST CHESTER, :  
 :  
 : Original Jurisdiction  
 Petitioner, :  
 v. : No. 260 MD 2018  
 :  
 PENNSYLVANIA STATE SYSTEM :  
 OF HIGHER EDUCATION and :  
 :  
 WEST CHESTER UNIVERSITY OF :  
 PENNSYLVANIA OF THE STATE :  
 SYSTEM OF HIGHER :  
 EDUCATION, :  
 Respondents. :  
 :

**RESPONDENTS' RESPONSES AND OBJECTIONS TO  
PETITIONER'S REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Respondents Pennsylvania State System of Higher Education ("State System") and West Chester University of Pennsylvania of the State System of Higher Education ("University" or, collectively with the State System, "Respondents"), by counsel, hereby responds to Plaintiff's Requests for Production pursuant to Pennsylvania Rule of Civil Procedure 4009.12.<sup>1</sup>

<sup>1</sup> Respondents object to Plaintiff's Instructions and Definitions to the extent they differ from or alter the Pennsylvania Rules of Civil Procedure.

1. Please identify and produce all statements, as defined by Pennsylvania Rule of Civil Procedure No. 4003.4, concerning this lawsuit, action or its subject matter which have been made by Respondent State System or Respondent University or either of their respective agents, or any witnesses, including, without limitation, any written statements, transcription of recorded interviews, and summaries of oral statements.

**RESPONSE:**

Respondents state that they have no responsive documents.

2. Please produce all documents which you identified in your responses to The Borough of West Chester's First Set of Interrogatories to Pennsylvania State System of Higher Education and West Chester University of Pennsylvania of the State System of Higher Education.

**RESPONSE:**

Respondents will produce documents identified in those responses.

3. Please identify and produce any and all documents consulted in responding to these Requests for Production of Documents.

**RESPONSE:**

Respondents object to this request on the grounds that it is vague and ambiguous, in that it does not identify documents with reasonable particularity. *See* Pa. R. Civ. P. 4009.11(b). Respondents further object on the grounds that it exceeds the scope of permissible discovery under the Pennsylvania Rules of Civil Procedure, in that it calls for Respondents to produce documents that have been reviewed but determined to be not responsive to any document request. Respondents will produce documents responsive to particular document requests.

4. Please identify and produce any and all reports of experts which you intend to call at trial in this matter, including the names, addresses, and phone numbers of said experts.

**RESPONSE:**

Respondents object to this interrogatory as premature. Respondents will identify experts who will testify at trial and produce reports in accordance with Rule 4003.5 if and when such experts have been designated.

5. Please identify and produce copies of any exhibits you intend to introduce at the trial of this matter.

**RESPONSE:**

Respondents object to this interrogatory as premature. Trial exhibits will be identified at a time prior to trial set forth in any appropriate scheduling order.

Dated: February 10, 2020

Respectfully submitted,

JOSH SHAPIRO  
Attorney General

BY:   
STEPHEN R. KOVATIS (Pa. No. 209495)  
Senior Deputy Attorney General  
Attorney-in-Charge

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KAREN M. ROMANO  
Chief Deputy Attorney General  
Civil Litigation Section

**CERTIFICATE OF SERVICE**

I hereby certify that on this day the foregoing Responses and Objections to Petitioner's Requests for Production of Documents are being served upon the persons and in the manner indicated below:

Service via Email and U.S. Mail

Kristin S. Camp, Esq.  
Michael S. Gill, Esq.  
Ellen B. Koopman, Esq.  
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ekoopman@buckleyllp.com

*Counsel for Petitioner Borough of West Chester*

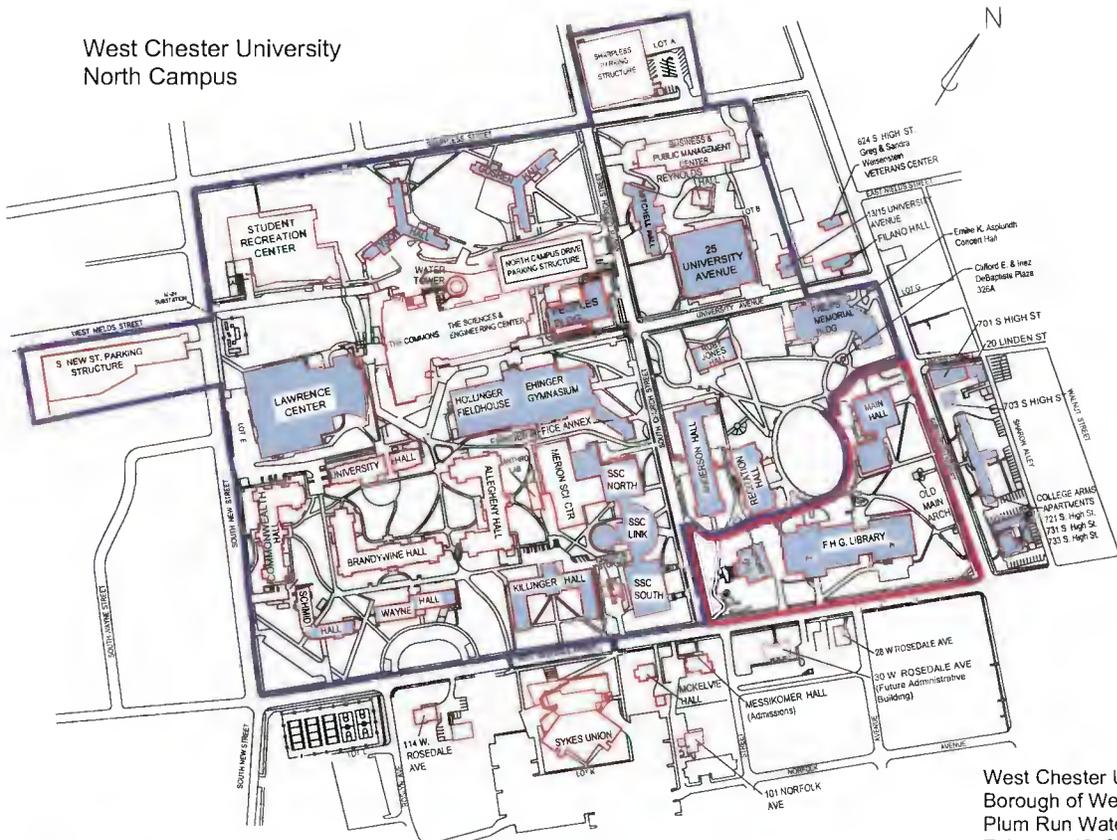
Dated: February 10, 2020



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Stephen R. Kovatis

West Chester University  
North Campus



- █ Borough of West Chester - WCU Plum Run Watershed - 2,355,568 sq ft - 54.1 acres
- █ Borough of West Chester - Not Located in Plum Run Watershed - 272,343 sq ft - 6.2 acres
- █ Buildings with No Structural Storm Water Management Systems

West Chester University  
Borough of West Chester  
Plum Run Watershed  
February 10, 2020

WCU000820

*Borough of West Chester*  
*4*  
*10-12-20*

Burroughs  
5  
10/2/20

**Storm Water Improvements by Campus Site  
West Chester University- Plum Run Outfall**

Existing Building w/ No Stormwater Management Installed		Removed Building or Site w/ No Storm Water Management Originally Installed		New Building or Site with Code Required Storm Water Management Installed				
	Foot print SF		Footprint SF		Footprint SF			
1	Lawrence Center	61,839	1	McCarthy Hall	16,297	1	Student Recreation Center	44,526
2	Schmidt Hall	8,080	2	Ramsey Hall	10,909	2	S. New St Parking Structure	38,815
3	Killinger Hall	20,396	3	Sanderson Hall	10,108	3	Commonwealth Hall	20,668
4	Schmucker Science Center	47,744	4	Boiler Plant	7,939	4	Brandywine Hall	23,081
5	Ehinger Gymnasium/ Annex	31,186	5	Spealman Building	4,197	5	University Hall	14,471
6	Hollinger Fieldhouse	28,893	6	D Parking Lot	69,533	6	Merion Science Center	23,834
7	Peoples Building	16,840	7	Campus Garage	3,793	7	The Commons/ Sciences and Engineering Center	69,724
8	Goshen Hall	10,909				8	North Campus Parking Structure	17,217
9	Tyson Hall	10,909				9	Allegheny Hall	24,551
10	Anderson Hall	24,088				10	Business and Public Management Center	20,276
11	Philips Memorial	19,812				11	Sharpless Parking Structure	18,343
12	25 University Ave	36,552						
13	Mitchell Hall	11,539						
14	Ruby Jones Hall	6,738						
15	Recitation Hall	13,539						
16	13/15 Univ Ave	2,240						
17	Wayne Hall	10,081						
<b>TOTALS</b>		<b>361,385</b>		<b>122,776</b>			<b>315,506</b>	

WCU000818

Borough 6  
 14 10.12.20

**West Chester University Campus**

*Pervious vs. Impervious Coverage*

*Storm Water Run-off Calculation*

	SF	Acres
Campus <b>Pervious Area</b> Feeding West Chester Borough Plum Run Outfall:	983,671	22.6
Campus <b>Impervious Area</b> Feeding West Chester Borough Plum Run Outfall:	1,371,897	31.5
Campus <b>TOTAL Area</b> Feeding West Chester Borough Plum Run Outfall:	2,355,568	54.1

**Run-off Volume Calculation**

2 year: 3.26 in / 24 hr

5 year: 4.10 in / 24 hr

**Volume = SF impervious x rainfall depth / 12**

1,371,897 sf x 3.26/12 =

1,371,897 sf x 4.10/12 =

372,699 CF

468,731 CF

WCU000819



IN THE COMMONWEALTH COURT OF PENNSYLVANIA

-----  
THE BOROUGH OF WEST CHESTER : NO. 260 MD 2018  
Petitioner, :  
vs. :  
: :  
PENNSYLVANIA STATE SYSTEM :  
OF HIGHER EDUCATION and WEST :  
CHESTER UNIVERSITY OF :  
PENNSYLVANIA OF THE STATE :  
SYSTEM OF HIGHER EDUCATION, :  
Respondents. :

-----  
Monday, December 21, 2020  
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Remote Zoom conference deposition of  
NATE CLINE, held at West Chester, Pennsylvania, at  
10:00 a.m., on the above date, before Jan Singer  
Brooks, Court Reporter and Notary Public.

-----  
Strehlow & Associates, Inc.  
54 Friends Lane  
Suite 116  
Newtown, Pennsylvania 18940  
215.504.4622  
-----

APPEARANCES

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Counsel for Petitioner Borough of West Chester

COMMONWEALTH OF PENNSYLVANIA  
Office of Attorney General  
BY: STEPHEN R. KOVATIS, ESQUIRE  
Senior Deputy Attorney General  
KAREN M. ROMANO, ESQUIRE  
Chief Deputy Attorney General  
Civil Litigation Section  
21 South 12th Street  
Third Floor  
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ph: 215.560.2940  
skovatis@attorneygeneral.gov  
Counsel for Defendant

ALSO PRESENT:

ELIZABETH RUDOLPH, ESQUIRE  
General Counsel for Pennoni and Nate Cline

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INDEX

WITNESS: Nate Cline

EXAMINATION

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EXHIBITS

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University-7	Bates No. 002538	60

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1                   - - -

2                   PROCEEDINGS

3                   - - -

4                   COURT REPORTER: It is stipulated  
5 and agreed by and between counsel for all  
6 parties present that pursuant to 231 Pa. Code  
7 Section 4002 this deposition is being  
8 conducted by video conference, that the court  
9 reporter, all counsel, and the witness are  
10 all in separate remote locations and  
11 participating via Zoom conference meeting  
12 under the control of Strehlow & Associates  
13 Court Reporting Service, that the officer  
14 administering the oath to the witness need  
15 not be in the place of the deposition and the  
16 witness shall be sworn in remotely by the  
17 court reporter after confirming the witness'  
18 identity, that this remote conference will  
19 not be recorded unless previously noticed as  
20 a videotaped deposition and that any  
21 recording without the express written consent  
22 of all parties shall be considered  
23 unauthorized, in violation of law, and shall  
24 not be used for any purpose in this

1 litigation or otherwise.

2           It is further stipulated that  
3 exhibits may be marked by the attorney  
4 presenting the exhibit to the witness, and  
5 that a copy of any exhibit presented to a  
6 witness shall be e-mailed to or otherwise in  
7 possession of all counsel prior to any  
8 questioning of a witness regarding the  
9 exhibit in question. All parties shall bear  
10 their own costs in the conduct of this  
11 deposition by remote conference.

12           - - -

13           (It is hereby stipulated and agreed  
14 by and among counsel for the respective  
15 parties that the reading, signing, filing,  
16 sealing and certification of the deposition  
17 are waived; and it is agreed that all  
18 objections, except as to form, are reserved  
19 until the time of trial.)

20           - - -

21           NATE CLINE, after having been first  
22 duly sworn, was examined and testified as  
23 follows:

24           - - -

1 MR. KOVATIS: Thank you.

2 - - -

3 EXAMINATION

4 - - -

5 BY MR. KOVATIS:

6 Q. Good morning again, Mr. Cline. My name  
7 is Steve Kovatis. I am an attorney with the  
8 Pennsylvania Office of Attorney General, and I  
9 represent the State System of Higher Education and  
10 West Chester University in the litigation that's  
11 been filed against them by the Borough of West  
12 Chester.

13 Are you familiar with that  
14 litigation?

15 A. Yes.

16 Q. Do you understand that you are here  
17 today for a deposition in that civil case?

18 A. Yes.

19 Q. Have you ever been deposed before?

20 A. Yes.

21 Q. About how many times?

22 A. Maybe half dozen to ten.

23 Q. This -- I don't know. Have you been  
24 deposed in the last year?

1 A. No.

2 Q. So this may be a somewhat new experience  
3 for you. The court reporter just read a series of  
4 stipulations and I want to just go over some  
5 ground rules with you, if that's okay.

6 A. Sure.

7 Q. So we are, as you can see, doing this by  
8 remote means during the Covid 19 pandemic. But  
9 as -- you just took an oath. Do you recall that  
10 oath?

11 A. Yes.

12 Q. And you understand that even under these  
13 circumstances, that is the same oath that you  
14 would have taken for any other deposition?

15 A. Yes.

16 Q. And that is also the same oath that you  
17 would take in a Court of Law. So you are  
18 obligated today to tell the truth just the same as  
19 if you were sitting on a witness stand in a Court  
20 even though we are all in separate locations and  
21 doing this by remote means.

22 Do you understand that?

23 A. Yes.

24 Q. We are doing a deposition. As you know,

1 there is a court reporter here. The court  
2 reporter is taking down a verbatim transcript of  
3 everything that we are saying. That just has a  
4 couple of implications I would like to go over  
5 with you.

6 The first that you are doing a  
7 great job with so far is that all of your answers  
8 have to be verbal. You can't shake your head, you  
9 can't nod, you can't say ah-huh, uh-uh. It  
10 doesn't come up clearly on a transcript.

11 Do you understand that?

12 A. Yes.

13 Q. So if one of us, if either your attorney  
14 or myself happens to correct you during the course  
15 of the deposition, please don't take it  
16 personally. Plenty of witnesses do it and it's  
17 only so that we can get a clear transcript at the  
18 end of the day. Fair?

19 A. Okay.

20 Q. You -- are you represented by counsel  
21 here today?

22 A. Yes.

23 Q. And who is your counsel?

24 A. Elizabeth Rudolph.

1 Q. And what is her title?

2 A. Assistant Counsel for Pennoni.

3 Q. And we will get into this. But Pennoni  
4 is your employer?

5 A. Correct.

6 Q. One of the other things about doing this  
7 deposition, especially doing this by remote means  
8 and we have a court reporter taking this down, it  
9 is important that we don't talk over each other.  
10 So if you will allow me to finish any question  
11 that I have I will allow you to finish any answer  
12 that you have.

13 Is that fair?

14 A. Yes.

15 Q. If I happen to interrupt you  
16 accidentally at any point, please say so and I  
17 will stop and allow you to finish whatever answer  
18 you were giving. Okay?

19 A. Okay.

20 Q. And if you for any reason can't  
21 understand a question that I give today, please  
22 say so. Is that okay?

23 A. Okay.

24 Q. And that includes whether you don't

1 understand the substance of the question, if it's  
2 a confusing question to you, or if because of our  
3 technological means there is -- you know, I cut  
4 out or for some reason you can't hear the  
5 question. In any event that you don't understand  
6 the question, please say so. Okay?

7 A. Okay.

8 Q. If you answer a question I'm going to  
9 assume that you heard and understood the question.

10 Is that fair?

11 A. Yes.

12 Q. I ask this question of everyone so it's  
13 certainly not -- please don't take offense and  
14 it's nothing personal. Are you under the  
15 influence of any drugs or medication today that  
16 would affect your ability to answer my questions  
17 or tell the truth?

18 A. No.

19 Q. You mentioned that you understood that  
20 the -- that you are here testifying in a civil  
21 case between the Borough of West Chester and West  
22 Chester University. Because of the difficulty  
23 there of -- in terms of names I will try to refer  
24 to the Borough of West Chester as Borough and

1 the -- and West Chester University as the  
2 University or the School.

3 Do you understand that?

4 A. Yes.

5 Q. So if at any point one of us slips into  
6 saying West Chester to refer to one of the  
7 entities here, again, please don't take offense if  
8 we correct it just to make sure that the record is  
9 clear so we know if we are talking about West  
10 Chester University or the Borough of West Chester.

11 Okay?

12 A. Understood.

13 Q. This is a yes or no question. I don't  
14 want to know the substance of it. But did you  
15 meet with counsel to prepare for your deposition  
16 today?

17 A. Yes.

18 Q. Did you speak with anyone else to  
19 prepare for your deposition today?

20 A. No.

21 Q. Did you review any documents to prepare  
22 for your deposition today?

23 A. Yes.

24 Q. What documents do you recall reviewing?

1           A.    There were four documents that you had  
2 forward via e-mail last week.

3           Q.    Anything beyond those?

4           A.    No.

5           Q.    Who is your current employer, Mr. Cline?

6           A.    Pennoni, P-E-N-N-O-N-I.

7           Q.    What is Pennoni, what kind of --

8           A.    Pennoni is a consulting engineering  
9 firm.

10          Q.    What does that mean, a consulting  
11 engineering firm?

12          A.    It's a wide ranging firm that provides  
13 technical assistance to municipalities, private  
14 companies, the State of Pennsylvania, others for  
15 construction anywhere from electrical, mechanical,  
16 construction services, civil engineering,  
17 transportation engineering, and on and on, but a  
18 lot of different technical engineering fields.

19          Q.    What is your title with Pennoni?

20          A.    I'm an Associate Vice President and  
21 Office Director for the West Chester office.

22          Q.    I'm sorry. It was Associate Vice  
23 President and what else?

24          A.    Office Director for our West Chester

1 office.

2 Q. How long have you been with Pennoni?

3 A. Twenty years.

4 Q. Well, I won't assume. I will just ask.

5 Have you always had the title of Associate Vice

6 President and Office Director?

7 A. No.

8 Q. When did you get that title?

9 A. Probably several years ago.

10 Q. Do you know about how many?

11 A. Each one was different. I think I  
12 started doing the office work -- Officer Director  
13 maybe four or five years ago and then Associate  
14 Vice President maybe three or four years ago.

15 Q. Currently to whom do you report?

16 A. Mark Celoni, C-E-L-O-N-I.

17 Q. And what is Mark's title?

18 A. Mark is I believe a Regional Vice  
19 President.

20 Q. And do you have any people that report  
21 directly to you?

22 A. Yes.

23 Q. Who are they?

24 A. It's probably 25 different individuals.

1 Q. Generally what are their titles?

2 A. They are engineers, field inspectors,  
3 draftsmen and similar.

4 Q. How would you describe your job duties  
5 at Pennoni?

6 A. I obviously am the Office Director for  
7 our West Chester office. From the West Chester  
8 office we have two technologies. One is municipal  
9 engineering; our second is site design  
10 engineering. So my job supervises both of these  
11 specialties for Pennoni for this office. We cover  
12 kind of the Chester County/Delaware County  
13 regions.

14 And then in my daily work I work as  
15 a municipal engineer for multiple municipalities  
16 and manage those of my staff but also work with  
17 multiple municipalities.

18 Q. What municipalities do you cover?

19 A. Personally?

20 Q. Correct.

21 A. West Chester Borough; Parker Township,  
22 Delaware County; East Brandywine Township, Chester  
23 County; and East Goshen Township, Chester County.

24 Q. For the Borough of West Chester what

1 kind of work does Pennoni do for the Borough?

2 A. We are the appointed Borough engineer.  
3 The work consists of assisting on capital projects  
4 as well as land development reviews, construction  
5 inspections, and any other task the Borough has,  
6 you know, directs towards us.

7 Q. Is that an exclusive role or are there  
8 other consulting firms that do that same kind of  
9 work for the Borough?

10 A. There are others.

11 Q. Do you know the names of those others?

12 A. I believe Traffic Planning and Design  
13 handles transportation and traffic, Gilmore  
14 handles MS4 and some stream protection aspects. I  
15 believe there is a municipal authority engineer.  
16 I'm not sure who that is. Those are all the ones  
17 I can think of off the top of my head.

18 Q. What is a municipal authority engineer?

19 A. The sewer, sanitary sewer.

20 Q. You mentioned Gilmore as the MS4  
21 consultant and that they do stream protection  
22 aspects. Do you know any more about what Gilmore  
23 does?

24 A. I don't. I don't interact with them on

1 a regular basis so I don't know that I -- I don't  
2 know what else they do.

3 Q. How long has Pennoni been an appointed  
4 Borough engineer?

5 A. I believe we were appointed late in  
6 2017.

7 Q. And is that -- is there a set term?

8 A. No, it's typically an annual or  
9 bi-annual reappointment.

10 Q. Do you know when the last reappointment  
11 was?

12 A. It would have either been January of  
13 this year or the prior year.

14 Q. Do you know if there is another  
15 reappointment in January of 2021?

16 A. I do not.

17 Q. Do you know when the next reappointment  
18 would be?

19 A. Typically it's the first Monday or  
20 Tuesday in January.

21 Q. Are you familiar with the Borough's  
22 Stream Protection Ordinance?

23 A. Somewhat, yes.

24 Q. Have you reviewed the Complaint in this

1 case?

2 A. Not in detail, no.

3 Q. In some general sense you have?

4 A. I think I saw some documents very early  
5 on but I did not review it in advance of this  
6 deposition this morning.

7 Q. Okay. Do you understand the dispute in  
8 this case?

9 A. Generally, yes.

10 Q. What is it you understand it to be?

11 A. That the State or the University is  
12 opposing the Borough's enforcement of a fee for  
13 stream protection.

14 Q. What is your understanding of what the  
15 Stream Protection Ordinance does?

16 A. The ordinance provides for funds for the  
17 Borough to manage its storm sewer network, improve  
18 quality, environmental quality streams, water  
19 quality, and by providing those funds the  
20 mechanism is to maintain, operate, improve those  
21 systems.

22 Q. I believe you just mentioned a fund  
23 where this money goes; is that right?

24 A. I believe it's some sort of -- again,

1 it's a fee the property owners provide that goes  
2 towards these storm water costs. I don't know the  
3 mechanisms of how that works at the Borough.

4 Q. So just to close that loop, is it fair  
5 to say that Pennoni is not involved in developing  
6 the Stream Protection Ordinance?

7 A. No, we did not develop it and we don't,  
8 you know, implement the day-to-day fee aspects.

9 Q. Meaning you don't implement collecting  
10 the fee, right?

11 A. Correct.

12 Q. But your job is to spend the money; is  
13 that fair?

14 A. Yeah, that's not unfair.

15 Q. So you're -- Pennoni is only involved in  
16 projects that are funded by the Stream Protection  
17 Fee; is that right? Let me rephrase.

18 Pennoni may be involved in other  
19 projects. But in terms of its involved in the  
20 Stream Protection Ordinary and the Stream  
21 Protection Fee, Pennoni's only involved is  
22 projects that may be funded by that fund, right?

23 A. Correct.

24 Q. When to your knowledge did -- and we

1 will just call it the Fund; is that fair?

2 A. Sure.

3 Q. And when I say Fund you understand I'm  
4 talking about the funds that are raised from the  
5 Stream Protection Fee?

6 A. Yes.

7 Q. Okay. So in this Fund, when was the  
8 first time that Pennoni or you became aware of the  
9 Fund?

10 A. I mean I am local so I'm aware of the  
11 Fund's existence. I'm aware of the process the  
12 Borough went through to implement it just in the  
13 engineering community itself. So I mean I have  
14 been aware of it since before we were appointed  
15 Borough engineer.

16 Q. So at what point was Pennoni paid from  
17 the Fund for the first time?

18 A. Likely late 2017, going into 2018 as we  
19 started working on projects as directed by the  
20 Borough.

21 Q. Has Pennoni ever done projects for the  
22 Borough that are not paid from the Fund?

23 A. I believe so. I don't know which  
24 projects were specifically paid by which funds,

1 but we have done other projects for the Borough.

2 Q. What other funding sources are there for  
3 Pennoni projects?

4 A. Funded by. Yeah, I would assume it's  
5 Borough Capital Funds. I don't know the funding  
6 mechanisms of how the Borough pays us but I will  
7 say we get paid frequently by developers, escrows  
8 or financial securities as well.

9 Q. Does Pennoni do work for the Borough  
10 that's paid out of the general fund of the  
11 Borough?

12 A. I believe so, yes.

13 Q. Is that still true today?

14 A. Yes.

15 Q. Do you know how it's determined whether  
16 Pennoni, a Pennoni project is paid for by the  
17 general fund or by the Stream Protection Fund or  
18 by some other way?

19 A. No.

20 Q. When you do a particular project for the  
21 Borough, are you aware of how it's being funded?

22 A. No. I mean, again, I don't make that  
23 decision on which project is funded and how. So I  
24 don't necessarily know that.

1 Q. Right. I understand that you don't make  
2 the decision. But my question is if you're doing  
3 a particular project, just take any particular  
4 project that Pennoni may be doing, do you know if  
5 that project is being paid for by the Stream  
6 Protection Fund or some other fund?

7 A. I don't know that for fact on each  
8 project, no.

9 Q. Do you know how the Borough selects  
10 projects to be paid for by the Stream Protection  
11 Fund?

12 A. No.

13 Q. Do you know the kind of projects that  
14 are paid for by the Stream Protection Fund?

15 A. Yes.

16 Q. How would you describe those?

17 A. Stream restoration, rain gardens,  
18 pervious paving and similar, tree planting.

19 Q. I'm sorry. Now I can't read my writing.  
20 For the first thing that you said, do you remember  
21 what that was?

22 A. I believe I said stream restoration.

23 Q. Stream restoration, yes.

24 So to your knowledge, the Stream

1 Protection Fund will fund projects including  
2 stream restoration, rain gardens, pervious pavers  
3 and tree planting; is that right?

4 A. Yes, or other similar items.

5 Q. Do you right now recall any other  
6 similar items?

7 A. There could be -- I believe they have  
8 done some -- there was a culvert replacement. I  
9 would have to go back and review maybe the list of  
10 other projects.

11 Q. Have you seen that list at any point?

12 A. That list I saw that you had sent over  
13 last week.

14 Q. Do you remember what list that was?

15 A. I mean I could -- can I pull it up here?

16 Q. Yes. If you could just point me to  
17 which one you are referencing that could make it  
18 easier.

19 A. Sure. I think there was one that was  
20 titled Stream Protection Fee Capital Projects and  
21 there was another called Projects Chart.

22 Q. Okay. So let's pull up each of those.  
23 So the first that you referenced is a Stream  
24 Protection Fee Capital Project, and if you look at

1 the bottom middle of the page that you are looking  
2 at there's a number down there. Do you see that?

3 A. Okay. A number? There's lots of  
4 numbers.

5 Q. At the very bottom in the middle of the  
6 page.

7 A. Yes, I see that.

8 Q. Is that number 003177?

9 A. Yes.

10 Q. Just to let you know, we sometimes call  
11 that a Bates number. That's applied by the  
12 attorneys in the case just to keep track of the  
13 documents and I just want to make sure we are both  
14 looking at the same document.

15 A. I have that, and I have learned  
16 something today.

17 MR. KOVATIS: So let's mark this  
18 as -- well, actually let's go off the record  
19 for one second.

20 (There was a discussion held off  
21 the record.)

22 (Exhibit No. University-6, Bates  
23 No. 003177, was marked for identification.)

24

1 BY MR. KOVATIS:

2 Q. Mr. Cline, you are looking on the screen  
3 in front of you.

4 A. Yes.

5 MR. KOVATIS: Off the record.

6 (There was a discussion held off  
7 the record.)

8 MR. KOVATIS: Back on the record,  
9 Jan.

10 BY MR. KOVATIS:

11 Q. Mr. Cline, you are currently looking at  
12 a document, Bates No. 003177. We are going to  
13 mark that University-6.

14 Can you tell me what this document  
15 is?

16 A. It appears to be a list of capital  
17 projects and other tasks completed by engineers  
18 and contractors over the past two, three years.

19 Q. Do you know who created this chart?

20 A. I do not.

21 Q. Do you know if it was Pennoni?

22 A. It was not me. No, it was -- no, I'm  
23 sorry, it was not Pennoni.

24 Q. It was not Pennoni. Do you know if it

1 was the Borough?

2 A. I do not.

3 Q. Do you know if it is an accurate  
4 description of the projects?

5 A. Could you be more specific?

6 Q. Do you know if -- well, do you have any  
7 knowledge as to why this document was created?

8 A. It appears to be a summary of projects  
9 that were related to the Fund, the Street  
10 Protection Fee.

11 Q. When you say appears to be, do you know  
12 that it is?

13 A. I don't know if it's all inclusive. I  
14 didn't prepare it. I don't know if there were  
15 other projects that have been excluded for any  
16 reason, so I just. . .

17 Q. That was my question. Thanks.

18 If you take a minute and look  
19 through this, my question will be are you aware of  
20 any projects that are not listed on here?

21 A. Nothing is coming to mind, no.

22 Q. Now, there are two parts to this  
23 document, the upper part and the lower part. Do  
24 you know the difference between these two?

1           A.    It appears the top part are costs that  
2 were paid to contractors, whereas the second part,  
3 the below part were costs paid to engineering  
4 firms.

5           Q.    There's one firm listed in the second  
6 part, E.B. Walsh. Do you see that?

7           A.    Yes.

8           Q.    Do you know who they are?

9           A.    Yes.

10          Q.    Who are they?

11          A.    They are a Chester County-based  
12 consulting engineering firm.

13          Q.    And the others are Pennoni and Gilmore?

14          A.    Correct.

15          Q.    Okay. So let's go through this list.  
16 Are you familiar -- the very first line, it says  
17 2020 Plum Run Restoration.

18                    Do you see that?

19          A.    Yes.

20          Q.    Are you familiar with that project?

21          A.    Yes.

22          Q.    What is it?

23          A.    Plum Run is a retaining wall  
24 construction in addition to soil nailing three

1 different walls along Plum Run, the southwest area  
2 of the Borough. That project is actually under  
3 construction currently and what we call  
4 essentially the first phase, which is the physical  
5 construction of these retaining walls and soil  
6 nails to stabilize the stream bank adjacent to  
7 several structures.

8 Q. Is that project being paid for by the  
9 Street Protection Fund?

10 A. Steve, again, I don't know exactly how  
11 they do that. I assume so. I just -- on each one  
12 of these, Steve, it's going to be the same answer.  
13 I don't know who decides who pays what.

14 Q. That was going to be my next question.

15 A. Okay.

16 Q. So for any of these projects you're not  
17 going to be able to know specifically if it's paid  
18 for by --

19 A. Correct. I would only be assuming,  
20 Steve.

21 Q. I don't want you -- I certainly don't  
22 want you to assume or guess today.

23 A. Right. So I do not know that for all  
24 these.

1 Q. That said, and maybe I should -- I  
2 probably should have said that at the beginning.  
3 I don't want you to assume or guess. But to the  
4 extent you have some information to answer a  
5 question but not others I would expect that you  
6 would give the information that you have. Is that  
7 fair?

8 A. Yes.

9 Q. So you said it's in the southwest area  
10 of the Borough. Is that project taking place on  
11 the University's campus?

12 A. No.

13 Q. Are you aware of whether Plum Run runs  
14 through the University, through their campus?

15 A. Yes.

16 Q. Is it true that it runs essentially  
17 underground through the campus?

18 A. Yes.

19 Q. To your knowledge, is it above ground at  
20 any point on campus?

21 A. I don't believe so.

22 Q. So this project is taking place  
23 downstream from campus. Is that fair?

24 A. Yes.

1 Q. And you said that it's essentially  
2 reconstructing the retaining wall of Plum Run?

3 A. Not reconstructing. It would be  
4 constructing. They don't exist currently so  
5 it's -- I believe earlier I said stream  
6 restoration. This is a stream restoration with  
7 the physical retaining walls and soil nails.

8 Q. Soil nails?

9 A. Soil nails, essentially your drills are  
10 drilling rebar into the embankment and then  
11 grounding it to create an artificial reinforced  
12 surface.

13 Q. Why do you do that?

14 A. To protect the embankment from  
15 collapsing and the stream from continuing to  
16 deteriorate the embankments.

17 Q. What would happen if the stream bank  
18 collapsed?

19 A. In regards to this project there are  
20 several structures adjacent that are in danger of  
21 falling into the stream, collapsing or being  
22 damaged.

23 Q. Is that also the purpose of the  
24 retaining wall?

1           A.    Yes.  For sake of discussion, the  
2 retaining wall, soil nails are all one and the  
3 same structure.

4           Q.    And the purpose of that structure is to  
5 hold the sides of the stream in place, right?

6           A.    There's fair, yes.

7           Q.    And that prevents the stream from  
8 collapsing which can damage the nearby structures,  
9 right?

10          A.    Correct, in addition to, you know,  
11 blocking the stream or causing flooding or other  
12 issues.

13          Q.    If it were to cause flooding, where  
14 would the flooding be?

15          A.    Typically it would be upstream.

16          Q.    Has that ever happened?

17          A.    Specifically in this location?

18          Q.    Correct.

19          A.    Not to my knowledge.

20          Q.    Are there any other projects being done  
21 on this section of Plum Run or would all of them  
22 fall into this category of Plum Run Restoration?

23          A.    I'm not sure I understand.

24          Q.    So this Plum Run Restoration Project

1 that has to do with the retaining wall and soil  
2 nails you said, right?

3 A. Correct.

4 Q. Are there any other projects underway on  
5 Plum Run?

6 A. We have started some initial design for  
7 what we are calling Phase 2. Phase 2 is  
8 anticipated to be what we term green  
9 infrastructure which would be more of a -- you  
10 know, plantings, softer than a structural wall  
11 type scenario. So Phase 1 was the structural  
12 wall. Phase 2 may be in the future some  
13 additional green, green infrastructure  
14 improvements for the stream.

15 Q. What exactly does that mean?

16 A. You know, riparian buffer plantings,  
17 vegetation, rock mirrors, you know, making sure  
18 the stream is in the proper channels, perfecting  
19 utilities, things of that nature. So, you know,  
20 less significant structural type projects. And,  
21 again, we call them green in that they are more  
22 natural type of improvements to maintain the  
23 stream channel, reduce erosion, health of the  
24 stream, et cetera.

1 Q. And what are the benefits of that green  
2 infrastructure plan?

3 A. Improves water quality, reduces impacts  
4 of flooding, reduces saltation into the stream  
5 channel, possibly pollutants into the stream  
6 channel, things of that nature.

7 Q. And that you said is Phase 2 of Plum  
8 Run?

9 A. Correct.

10 Q. Is there a plan for a Phase 3?

11 A. No.

12 Q. Is there anything else involved in  
13 Phase 2?

14 A. No, Phase 2 right now is just some very  
15 preliminary design; and that's it right now.

16 Q. The second item on here, the Barnard  
17 Street Culvert. Do you see that?

18 A. Yes.

19 Q. What is a culvert?

20 A. A culvert is a large conveyance system,  
21 larger than a typical storm sewer pipe. They are  
22 typically, you know, box or elliptical in shape to  
23 pass through a stream so they are typically large  
24 structures.

1 Q. Where is the Barnard Street culvert?

2 A. If I said Barnard Street, would that be?

3 Q. Can you be a little more specific? Is  
4 it throughout Barnard Street?

5 A. No, it would be a, you know, one block  
6 section of Barnard Street I believe just east of  
7 New Street.

8 Q. Is it on West Chester's campus, West  
9 Chester University's campus?

10 A. No.

11 Q. And what exactly, if you know, is this  
12 project? Is it replacing the culvert, fixing it?  
13 What does it involve?

14 A. I was not involved in the project  
15 personally. I'm only aware of it in my role just  
16 being involved with the Borough. My understanding  
17 was it was a replacement of an existing culvert.

18 Q. The next line item is green  
19 infrastructure projects. Do you know what those  
20 entail?

21 A. So if you bear with me, I might have to  
22 explain a little bit on this one.

23 Q. Sure.

24 A. That project was signed by CH2M who I

1 believe has since been acquired by Jacobs and  
2 entailed maybe five or six different smaller  
3 projects throughout the Borough. We did assist on  
4 the tail end with the last one or two to be  
5 implemented. I believe on the bottom half here it  
6 kind of has that next awning but we were only  
7 involved partially on that.

8 Q. And what sort of things would be  
9 involved in the green infrastructure project?

10 A. Again, I don't know each specific  
11 project that was included. I know a couple of the  
12 projects included several rain gardens, several  
13 curb bump-outs, I believe underground infiltration  
14 areas and I believe that included a pervious paved  
15 alley in the southwest quadrant of the Borough.  
16 But there's I think a few other projects that that  
17 included as well.

18 Q. Let's just talk about those particular  
19 kind of projects generally just so it's clear what  
20 we are talking about. So when you say a rain  
21 garden, what is a rain garden?

22 A. A rain garden would be a surface,  
23 detention/retention facility for storm water that  
24 uses vegetation and soil in an effort to recharge

1 the aquifer, get water back in the ground, filter  
2 the water, clean the water that's running off  
3 maybe Borough streets, private properties, et  
4 cetera.

5 Q. So it's kind of a hole in the ground  
6 containing some vegetation that you see  
7 occasionally, right?

8 A. That would be one way to describe it,  
9 yes.

10 Q. Certainly not an engineering way to  
11 describe it.

12 A. Fair.

13 Q. What is a curb bump-out?

14 A. A curb bump-out or curb extension would  
15 be an area where you kind of retake some of the  
16 paving from the street and you create a  
17 depression, almost a smaller rain garden with some  
18 vegetation. Again, it's an effort to reduce  
19 impervious coverage while enhancing, you know, the  
20 benefits of natural vegetation. As I spoke to  
21 earlier, in some ways almost a mini rain garden is  
22 not an unfair way to describe it.

23 Q. So what is the purpose -- let's go back  
24 to the rain garden. What is the purpose of a rain

1 garden?

2 A. Well, I think I said that a minute ago.  
3 But, again, environmental quality of the water,  
4 reducing the amount of water into the stream  
5 channel. You know, it gets into a lot of  
6 technical storm water and things but flood  
7 control, rain control, infiltration, all those  
8 benefits in addition to environmental benefits for  
9 the quality of water that's getting into the  
10 stream network.

11 Q. And for curb bump-outs, what is the  
12 advantage of those?

13 A. I would say similar, in addition to the,  
14 you know, reduction of impervious cover.

15 Q. Reduction of impervious cover, what do  
16 you mean?

17 A. Well, any time you're eliminating  
18 impervious cover and replacing it with vegetation  
19 is improving runoff and reducing runoff.

20 Q. Runoff meaning what?

21 A. Storm water runoff.

22 Q. Meaning storm water that goes -- flows  
23 down impervious surfaces and then goes directly  
24 into a waterway?

1 A. Or a storm sewer network.

2 Q. Which then leads into a waterway  
3 presumably?

4 A. Correct.

5 Q. So the benefit of those type of projects  
6 is that -- one of the benefits is that it reduces  
7 the amount of water that eventually ends up in the  
8 existing waterways, right?

9 A. That could be considered one, yes.

10 Q. And it improves the quality of that  
11 water as well. Is that fair?

12 A. Yes.

13 Q. It reduces pollutants that are in the  
14 water. Is that true?

15 A. Yes.

16 Q. Underground infiltration, what is that?

17 A. Underground infiltration would be  
18 similar to a rain garden but it would not be a  
19 surface feature. It might be under a parking lot  
20 or under a sidewalk or under the road network  
21 where capacity is added for storm water runoff  
22 to -- you know, during a storm event to hold that  
23 water back to prevent it from going into the  
24 stream quickly to help with erosion, rain control

1 as well as trying to infiltrate that storm water,  
2 many similar features as the rain garden, just  
3 less visible and more of an undergrounds scenario.

4 Q. So essentially it would have the same  
5 benefits as the curb bump-out from the rain  
6 gardens that we have been talking about, right?

7 A. Yes, similar, yes.

8 Q. Any additional ones, any additional  
9 benefits that we haven't talked about?

10 A. The one thing for -- all of these have,  
11 all of these improvements have similar benefits.  
12 Each one has, you know, maybe more or less of each  
13 specifically. The one I did not mention would be  
14 also the, you know, stream protection aspects  
15 where, again, by reducing the impact of storm  
16 events on the stream corridors and erosion that's  
17 caused by that. So that's another benefit that  
18 all these features will have.

19 Q. Explain more what you mean by that?

20 A. By holding, by holding back the storm  
21 water runoff in these facilities to reduce the  
22 violent impact of severe, significant storms have  
23 on the streams, the channels, the erosion that  
24 occurs.

1 Q. So after a big rainstorm you don't get  
2 that sudden surge of water that flows into the  
3 waterways that can then create problems?

4 A. Correct. These facilities would help  
5 reduce those impacts.

6 Q. You had also mentioned pervious pavers.  
7 Describe what a pervious paver is.

8 A. A pervious paver would be similar to --  
9 pervious pavers, pervious asphalt are similar  
10 technologies but they allow storm water to  
11 infiltrate into a surface as opposed to running  
12 off that surface. So, again, an opportunity to  
13 get water back into the aquifer, to the ground,  
14 filter that water, clean that water and prevent  
15 that water from running directly into the storm  
16 sewer network and stream. So, again, similar  
17 benefits as to some of the previously discussed  
18 improvements.

19 Q. Is there any other type of green  
20 infrastructure project or anything else that would  
21 fall under this category of green infrastructure  
22 project that we haven't talked about?

23 A. Tree plantings would be another one.

24 Q. And I assume that is exactly what it

1 sounds like?

2 A. Yep.

3 Q. You plant trees, right?

4 A. Yep, planting trees or any vegetation,  
5 all, you know, beneficial.

6 Q. Why is that?

7 A. It prevents -- you know, reduces the  
8 impacts of runoff into that storm sewer network,  
9 it infiltrates water, cleanses water, you know,  
10 again, similar benefits as some that we previously  
11 discussed.

12 Q. Anything else that would fall into this  
13 category of green infrastructure projects?

14 A. The list is certainly longer but those  
15 are the ones that are kind of at the front of my  
16 mind right now based on some of the projects that  
17 we have been working on with the Borough.

18 Q. Let's go back to the --

19 MR. GILL: If I can just interject.  
20 I just lost for some reason everybody's video  
21 feed. I can still hear you but I can't see  
22 you. You know, go ahead. Wait. Now you're  
23 back. I don't know what just happened. It's  
24 coming in and out but please go ahead. I can

1 still hear you.

2 MR. KOVATIS: Okay.

3 MR. GILL: I just wanted to note  
4 that that had happened.

5 MR. KOVATIS: That's a good  
6 reminder.

7 BY MR. KOVATIS:

8 Q. Mr. Cline, if you at any point need a  
9 break, whether just to get up and stretch your  
10 legs or go to the bathroom, please don't hesitate  
11 to let me know. All I would ask is that you would  
12 finish the question, whatever question was pending  
13 in front of you, and we can take a couple minute  
14 break. I don't think we are quite at that point  
15 yet unless you want to take a break right now.

16 A. I'm fine for now.

17 Q. But please don't hesitate to speak up as  
18 we go forward.

19 Okay. So going back to the chart  
20 that was at 3177.

21 A. Yes.

22 Q. One of the items in the middle at the  
23 top it says John O. Green Park.

24 Do you see that?

1 A. Yes.

2 Q. Do you know what that is?

3 A. Yes.

4 Q. What is that item?

5 A. That was a capital project that had  
6 multiple facets. We actually just completed,  
7 substantially completed construction in the past  
8 couple weeks that included pervious paving,  
9 included tree plantings, vegetation improvements,  
10 storm sewer modifications and improvements and  
11 similar, in addition to parking, crosswalks,  
12 fencing, other maybe non storm water related  
13 aspects.

14 Q. Okay. So this line item here about  
15 \$919,000 includes both storm water related and non  
16 storm water related improvements?

17 A. I believe it might, yes.

18 Q. And this may seem obvious but just to be  
19 clear. This all took place at the John O. Green  
20 Park in the Borough?

21 A. At the park or in the streets adjacent.

22 If I may, Steve, one clarification.

23 Q. Go ahead.

24 A. On that same form you mentioned the

1 value for John O. Green Park is different on the  
2 top and the bottom of that sheet, right. So  
3 that's -- okay. Never mind. I was confusing  
4 something for a second there.

5 Q. Well, you're right. There is a Pennoni  
6 line item below that has John O. Green Park listed  
7 for 107,000.

8 A. Right.

9 Q. Where the top item is 919,000.

10 A. Right.

11 Q. Do you know what accounts for that  
12 difference?

13 A. The to, that's right, the top appears to  
14 be the contractor amounts paid whereas the bottom  
15 was the engineering. I had zoomed in and I forgot  
16 that breakdown.

17 Q. Okay. Well, the next item here is  
18 Barnard Street Storm Sewer. We had talked about  
19 the Barnard Street Culvert. What is the Barnard  
20 Street Sewer Project?

21 A. You're jumping below that. That one was  
22 nearby, the Culvert Project. In a storm event in  
23 2018 the road essentially failed due to flooding  
24 of Goose Creek and based on that flooding we

1 worked with the Borough, the contractor more, and  
2 we provided essentially an underground  
3 infiltration/storage facility in that area to hold  
4 back water and rebuild that road adjacent to Goose  
5 Creek.

6 Q. So this project involved -- is this  
7 another project like John O. Green that involved  
8 some storm water aspects and some just normal  
9 structure aspects?

10 A. No, this was -- substantially relates to  
11 either damage from a storm event or the  
12 improvements that were determined to make things  
13 better going forward.

14 Q. Okay. So if we are talking about just a  
15 repairing of a road, would that fall under -- if  
16 that was caused by a storm event you would --  
17 would you characterize that as a storm water  
18 related expense?

19 A. In this case, yes, because of the -- it  
20 wasn't just restore it in kind. It was improved  
21 and modified to make it better for storm water  
22 management. The, if I may, you know, the repaving  
23 of a standard road would be a different  
24 discussion.

1 Q. What about the repaving of a -- or  
2 repair of a standard road as the result of a storm  
3 event?

4 A. I think that -- again, I don't pick who  
5 -- how they pay out of what fund. In this case I  
6 think it was reasonable storm water costs due to  
7 storm events and, again, the improvements we made  
8 storm water related for drainage, storage, et  
9 cetera, on this road. It seems very, very  
10 reasonable to me.

11 Q. The next item after this says Spring  
12 Grove Lane Storm Water.

13 Do you see that?

14 A. Yes.

15 Q. Do you know what that project is?

16 A. Yes. That was a project in the vicinity  
17 of Plum Run where, again, we had flooding of  
18 properties off of Spring Grove Lane. We installed  
19 a storm sewer network and swale, inlets and  
20 similar to get that water into the storm sewer  
21 network into Plum Run and stop the flooding of  
22 these properties and standing water on Borough  
23 streets.

24 Q. And that was all done along Spring Grove

1 Lane?

2 A. Correct.

3 Q. And so that was -- was that just a one  
4 time event?

5 A. What do you mean event?

6 Q. A one time fix basically?

7 A. Yes, it was a project, a specific  
8 project.

9 Q. Okay. The next line item it says Hoops  
10 Park Improvements. It says it's 2020 on hold. Do  
11 you know if that project is still on hold?

12 A. I do not know if that project was  
13 completed.

14 Q. Do you know what it is, the project?

15 A. My understanding, it is going to be a  
16 pervious trail installation at the park.

17 Q. So looking down then at the next section  
18 of this chart, the first line item it says Ongoing  
19 Stream Protection Program, Engineer Pennoni.

20 That's not a particular project, is  
21 it?

22 A. No, I believe that's over the course of  
23 maybe a couple years some miscellaneous meetings  
24 or assistance or discussions with various Borough

1 staff on kind of miscellaneous issues with that.

2 Q. The next two items, they are listed for  
3 Gilmore but I don't know. You can tell me if you  
4 know or not what it means. TMDL Strategy and TMDL  
5 Strategy Update, do you know what those mean?

6 A. I know what they mean. I'm not involved  
7 in either project so I don't know of specifics.  
8 TMDL, I mean I know what it stands for if that  
9 helps but I'm not familiar with Gilmore's work on  
10 either project.

11 Q. Well, what -- go ahead. What does it  
12 stand for?

13 A. Total maximum daily load.

14 Q. What does that mean?

15 A. It's standards set by the DEP for  
16 pollutants in the streams.

17 Q. So let's go down again. I know this is  
18 listed for Gilmore. But it has a few lines down  
19 Pine Alley Storm Sewer Rehab. Are you familiar  
20 with that project?

21 A. I am not.

22 Q. The same thing. Street Map Scans, are  
23 you familiar with that project?

24 A. I am not.

1 Q. And the IDD&E Program, are you familiar  
2 with that?

3 A. No.

4 Q. So the next section looks like a number  
5 of Pennoni projects. One is listed there as,  
6 forgive me, Fugett? How do you pronounce that?

7 A. That's Fugett.

8 Q. Fugett.

9 A. Yes.

10 Q. Fugett Park Green Infrastructure. We  
11 talked about green infrastructure projects  
12 already. Is there anything involved there that we  
13 haven't talked about?

14 A. No, I would say that's somewhat in line  
15 with what we already talked about.

16 Q. And the next item is Plum Run  
17 Restoration which we have already talked about,  
18 right?

19 A. Correct.

20 Q. That's the same, the same item, right?

21 A. Yes.

22 Q. The next one is Green View Alley. What  
23 is Green View Alley?

24 A. Green View Alley is adjacent to Fugett

1 Park, again, very similar implementation as we  
2 discussed previously. We are at storm sewer  
3 improvements, we are looking at pervious paving,  
4 we are looking at tree plantings, we are looking  
5 at subsurface infiltration. So various storm  
6 water green infrastructure concepts to improve the  
7 alley adjacent to the park.

8 Q. So when you hear say storm sewer  
9 improvements, what exactly are you talking about?

10 A. Well, sorry. To be more clear, you  
11 know, again, the existing storm sewer network may  
12 include inlets or pipes that are undersized,  
13 damaged, collapsing or broken, so oftentimes these  
14 projects also include repairs or modifications to  
15 the storm sewer network.

16 Q. We talked earlier about Plum Run and, in  
17 particular, the area of Plum Run that runs through  
18 and under the University's campus.

19 Do you remember that?

20 A. Yes, correct.

21 Q. Is it correct that Plum Run runs under  
22 the University's campus in essentially a storm  
23 sewer pipe?

24 A. Storm sewer pipe or a culvert as

1 previously discussed.

2 Q. A culver, is that --

3 A. Yes, I think it's more of a storm sewer  
4 culvert in parts.

5 Q. Are you aware of any project that is  
6 planned to do work on that culvert?

7 A. Yes. As part of West Chester  
8 University's Project that we typically refer to as  
9 the Commons, they were reconstructing portions of  
10 that storm sewer culvert is my understanding.

11 Q. Who was?

12 A. The Borough. I mean, I'm sorry, the  
13 University, the University.

14 Q. So as part of the University Commons  
15 Project the University was making repairs or  
16 improvements or both to that culvert?

17 A. I would term it both. The project was a  
18 little before my time, Steve, so I'm not  
19 intimately familiar with how it came to be.

20 Q. What do you mean the project was before  
21 your time?

22 A. The project was approved before we were  
23 Borough engineers so I wasn't involved in the  
24 review or the Peer Review of the design, why this

1 culvert was being either reconstructed or  
2 repaired. I don't know if it was in regards to  
3 employees being reallocated or other utility  
4 conflicts. So, there are a list of variables  
5 there.

6 Q. That's fair. My question, though, is --  
7 or I guess my next question is more the who than  
8 the why. So is the Borough spending money to do  
9 these repairs and improvements to the Plum Run  
10 Culvert under the University's campus?

11 A. No, I don't -- you said the Borough.

12 Q. The Borough.

13 A. No, I don't believe the Borough is  
14 involved in that Commons Project.

15 Q. Meaning in the funding of the project?

16 A. To my understanding, they are not.

17 Q. And the University is to your knowledge?

18 A. Yes.

19 Q. Are you aware of any Borough project to  
20 make any repairs or improvements to that Plum Run  
21 Culvert?

22 A. Currently, no.

23 Q. Are you aware of an outfall near the New  
24 Street parking structure from that culvert?

1 A. Yes.

2 Q. Do you know who manages that outfall?

3 A. I do not.

4 Q. Are you aware of any Borough projects in  
5 terms of managing that outfall?

6 A. Specific to that outfall?

7 Q. Specific to that outfall.

8 A. No.

9 Q. If there were such projects, would  
10 Pennoni be aware?

11 A. We might not.

12 Q. Why not?

13 A. As discussed previously, Gilmore does  
14 some work, CH2M and L. Jacobs did some work.  
15 Frankly, Public Works does stuff on a day-to-day  
16 basis regarding maintenance that we are not  
17 involved with. So our role is somewhat limited.

18 Q. A couple items down on that chart it  
19 looks like listed for 2021, the Franklin Street  
20 Bridge?

21 Do you see that?

22 A. Yes.

23 Q. What is that project?

24 A. That would be the anticipated

1 replacement of a bridge on Franklin Street. This  
2 is nearby both Fugett and Green View Alley. It  
3 entailed replacing the entire bridge, some stream  
4 restoration, utility modifications, some drainage  
5 improvements and similar for Goose Creek.

6 Q. Is that the bridge over Goose Creek?

7 A. I believe so, yes.

8 Q. So is that a storage water project or  
9 just a normal infrastructure project?

10 A. No, it's -- the bridge is carrying the  
11 road over the stream, so yeah, I think it's fair  
12 to say it's a storm sewer project.

13 Q. Does Pennoni generally make any kind of  
14 distinction like that between what might be a  
15 storm water project and what might be a more  
16 standard infrastructure project?

17 A. No.

18 Q. Does that distinction matter to Pennoni  
19 at all?

20 A. Not that I can think of, no.

21 Q. Is that a planned project or is that  
22 something that is underway right now?

23 A. I would say it's a planned project. We  
24 are in some preliminary design and awaiting some

1 clarity here in the new year on what direction the  
2 Borough wants to go.

3 Q. The next is the West Marshall Street.  
4 What is that project?

5 A. That's a project we completed some  
6 survey for looking at installing -- it's a street  
7 that does not have curbs, so the drainage and the  
8 runoff is kind of all over and it's impacting the  
9 park adjacent so we are looking at maybe  
10 installing some curbing, some inlets, possibly  
11 doing some curb bump-outs or rain gardens to  
12 improve that block.

13 Q. Where exactly on West Marshall Street is  
14 that?

15 A. I believe that's West Marshall, I think  
16 the unit block west of New. I think that's  
17 adjacent to Hoopes Park.

18 Q. Which park?

19 A. No, Barkley Park. Right, Barkley Park.

20 Q. We have talked about Barnard Street, we  
21 have talked about Spring Grove Lane, we have  
22 talked about Hoopes Park. I don't believe we  
23 talked about Hillside Drive South Storm Sewer.  
24 What is that project?

1           A.     That project, and if I may, the project  
2 immediately below at Marshall Drive/Goshen Road  
3 are both in the same general area. I believe they  
4 are in the northeast quadrant of the Borough.  
5 Consistent flooding issues, overwhelmed storm  
6 sewers. We did some survey work to assist Public  
7 Works in making some modifications to make sure  
8 that the runoff of storm water was getting into  
9 the storm sewer network.

10          Q.     So let's take those two as an example.  
11 When -- you say one of the things that it's  
12 addressing is flooding; is that right?

13          A.     Yes.

14          Q.     So when there is an event like that, a  
15 flooding event, who in the Borough is impacted by  
16 that event?

17          A.     You know, property owners in the  
18 vicinity.

19          Q.     The property owners right around where  
20 the flooding takes place are the ones that are  
21 impacted by those flooding events, right?

22          A.     Well, yeah, with the exception that in  
23 some instances, especially in the Borough, a lot  
24 of times the streets are closed. So, you know,

1 when those streets get closed, you know, all users  
2 in the Borough, whether it's vendors, workers,  
3 residents, anybody trying to get through the  
4 Borough, you know, all these flooding events is  
5 also -- you know, becomes difficult.

6 Q. So both the local property owners and  
7 anybody wanting to use those streets around where  
8 the flooding takes place, they are the ones  
9 affected, right?

10 A. Correct.

11 Q. But that project is paid for, to the  
12 best of your knowledge, by general -- by Borough  
13 funds, whether the Storm Water Fund or the General  
14 Fund or something else, right?

15 A. To the best of my knowledge, yes.

16 Q. To the best of your knowledge, are those  
17 local property owners or users of the road  
18 specifically charged for that project?

19 A. I don't believe so.

20 Q. The last item on here, UNT - Chester  
21 Creek Gravel Bar Removal. What is that?

22 A. That was permitting to remove sediment  
23 buildup in a portion of a stream that was causing,  
24 you know, flooding, mosquito problems, vegetation

1 problems. So, that was to get a permit from DEP  
2 for the Borough to go in and remove that saltation  
3 and debris. It's called a gravel bar technically  
4 by DEP but that's the terminology.

5 Q. Where exactly is that?

6 A. I believe that is on a stretch of Goose  
7 Creek south of Barnard I want to say.

8 Q. At the beginning when I was asking about  
9 projects and you had referenced two documents, I  
10 believe the other one you referenced was called  
11 projects chart?

12 A. Yes.

13 Q. If you could look at that.

14 A. I have that here.

15 Q. Okay. It's actually on the --

16 MR. GILL: Steve, can I interject?

17 Do you mind if we take a five-minute break?

18 MR. KOVATIS: That's totally fine.

19 MR. GILL: Thank you very much.

20 (A brief recess was held at this  
21 time.)

22 MR. KOVATIS: We will go back on  
23 the record.

24

1 BY MR. KOVATIS:

2 Q. If you would, Mr. Cline, we were just  
3 about to take a look at the document that was  
4 titled Project Charts. And actually the way it's  
5 oriented, to me it's on the left side there's a  
6 number, 002528.

7 Do you see that?

8 A. Yes.

9 Q. Are you familiar with this chart?

10 A. Yes, I am.

11 Q. What is it?

12 A. I believe this to be some information I  
13 provided to the Borough regarding Pennoni costs on  
14 apparent storm related projects.

15 Q. Is this a full list of storm water  
16 related projects?

17 A. It appears to be inclusive of the work  
18 we were involved with. But if I might, again, I  
19 provided I believe this information to the Borough  
20 but it looks like it was then edited or added to  
21 from beyond what I had transmitted to the Borough.

22 Q. Okay. I am particularly looking at the  
23 second column where it just has a name.

24 A. Yes.

1 Q. Is that where you are referring to  
2 apparent edits or was it more to the other  
3 columns?

4 A. The other columns I believe.

5 Q. So is that list of projects or places  
6 under where it says name, is that a full list of  
7 storm water related projects that Pennoni is  
8 involved with?

9 A. It appears to be, yes.

10 Q. Looking at it, it looks like we have  
11 already discussed these projects in the previous  
12 chart. Let's just make sure that I am not missing  
13 anything. Plum Run Stream Restoration we  
14 discussed previously, right?

15 A. Correct.

16 Q. And the Fugett Park Green Infrastructure  
17 we discussed previously?

18 A. Correct.

19 Q. And Green View Alley we discussed?

20 A. Correct.

21 Q. John O. Green Park we discussed?

22 A. Yes.

23 Q. Storm Sewer Rehabilitation we discussed?

24 A. I don't know that we discussed that one.

1 Q. Okay. What is that one?

2 A. That is a project we had started with  
3 the Borough where we were looking at  
4 rehabilitating or replacing storm sewers, inlets  
5 and manholes throughout the Borough.

6 Q. Where exactly?

7 A. It could be anywhere in the Borough.

8 MR. KOVATIS: Go off for one  
9 second.

10 (There was a discussion held off  
11 the record.)

12 MR. KOVATIS: Back on the record.

13 One thing I realize I forgot to do  
14 is actually mark this. So we are going to  
15 mark this document, Bates No. 002528, as  
16 University-7.

17 (Exhibit No. University-7, Bates  
18 No. 002538, was marked for identification.)

19 BY MR. KOVATIS:

20 Q. Mr. Cline, we were talking about the  
21 line item there Storm Sewer Rehabilitation. What  
22 exactly -- you said it's throughout the entire  
23 Borough. But what exactly would it entail?

24 A. It would entail, again, replacing, could

1 be repairing, could be lining storm sewer  
2 manholes, inlets or pipes anywhere in the Borough.  
3 So it was brainstorming those locations in most  
4 need of repair or replacement with Borough staff.  
5 I don't believe we have gotten that one forward,  
6 you know, moved that one forward yet. But, you  
7 know, again, I anticipate that will be something  
8 we will be doing in the future.

9 Q. Are you aware that there are streets  
10 that run through the University's campus?

11 A. Yes.

12 Q. Would this project entail work on those  
13 streets?

14 A. It could, yes.

15 Q. It could but maybe not?

16 A. Correct.

17 Q. And I assume the same. There are  
18 streets that border on all four sides of the  
19 University's -- and by the University's campus I  
20 should be more clear. I mean the portion of north  
21 campus that is situated in the Borough.

22 A. Understood.

23 Q. It would include those streets as well,  
24 right?

1 A. Yes.

2 Q. So any -- this would include any streets  
3 anywhere within the confines of the Borough of  
4 West Chester?

5 A. That are owned and maintained by the  
6 Borough. So it would not include possibly PennDOT  
7 owned roads or private roads.

8 Q. But those roads that run through West  
9 Chester's campus, West Chester University's campus  
10 are Borough roads so it would include those,  
11 right?

12 A. I don't know. I believe mostly Borough  
13 roads. I don't know if there are any PennDOT  
14 roads there, Steve, to be honest.

15 Q. Next item, Franklin Street Bridge I  
16 believe we discussed, right?

17 A. Correct.

18 Q. West Marshall Street I believe we  
19 discussed?

20 A. Correct.

21 Q. And Barnard Street Storm Sewer we  
22 discussed, right?

23 A. Correct.

24 Q. And Spring Grove Lane Storm Water we

1 discussed?

2 A. Yes.

3 Q. And Hoopes Park Improvements we  
4 discussed?

5 A. Correct.

6 Q. And Hillside Drive South Storm Sewer we  
7 discussed?

8 A. Correct.

9 Q. And Marshall and UNT - Chester --  
10 actually Hillside and Marshall we discussed  
11 together, right?

12 A. Correct.

13 Q. And then the last one was the UNT -  
14 Chester Creek Gravel Bar Removal. We also  
15 discussed that, right?

16 A. Correct.

17 Q. So based on the previous document and  
18 this document, is it fair to say that there may be  
19 projects, storm water related projects that the  
20 Borough is working on with engineers other than  
21 Pennoni that may not be reflected in this  
22 document?

23 A. At the current -- yes, that's fair.

24 Q. And that you don't have any knowledge

1 about those, right?

2 A. Correct. There's probably more to  
3 clarify.

4 Q. Sure.

5 A. Again, I don't think there's any other  
6 capital projects that we are not aware of.  
7 Gilmore, for example, is doing MS4 permitting and  
8 PRP planning, things that are more administrative  
9 in nature.

10 Q. Okay. So any capital project Pennoni  
11 would be involved in?

12 A. Typically, yes.

13 Q. So is it fair to say then that we have  
14 talked about all of the storm water related  
15 capital projects that are underway or planned for  
16 the Borough?

17 A. I believe that's fair.

18 Well, let me throw out one other  
19 exception, Steve. Public Works may be doing  
20 things that I'm not aware of or involved with on a  
21 smaller scale that I might not be involved with,  
22 tree planting, inlet replacements, things of that  
23 nature that they don't need our expertise with.

24 Q. You don't need an engineer just to plant

1 a tree, right?

2 A. Well, sometimes you do.

3 Q. Sometimes you do but not always. Is  
4 that what you mean?

5 A. Yes. There are other smaller projects  
6 maybe day-to-day, regular maintenance or things  
7 that just don't warrant the inclusion of the  
8 Borough engineer's involvement.

9 Q. Might street sweeping fall into that  
10 category?

11 A. That's a good example.

12 Q. But on the whole, those are smaller  
13 projects that are done directly by the Borough; is  
14 that right?

15 A. I would have thought done by Borough  
16 Public Works staff or maybe separate contractors  
17 or volunteers.

18 Q. But any project that would involve at  
19 least a substantial amount of funding would  
20 involve Pennoni itself?

21 A. Within this time frame that we are  
22 talking about here --

23 MR. GILL: I'm going to object to  
24 the form of the question. I'm not clear and,

1           therefore, I don't know whether the witness  
2           is on what you mean by substantial amount of  
3           funding.

4 BY MR. KOVATIS:

5           Q.     So Mr. Cline, then how would you --  
6           those other projects that you said might be done  
7           directly by the Borough, how would you  
8           characterize the funding that might be necessary  
9           for those projects?

10          A.     I don't know if that's a funding --  
11          again, we would typically get involved in the  
12          capital projects that are required to go out to  
13          bid or require permitting. But the day-to-day  
14          maintenance smaller projects are something that  
15          others might be involved with.

16          Q.     Okay. Day-to-day smaller projects then?

17          A.     Ongoing maintenance, things of that  
18          nature. It could be a project -- it could be a  
19          \$25,000 project but, you know, it does not need  
20          our assistance. So I mean \$25,000 times -- you  
21          know, across the Borough multiple times adds up as  
22          well.

23          Q.     But if it's not a day-to-day smaller  
24          type project it would involve Pennoni, right?

1 A. Typically, yes.

2 Q. When you say typically, can you think of  
3 any exceptions to that?

4 A. I can just state that, again, Gilmore is  
5 involved on the MS4 permitting aspect of things.  
6 You know, we are not involved with the sanitary  
7 sewers or the municipal authority in any way. And  
8 I don't pretend to be, you know, an elected  
9 official or the Borough manager and be all knowing  
10 of what's going on in the Borough.

11 Q. In the document we have marked as  
12 University-7 at 2528 that we were just talking  
13 about, we had talked about the Storm Sewer  
14 Rehabilitation Project line item that went on any  
15 Borough owned roads throughout the Borough. Other  
16 than that, are you aware of any storm water  
17 related projects that would take place on roads in  
18 or around the University's campus?

19 A. When you say in or around, could you be  
20 more specific?

21 Q. Sure. The roads that immediately border  
22 the north campus in the Borough and the roads, the  
23 Borough owned roads that run through campus.

24 A. Okay.

1 Q. So other than that line item that we  
2 were looking at, the Storm Sewer Rehabilitation,  
3 are you aware of any other projects on those  
4 roads?

5 A. On those roads immediately bordering --

6 Q. Storm water related projects.

7 A. Yes, immediately bordering or running  
8 through the campus, no.

9 Q. And that includes ongoing and planned,  
10 right?

11 A. To my knowledge, yes.

12 Q. Are you aware of any storm water related  
13 problems on the University's campus?

14 A. I cannot say I'm intimately familiar  
15 with the Borough's campus -- I mean with the  
16 University's campus. Sorry. Excuse me.

17 Q. But are you aware of any storm water  
18 related issues on the campus?

19 MR. GILL: Again, I'm going to  
20 object to the form of the question, storm  
21 water related issues.

22 BY MR. KOVATIS:

23 Q. Mr. Cline, do you understand storm water  
24 related issues?

1           A.    It could mean a whole host of different  
2 aspects.  For example, you know, Plum Run you and  
3 the restoration work project is dealing with the  
4 storm water runoff from the University campus  
5 that's impacting the street.

6           Q.    I am asking about problems on the  
7 University's campus.

8           A.    And as I believe I said earlier, I'm not  
9 familiar with any specific problems on the  
10 University's campus.

11          Q.    So the University is not -- you had  
12 mentioned, for example, on the Plum Run Stream  
13 Bank Restoration it benefits the property owners  
14 who live along that -- that own property along  
15 that street bank, right?

16          A.    Yes, there are benefits.

17          Q.    And the University is not one of those  
18 property owners; is that correct?

19          A.    Correct.

20          Q.    But it is downstream, this project is  
21 taking place downstream from where Plum Run runs  
22 through and under the University's campus, right?

23          A.    Yes.

24          Q.    Are you aware of any project being done

1 by the Borough anywhere on the University's  
2 campus?

3 A. I am not, no.

4 Q. And that's both currently and going back  
5 to 2017?

6 A. Yeah, until 2017, 2018 I'm not aware of  
7 any specifically.

8 MR. KOVATIS: I don't have any  
9 further questions.

10 - - -

11 EXAMINATION

12 - - -

13 BY MR. GILL:

14 Q. Mr. Cline, I just have a few questions  
15 for you.

16 In Pennoni's role as the Borough  
17 engineer you make reference to the fact that you  
18 are not a member of Borough Council and you are  
19 not part of the Borough staff; is that correct?

20 A. That's correct.

21 Q. So from a policy making perspective,  
22 Pennoni doesn't play any role in making policy for  
23 the Borough, correct?

24 A. Correct.

1 Q. Okay. In the selection of projects that  
2 the Borough might pursue using funds from the  
3 Stream Protection Fee Program, Pennoni plays an  
4 advisory role in that process, correct?

5 A. Advisory would be the exact term I would  
6 use, yes.

7 Q. Okay. Now, is it true that there could  
8 be projects or expenses that the Borough funds  
9 with the Stream Protection Fee revenue which  
10 Pennoni wouldn't be aware?

11 A. Yes.

12 MR. KOVATIS: Objection.

13 BY MR. GILL:

14 Q. So it's fair to say, just to recap, it's  
15 fair to say that Pennoni does not have an  
16 exhaustive knowledge of all of the manners in  
17 which the Stream Protection Fee revenue is  
18 expended by the Borough; is that fair?

19 A. Yes.

20 Q. Referring back to what Mr. Kovatis  
21 marked as University-7, the document bearing Bates  
22 Stamp No. 002528, can you restate who prepared  
23 that?

24 A. I believe I prepared the initial

1 summary. It appears that maybe somebody at the  
2 Borough added on to that or expanded upon that.

3 Q. Okay. In preparing the initial summary,  
4 is it fair to say that you only identified  
5 projects in which Pennoni was involved as the  
6 consulting engineer?

7 A. Correct.

8 Q. And do you know who at the Borough might  
9 have added on to that?

10 A. I don't.

11 Q. So, again, there could be projects that  
12 are being included with the Stream Protection Fee  
13 revenue which would not show up on University-7?

14 A. Correct, yes.

15 Q. Nate, does the Borough have multiple  
16 storm water collection and conveyance systems or  
17 is it one integrated system?

18 A. I mean I would term it as one integrated  
19 system. It's a network of storm sewers and  
20 inlets, stream channels throughout the Borough.  
21 You know, I have always treated those as  
22 integrated systems throughout.

23 Q. Okay. West Chester University is  
24 performing some work on the culvert which carries

1 Plum Run through a portion of north campus,  
2 correct?

3 A. Correct.

4 Q. And they are doing that in conjunction  
5 with the Commons Project, correct?

6 A. Correct.

7 Q. Was that, to your knowledge, if you  
8 know, was that work which the University  
9 volunteered to do prior to the Commons Project or  
10 was -- or are they doing it as a result of the  
11 Commons Project?

12 A. I honestly -- I don't know for a fact.

13 Q. Okay. Pennoni, you said part of  
14 Pennoni's work is to review land development  
15 submissions that property owners submit to the  
16 Borough, correct?

17 A. Correct.

18 Q. Is it unusual for the developer of real  
19 estate to perform work on Borough owned  
20 infrastructure in conjunction with a land  
21 development project?

22 A. Yes, that's not typical.

23 Q. Okay. Sticking with the Commons  
24 Project, are you familiar with the Commons

1 Project?

2 A. Yes.

3 Q. Did you do the reducer?

4 A. We did not.

5 Q. Okay.

6 A. We took over after the project was  
7 approved and we have been involved in construction  
8 observations.

9 Q. Do you know whether storm water from the  
10 Commons Project, and by that I mean post  
11 construction storm water, is intended by the  
12 University to be discharged into Plum Run -- into  
13 that culvert as it runs through north campus, if  
14 you know?

15 A. It has to go somewhere and that's where  
16 it would go.

17 Q. You mentioned earlier that maintenance  
18 of the Borough's street network from a storm water  
19 perspective, storm water management perspective  
20 serves to enhance or preserve the Borough's storm  
21 water collection and conveyance system. Am I  
22 characterizing or restating your testimony  
23 correctly?

24 A. Yeah, I think that's reasonable, yes.

1 Q. Can you elaborate on that?

2 A. Sure. I mean I think it's the  
3 day-to-day activities such as street sweeping,  
4 right, street sweeping is collecting saltation,  
5 debris, trash, chemicals off the road. Borough  
6 staff is out cleaning, you know, leaves and  
7 blockages from inlets to prevent flooding,  
8 cleaning out inlets that are full of debris so the  
9 water can flow through the storm sewer network.  
10 You know, those are some day-to-day activities  
11 that Borough Public Works staff do that, you know,  
12 maintain the storm sewer network.

13 Q. And again, can you elaborate on your  
14 earlier statement that maintenance of the storm  
15 sewer network provides a benefit for upstream  
16 property owners?

17 A. Sure. So, again, you know, by keeping  
18 that storm sewer network flowing, clear and free  
19 flowing prevents flooding upstream, prevents  
20 flooding of Borough streets, private properties,  
21 in addition to the benefits of, you know, the  
22 street sweeping which helps clean the saltation  
23 and debris and reduces pollutants in the water and  
24 storm sewer network. So there's multiple benefits

1 to that ongoing maintenance.

2 Q. If you know, if downstream components of  
3 the Borough's storm collection and conveyance  
4 system or downstream receiving water courses were  
5 to become clogged or unobtainable for the  
6 discharge of storm water, how would that affect  
7 upstream property owners?

8 A. Sure. Any upstream property owner where  
9 something is clogged, broken, not being  
10 maintained, the potential for flooding strongly  
11 exists. Again, without rain water from a storm  
12 event it doesn't have an opportunity to get into  
13 the storm sewer network. It overflows, overflows  
14 into private properties, causes damages, causes  
15 flooding, the street closures we see frequently in  
16 the Borough and all those problems. So that's why  
17 that maintenance needs to happen on a regular  
18 basis and that's why that system needs to be in  
19 good repair.

20 Q. Okay. And if an upstream property owner  
21 was to attempt to manage and maintain storm water  
22 on the site -- well, let me ask this.

23 Could an upstream property owner  
24 manage and maintain storm water from their

1 property entirely on their site?

2 A. Typically, no. It's almost impossible.  
3 In theory, you could for a very small site. But  
4 the larger the sites get it gets very, very  
5 challenging and difficult.

6 Q. Okay. Go ahead.

7 A. It gets expedientially harder with each  
8 storm event, right. You can design something for  
9 a 100 year storm until you have the 500 year storm  
10 and then -- because you use the downstream  
11 property.

12 Q. Okay. You said that Plum Run is in a  
13 state -- I'm sorry. Let me ask you. Is Plum Run  
14 in a -- is the channel of Plum Run in such a  
15 condition that the restoration work which the  
16 Borough is undertaking now necessary?

17 A. Yes.

18 Q. And the current condition, the pre  
19 project condition of Plum Run, was that caused by  
20 erosion?

21 A. Yes, street erosion.

22 Q. And is erosion a result of development  
23 of upstream properties?

24 A. Predictably, yes.

1 Q. Is it fair to say that the more  
2 developed an upstream property is in the absence  
3 of storm water management controls on site, the  
4 more developed an upstream property is the greater  
5 erosive effects you would expect to see  
6 downstream?

7 A. Yes.

8 Q. To confirm, I think you said this  
9 earlier, but to confirm, Pennoni was not part of  
10 the formulation of the Stream Protection Fee  
11 Ordinance, correct?

12 A. Correct.

13 Q. And I think this is implicit in your  
14 answer but let me just be clear. Pennoni is not  
15 involved in the calculation of the Stream  
16 Protection Fee as applied to individual  
17 properties, correct?

18 A. Correct.

19 Q. Or at all generally, correct?

20 A. Correct.

21 MR. GILL: That's all I have.

22 MR. KOVATIS: Nothing further for  
23 me.

24 COURT REPORTER: Did you want a

1 copy of the transcript?

2 MR. GILL: Yes.

3 And it struck me that we did the  
4 normal stipulations. But for good measure, I  
5 am assuming that as we did with the other  
6 witnesses, we are preserving all objections.

7 MR. KOVATIS: Correct, that's my  
8 understanding as well.

9 MR. GILL: Thank you.

10 (The deposition was concluded at  
11 11:54 a.m.)

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1 CERTIFICATION

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4  
5 I hereby certify that the  
6 testimony and the proceedings in the  
7 foregoing matter are contained fully and  
8 accurately in the stenographic notes taken  
9 by me, and that the copy is a true and  
10 correct transcript of the same.

11  
12 \_\_\_\_\_  
13 JAN SINGER BROOKS  
14 Professional Court Reporter

15 The foregoing certification does  
16 not apply to any reproduction of the same by  
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18 and/or supervision of the certifying  
19 shorthand reporter.

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21  
22  
23  
24

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YEAR	PROJECT	CONTRACTOR	COST
2020	Plum Run Restoration	Flyway Excavating	\$748,250.00
2018	Barnard Street Culvert	Total Site	\$341,840.70
2018	Green Infrastructure Projects	Total Site	\$726,384.13
2018	Fugett Park Green Infrastructure	Total Site	\$170,689.64
2020	John O Green Park	Berg Construction	\$919,197.50
2018	Barnard Street Storm Sewer	MOR	107967.55
2018	Barnard Street Storm Sewer	ACF Environmental	\$6,920.39
2019	Spring Grove Lane Stormwater	Ron Smith Inc	\$79,441.00
2020 onhold	Hoopes Park Improvements	Perk E Pave	\$24,200.00
	sub total		\$3,124,890.91

YEAR	PROJECT	ENGINEER	COST
on-going	Stream Protection Program	Pennoni	\$1,198.75
thru 2017	TMDL Strategy	Gilmore	\$58,972.98
thru 2018	TMDL Strategy Update	Gilmore	\$16,963.07
2015- 2019	MS4 Program Consulting	Gilmore	\$141,596.89
thru 2018	Pine Alley Storm Sewer Rehab	Gilmore	\$60,850.87
thru 2017	Street Map Scans	Gilmore	\$2,328.00
thru 2020	IDD&E Program	Gilmore	\$50,212.59
2019- 2020	MS4 Program Consulting	Gilmore	\$30,625.66
	Green Infrastructure Projects	Pennoni	\$726,384.13
2018	Fugett Park Green Infrastructure	Pennoni	\$13,457.50
2020	Plum Run Restoration	Pennoni	\$97,232.75
2020	Greenview Alley	Pennoni	\$20,244.77
2020	John O Green Park	Pennoni	\$107,398.95
on-going	Storm Sewer Rehabilitation	Pennoni	\$3,471.00
2021	Franklin Street Bridge	Pennoni	\$20,880.75
2019	W. Marshall Street	Pennoni	\$12,442.54
2018	Barnard Street Storm Sewer	Pennoni	\$10,137.25
2018	Barnard Street Culvert	EB Walsh	\$25,411.00
2019	Spring Grove Lane Stormwater	Pennoni	\$32,084.75
2020	Hoopes Park Improvements	Pennoni	\$7,338.75
2020	Hillside Dr South Storm Sewer	Pennoni	\$3,684.75
2020	Marshall Dr/Goshen Rd Streambank	Pennoni	\$5,147.75
2020	UNT - Chester Creek Gravel Bar Removal	Pennoni	\$3,141.00
	sub total		\$1,451,206.45
	<b>GRAND TOTAL</b>		<b>\$4,576,097.36</b>

Project #	Name	F amount	E.B. Walsh	CZM/HH	Contractor	Contractor Costs	Contractor	Contractor Costs	Timing	Public Works Costs	Description
WCHB000002	Storm Protection	\$1,198.75			N/A	N/A			ongoing		Misc. assistance with Borough staff
WCHB000005	Storm Stream Restoration	\$97,232.75			Flukey Excavating, Inc.	\$748,000.00			Spring/Summer 2020		Phase 1 construction, survey, environmental, soil testing, bid documents, etc.; initial Phase 2 coordination and planning
WCHB000006	Wetland Green Infrastructure	\$18,459.00			Total Site (Mike Tyson)	\$118,089.66			2018-Complete		Green infrastructure design and installation at Fugate Park
WCHB000007	Storm Stream	\$20,244.77			TBD				2020		Green infrastructure design, including survey
WCHB000008	Storm Stream Park	\$107,398.95			Berg Construction, LLC	\$919,197.50			Spring 2020		Survey, design, permitting, bid documents
WCHB000010	Storm Sewer Rehabilitation	\$3,471.00			N/A	N/A			ongoing		Misc. storm sewer rehab at various locations
WCHB000011	Storm Sewer Rehabilitation	\$20,880.75			TBD	TBD			2021		Initial survey, environmental permitting, requirement
WCHB000012	Storm Sewer Rehabilitation	\$12,442.54			MOR Outdoor				2019-Complete		Survey, initial planning for storm sewer rehabilitation project
WCHB000013	Barnard Street Storm Sewer	\$10,137.75			MOR Outdoor	\$107,967.55	ACT Environmental	\$6,920.39	2018-Complete		Design, inspection for emergency storm water capacity project
WCHB000014	Storm Sewer Line Stormwater	\$32,084.75			Ross Smith, Inc.	\$79,441.00	MOR Outdoor		2019-Complete		Survey, design, bid documents and construction administration and observations for storm sewer improvements
WCHB000017	Stormwater Park Improvements	\$2,318.75			Park E. Pines	\$36,100.00			2019-Complete		Survey, design, design assistance for parkway trail installation, Material Only
WCHB000019	Multi-Use South Storm Sewer	\$3,464.75			MOR Outdoor	N/A			2019-Complete		Survey for storm sewer improvements
WCHB000026	Marshall Drive/Goshen Road Streambank	\$5,417.75			N/A	N/A			TBD		Survey for stream maintenance/improvement
WCHB000027	Uff/Christen Creek Gravel Bar Removal	\$3,141.00			PWD	TBD			2020		Initial investigations, permitting and wetland research for gravel bar removal/streambank improvement project
	Barnard Street Culvert	N/A	\$25,411.00		Total Site (Mike Tyson)	\$343,640.70			2018-Complete		
	Green Infrastructure Projects	\$76,384.13	7777		Total Site (Mike Tyson)	\$726,384.13			2018-Complete		

Notes:  
Approximate Invoiced to Through Dec. 2019, some costs for various projects may not have been billed to client to date

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