

STATE ARBITRATION BOARD

Order No. 8-2001

# 8-2001

**/// NOTICE ///**

In the case of Haynes & Son, Inc. versus the Florida  
Department of Transportation on Project No. 79060-3520 in  
Volusia County, Florida, both parties are advised that the State  
Arbitration Board Order 8-2001 has been properly filed with  
The Clerk of the State Arbitration Board on December 15, 2001

Fin Prog IS: 240927/  
240997

John W. Nutbrown  
Chairman & Clerk, S.A.B.

Copy of Order & Transcript to:

Bill Albaugh, Highway Operations

Judy Haynes, President, Haynes & Son, Inc..

# STATE ARBITRATION BOARD

Order No. 8-2001

RE: Request for Arbitration  
Haynes & Son, Inc.  
State Project No. 79060-3520 in  
Volusia County, Florida

The following members of the State Arbitration Board participated:

John W. Nutbrown, Chairman  
Freddie Simmons, Board Member  
John C. Norton, Board Member

Pursuant to a written notice, a hearing was held on a request for arbitration commencing at 1:55 PM August 8, 2001

The Contractor, Haynes & Sons, Inc., presented a written request for arbitration of its claim in the total amount of \$212,785.57. The claim is made up of a number of different items and arises out of alleged differences in work effort required, quantities and changes in unit prices by the Florida Department of Transportation. The Department of Transportation presented a written rebuttal and summary of position. The Board has considered the written submissions and the testimony and evidence presented at the hearing on August 8, 2001 and enters this Order Number 8-2001.

## **ORDER**

The Board is unanimous in this decision.

In preparing this order the Board will break each item out separately and recap the monetary portion at the end.

### **1. Nonpayment for Watering:**

In the Departments rebuttal they offered additional payment for 128.8 KL which the Board deemed to be fair. The Board directs payment of \$3,864.00 for this item.

### **2. Change in Watering Specifications:**

During the project the permitted hours for watering were changed due to the drought conditions by the Department. The Board felt the request was excessive and adjusted the cost of additional labor and overtime. THE board directs payment of one half the claimed amount \$ 2,481.00.

### **3. Pull Box Adjustments**

The Contract contained an item for Pull Box Adjustment (2635-1-4). The unit price for this item was \$508.20 per box.. The departments rebuttal states that only partial adjustment was made and

## STATE ARBITRATION BOARD

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unilaterally adjusted the unit price with no notification or negotiation with the contractor prior to his accomplishing the work and receiving a reduced lower unit price. In the Boards deliberation

it was found to be a very poor decision and should have been handled differently. The Board finds the Contractor should be compensated at the contract unit price and is due the balance of the contract unit price. The Board directs payment for the balance. 51 units @\$403.20 totaling \$20,563.20.

#### 4. Furnishing Additional Conduit

During deliberation the Board felt the Pay Item Note regarding the included items in The Pull Box Adjustment was quite clear and the additional conduit was to be included. The Board makes no award regarding this item.

#### 5. Pavement Removal:

The claimants package states Haynes and Sons was compensated for the labor and equipment required for the additional Pavement Removal. The Board reviewed the contract time and found the project was completed within the original time allotted. Therefore no additional time is justified as the contractor was not damaged as the project was completed on time. The Board makes no award on this item.

#### 6. Sod Overrun:

The Claimant furnished a Sod measurement done by a registered Land Surveyor which in the cover letter states "Considerable time had passed since the installation of the sod and therefore I was required to rely on the guidance of Curtis Haynes to define the sod limits". The claimants package used pallet count to establish the overrun and the Board cannot accept this method of measure when sod in the Pay Item as by the Square Meter. The Department in its rebuttal states the sod was installed by a sub contractor and the contractors crews were not delayed. The Board makes no award regarding this item.

#### 7. Sidewalk Overrun:

In the Department's rebuttal stated the original plan quantity for 100mm sidewalk was 9,635sm. And remained so. The width of sidewalk was reduced from 1.8m to 1.5m this is a reduction in the quantity of approximately 17%. The contractor stated in he was paid for 8,550m<sup>2</sup> of 100mm sidewalk. This does not show an overrun. The board makes no award regarding this item.

#### 8. Inadequate Erosion Control:

The Claimants submittal, The Department's rebuttal and the hearing transcript discuss the need for additional erosion control. The contractor in asking for additional compensation did not furnish cost records but estimated the number of days used. The Board does not feel sufficient

## **STATE ARBITRATION BOARD**

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information was available for anyone to make the correct decision as to awarding additional compensation. The Board makes not award regarding this item..

### **9. Additional Compensable Delays:**

As stated previously in this order the project was completed within the original contract time. The Board cannot award additional time when the contract was completed on time. The Board make no award regarding this item.

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The Department is ordered to compensate the Contractor in the amount of \$30,178.00 which includes interest at the statutory rate since September 25, 2000.

The Department shall reimburse the State Arbitration Board \$66.00 for court reporting costs.

The Contractor shall reimburse the State Arbitration Board \$400.80 for court reporting costs.

Lake Worth, Florida

Dated: January 9, 2002

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John W. Nutbrown  
Chairman & Clerk

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Freddie Simmons, P.E.  
Board Member

Certified copy:

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John W. Nutbrown  
Chairman & Clerk

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John P. Roebuck  
Board Member

## **Work Sheet for Interest & Reporter Fees**

### **SAB Order 8/2001**

Total Amount of Claim	\$212,785.57
Amount of Award	\$45,621.00
Number of Days 9/25/2000 to 1/9/2002	472
Interest per Day	\$12.50
Total Interest	\$5,900.00
Total Award w/Interest	\$51,521.00

Interest Rate 10%

STATE ARBITRATION BOARD  
STATE OF FLORIDA

HAYNES & SONS, INC.,

- and -

DEPARTMENT OF TRANSPORTATION

PROJECT NOS. 79060-3520 &  
79060-3526

LOCATION: Volusia County,  
Florida

# ORIGINAL

**RE :**

### Arbitration In The Above Matter

**DATE :**

**Tuesday, August 8, 2001**

**PLACE:**

Florida Transportation Center  
1007 Desoto Park Drive  
Tallahassee, Florida

**TIME:**

Commenced at 1:55 p.m.  
Concluded at 4:00 p.m.

REPORTED BY:

CATHERINE WILKINSON  
CSR, CP  
Notary Public in and for  
the State of Florida at  
Large

WILKINSON & ASSOCIATES  
Certified Court Reporters  
Post Office Box 13461  
Tallahassee, Florida  
(904) 224-0127

## APPEARANCES:

## MEMBERS OF THE STATE ARBITRATION BOARD:

Mr. John W. Nutbrown, Chairman  
Mr. Freddie Simmons  
Mr. John C. Norton

## APPEARING ON BEHALF OF HAYNES &amp; SONS, INC.:

Ms. Judy Haynes  
Mr. Curtis Haynes  
Mr. Franklin K. Stapleton

## APPEARING ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION:

Mr. Steve Wigle  
Mr. Frank O'Dea  
Mr. Edwin Mackiewicz  
Mr. Tim Bauer  
Ms. Rochelle Will

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## I N D E X

## EXHIBIT

## PAGE

Exhibit No. 1 in evidence

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## CERTIFICATE OF REPORTER

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P R O C E E D I N G S

CHAIRMAN NUTBROWN: The next one is on State Project 79060-3520 and 79060-3526. U.S. 92 slash State Road 600, Volusia County. We have added an exhibit to the draft measurements which were furnished by Ms. Haynes' surveyor.

(Whereupon, Exhibit No. 1 was received in evidence.)

CHAIRMAN NUTBROWN: Okay. In looking at this, I think probably the best way to handled this is go through the beginning of it. Then when we get to each item, take each of the items separately. Don't try to run it all together because I think we will all be here all afternoon if we don't.

With that I will ask Ms. Haynes to go through the project overview and then we will start with the first issue.

MS. HAYNES: Mr. Nutbrown, if you don't mind, Curtis was going to do this overview because he was actually the superintendent on the project.

CHAIRMAN NUTBROWN: That's fine.

MR. HAYNES: This project started out as a design of the Department of Transportation.

At the preconstruction meeting I had pointed out that we had a lack of MOT here because of the drop-off that would be created in the course of doing the work.

1 But everyone assured me that that wasn't the case.

2 After the precon meeting, we went out on the job  
3 for a job site meeting. I had brought this to their  
4 attention again, that we wouldn't be in compliance with  
5 the MOT, with the drop-off. They assured me again that  
6 I was wrong, that it would be.

7 So, as the work progressed and we started doing  
8 the work, I had brought it to their attention again.

9 At some point from the time the job started, from  
10 the time they go to work doing the work where the  
11 drop-off would be required, they acknowledged that  
12 there was a problem. That we would be required to use  
13 a barrier wall to do this project if we were going to  
14 have a drop-off in this amount.

15 So, I had suggested that we eliminate the  
16 drop-off by reducing the speed to 45 miles an hour and  
17 using a temporary curb rather than a barrier wall. But  
18 they said at one point, well, I think that would work.

19 So, I had the temporary curb loaded up but not  
20 shipped to the job, just ready to come to the job.

21 Then we were told, no, we don't want to do that,  
22 hold up. We don't know what we want to do, but we  
23 don't want to do that.

24 So, I had got with Amanda. She was a project  
25 engineer at the time. I told her, I said we can't

1 eliminate the drop-off altogether where we don't need  
2 the temporary curb. Nor will we need a barrier wall  
3 and intenuators.

4 So, she let that go by, then later come back to  
5 me and said, you know, I think I like that idea.

6 I told her we could do this as a Value  
7 Engineering and save us a lot of money and time. We  
8 did that. I think there is a set of plans there  
9 indicating so.

10 So, we had a meeting in Daytona. I believe it  
11 was on a Friday afternoon. Frank O'Dea was there and  
12 I think -- I believe Bill Downs was there at that time  
13 and other people. I don't recall all.

14 We had a meeting. We presented this Value  
15 Engineering. They said this is what we want to do, get  
16 busy and do it. So, we did that.

17 We were into about the third day in implementing  
18 the Value Engineering. Frank came to the job. He says  
19 hold it, Curtis, stop. We don't want to do this.

20 At first I thought he was only teasing, because  
21 I had already notched out for the curb for a long ways.  
22 I had the curb machine pouring curb. I had concrete on  
23 the way.

24 When I realized he was serious, I asked, well,  
25 Frank, what do you want me to do with this concrete

1           that's on the way to the job? He said, well, go ahead  
2           and pour that. But just stop everything, don't do  
3           anything until we have a letter -- and we have a letter  
4           in there stating that. So, we did what we were told.

5           Then he come back to me and he told me, you go  
6           ahead and go to Bill France Boulevard and then stop,  
7           don't go no further.

8           So, they gave me a letter, told me to stop work  
9           at Bill France, complete that phase behind us.

10          CHAIRMAN NUTBROWN: Let me interrupt you a  
11          minute. Not being familiar with the job, what does  
12          phase one entail and what does phase two entail?

13          MR. HAYNES: Well, phase one is the work that  
14          took place up until such time that the Value  
15          Engineering took into place. That was phase one.

16          CHAIRMAN NUTBROWN: Okay. And phase two was --

17          MR. HAYNES: So, phase two. I was somewhat  
18          disappointed. I didn't really know what to do except  
19          do as directed.

20          He said I want you to take all this dirt up.  
21          I want you to dress this to drain water. I want you to  
22          resod it. I said okay, I can do that.

23          So, in the course of about two weeks, I had been  
24          busy doing what I had been told to do, which was  
25          completing the work up to Bill France. And then from

1 Bill France west almost to the interstate, we were  
2 dressing, grading and sodding.

3 There was a leaning guide pole, a strand pole  
4 that was leaning. We had been asked to give some  
5 numbers to straighten it up.

6 I was there looking, doing some measuring. About  
7 two weeks had gone by. Frank come up to me and said,  
8 Curtis, he said, I think you should stop that dressing  
9 and sodding over there because I think we can finish  
10 this project.

11 I wasn't sure, again. I said, well, am I hearing  
12 right? Say what, Frank?

13 He said I think we've come up with a plan that we  
14 can finish this job and use your Value Engineering.

15 I said, well, what do you want me to do with all  
16 this sod I've got here on the job? He said you just go  
17 ahead and dress and finish what you are doing on the  
18 south side of the road. On the north side of the road,  
19 he said, leave it alone. I think we can implement your  
20 Value Engineering.

21 So, at that time we had previously agreed on a  
22 settlement of phase one where they had paid us for  
23 Value Engineering and down time on the job.

24 So in the phase two of the job, there was a  
25 shut-down period for special events that took place.

1 He asked me to get the northbound side suitable for  
2 foot traffic for all the special events that were  
3 taking place. We did that. Then we shut the job down.

4 They paid us up until that point for time delays  
5 and our share of the Value Engineering.

6 Then when we come back to work after the  
7 shut-down, it became phase two. We started  
8 implementing the Value Engineering design with some  
9 changes that Frank had brought to me, whereas they  
10 wanted to eliminate the under sidewalk and drainage and  
11 just put transitions in the curb, let the water run  
12 through the curb and across the sidewalk by lowering  
13 the sidewalk grade, asking me if that was okay with me.

14 I said yes, that's okay with me. Reducing the  
15 sidewalk from an eight-foot sidewalk to a five-foot  
16 sidewalk and having a grass strip between the sidewalk,  
17 and the curb on a two-to-one slope I believe, the grass  
18 strip, then pouring the sidewalk.

19 In the course of doing that, some of these issues  
20 arose. They are spelled out as we have them spelled  
21 out.

22 CHAIRMAN NUTBROWN: Steve, do you want to go  
23 ahead with just the issues or -

24 MR. WIGLE: Frank is going to present this one.

25 MR. O'DEA: We were there. Before we discuss

1 each issue, I don't disagree with much of what Curtis  
2 said to this point. The only -- the last ten minutes  
3 we have been hearing about the items that basically led  
4 to the point of the Department and Haynes entering into  
5 SA number two, which was for 900 and something thousand  
6 dollars, which was for the acknowledgement of all these  
7 things that occurred prior to this point in time and  
8 the implementation of the Value Engineering change  
9 proposals and the implementation of the design changes.

10 Basically everything Curtis has brought up to  
11 this point was the subject of supplemental agreement  
12 number two that Haynes and the contractor entered into.  
13 These issues, I guess, are as a result of the period of  
14 time following, you know, the execution of SA two.

15 MR. SIMMONS: Just a quick question. The job was  
16 primarily sidewalk, curb, whatever drainage structures  
17 was involved with the curb, is that right?

18 MR. O'DEA: Yes, sir.

19 MR. SIMMONS: So, what was the primary thing  
20 about the VEC? What was the page or change that  
21 allowed you to do, the drop-off, so we can understand?

22 MR. O'DEA: It was an existing eight-lane  
23 facility with paved shoulders, and the project involved  
24 installing Type F curb and gutter and putting in  
25 sidewalk behind that, in the general vicinity of the

1 Daytona Speedway.

2 The problem arose from the standpoint of when you  
3 dug out the existing shoulder, the plans indicated the  
4 existing shoulder would be removed, new shoulder full  
5 depth would be installed with a new Type F curb.

6 Apparently what happened is the design standards  
7 had changed when the project was designed and when it  
8 was let. The drop-off criteria was different. You  
9 were allowed a different drop-off when it was  
10 originally designed. Now it became seven-inch  
11 drop-offs had to be protected by a barrier wall.

12 MR. HAYNES: Thirteen.

13 MR. O'DEA: If it was 13 it would be all right.  
14 If it was seven, that's a --

15 MR. HAYNES: Thirteen-inch drop-off --

16 MR. O'DEA: Seven is the minimum and we had  
17 greater than seven. I see what you are saying.

18 That's the -- there were some trench drains in  
19 the plans. Curtis said he could come up with a better  
20 way. We said we liked his idea better. That was the  
21 basis of the VE.

22 The VE involved eliminating the total removal of  
23 the existing shoulder and instead just milling the  
24 existing shoulder, thereby reducing the drop-off. We  
25 still had the basic typical sections.



1 MR. SIMMONS: Just didn't cut out --

2 MR. O'DEA: Eliminated asphalt. When we replaced  
3 the asphalt we put it at varying cross slopes to  
4 maintain --

5 MR. HAYNES: We put it on stabilized subgrade  
6 instead of putting it on ABC black base.

7 MR. O'DEA: And eliminated the potential use of a  
8 barrier wall.

9 MR. HAYNES: And that eliminated the drop-off --

10 MR. SIMMONS: Okay.

11 CHAIRMAN NUTBROWN: Go ahead, Frank. You got any  
12 more?

13 MR. O'DEA: No, that's it.

14 CHAIRMAN NUTBROWN: All right. Then let's go  
15 ahead. We will let Mr. Haynes proceed with the first  
16 issue, nonpayment for watering.

17 MR. HAYNES: Since we drew up our claim here,  
18 it's been brought to my attention that our sod  
19 measurements were far from being correct, which would  
20 account for additional water needed on the sod.

21 We were like almost 10,000 square meters of sod  
22 underpaid according to our certified land surveyor's  
23 measurements.

24 Now, that might account for a lot of the water  
25 not being paid here. We just simply didn't get paid

1 for the water that we put out. We are asking to get  
2 paid for it.

3 At one point in time -- I don't know how this  
4 came about, but we had a deduction of, I think it was  
5 \$10,000 for our water on our estimate. We were not  
6 notified of this, that we were going to have any  
7 deduction from our monies.

8 When we got our estimate we saw that was  
9 deducted. Then when we confronted the Department, they  
10 said, well, okay, we will put it back, and they did.

11 We feel like the same thing is happening here.  
12 We are just being deducted money for watering and not  
13 being paid, in addition to the sod, our quantities on  
14 our sod.

15 CHAIRMAN NUTBROWN: We are going one issue at a  
16 time. We will get that out of the way. Frank?

17 MR. O'DEA: I don't know which one to address,  
18 the sod or the water.

19 CHAIRMAN NUTBROWN: Start with the water.

20 MR. O'DEA: The contractor is alleging two basic  
21 reasons. What they have told us -- there are two areas  
22 where they feel we haven't paid them for water. One  
23 was the specific deductions on three dates where the  
24 Department did make a deduction. We acknowledge we  
25 made a deduction to the watering logs.

1 I can tell you a little history. When the  
2 project first started, we did not have a water meter on  
3 the truck initially. The contractor had a tanker  
4 truck.

5 So, the initial water measurements or the water  
6 logs were being tracked in tank loads rather than being  
7 tracked by the meter. It's a common practice. We do  
8 it all the time, if the contractor is not providing  
9 metered water. We determined average size of the tank,  
10 et cetera.

11 The logs at the time the inspectors were just  
12 keeping track of the number of truckloads being used on  
13 the project.

14 At a later date something kind of clicked with  
15 them. The contractor was using the water for a lot of  
16 purposes while he was on the job. He was using it for  
17 the sod. He's also using it to wet down the  
18 embankment, to clean off his equipment, things like  
19 that.

20 While we were keeping track of it, later on once  
21 the meter came, we were able to keep track of it pretty  
22 close. We knew how much water was flowing for certain  
23 purposes, but no deduction had been made earlier for  
24 the water that we felt was being used for nonsod  
25 purposes. In fact, we were only supposed to pay for

1 the water for the sod.

2 So, a deduction was made. As I stated here, at  
3 this point in time we can't support the deduction. It  
4 made sense at the time we did it. Right now we cannot  
5 recreate it.

6 While we feel it is a valid deduction, we can't  
7 support the numbers, so we are willing to pay back the  
8 amount we deducted that we cannot support gallon for  
9 gallon where the water went.

10 That amounts to 34,000 gallons, which is \$3,864.  
11 Basically we are conceding that issue.

12 The next area where the contractor has claimed he  
13 wasn't paid for the sod was after May 31 he feels we  
14 have not paid for any water to the sod after May 31.

15 MR. SIMMONS: On page three of what we have.

16 CHAIRMAN NUTBROWN: It's in another spot in there  
17 that says the May date in it.

18 MR. SIMMONS: That's right there.

19 MR. O'DEA: I'm sorry, still on page one. I'm on  
20 the Department's response, which is nonpayment for  
21 watering, page one.

22 The contractor claims that after May 31 we  
23 stopped keeping track of the water and that we didn't  
24 pay for all the water after that date. They have a  
25 final meter reading taken on August 1, 2000 that

1 establishes that 43,700 gallons was provided by Haynes  
2 after May 31.

3 Our contention is that there was no water placed  
4 on the sod after May 31, 2000. That is why we did not  
5 keep track of all water. Any and all water used after  
6 that point was used for Haynes' purposes, whether it be  
7 for embankment.

8 We have it documented that during -- before we  
9 stopped keeping track of the water, that on an average  
10 day much of it was going to washing equipment, washing  
11 equipment, wetting down embankment and milling. But  
12 there would be no milling going on after May.

13 While we did not keep track of the water, there  
14 were only four days that the sod subcontractor was on  
15 the project after May 31. It had rained a considerable  
16 amount on the project after May 31, so it is not an  
17 unreasonable argument that there was no water placed on  
18 the sod after that time.

19 MS. HAYNES: Mr. Chairman, can I ask a question  
20 here? How many rain days were given after May 31?

21 MR. O'DEA: I think it was 14.

22 MS. HAYNES: So, from May 31 to -- when did the  
23 project end?

24 MR. O'DEA: August 9.

25 MS. HAYNES: For three months, 14 days would

1           adequately water the sod that was laid?

2           CHAIRMAN NUTBROWN: That's only two months.

3           MR. MACKIEWICZ: Those weather days were granted  
4           in consideration of the specifications of the work that  
5           was affected. There are indications on other dailies  
6           when showers came through, things of that nature, which  
7           would water the sod, but not be enough to grant a  
8           weather day.

9           MR. O'DEA: Basically the only time the sod  
10          subcontractor was on the project after May 31 was for  
11          punch list-type of work anyway. He wasn't putting huge  
12          areas of sod down after he had --

13          MS. HAYNES: The sod subcontractor doesn't water.

14          MR. O'DEA: I understand, but what the sod was --  
15          the sod was being watered generally after it was  
16          initially placed. After it was established it wasn't  
17          being continually watered.

18          MR. HAYNES: I will have to be excused to the  
19          restroom. I believe everybody can go on without me for  
20          this.

21          MS. HAYNES: Do you remember the amount of sod we  
22          laid after May 31?

23          MR. STAPLETON: I don't have the number right in  
24          front of me. I would like to say --

25          CHAIRMAN NUTBROWN: Wait a second. Are you

1 through, Frank?

2 MR. O'DEA: Yes.

3 MR. STAPLETON: If it was a great amount of rain  
4 that came one day and we couldn't work, we didn't lay  
5 any sod that time anyway.

6 Any time sod was laid, we watered. We didn't go  
7 out there, lay sod and there was a shower, enough to  
8 water the sod. If we laid sod, we watered until the  
9 sod was thoroughly wet.

10 I wasn't on the job at the very beginning, but  
11 from the time I come on the job and I was over this,  
12 that's the way I've always laid sod, watered it.  
13 That's the way it was done on this job.

14 Any sod that was laid after this May 31 time, it  
15 was watered the same as the sod before. If I laid sod,  
16 I had a water truck there full of water ready to put  
17 water on that sod.

18 Unless by chance we was laying sod and we got  
19 rained out and say it come a flood, rained us out the  
20 rest of the day and we couldn't lay any more sod, but  
21 I don't recall that happening that we got rained out.

22 MR. SIMMONS: What about the issue of using the  
23 water for other things?

24 MR. STAPLETON: The issue of using the water for  
25 equipment? I would say we did do that, but if anybody

1 here knows much about a pressure washer, when you take  
2 a 4,000 gallon tanker and you hook it up to a standard  
3 pressure washer, running 3500 psi through a little old  
4 tip, you are not going to use thousands of gallons for  
5 washing equipment. It is very conservative. It uses  
6 high pressure, little water. Yes, we did use it for  
7 that.

8 MR. O'DEA: We included the logs, just to give a  
9 general idea of how much water was being placed on the  
10 sod as opposed to being used for other purposes when  
11 meter readings were being done. There's a couple of  
12 thousand gallons, 3200 gallons for sod, several  
13 thousand gallons for other purposes.

14 Again, the Department's inspectors had no reason  
15 to not record the water after May 31. If there was  
16 water being placed for sod, they would have tracked it  
17 just like they were doing before May 31. There was no  
18 direction, no reason for them to stop recording those  
19 quantities if they weren't being used on the sod -- if  
20 they were being used on the sod.

21 CHAIRMAN NUTBROWN: Lynn, did you have more than  
22 one water truck on the job you were using?

23 MR. STAPLETON: No, we had one truck. That  
24 truck, as Mr. O'Dea was saying, before we had the meter  
25 on the job, we furnished the Department with a letter,



1 I'm pretty sure of, stating the quantity that truck  
2 held. It wasn't just a guesstimate that somebody come  
3 up with. It was a letter that we got from the company  
4 stating that it holds this many gallons.

5 CHAIRMAN NUTBROWN: That's not what I was getting  
6 at. Was the truck used for other purposes, say to wet  
7 subgrade, to wet embankments?

8 MR. STAPLETON: Yes, it was used for other things  
9 than just watering sod. I would like to say that when  
10 there was drought conditions -- and I believe everybody  
11 here knows there was drought conditions on the job.  
12 When you say it was used for watering embankments and  
13 not just sod, we water embankments before laying sod.

14 If you lay sod on powdered sand, you are doing no  
15 good. We did wet the embankment. We wet the  
16 embankment in preparation for laying the sod at certain  
17 times.

18 CHAIRMAN NUTBROWN: Who wants to address --  
19 I will give --

20 MR. NORTON: Can I ask a question?

21 CHAIRMAN NUTBROWN: Sure, I'm sorry.

22 MR. NORTON: I notice if you add up the three  
23 days, it comes to 34,000, yet you say 40,800. Do you  
24 know, is that just an arithmetical error in the plans?

25 MS. HAYNES: What page are you on?

1 CHAIRMAN NUTBROWN: Page three.

2 MR. NORTON: Page three. If you total up those  
3 three days, 13,600, 13,600, and 6800 comes to 34,000,  
4 not 40,000. You have 40,800. Right under entitlement,  
5 third line down. Go up a little.

6 MS. HAYNES: Are you reading that, Lynn?

7 MR. STAPLETON: Yes.

8 MR. NORTON: If you add up those three days, it  
9 only comes to 34,000, not 40,800.

10 MR. STAPLETON: I would say that was an error.

11 MR. NORTON: Okay.

12 CHAIRMAN NUTBROWN: Freddie, do you have any  
13 questions?

14 MR. SIMMONS: No.

15 CHAIRMAN NUTBROWN: Jack, do you have anything  
16 else?

17 MR. NORTON: I have one for the State. You gave  
18 them 14 days during that period. Was any of that a  
19 tropical storm or did you have a hurricane or anything  
20 in there where you would have gotten three or four days  
21 at a time of real heavy rain and then none? If you  
22 take 70 days and divide it by 14, that's rain every  
23 five days.

24 If you take a tropical storm or two in there that  
25 hits you for three or four days at a time, then it

1           could be dry conditions.

2           MR. MACKIEWICZ: I don't recall. I don't know  
3           without looking at the records.

4           MR. O'DEA: I counted up the days. They were  
5           kind of spread out. I can't say that they were --

6           MR. NORTON: There wasn't a group of days in a  
7           row. All right. That's all I wanted to know. Thank  
8           you.

9           CHAIRMAN NUTBROWN: Okay. Let's take the next  
10          issue, the change in work --

11          MR. HAYNES: I was thinking. We did have a  
12          hurricane.

13          MR. O'DEA: We had Floyd, but Floyd was at the  
14          beginning of the job. I came out on Sunday and you  
15          guys were fixing that sidewalk in the middle of the  
16          rain. You remember that.

17          MR. HAYNES: Okay. There was great concern about  
18          the cost for watering the sod. The State had come to  
19          us and give us specific amount and specific days and  
20          time of day to water the sod. So, we did as we were  
21          told.

22          Then in the course of doing this -- it's not in  
23          the scope of watering sod that I've ever heard of  
24          anybody doing nor that I have done myself. It  
25          certainly wasn't what we intended to do when we bid the

1 job to water the sod.

2 So, I explained to them this is going to require  
3 more man hours. You are going to have to address more  
4 time to it. It's going to cost twice the money to put  
5 the water out, to be restricted to applying the water  
6 in this method.

7 So, we wrote them the letter, explained it to  
8 them. If it's going to be twice the trouble, that we  
9 need twice the money.

10 MS. HAYNES: Actually, they wanted to set a  
11 specific time, like before you had to -- you had to  
12 water before ten o'clock in the morning or after four  
13 o'clock in the afternoon. Isn't that right, Ed? It  
14 would be before 10:00 or after 4:00.

15 MR. MACKIEWICZ: I believe that's right.

16 MS. HAYNES: And --

17 MR. HAYNES: To calculate the measurements  
18 precisely as to the amount of water we were putting  
19 out.

20 MR. STAPLETON: It did affect our schedule some  
21 I feel like, too, because before ten o'clock we always  
22 worked the watering in around doing other things on the  
23 project like pouring concrete. Usually pouring  
24 concrete will take place early in the morning. We  
25 would start early in the morning, work until lunchtime.

1           You try to put the watering in early in the  
2 morning with that. I feel like it had somewhat of an  
3 effect.

4           MR. HAYNES: It became an inconvenience because  
5 it wasn't convenient anymore. We could water at a  
6 convenient time. The convenient time might be before  
7 10:00 or after 4:00. But as to the day-to-day work, it  
8 might not be. It's not always convenient to water --  
9 to do it as they had described, it did become  
10 inconvenient at times.

11          CHAIRMAN NUTBROWN: Okay. Do you have anything  
12 else you want to add?

13          MR. HAYNES: I really think that one is kind of  
14 short and sweet.

15          CHAIRMAN NUTBROWN: Frank?

16          MR. O'DEA: The contractor did mention earlier  
17 that this project, early on before the rainy season of  
18 2000, was in a drought. The Department was concerned  
19 about spending more on water than sod, didn't think it  
20 was a prudent way to manage the project.

21               We feel that it's within our authority under the  
22 specifications in the contract to establish the rate.  
23 In fact, the specifications require that we establish a  
24 rate for the contractor to place the water on the sod.

25               Again, we felt it was within our right to work --

1 to order that rate. We worked with the contractor on  
2 determining how that rate we set applied as they  
3 requested.

4 We talked about -- because the issue of  
5 calculating the areas came up. They indicated that if  
6 we told them how much per pallet, that would help them  
7 apply water. So, we determined how much water per  
8 pallet of sod our specified rate equated to.

9 We had asked the contractor to quantify how he  
10 determined this quantity or this price doubled. They  
11 have not given us any information other than similar to  
12 what you've heard here today. No real hard  
13 justification for why the price would double for a  
14 specified rate.

15 We feel the contractor had to have some sort of  
16 specified rate when he began work, otherwise he would  
17 have just been applying water uncontrollably. And  
18 either that was not acceptable or he had some sort of  
19 rate he was applying. We just wanted to specify a  
20 target for this application rate.

21 We are willing to take the risk, and at the time  
22 he notified us, we were responsible if the sod died.  
23 We took the risk for that.

24 As far as impacting their schedule, the way they  
25 were watering the sod, I guess Tim would be the best

1 person to maybe address the way they had -- they had an  
2 individual who was doing other duties. He would get  
3 into the water truck and apply the water to the sod.

4 That didn't change. What might have changed is  
5 when in the day this individual would do it.

6 This individual, what were his normal duties,  
7 Tim?

8 MR. BAUER: The way I remember, he was the  
9 mechanic's helper. I don't know if he was actually  
10 doing concrete or any other items.

11 MS. HAYNES: Who was it?

12 MR. STAPLETON: I don't know if I would say that.  
13 It was probably the superintendent part of the time.  
14 I'm the mechanic's helper. I would say 50 percent of  
15 the time I put water out, the time I was there. Before  
16 that it could have been -- I don't know who it was.

17 That was on the last two-thirds of the job.  
18 I was overseeing the job because Mr. Haynes wasn't  
19 there at the time.

20 With me doing that and having other things going  
21 on that I needed to be looking after, such as the  
22 concrete, looking after it, making sure the pour was  
23 going good early in the morning, it did restrict me.

24 I would have people get going, doing other  
25 things. I would go put out the water, apply the water.

1 Up until this point when the water really became  
2 restricted, we've always laid sod, watered it just like  
3 the spec book reads. That's wet the sod and put the  
4 water on it. It says for the duration of the roots.  
5 That's what we've tried to do, to establish good growth  
6 quick.

7 CHAIRMAN NUTBROWN: Curtis?

8 MR. HAYNES: The specs read there that you will  
9 wet the sod for the depth of the roots, for the  
10 duration of the job. It's quite simple the way it  
11 reads. It's not hard to -- and that's, of course, what  
12 we were trying to do, until we were restricted.

13 MR. STAPLETON: It become an issue when the water  
14 was costing more than what the sod was because it was  
15 drought conditions.

16 We just done as directed. We feel like, you  
17 know, it changed halfway through the job how we could  
18 be applying this water when we applied it to keep the  
19 grass alive.

20 And everything was doing good, and then all of a  
21 sudden the water starts costing or they see that the  
22 water is costing a lot more. Then all of a sudden it  
23 stops.

24 We can't do it the way we was doing it. We've  
25 got to redo it. We've got to do it a different way



1 now.

2 CHAIRMAN NUTBROWN: Frank, did you have anything?

3 MR. O'DEA: For clarification in my rebuttal,  
4 I refer to spec Section 575-3.4, which requires the  
5 engineer to authorize the water used on the sod and  
6 determine that the sod contains sufficient moisture as  
7 determined by the engineer.

8 So, again, referring back to our authority to  
9 regulate the amount of water.

10 MS. HAYNES: Which spec are you looking at?

11 MR. O'DEA: 575-3.4 and 570-7.

12 CHAIRMAN NUTBROWN: Yes, ma'am?

13 MS. HAYNES: Do you want me to read the spec or  
14 do you want to look at the spec?

15 MR. HAYNES: No, he was just trying to let you  
16 speak because you were ready to speak before  
17 I interrupted.

18 MS. HAYNES: The spec says, "Ensure that the  
19 areas requiring sod contain sufficient moisture as  
20 determined by the engineer for optimum results after  
21 placement. Keep the sod in a moist condition for the  
22 duration of the contract period, and in no case less  
23 than two weeks.

24 "Ensure that the moistened condition extends to  
25 at least the full depth of the rooting zone. Do not

1       apply water when there is a danger of freezing  
2       conditions.

3               "The sufficient moisture as determined by the  
4       engineer" -- I mean that is a determination by the  
5       engineer, but they are turning the spec around to say  
6       that the engineer has the ultimate decision whether  
7       it's sufficient moisture, and it wasn't. It's saying  
8       that he is to make the determination if it's sufficient  
9       moisture.

10              CHAIRMAN NUTBROWN: Frank?

11              MR. O'DEA: Again, this issue came up during the  
12       project at which time the Department took  
13       responsibility for the sod based on us giving this  
14       specific direction. It turns out the water directed  
15       was sufficient in combination. We did not replace any  
16       sod because of lack of watering.

17              CHAIRMAN NUTBROWN: Curtis?

18              MR. HAYNES: We don't have a problem with the  
19       specs. We read them and understand them. We also  
20       don't have a problem with if they choose to override  
21       the specs and say, hey, because it clearly states that  
22       they can.

23              We don't have a problem with doing anything they  
24       tell us to do, even though sometimes we may not agree  
25       with them.

1           We did that throughout the entire job. Even if  
2 we didn't agree with them, we let it be known that we  
3 didn't agree with them, but we still did it.

4           CHAIRMAN NUTBROWN: Okay.

5           MS. HAYNES: When they change things on the  
6 project that cost the contractor more money, then they  
7 should have to pay. They need to compensate the  
8 contractor.

9           CHAIRMAN NUTBROWN: Has there ever been any cost  
10 data shown where your costs change that much?

11          MS. HAYNES: Did we submit to them the cost data?

12          CHAIRMAN NUTBROWN: Yes.

13          MS. HAYNES: No.

14          CHAIRMAN NUTBROWN: Freddie, do you have any  
15 questions on that issue?

16          MR. SIMMONS: The 165.41 for the time -- the  
17 watering after May 8, that's the same -- being reputed  
18 as on the first issue, as far as the total quantity of  
19 water? That figure is part of the question, the amount  
20 of water put on it?

21          MR. STAPLETON: Yes.

22          MR. SIMMONS: That's the same water we are  
23 talking about?

24          MR. STAPLETON: Yes, that's the amount we felt we  
25 were owed money on.

1 MR. SIMMONS: We have not paid to date any of  
2 that 165.41?

3 CHAIRMAN NUTBROWN: Am I right, Steve, they would  
4 have paid the original amount?

5 MR. O'DEA: We paid the original.

6 MR. SIMMONS: Not the full amount, but --

7 MR. NORTON: You paid for 30 and they wanted 60  
8 is what I'm understanding. Is that correct?

9 CHAIRMAN NUTBROWN: Is that correct, Mr. Haynes?

10 MR. HAYNES: I'm not sure of that.

11 MR. SIMMONS: Maybe that's right. That number  
12 would work out to that amount, not asking for the  
13 double quantity thing, double price.

14 MR. O'DEA: We paid it at the unit price of 30.

15 MR. WIGLE: That's right.

16 CHAIRMAN NUTBROWN: They are asking for another  
17 30 --

18 MR. SIMMONS: I see.

19 CHAIRMAN NUTBROWN: -- on that amount.

20 MR. MACKIEWICZ: If I could add something just to  
21 reiterate what Frank was touching on. We agreed we did  
22 issue the directive as far as the watering. Once they  
23 received that, they sent a letter to me stating that  
24 there would be this 100 percent increase due to the  
25 things listed here.

1 I then wrote a letter asking for that backup  
2 documentation as to how this cost data was derived.  
3 Like was said, we never received that at one of the  
4 follow-up progress meetings. We worked with the  
5 contractor because of the letter that was issued.

6 Because it was a metric project, like Frank said,  
7 we came up with a more workable, I guess, rate based  
8 upon truckload -- gallons per pallet or per truckload.

9 It was asked to be submitted that increase in  
10 price and was not received.

11 CHAIRMAN NUTBROWN: Okay.

12 MR. WIGLE: If I understood your question,  
13 though, we paid for this water already, \$30, and they  
14 are asking 60.

15 CHAIRMAN NUTBROWN: That's the way I understand  
16 it.

17 MR. STAPLETON: I don't know if I can agree a  
18 hundred percent with that. I don't think they paid for  
19 anything after May 31. This says after May 8.

20 MR. MACKIEWICZ: 2001. I'm not sure how accurate  
21 that update is. That's 2001. That's a couple of  
22 months ago. We will have to look in the record to see  
23 when the directive was issued. I thought it was much  
24 earlier in the project than that, but I might be  
25 mistaken.

1 MR. NORTON: Frank, do you have a copy of the  
2 final pay estimate by any chance for this job?

3 MR. STAPLETON: I'm thinking that most of that is  
4 covered up to the May 31, but some of that could be in  
5 something we didn't receive, that we've asked for  
6 payment.

7 MR. SIMMONS: Probably part of something you  
8 didn't get.

9 MR. STAPLETON: After May 31 I think that's what  
10 we were asking for, some of that double. When we were  
11 asking for double is when we were told, directed how to  
12 place the water. So it would be I believe anything  
13 from May 8 to the end of the job. So, some of that  
14 water would not receive any payment on, but that's in  
15 dispute. It would be a portion of it.

16 MR. O'DEA: To answer your question, I don't have  
17 a copy of the final pay --

18 MS. HAYNES: I have a copy in here somewhere.

19 MR. O'DEA: The directive issuing the watering  
20 change, that was dated May 8, 2000.

21 CHAIRMAN NUTBROWN: In the previous issue there's  
22 294.09 kiloliters that they say wasn't paid for. Then  
23 in the next issue we are talking about 165.41  
24 kiloliters at the additional price?

25 MR. O'DEA: Yes.

1                   CHAIRMAN NUTBROWN: Which part goes on which side  
2 of the fence?

3                   MR. STAPLETON: We would have to use the dailies.  
4 I don't have the paperwork I'm sure right here. We  
5 would have to use the daily log from May 8 to the 31.  
6 And then from May 31 to the end of the job would be --

7                   CHAIRMAN NUTBROWN: Would not have been paid for  
8 at all?

9                   MR. STAPLETON: However many loads of water we  
10 had from May 8 to May 31, we have been paid for half of  
11 it. Then for anything after May 31 we haven't been  
12 paid for nothing.

13                  MS. HAYNES: Do you want to look at this final  
14 estimate? I have one here.

15                  MR. SIMMONS: Does it have a total? Is this  
16 estimate to date, the final? 1,041.

17                  MS. HAYNES: Doesn't it say final at the top?

18                  CHAIRMAN NUTBROWN: Should be right in the  
19 center.

20                  MR. SIMMONS: There it is right in the middle.  
21 1,041.

22                  MR. NORTON: They paid for 1,041 kiloliters.

23                  MR. SIMMONS: That's for everything, the whole  
24 time less what they say you haven't paid. I would like  
25 to commend you all for dealing with kiloliters per

1           hectare.

2           MS. HAYNES: Isn't that crazy? How do you  
3           determine how many kiloliters per hectare you put out?

4           CHAIRMAN NUTBROWN: What is a hectare?

5           MR. MACKIEWICZ: 10,000 square meters. Don't ask  
6           me what a kiloliter is.

7           CHAIRMAN NUTBROWN: Okay. Freddie, do you have  
8           any other questions on the water issue at this time?

9           MR. SIMMONS: No.

10          CHAIRMAN NUTBROWN: Jack?

11          MR. NORTON: No.

12          CHAIRMAN NUTBROWN: Lynn?

13          MR. STAPLETON: I would like to make one more  
14          statement. It kind of has to do with the sod but maybe  
15          will help justify some of the water we are asking for.

16          Due to the discrepancies that we had in the sod  
17          and the water, we've had our surveyor that we used on  
18          the job down there to go down there, and we measured  
19          all the sod on there, which has been in the last few  
20          weeks, so we could get a total measurement.

21          From what we received for final payment and what  
22          measurement he come up with, there's 9400 square meters  
23          of difference. We have a 9400 meter overrun in the  
24          amount of sod, greater than what was paid for.

25          Now we can talk about this when we talk about the



1 sod, but I just want to say that I feel that would also  
2 help justify some of the water that we put out, that we  
3 had that much greater of an overrun that this water was  
4 used.

5 That's all I want to say about that. We can move  
6 on.

7 CHAIRMAN NUTBROWN: All right.

8 MR. WIGLE: I would like to make a comment on  
9 this. This is the first discrepancy or alleged  
10 discrepancy in the sod.

11 MS. HAYNES: Mr. Chairman, after we filed our  
12 claim, we thought it beneficial to go ahead and have a  
13 surveyor to measure those sod quantities because of the  
14 discrepancies in the water and the sod overruns. So,  
15 we had him do that. It's just been in the last couple  
16 of weeks. We just received that. I sent it to  
17 Mr. Nutbrown. I probably should have sent you a copy,  
18 but I didn't.

19 CHAIRMAN NUTBROWN: I received it last Thursday  
20 or Friday. I didn't think there was time to distribute  
21 it properly, so I just brought it.

22 MR. WIGLE: That's okay.

23 CHAIRMAN NUTBROWN: All right. Let's start with  
24 the pull box adjustments.

25 MR. HAYNES: I don't see where it's really hard

1 to understand. I think I can explain this in  
2 simplicity, a lot more simple than the water.

3 When we were told to shut the job down, dress and  
4 grade the south side of the road back, that's what we  
5 did. In the course of doing this, we had to adjust the  
6 pull boxes to sod grade elevation. We did this.

7 Now, on the north side of the road there was some  
8 temporary adjustments made, which we never asked for no  
9 payment for these temporary adjustments to accommodate  
10 foot traffic. We knew at that time that we were going  
11 to come back to the north side and work.

12 When we were doing the south side, we were under  
13 the impression that we were through, we were not going  
14 to come back. We were going to dress and sod and leave  
15 the job as we had been instructed to do.

16 We adjusted those pull boxes to sod grade  
17 elevation as a permanent adjustment.

18 Then when we were told that we were going to  
19 finish the job, that we would go in and pour curb and  
20 gutter and sidewalk, we had to strip the sod off to do  
21 this work again.

22 In the course of doing this, it required another  
23 adjustment to adjust them to asphalt grade, sidewalk  
24 grade and sod grade on the south side. We are asking  
25 to be paid for that second adjustment.

1 I may want to say something later after I hear  
2 what they've got to say, but that's about as simple as  
3 it gets.

4 MR. SIMMONS: All 51 of these in question are on  
5 the south side?

6 MR. HAYNES: Yes. I would like to say that  
7 I would graciously accept the temporary adjustment on  
8 the north side that Frank has called the south side, he  
9 called them temporary adjustments, at \$105 apiece.  
10 There's some 70 boxes on the north side. We would  
11 graciously accept that payment if they choose to pay  
12 it. We haven't asked for that.

13 CHAIRMAN NUTBROWN: Okay. Frank?

14 MR. O'DEA: A couple of things. It's more  
15 complicated than the water, first off.

16 The contract plans do include a pay item for  
17 adjusting pull boxes. It includes a specific pay item  
18 note which describes the work involved.

19 At the time the Department ordered the contractor  
20 to regrade the south side in front of the speedway,  
21 there were existing pull boxes, some of which got  
22 vertically adjusted, some of which were buried, because  
23 I know because I saw them get buried.

24 At the time we just wanted to wrap the project up  
25 to get off the road. That was our goal.

1           The contractor and the Department subsequently  
2 entered into supplemental agreement two that in theory  
3 covered everything that hadn't been covered in another  
4 way. To be honest, we didn't think about those pull  
5 boxes when we were envisioning this project.

6           We tried to capture everything that we thought  
7 would happen. We agree that many of those pull boxes  
8 were moved up or down when this grading and sodding was  
9 done. We don't feel that was a complete pull box  
10 adjustment as defined by the contract, but we agree  
11 that it was something not anticipated by the  
12 contractor.

13           So, that is why we determined an amount we felt  
14 was fair and equitable for that work, that temporary  
15 relocation work. We did not have an exact number. We  
16 knew that there were 51 pull boxes over there. Some of  
17 which again I knew got buried, but we did not have an  
18 exact number.

19           We just decided to pay for all of those 51 at the  
20 amount that we determined was fair and reasonable for  
21 the work, since there was no existing description of  
22 that work that they did.

23           CHAIRMAN NUTBROWN: Let me interrupt a second.  
24 Looking at the final pay estimate here, your item claim  
25 delay and inefficiencies, is that where that was

1 included in that item or is that correct?

2 MR. O'DEA: Well, SA two, we have a copy of it.

3 CHAIRMAN NUTBROWN: It's part of the package.

4 MR. MACKIEWICZ: I think he's asking is that  
5 where the \$105 per pull box was paid.

6 CHAIRMAN NUTBROWN: No, was that for some of the  
7 adjustments or not?

8 MR. O'DEA: No. We did a unilateral payment on  
9 top of that amount for claimed inefficiencies. We did  
10 a unilateral payment equivalent to \$101 for the 51 pull  
11 boxes, on top of the line item you are referencing.

12 MR. SIMMONS: Do you know where the detail for  
13 the pull box adjustment is?

14 MR. HAYNES: On the second page, plan sheet five.

15 MR. O'DEA: We have two sets of plans. That's  
16 where the pay item is. It's on the second plan sheets.  
17 It's this note.

18 MR. SIMMONS: It's a note. Okay. This note that  
19 goes with this pay item, which is the \$500 activity,  
20 right?

21 MR. WIGLE: Right.

22 MR. SIMMONS: Says includes the cost of vertical,  
23 horizontal adjustment of all pull boxes, includes the  
24 following: replace damaged pull boxes, conduit,  
25 traffic signal loops, loop lead-ins, interconnect wire

1 and streetlight circuit wire. Did you all have to do  
2 that?

3 MR. HAYNES: We had to do some of it because the  
4 damage to the pull boxes were done before we got there.  
5 Some were damaged and then we damaged some with  
6 equipment when we got there. We did have to do that.

7 We didn't damage any conduit or electrical. We  
8 didn't do any damage to that. We did damage some pull  
9 boxes, which we bought new pull boxes and put them in  
10 when we damaged one, or if we got there and one was  
11 damaged, we replaced it.

12 MR. O'DEA: Of the 51?

13 MR. HAYNES: No, that's the 120 all throughout  
14 the job. Any pull box that was there and we damaged  
15 it, we bought truckloads of them, more times than one,  
16 to replace them. We didn't damage any conduit, nor did  
17 we damage any electrical.

18 MR. SIMMONS: Not even on the 51?

19 MR. HAYNES: No.

20 MR. SIMMONS: When you came back and had to fully  
21 do the final fix, then it included that stuff, all the  
22 conduit and everything, right?

23 MR. HAYNES: It don't include the conduit because  
24 we didn't damage any of it. There was conduit that  
25 needed to be replaced because the conduit was too

1 short.

2 MS. HAYNES: Not replaced but extended.

3 MR. HAYNES: Extended. We had to extend it  
4 because it was too short, not because we damaged it.

5 CHAIRMAN NUTBROWN: What brought about the  
6 overrun in quantity? I see it was 93 in the original  
7 plans and 122 in the final pay quantity.

8 MR. O'DEA: The original plan quantity I think  
9 forgot to include some of the traffic signal ones,  
10 and the designer estimated he included all the  
11 streetlighting pull boxes but he forgot to include the  
12 traffic signal pull boxes in his count. When we redid  
13 those, we overran.

14 MR. HAYNES: I do believe they may have done a  
15 visual count on those to figure out what was there  
16 because there was a lot of these pull boxes that were  
17 covered up with dirt.

18 That's the first I've heard that he forgot to  
19 count some of the streetlighting -- signal pull boxes.  
20 I thought that he had just overlooked the count because  
21 there was a lot of them covered up with dirt.

22 MR. O'DEA: We are estimating or we are trying to  
23 read into it. We just got a chart that broke it out by  
24 page how many. If we encountered more, we overran at  
25 the existing unit price.

1 CHAIRMAN NUTBROWN: I see in the plans you paid  
2 for 122 at \$580. Then you went back and paid for 51  
3 more at 105.

4 MS. HAYNES: That was the readjustment.

5 MR. SIMMONS: The 51 is part of the 122. You had  
6 to do that twice?

7 MR. O'DEA: The first time when they --

8 MR. SIMMONS: 105, then paid 508 on the same box.

9 MR. MACKIEWICZ: There's 122 total, 51 of those  
10 were handled twice.

11 MR. O'DEA: We paid for the first adjustment at  
12 105 and the second adjustment at the pay item.

13 MS. HAYNES: You paid the first adjustment at the  
14 pay item.

15 MR. O'DEA: We paid the first one at the pay  
16 item.

17 MR. STAPLETON: And the second one at the --

18 MR. HAYNES: We had the money regardless of the  
19 order.

20 MR. O'DEA: You got the money. The unilateral  
21 was to pay for the adjustment that was not anticipated.

22 MR. HAYNES: When we adjusted them the first time  
23 for shut-down, you paid me all of them at the contract  
24 price. When we went back the second time to pick the  
25 project up --



1 MR. O'DEA: We were holding back because there  
2 was other items. We didn't pay them all.

3 MS. HAYNES: Give me the keys to the car. I have  
4 all the pay estimates.

5 MR. HAYNES: I don't really think our dispute is  
6 when you paid and what you paid, it's that you need to  
7 pay some more.

8 MR. WIGLE: That's always in dispute.

9 CHAIRMAN NUTBROWN: Freddie, do you have any  
10 other questions or comments in that regard?

11 MR. SIMMONS: No.

12 CHAIRMAN NUTBROWN: Jack?

13 MR. NORTON: No.

14 CHAIRMAN NUTBROWN: Lynn?

15 MR. STAPLETON: Yes. I would like to add this.  
16 The biggest discrepancy is in how everyone reads the  
17 pay item note.

18 We replaced -- we went out there the first time  
19 through and raised the boxes and adjusted them to  
20 grade, finished grade, sod grade, where you won't trip  
21 over them when you are walking down, finished. It's  
22 adjusted. We raised it, put it on grade.

23 The second time we come back and we done the same  
24 thing again. We went and stripped all that sod off,  
25 poured the sidewalk in there. Some of the elevations

1 changed because the sidewalk went up and down to match  
2 the light pole bases. It naturally changed the grade  
3 on the slope where the pull boxes was.

4 Those pull boxes, again, had to be dug around and  
5 raised or lowered or whatever. We done, again, done it  
6 twice on the south side. We done it twice. One time  
7 we got paid for it. The second time we got paid at  
8 what the State felt like was a fair and reasonable  
9 price when we had a pay item price to be paid.

10 I don't understand how the State can come up with  
11 what they feel is a fair price when you have a pay item  
12 price for something that you are doing on that project.

13 MR. BAUER: Mr. Chairman, if I can interject  
14 here. The difference in the last one, if you look at  
15 the standard index, a complete pull box is not just  
16 raising it up.

17 There's pea rock to be put in it. The conduit  
18 needs to be brought up. It needs to be completed. You  
19 could have a three-foot hole inside the box. That's  
20 not a complete box if you look at the standard index.

21 To build one it has to be a certain depth to the  
22 box, a certain height above the pea rock. That wasn't  
23 done the first time.

24 The last time we left everything was full and  
25 complete. That's per the index. That's the difference

1           between the work. The work is actually putting the box  
2           in complete, nice, clean box, with no dirt in it, pea  
3           rock, pipe, air duct sealed, a complete box, not just  
4           lifting the lid and looking in it.

5           MR. HAYNES: He's right about what he's talking  
6           about except for one thing. He's not talking about an  
7           adjustment. He's talking about a new box installation.  
8           That's what he's describing. He's not describing an  
9           adjustment, he's describing a new installation on a new  
10          construction.

11          MR. STAPLETON: As far as replacing anything that  
12          we damaged, we did. If we damaged a pull box, we  
13          replaced it.

14          We didn't damage any conduit. The conduit was  
15          too short when we raised some of the boxes. We needed  
16          additional conduit to raise it up. There wasn't enough  
17          wire and slack in the lines to raise the wire up.  
18          There was not enough conduit.

19          CHAIRMAN NUTBROWN: Did you say there was enough  
20          slack in the wire it could be adjusted but you had to  
21          add conduit?

22          MR. STAPLETON: You had to add conduit to get it  
23          up to the box in the right elevation. The way I read  
24          this, we replace anything that's damaged. We don't  
25          start supplying conduit to bring that box up to grade.

1 CHAIRMAN NUTBROWN: Okay. Frank?

2 MR. O'DEA: I agree with Lynn. We disagree  
3 with their interpretation of the plan note. Our  
4 interpretation of the work that was anticipated to be  
5 complete by the contract documents from an adjusted  
6 pull box was a pull box that was usable by our  
7 standards of what is an acceptable pull box.

8 The initial work done by Haynes for these  
9 temporary adjustments left a pull box that was a box  
10 surrounding dirt. That was not an acceptable pull box.

11 It was extra work to the contractor. We agreed.  
12 We paid for that extra work.

13 CHAIRMAN NUTBROWN: How did you pay for it the  
14 first time around? At what price?

15 MR. O'DEA: Initially I was under the impression  
16 we were making partial payments on the pull box item.

17 Say the contractor touched 70 of them. We paid  
18 70 at a certain percentage because a completed pull box  
19 to us involved, you know, raising it, putting these  
20 conduit -- putting the pea gravel, sealing the wires  
21 going to the conduit. All of that is a completed pull  
22 box.

23 If they touched 70 of them, they've got probably  
24 on a monthly estimate a quantity of 25 or 30 because --

25 CHAIRMAN NUTBROWN: The only way of telling that

1 is through your pay log.

2 MR. O'DEA: Exactly. When we eventually got to  
3 the point where quite honestly this initial adjustment  
4 for this added work kind of slid by us. That's why we  
5 recognized that there was extra work. That's what the  
6 unilateral is all about.

7 No one envisioned this temporary relocation where  
8 the pull boxes would be sitting there not up to any  
9 standard whatsoever. We told them to do it. We told  
10 them to do it when we told them to straighten the job  
11 up and move off.

12 It was extra. It really was. We acknowledge it  
13 was. We do not feel that was an adjusted pull box in  
14 accordance with the terms of the contract, which we  
15 feel include the items there.

16 MS. HAYNES: Mr. Chairman, if they did not feel  
17 at the time those boxes were adjusted that it was a  
18 full pull box adjustment, but yet they were willing to  
19 leave that project at that point, because that's when  
20 they were adjusted was when we were fixing to leave the  
21 project.

22 If they didn't feel like it was a completed  
23 adjustment, why were they willing to leave them like  
24 that?

25 CHAIRMAN NUTBROWN: Lynn, let me ask a question.

1 On the initial, when you were getting ready to leave  
2 the job, is that at the time you extended the conduits?

3 MR. STAPLETON: No, sir. At that time the boxes  
4 was adjusted to grade and it was sodded. When we come  
5 back the second time, stripped all the sod off, poured  
6 the sidewalk, readjusted the boxes up to grade, some of  
7 the grades actually was higher because of matching the  
8 light pole bases. It makes the box higher than it was  
9 the first time when it was down lower to the grass.  
10 Therefore, it would make the conduit shorter.

11 I can't say it about all boxes, but I can say it  
12 about some of them that it wouldn't have been that way  
13 the first time around.

14 CHAIRMAN NUTBROWN: The first time around it was  
15 strictly a vertical adjustment, no horizontal?

16 MR. STAPLETON: Could have been vertical, if it  
17 needed to be shifted a little bit.

18 CHAIRMAN NUTBROWN: Nothing to any great extent?

19 MR. STAPLETON: The second time when the conduit  
20 was added, we talked with them about the conduit. We  
21 said the conduit is too short, what should we do. They  
22 directed us to add, to extend the conduit.

23 We told them we would need extra money to extend  
24 the conduit. To do that you have to have your  
25 electrician cut the wires and put the conduit, add the

1 additional conduit and then reclamp your wires.

2 They directed us not to do that, to split the  
3 conduit down the side. If it was a foot apiece, cut it  
4 down one side, slip it around your wire, cut you a  
5 coupling in half, slip it down over, twist it.

6 We done as directed.

7 CHAIRMAN NUTBROWN: Okay. Jack, do you have any  
8 other questions?

9 MR. NORTON: No.

10 CHAIRMAN NUTBROWN: Freddie?

11 MR. SIMMONS: Wasn't this about the time of the  
12 extra eight days? Was that all in that initial  
13 adjustment, the temporary adjustment? The extra eight  
14 days, wasn't that what that was?

15 MR. STAPLETON: That would have been mainly for  
16 adding that conduit, having our electrician out there,  
17 having time for him to go back and add the conduit on  
18 all these boxes.

19 MR. HAYNES: We paid him to add conduit --

20 CHAIRMAN NUTBROWN: We are not down to the  
21 conduit item. We are still related to the pull boxes,  
22 trying to satisfy ourselves on that.

23 MR. STAPLETON: That one would have been even for  
24 the second adjustment or on the pull boxes and adding  
25 and extending the conduit, the 51.

1                   CHAIRMAN NUTBROWN: In the first part of your  
2 claim, the contractor's summary, it says the job was  
3 completed, I think, one day early. Is that correct?

4                   MR. HAYNES: I recall seeing that.

5                   CHAIRMAN NUTBROWN: It was 276 days and you  
6 finished on day 275. Does that sound right, Steve?

7                   MR. WIGLE: Let me see.

8                   MR. SIMMONS: That's what is on this thing here.

9                   MR. WIGLE: Yes.

10                  MS. HAYNES: Mr. Chairman, there is no spec in  
11 this book for a pull box adjustment, only for a new  
12 pull box. That's what Tim --

13                  CHAIRMAN NUTBROWN: Yes, but there's also a  
14 payment note in the plans stating what is to be  
15 included in the items of adjustment and so forth.

16                  MR. HAYNES: Pay item note number five, on sheet  
17 five?

18                  CHAIRMAN NUTBROWN: Yes.

19                  MR. HAYNES: We did that. We did exactly what it  
20 says on that pay item note.

21                  CHAIRMAN NUTBROWN: I'm reading here from your  
22 thing, the original contract time was 130, you were  
23 granted time extensions of 146 days, gave you 276  
24 contract days charged, 275. Is that correct?

25                  MS. HAYNES: Eighty of those days was because of



1 Value Engineering.

2 CHAIRMAN NUTBROWN: I'm not worrying about that.  
3 All I'm saying is you finished the job within the  
4 adjusted contract time.

5 MR. HAYNES: Right. One day early I think.

6 CHAIRMAN NUTBROWN: That's fine.

7 (Brief pause)

8 CHAIRMAN NUTBROWN: All right. We are down to  
9 the additional conduit.

10 MR. HAYNES: I believe we can move this one quite  
11 rapidly. It's the conduit that needed to be installed,  
12 as directed by the State, as we adjusted the boxes  
13 where the conduit was not enough conduit. I'd like to  
14 reiterate that we replaced this conduit as we were  
15 directed. We did not damage any conduit when we were  
16 there.

17 We felt it was not our contractual responsibility  
18 to do it. It was our responsibility to do it because  
19 that's what we were directed to do, and that's what we  
20 did.

21 CHAIRMAN NUTBROWN: Okay. This was additional  
22 conduit and not damaged conduit. Is that what you are  
23 saying?

24 MR. HAYNES: This was conduit that was needed to  
25 extend the pipe up, from raising the box up.

1                   When we got there, we did not damage any conduit.  
2                   But we didn't feel that was our contractual  
3                   responsibility, only our responsibility because the  
4                   State had directed us to do it, and we did.

5                   MR. O'DEA: Our position very simply is that the  
6                   note did not -- the note referred to damaged pull  
7                   boxes. The conduit was the conduit required to adjust  
8                   the pull box. That the conduit that the contractor  
9                   provided was included in the pay item, and he was paid  
10                  for the work.

11                  CHAIRMAN NUTBROWN: Was the quote that was  
12                  furnished to the Department for 94.50 per box requested  
13                  by you or unsolicited from the contractor?

14                  MR. O'DEA: It was unsolicited. He presented  
15                  that to us.

16                  MS. WILL: Unsolicited.

17                  MS. HAYNES: We did inform the Department at the  
18                  time they asked us to do the work that we felt we  
19                  should be compensated for that work. We told them that  
20                  we would be filling a claim on that.

21                  In order to file a claim, we had to document what  
22                  our claim would be.

23                  CHAIRMAN NUTBROWN: Okay. Freddie, do you have  
24                  any questions?

25                  MR. SIMMONS: No.

1 CHAIRMAN NUTBROWN: Jack?

2 MR. NORTON: One quick one. 366 additional man  
3 hours, that was Haynes' time or was that your  
4 electrical sub?

5 MS. HAYNES: That was the sub.

6 MR. NORTON: Okay.

7 CHAIRMAN NUTBROWN: That was not included in the  
8 94.50 in cost?

9 MS. HAYNES: Yes. His cost, his price to us was  
10 like 87 something and then we added 10 percent to that,  
11 which is the allowable mark-up.

12 CHAIRMAN NUTBROWN: Anybody else have anything on  
13 that item? Okay. Let's go to the pavement and  
14 removal.

15 MR. HAYNES: We will let Lynn do this one. He  
16 has firsthand knowledge with this. He was directly  
17 involved with this issue.

18 MR. STAPLETON: At this intersection we run  
19 into some unforeseen concrete pavement that we had to  
20 remove. I believe we spoke to Mr. O'Dea. We talked  
21 about this.

22 We was directed to remove it. We was paid for it  
23 under the contract pay items for the removal, but in  
24 the time of doing that, as being for unforeseen work,  
25 we requested two days to do this work. That's what we

1 are asking for.

2 The State stated that we had weather recovery  
3 time. If this was, in fact, the case, if it was  
4 unforeseen work connected to the project, we are still  
5 entitled to the time.

6 CHAIRMAN NUTBROWN: Is the time at this point a  
7 moot subject because of the fact that the job was  
8 finished within the original contract time?

9 MS. HAYNES: No, sir, because time is money.

10 MR. HAYNES: We would have finished the contract  
11 more days than one early had we not encountered these  
12 delays that we are asking for time.

13 CHAIRMAN NUTBROWN: Frank?

14 MR. O'DEA: The Department paid for the work. We  
15 felt the delay was concurrent with weather days that  
16 were granted. We will discuss all the time issues at  
17 the end, if you don't mind. There are a series of  
18 them.

19 CHAIRMAN NUTBROWN: Okay. Sod overrun.

20 MR. HAYNES: An easy explanation for the sod  
21 overrun was simply that we were told to dress and sod  
22 the south side of the road back, which we did.  
23 Obviously it's going to run way over because the sod we  
24 were throwing down then unknowingly at that time we  
25 were going to clear and grub it again at a later date

1 to pour curb and gutter and sidewalk.

2 Then after we did that, that sod come up. Then  
3 we poured the curb and gutter and sidewalk and then  
4 resodded again. It caused the sod to overrun.

5 CHAIRMAN NUTBROWN: Frank?

6 MR. O'DEA: We agree the sod overran. The  
7 contractor -- up until today, we have not heard of any  
8 argument about quantities. This argument that they  
9 presented was strictly a time issue due to the sod  
10 overrun.

11 The sod overruns were known of. Potentially all  
12 the work was described, everyone knew what was going to  
13 happen at the time supplemental agreement number two  
14 and the extension of contract time was granted.

15 So, we do not feel any additional time is due to  
16 the contractor.

17 MR. STAPLETON: The sod was increased. Wasn't  
18 the sod increased from the original contract when  
19 the --

20 MR. O'DEA: Yes.

21 MR. STAPLETON: To what amount?

22 MR. O'DEA: We increased it 23,000 square meters  
23 in supplemental agreement number two.

24 MR. STAPLETON: That was the anticipated.

25 MR. O'DEA: That was the estimated, exactly.

1 MS. HAYNES: On the final estimate you paid 32.  
2 So that's 10,000 square meters right there overrun,  
3 plus when the surveyor went and measured we are another  
4 10,000.

5 MR. STAPLETON: What we are saying is the  
6 discrepancy, that when the SA number two, they  
7 increased it on that to 23,000. That's going to be the  
8 anticipated amount of sod. In fact, when we finished  
9 the job, it was 32,000. It was 10,000 additional.

10 Now, also, at the end, when we've done this, had  
11 the surveyor do the survey -- let it be known we are  
12 not trying to slip in here with anything. It just  
13 happened like this. We had the survey because of all  
14 the problems and discrepancies that we've had here.

15 We've just realized this, too. It just happened.  
16 So we found another 10,000 square meter error.

17 It's nothing that we was trying to wait until  
18 this meeting to furnish to anyone.

19 So, now we are 20,000 square meters per se over,  
20 over what the anticipated SA number two was.

21 MR. O'DEA: As far as this measurement is  
22 provided today, it's kind of like the issue we talked  
23 about earlier where 11 months after the contractor has  
24 allegedly cleared everything with all their subs, they  
25 are telling us there's a dispute.

1           You know, it's hard for us to address this at  
2           this point in time, other than we work with the  
3           contractor through the project and through the final  
4           estimate.

5           Apparently the sod subcontractor was fine with  
6           the numbers at the time, or if they weren't, we were  
7           not notified of any issue with the sod quantities until  
8           this point in time.

9           We have paid for the -- we feel we have paid for  
10          all the sod placed. The estimate was increased on SA  
11          two by the Department in anticipation of an estimated  
12          overrun.

13          The work described by that overrun was known to  
14          both parties at the time the settlement was agreed to  
15          with Haynes and the Department, the rework of the south  
16          side.

17          MR. STAPLETON: Through the anticipated 23,000.

18          MR. O'DEA: That number was never discussed. The  
19          number was given by the Department after the days were  
20          agreed to with the Department and Haynes and Sons, just  
21          like the sidewalk we will talk about later.

22          CHAIRMAN NUTBROWN: Was the sod figure adjusted  
23          after supplemental number two?

24          MR. O'DEA: Adjusted for final quantity. It  
25          overran.

1           CHAIRMAN NUTBROWN: The original plan quantity  
2 never changed once you set up with the additional work  
3 in supplemental number two?

4           MR. O'DEA: The original plan set of quantity, SA  
5 two had a second quantity, then we have the final  
6 quantity measured.

7           MR. STAPLETON: SA two was the 23,000. That was  
8 the anticipated, which we wound up with 32,000 that  
9 we -- that everybody felt was what it was.

10          MR. O'DEA: I disagree. You weren't at the  
11 meeting. When we settled the claims settlement with  
12 Mrs. Haynes for the time and the money, we did not even  
13 talk about increasing the supply of --

14          MS. HAYNES: No, but I believe you did send us  
15 some quantities.

16          MR. O'DEA: They were estimated. We knew what  
17 the work was. The sod wasn't the controlling items of  
18 work. It's really an issue of time.

19          MS. HAYNES: Everything is estimated. When you  
20 send me a set of plans to bid, all those quantities are  
21 estimated. We all know that. But when it runs over  
22 that much --

23          MR. O'DEA: I dare say the quantity of sod did  
24 not enter into the agreed to amount of time. It is  
25 strictly the other issues related to the amount of work



1 Haynes had completed to date. It was a non --

2 MR. SIMMONS: The original quantity, the initial  
3 plans was 14,192. Then it went to 23 on the SA two.  
4 Then in the final payment it was 32,784.

5 MR. O'DEA: That's correct.

6 MR. SIMMONS: Now your last thing is 42,285.

7 MR. STAPLETON: Yes, but that's the surveyor's.

8 MR. WIGLE: Frank just made a point I'd like to  
9 make clear. During the negotiations for SA two,  
10 I wasn't there either, but it increased sod quantities  
11 from the plan quantity to the 23,000. That increase in  
12 sod was not an issue as far as time, is that right?

13 MR. O'DEA: That's correct because the sod wasn't  
14 a controlling item of work.

15 MR. HAYNES: It became an issue when it went from  
16 23 to 32 and now from 32 to 42.

17 MR. O'DEA: I disagree only because the amount of  
18 days the sod subcontractor was on the job after May 31  
19 was only four days. The project actually had active  
20 work through August 9.

21 It was clearly not controlling at the end of the  
22 project. No work was held up waiting. No sidewalk was  
23 held up waiting for the sod. It was the opposite. The  
24 sod went in after all the sidewalk work was done.

25 MR. SIMMONS: The claim we are seeing is for

1 time. I assume if there's anything with money that's  
2 going to come later because you're 10,000 more on your  
3 latest quantity. You haven't asked us for payment on  
4 this part.

5 MS. HAYNES: No, because at the time this was  
6 filed we didn't have that.

7 MR. STAPLETON: I can't say that the sod was  
8 only -- you are saying it only took four days in the  
9 end. This number from 23 to 32 would have been way  
10 back before those last four days, especially if it's  
11 42,000 now. It wouldn't have been just four days, it  
12 would have been way back.

13 I mean you are talking about 20,000 square meters  
14 of sod. You don't lay that in four days and water it  
15 and keep it alive.

16 MR. O'DEA: I agree. The sod was not critical.  
17 That's what I'm trying to say.

18 MR. HAYNES: You don't just lay sod. You've got  
19 to get preparation made to lay it. That takes  
20 additional time. To lay more sod, you have to get more  
21 area ready, which takes time.

22 Regardless of how you look at it, it took more  
23 time to do more work.

24 MR. STAPLETON: What we are saying is there was  
25 more sod laid than what was anticipated and what was

1 expected. We was held there for an extended time to do  
2 that. We feel we need to be paid for the time we was  
3 held there.

4 MR. O'DEA: We will defer all discussion on money  
5 for time. There is one giant item at the end where we  
6 can discuss it all at once.

7 CHAIRMAN NUTBROWN: Freddie, do you have any  
8 other questions?

9 MR. SIMMONS: No.

10 CHAIRMAN NUTBROWN: Jack?

11 MR. NORTON: No.

12 CHAIRMAN NUTBROWN: All right. We will move on  
13 to the next item, which is the sidewalk overrun.

14 MR. SIMMONS: Again, this is a time issue, not  
15 money.

16 MR. STAPLETON: Basically this is the same thing  
17 as the sod. It was anticipated on SA number two this  
18 would be 8500 square meters, hundred millimeters. That  
19 changed to 9100 square meters. We had additional time  
20 there. That's really the long and short of it.

21 CHAIRMAN NUTBROWN: Okay. Frank, do you want to  
22 include that in the end?

23 MR. O'DEA: Again, the issue with the quantity,  
24 there were two quantities changed in SA two that were  
25 not part of the VECP. It was the sod that was

1 increased and the sidewalk that was decreased.

2 At the time the Department and the Haynes entered  
3 into the settlement for SA two, the sod and sidewalk  
4 quantities were what they were in the plans. We didn't  
5 discuss those. When we were processing SA two, we knew  
6 there would be an overrun of sod, an underrun in  
7 sidewalk because we narrowed it up.

8 In order to minimize, we needed to encumber some  
9 money for the extra sod and take advantage we were  
10 going to underrun on the sidewalk.

11 We estimated an underrun based on the one meter  
12 of -- or point one meter. It's a metric job. We went  
13 from six foot to five foot in a lot of places. We took  
14 a rough length, we took an area. We deducted that  
15 amount when we did supplemental agreement two.

16 The point is that the Department made these  
17 changes to the quantities of sod and sidewalk after the  
18 agreement of the time was made. The original sidewalk  
19 quantity was actually 9600 square meters on the date we  
20 agreed to the time with Haynes.

21 The final amount is in reality an underrun from  
22 what they would have anticipated on the day we agreed  
23 to the time.

24 Again, this is a time issue, not a money issue.  
25 So, we have some things to say about that as well.

1 CHAIRMAN NUTBROWN: Okay.

2 MR. HAYNES: I think Frank is probably accurate  
3 with what he's just said. I'd also like to add that we  
4 were going to pour this sidewalk against the back of  
5 the curb originally.

6 Then after the agreement he came to me and asked  
7 me, would you have a problem with making the sidewalk  
8 here, putting the grass strip here, lowering the  
9 sidewalk. I said no, I wouldn't have a problem with  
10 that.

11 Well, I don't have a problem with doing anything  
12 that he asked me to do. Sometimes I want my money for  
13 it, but I ain't got a problem doing it.

14 That required setting two sidewalk forms instead  
15 of one. That required putting a narrow strip of sod  
16 down through there instead of no sod at all and all the  
17 sod on the back side.

18 That required a two-to-one slope on the sod,  
19 laying sod in a small area to dress and hand grade.

20 It did reduce the sidewalk. It did increase the  
21 sod. It increased the labor factor.

22 CHAIRMAN NUTBROWN: Okay.

23 MR. O'DEA: One last thing on that. We are not  
24 talking about the labor factor at this point. That's a  
25 whole new twist. All those redesigns were done prior

1 to SA two when we moved this sidewalk back.

2 Any of that the contractor, when they priced  
3 those changes to us, had the opportunity to -- and it's  
4 part of the final plans -- I mean that we executed with  
5 SA two. They had an opportunity to adjust their --  
6 whatever settlement we made, there was plenty of chance  
7 for them to take advantage of that at that time.

8 CHAIRMAN NUTBROWN: Freddie, do you have anything  
9 further?

10 MR. SIMMONS: Just one question. Was the 8550  
11 the number at SA two when you started the phase two  
12 plan? That's what I was looking for. The original  
13 sidewalk, the 100 millimeter was 9635.

14 MR. O'DEA: Right. At the start of SA two it was  
15 8550.

16 CHAIRMAN NUTBROWN: Jack, do you have any  
17 questions?

18 MR. NORTON: No.

19 CHAIRMAN NUTBROWN: Now let's move on to the  
20 inadequate erosion control.

21 MR. HAYNES: We can move back almost to the very  
22 beginning of recognizing the problem with MOT. I had  
23 come to Frank with this about inadequate MOT. We had  
24 addressed this issue. We had agreed that, yes, it's  
25 inadequate, that we've got to do something different.

1 I said -- and another thing out there on the job.  
2 I said these open drain ditches don't have any silt  
3 fence running along them.

4 All the jobs I've been on they put silt fence at  
5 the toe of these slopes. So, it was elected not to do  
6 this.

7 In the course of doing this, the way the job  
8 turned out, the extended period of time, the dressing  
9 of the job and redressing of the job and working, what  
10 it ended up, I had to clean these ditches out before  
11 I left. That cost additional time.

12 CHAIRMAN NUTBROWN: Frank?

13 MR. O'DEA: Our position is the plans had spelled  
14 out where silt fence was supposed to go. I don't  
15 recall having the specific direction or a request from  
16 Haynes to add silt fence to the project.

17 The silt fence we did not install, that was  
18 included in the plans was located as shown in these  
19 sheets.

20 There's some side drains that ran between the  
21 driveways. The plans show putting silt fence in front  
22 of the mitered ends across the driveways.

23 The first sheet is just a tally of the  
24 quantities. I'm on page 9-B of our exhibit.

25 The silt fence that we did not install in

1       accordance with the plans, the only thing it would have  
2       done would prevent silt from backing into our pipes.  
3       So, the only extra work we could envision by not  
4       installing these would be desilting of the pipes.

5               There was no desilting of the pipes performed by  
6       Haynes on this project that we were aware of, that we  
7       were notified of, that we sought.

8               The remainder of the silt fence was installed in  
9       accordance with the plans. The contractor never gave  
10      us any sort of notice during the job that there was  
11      excessive erosion causing them to perform extra work.

12              Quite honestly, the first we heard was at the  
13      qualified acceptance.

14              Again, it's a time issue as well, rather than a  
15      money issue.

16              MR. HAYNES: I might say that there was a young  
17      lady by the name of Amanda with me at the time I spoke  
18      with Frank about this. I recall him asking her that  
19      question. She said, yes, that's correct, there's not  
20      any silt fence on the plans designed to go along those  
21      ditches.

22              It was simply an oversight just like the MOT was.  
23      It should have been there. I'm not at liberty to start  
24      making these changes there without being directed.

25              MS. HAYNES: Amanda Hanks was the original



1 project engineer on this project. In the course of  
2 this project, she started out being the project  
3 engineer along with Keith and Schnars, were the CEIs.

4 Then Suzanne Phillips took over the project.  
5 Then Rochelle took over the project. In the course of  
6 this project, Mr. Ryan, who worked for Keith and  
7 Schnars, who was also on this project, passed away.  
8 Another fellow named Willis Fillbeck become took over  
9 the project.

10 In the course of all these people, you know, it's  
11 hard unless you get every single one of those people in  
12 a room to know exactly what went on unless you were  
13 sitting right there because, you know, we would get one  
14 directive and then you would get another directive from  
15 somebody else.

16 It was a wild project. It was a wild ride from  
17 the beginning.

18 CHAIRMAN NUTBROWN: Freddie, do you have any  
19 questions or comments?

20 MR. SIMMONS: No.

21 CHAIRMAN NUTBROWN: Frank, do you have anything  
22 else?

23 MR. O'DEA: I have nothing to say.

24 MR. HAYNES: Let me say one thing about this  
25 erosion control before I leave it.

1           When I mentioned it, Amanda mentioned it, us  
2           three were in the room. It was stated more or less,  
3           well, just forget it. So, I'm not going to make any  
4           waves, just do like I'm told.

5           I forgot it. I went to work. Maybe it wouldn't  
6           erode down in the ditch, but it did, and I cleaned them  
7           out.

8           MS. HAYNES: Tim was on the project.

9           MR. BAUER: I don't remember them mentioning a  
10          silt fence.

11          MS. HAYNES: You know they cleaned the ditches  
12          out.

13          MR. HAYNES: You know I had to clean the ditches  
14          out before dressing and sodding the first time.

15          CHAIRMAN NUTBROWN: Frank?

16          MR. O'DEA: I will make this statement. Myself  
17          and Tim were on the project from day one through the  
18          end of the project. You know, yes, the Department had  
19          a couple of personnel, project engineer, unfortunately,  
20          died. Mr. Haynes wasn't on the job. He had some  
21          health problems, then Lynn came on. It was a jumbled  
22          project.

23          That really doesn't enter into the issues and the  
24          notice and if we would have been notified, we worked  
25          very well with the contractor.

1           It was a tough project from day one. We worked  
2           it out as well as we could. That's all I've got to  
3           say.

4           CHAIRMAN NUTBROWN: Freddie, any other comments?

5           MR. SIMMONS: No.

6           CHAIRMAN NUTBROWN: Jack?

7           MR. NORTON: No.

8           CHAIRMAN NUTBROWN: All right. The additional  
9           compensable delays.

10          MR. HAYNES: I don't think we've asked any money  
11          for this. It's just the fact that we thought that it  
12          should be known that it happened.

13          MR. O'DEA: We will take it.

14          MS. HAYNES: Compensable delays are the days.

15          CHAIRMAN NUTBROWN: Frank, do you have any  
16          comment on that?

17          MR. O'DEA: We will take their offer.

18          CHAIRMAN NUTBROWN: All right. The summary.

19          MR. O'DEA: No, I'm sorry.

20          MR. HAYNES: Strike that statement.

21          MR. O'DEA: He made a mistake.

22          MR. STAPLETON: The delays is everything we  
23          listed, went through and talked about.

24          MR. HAYNES: It's quite simple to me. Just pay  
25          us, let us go home.

1 CHAIRMAN NUTBROWN: Okay.

2 MR. O'DEA: As far as the additional compensable  
3 delays, the Department does have a position. Each of  
4 these individual items we have included a summary where  
5 the contractor has tied days to specific activities.  
6 As you have mentioned earlier, the contract did come in  
7 one day under adjusted contract time.

8 I understand where the contractor is coming from  
9 when he's delayed from completing a project early, you  
10 know. We should not hold him up from completing a  
11 project early. It is not our intention to.

12 The situation we have here is a little bit  
13 different. The Department and contractor entered into  
14 the supplemental agreement. The Department paid a  
15 significant amount of damages for a specified number of  
16 days.

17 The contractor is now saying I could have  
18 finished earlier and then I would have made more money.  
19 But we feel that when we paid the damages, and we have  
20 paid specifically for the delay damages for those  
21 number of days, that we should not be paying a second  
22 time for those delay damages when we have already paid  
23 once.

24 MS. HAYNES: That payment for those delay damages  
25 was up to the date of the supplemental agreement, not

1 after the supplemental agreement. Up to the date of  
2 the supplemental agreement.

3 MR. O'DEA: I agree, that the -- but the damages  
4 that were paid were for the number of days from that  
5 date forward. Had we gone beyond that date, the  
6 Department would be willing to look at other options.  
7 We feel we have paid specifically for those damages.

8 We have paid for a damage. You are saying now  
9 that that wasn't really a damage, if you could have  
10 finished the work early, and we don't think that's fair  
11 to be paying a second time.

12 CHAIRMAN NUTBROWN: Let me interrupt and clarify  
13 something. The settlement at the time of supplemental  
14 agreement number two went from the beginning of the job  
15 up through the signing of supplemental agreement number  
16 two, is that correct?

17 MR. O'DEA: Well, covered a lot of stuff, quite  
18 honestly. We need to take a look at supplemental  
19 agreement number two. It covered all the damages to  
20 that point in time, plus the Value Engineering, plus  
21 the redesign work.

22 CHAIRMAN NUTBROWN: Okay. Still, any delays or  
23 damages that came after supplemental number two were  
24 not included in supplemental number two? Is that the  
25 way I read it? I looked at supplemental agreement

1 number two, the --

2 MR. O'DEA: As long as it wasn't related to  
3 issues known at the time. And there were many issues  
4 known at the time. Yes, I agree with you.

5 CHAIRMAN NUTBROWN: Okay.

6 MR. O'DEA: We paid the damages, though, for  
7 those days, to a certain point.

8 CHAIRMAN NUTBROWN: All right.

9 MR. HAYNES: Now, Mr. Chairman, we don't have a  
10 problem with phase one of the project and the agreement  
11 and the settlement. We don't have anything -- from  
12 that date back we don't have a problem. We are not  
13 asking for anything. We don't have a problem, don't  
14 have a compliant. It's only from that date forward.

15 CHAIRMAN NUTBROWN: What your package says.

16 MR. HAYNES: Yes.

17 CHAIRMAN NUTBROWN: Freddie, do you have  
18 anything?

19 MR. SIMMONS: The supplemental agreement number  
20 two, does that include all of the 146 days that the  
21 contract was extended?

22 MS. HAYNES: No.

23 MR. O'DEA: It included -- an 80-day extension  
24 plus a suspension was built in.

25 MR. SIMMONS: The extra time was granted at the

1 end of the contract, the other 60 days or so?

2 MS. HAYNES: They were rain days, suspension  
3 days.

4 MR. O'DEA: There was a two-month suspension  
5 built in. It's really 80 plus 60 plus weather days.  
6 It's basically compensated delays, either weather,  
7 which isn't compensated, or -- we granted 80, suspended  
8 60. This is back when we could still suspend time.

9 MR. SIMMONS: It's your position I would assume  
10 that the 80 days in the supplemental for work itself  
11 included the overruns of these items and all damages or  
12 whatever related to that?

13 MR. O'DEA: Yes, sir.

14 MS. HAYNES: I believe the 80 days was -- Frank,  
15 I don't think that is totally the way it was. The 80  
16 days was granted because of time delays that had  
17 happened before the supplemental agreement. Bill Downs  
18 asked me that day, well, how long do you need to finish  
19 this contract.

20 MR. O'DEA: How long do you need to finish the  
21 contract?

22 MS. HAYNES: That's right, because we had not  
23 been able to work because of the delays caused by the  
24 Department.

25 MR. O'DEA: That's right. I agree with you. We

1           were sitting in the Daytona conference room. We wanted  
2           to know how much more time do we need to finish the  
3           job.

4                   MS. HAYNES: That's right.

5                   MR. SIMMONS: Was that after supplemental two?

6                   MS. HAYNES: But the 80 days was granted because  
7           of time delays that the Department had already caused,  
8           not because we knew that there were delays in the  
9           future.

10                  MR. HAYNES: Right.

11                  MR. O'DEA: I understand. What we were trying to  
12           determine at that point in time was where -- knowing  
13           all these things that went on, when are we going to be  
14           done now. That's what we were trying to determine, how  
15           long we need to finish this job.

16                  MS. HAYNES: I know, but you can't say that you  
17           paid for the delays that happened after the  
18           supplemental because you granted the 80 days for the  
19           delays that happened before the supplemental.

20                  MR. O'DEA: There was an original contract time  
21           was our position. We paid for 80 plus 60 suspension  
22           because we paid for that as well. We paid for 140  
23           extra days.

24                  MS. HAYNES: The only thing you paid on  
25           suspension was maintenance of traffic.



1 MR. O'DEA: We paid what you and I agreed --

2 MS. HAYNES: \$12,000 for maintenance of traffic.

3 MR. O'DEA: We paid what we agreed on.

4 MS. HAYNES: I know, but you are making it sound  
5 like you paid us for the suspension time when really  
6 you didn't. You paid us for the maintenance of traffic  
7 during the suspension time.

8 MR. HAYNES: We didn't ask for any money during  
9 that suspension time, only what it took to maintain the  
10 maintenance of traffic. We were not like saying, all  
11 right, then we are going to nail your hide to the cross  
12 for full compensation on those 60 days, too. We only  
13 asked for compensation on the 80 days and a minimum  
14 amount of money on the 60 days is all we asked for.

15 MR. NORTON: Frank, in the contract time  
16 extension granted by the DOT, you gave 146 days. Does  
17 that include the 60-day suspension?

18 MR. O'DEA: No.

19 MR. NORTON: None of this --

20 MR. SIMMONS: That's not part of it?

21 MR. NORTON: You actually gave them 80 days for  
22 SA two and then you gave them another 66 days for  
23 weather, et cetera?

24 MS. HAYNES: No.

25 MR. O'DEA: I didn't prepare that. I think that

1 was from Haynes. I don't know.

2 CHAIRMAN NUTBROWN: I would say the way I read it  
3 is the 140 days includes the delays prior to.

4 MR. SIMMONS: The 276 which was the total  
5 contract allowed time, that includes the 60-day  
6 suspension?

7 MR. O'DEA: No, it doesn't. There's been other  
8 time granted prior to supplemental agreement two. We  
9 gave seven days for that initial survey problem.

10 MR. SIMMONS: This 276 is not the whole time.

11 CHAIRMAN NUTBROWN: In other words, the delayed  
12 time and the contract type was just stopped.

13 MR. O'DEA: During the 60 days, yes.

14 CHAIRMAN NUTBROWN: For the 60 days the job was  
15 closed and then restarted again when they went back to  
16 work.

17 MR. NORTON: The total contract days, whatever it  
18 happens to be, if it's 275 or whatever, you would add  
19 60 to get the actual time, elapsed time.

20 MR. O'DEA: Right.

21 MR. SIMMONS: What about weather? How much  
22 weather delay was there on the job that they got extra?

23 MR. MACKIEWICZ: I don't know the exact number.

24 MR. SIMMONS: That wouldn't be in there?

25 MR. O'DEA: Weather is included in the 276. What

1 is not included in the 276 is the 60 days, plus the  
2 project has multiple events that the contractor has to  
3 suspend for that's in the original contract like Bike  
4 Week in Daytona, the Daytona 500 in July.

5 MS. HAYNES: Look at that supplemental two. Can  
6 I look at the final estimate? I think it shows the  
7 days and all on here.

8 MR. NORTON: What was the notice to proceed?

9 MR. SIMMONS: 7-16-99.

10 MR. NORTON: 7-16-99.

11 MS. HAYNES: The project started I believe  
12 August 16.

13 MR. NORTON: And the final was 8 --

14 MS. HAYNES: August 16 to August 9.

15 MR. NORTON: 9-25.

16 MR. SIMMONS: That's 420 days or so. So, there  
17 was a lot of stuff going on in Daytona.

18 CHAIRMAN NUTBROWN: You would have had a session  
19 for Bike Week, for the Daytona 500.

20 MR. O'DEA: Right, July, spring break,  
21 Octoberfest.

22 MS. HAYNES: They have a lot of things going on  
23 down there.

24 MR. NORTON: 431 days.

25 MS. HAYNES: From August 16, '99 to August 9th?

1 That can't be right.

2 MR. NORTON: I'm going from notice to proceed of  
3 7-16-99 to final of 9-25-2000.

4 MS. HAYNES: The notice to proceed you have a  
5 certain amount of time after that.

6 MR. NORTON: Yes, but I was just looking for the  
7 total days.

8 CHAIRMAN NUTBROWN: Mrs. Haynes, have you  
9 completed your presentation on these items?

10 MR. HAYNES: My head is spinning a little right  
11 now, but I think we have.

12 CHAIRMAN NUTBROWN: All right. Mr. O'Dea, have  
13 you completed your presentation?

14 MR. O'DEA: Yes.

15 CHAIRMAN NUTBROWN: Okay. Mr. Simmons, do you  
16 have any further questions to direct at either party?

17 MR. SIMMONS: No.

18 CHAIRMAN NUTBROWN: Mr. Norton?

19 MR. NORTON: I notice under the summary it says  
20 Haynes reserves the right to amend its calculations in  
21 the future as further analysis is performed. Are you  
22 going to do further analysis?

23 MS. HAYNES: The only further analysis that  
24 I think we need to address is the overrun of the sod.

25 MR. NORTON: Okay.

1 CHAIRMAN NUTBROWN: You have no other questions?

2 MR. NORTON: I'm done.

3 CHAIRMAN NUTBROWN: The hearing is hereby closed.

4 MR. O'DEA: I'm sorry. The overrun of the sod we  
5 would like to address, or is it too late to address it?

6 CHAIRMAN NUTBROWN: No, we can open it up or you  
7 can set it up as a separate thing.

8 MR. MACKIEWICZ: Why don't you just make a  
9 statement on it.

10 MR. O'DEA: The whole issue of the qualified  
11 acceptance here, the contractor, we had an issue about  
12 accepting the qualified acceptance. The contract  
13 basically says they are not allowed to reserve their  
14 right. They need to spell out all their issues.

15 I -- this is the first we are hearing about this  
16 issue. We do not believe there is an underrun in sod.  
17 We wish the contractor would have told us at any of the  
18 multitude of the other times we had to discuss this  
19 issue.

20 It's been a year since the project -- two years  
21 since some of this sod has been put down. It's  
22 impossible to actually do measuring to tell where is  
23 new sod and where is old sod.

24 MS. HAYNES: If you know the scope of the work  
25 and the project as well as we did, it would be easy to

1           measure the sod.

2           MR. WIGLE: No, it's not.

3           MS. WILL: The sod was measured as it was laid.

4           MS. HAYNES: The surveyor was able to measure it.

5           MR. WIGLE: No, he wasn't.

6           MR. HAYNES: He was able to measure it with Lynn  
7           and I directing him.

8           MR. WIGLE: I would like to read part of  
9           paragraph two. "Considerable time had passed since the  
10          installation of the sod and, therefore, I was required  
11          to rely on the guidance of Curtis Haynes to the final  
12          sod limits."

13          MS. HAYNES: If you will notice in our claim, his  
14          measurements and the water -- let's see. His  
15          measurement comes real, real close to what we came up  
16          with in this.

17          MR. HAYNES: In our original claim.

18          MR. O'DEA: I never saw any reference to a  
19          quantity of sod.

20          MS. HAYNES: Well, there was.

21          MR. O'DEA: Also, you've hired a surveyor to  
22          measure sod that isn't there. I also have to object to  
23          that. He acknowledges in the case of suspension of  
24          time, the sod had been removed during subsequent  
25          construction. So, basically he's measuring sod that is

1 no longer there.

2 I think that's highly suspect as well. It's been  
3 removed. We measured it before it was removed.

4 MS. HAYNES: I take offense to that, Frank, for  
5 Russ Gibson. We know where it --

6 MR. HAYNES: We know where it was removed to.

7 MS. HAYNES: Right here under sod overrun,  
8 "Subtracting the 23,000 square meters phase two, plan  
9 total, from the 32,784 square meters of actual sod  
10 totals 9,784 square meters of overrun."

11 He is showing, I think 9,400 something.

12 MR. HAYNES: That's additional.

13 MS. HAYNES: You are right. I'm sorry. That's  
14 additional. I really believe if the Department wanted  
15 to measure the sod that it would be possible. Tim was  
16 out there every day.

17 MR. BAUER: I've already measured it.

18 MS. HAYNES: You measured it when it was being  
19 laid. You did make a mistake on the water. They made  
20 a mistake on Clermont, paying us for the handrail. For  
21 us to ask you to remeasure that sod I don't think is  
22 asking too much.

23 MR. O'DEA: You never asked us to remeasure the  
24 sod.

25 MS. HAYNES: No, not until we had Russ measure

1 it. We didn't know there was a problem.

2 CHAIRMAN NUTBROWN: All right. The hearing is  
3 officially closed. The Board will deliberate,  
4 hopefully have an order out within about six weeks.  
5 You will receive a copy of the transcript as well as  
6 the order when it's issued.

7 (Whereupon, the deposition was concluded at 4:00 p.m.)

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1                                    CERTIFICATE OF REPORTER

2        STATE OF FLORIDA )

3        COUNTY OF LEON )


4            I, CATHERINE WILKINSON, Court Reporter, do hereby  
5        certify that I was authorized to and did stenographically  
6        report the foregoing proceedings; and that the transcript is  
7        a true record of the testimony given.

8            I FURTHER CERTIFY that I am not a relative, employee,  
9        attorney or counsel of any of the parties, nor am I a  
10       relative or employee of any of the parties' attorney or  
11       counsel in connection with the action, nor am I financially  
12       interested in the action.

13           Dated this 14th day of August, 2001.

14

15

  
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