

# APPROVED

## MINUTES

### CITY OF FORT LAUDERDALE CIVIL SERVICE BOARD MEETING

Thursday, December 12, 2019 - 10:00 AM  
City Hall, 1st Floor Commission Chambers  
100 North Andrews Avenue  
Fort Lauderdale, Florida

#### Cumulative Attendance

01/01/2019 – 12/12/2019

<u>Board Member</u>	<u>Attendance</u>	<u>Present</u>	<u>Absent</u>
Lori Adelson, Chair	P	0	0
Shelley Gialluca	P	0	0
Robert Baldwin	P	0	0

#### Call to Order

Ms. Smith called the meeting to order by at 10:37 AM.

#### Roll Call

#### Staff Present:

Tarlesha Smith, Esquire - Director of Human Resources and Board Secretary  
Kerry Arthurs - Administrative Supervisor and Board Clerk

#### Other Attendees:

Mimi Turin, Esquire – Board Counsel  
Patrick Zalman, Esquire – Outside Counsel for the City of Fort Lauderdale  
Ken Miller, Esquire – Outside Counsel for the City of Fort Lauderdale  
Denise J. Bleau, Esquire – Counsel for John Madden, Appellant  
John Madden – Appellant  
Janeen Richard – Employee Relations Manager  
Anthony Fajardo – Director, Department of Sustainable Development

#### Attachment:

Transcript of Proceedings – Prototype Inc.

#### Meeting Adjournment:

the meeting was adjourned at 4:01 PM.

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CITY OF FORT LAUDERDALE  
CIVIL SERVICE BOARD HEARING

**TRANSCRIPT OF PROCEEDINGS**

**AGENDA ITEM V  
APPEAL OF TERMINATION OF EMPLOYMENT - JOHN MADDEN**

DATE HELD: THURSDAY, DECEMBER 12, 2019  
TIME: 10:37 a.m. - 4:01 p.m.  
PLACE: City Hall  
1<sup>st</sup> Floor Commission Chambers  
100 East Andrews Avenue  
Fort Lauderdale, FL 33301

**APPEARANCES BY****BOARD MEMBERS:**

LORI ADELSON  
SHELLEY GIALLUCA  
ROBERT BALDWIN

**STAFF:**

TARLESHA SMITH, Director of Human Resources  
and Board Secretary  
STEPHANIE ARTIS, Financial Administrator  
KERRY ARTHURS, Administrative Administrator

**COUNSEL:**

PATRICK W. ZALMAN, ESQUIRE  
KEN MILLER, ESQUIRE  
Haliczer, Pettis & Schwamm  
*Outside Counsel for the City of Fort Lauderdale*  
One Financial Plaza, Seventh Floor  
Fort Lauderdale, FL 33394-0015

DENISE J. BLEAU, ESQUIRE  
Ward, Damon, Posner, Pheterson and Bleau  
*Counsel for John Madden, Former Employee*  
4420 Beacon Circle  
West Palm Beach, FL 33407

MIMI TURIN, ESQUIRE  
Turin Center for Dispute Resolution  
*Board Counsel*  
11352 West State Road 84, Suite 58  
Davie, FL 33325-4007

## HEARING

DECEMBER 12, 2019

COMMENCING AT 10:37 A.M.

TARLESHA SMITH: Good morning. It is 10:37 a.m. and I'd like to call the December 12, 2019, meeting of the City of Fort Lauderdale Civil Service Board Meeting to order. Please call the roll.

CLERK: Lori Aldeson.

MS. ADELSON: Correction, Adelson.

CLERK: Adelson, sorry.

MS. ADELSON: No worries.

CLERK: Shelley Gialluca.

MS. GIALLUCA: Gialluca, here.

CLERK: Robert Baldwin.

MR. BALDWIN: Here.

CLERK: Mimi --

MS. TURIN: I am Mimi Turin, Board Counsel.

MS. SMITH: Board Counsel. Okay.

MS. TURIN: And I believe you now have a quorum, and we also have the Secretary to the Board.

MS. SMITH: Yes, Secretary to the Board. I am Tarlesha Smith, the HR Director for the City of Hialeah.

UNKNOWN FEMALE: Hialeah?

MS. SMITH: Why do I keep saying that? I meant

1 the City of Fort Lauderdale. It takes me back fifteen  
2 years ago, twenty.

3 Yes, that's the Court Reporter. Can you  
4 announce where you're from? The Court Reporter, which  
5 agency are you with?

6 COURT REPORTER: My name is Harcy (Landivar) and  
7 I'm from Verbatim Support Services.

8 MS. SMITH: You've already introduced the Board  
9 Members. I don't know if anyone wants to say anything  
10 else in addition to what they've said already besides  
11 their name. Introduction of the Board Members?

12 CHAIR ADELSON: No. Present.

13 MR. BALDWIN: Nothing.

14 MS. SMITH: Okay. The first order of business  
15 for the Board is to appoint a Chair.

16 MR. BALDWIN: I'd like to make a motion to  
17 appoint Lori Adelson as the Board Chair.

18 MS. TURIN: Somebody needs to second that.

19 MS. GIALLUCA: I'll second that motion.

20 MS. TURIN: All in favor?

21 MR. BALDWIN: Aye.

22 MS. GALLUCA: Aye.

23 MS. TURIN: Congratulations.

24 MS. ADELSON: Thank you.

25 MS. SMITH: Lori Adelson is the Chair of the

1 Board for the Civil Service Board for the City of Fort  
2 Lauderdale. Congratulations, Lori.

3 CHAIR ADELSON: Thank you.

4 MS. SMITH: The meeting is yours.

5 CHAIR ADELSON: Okay. Good morning everyone.  
6 So, inasmuch as I am newly appointed as the Chair of  
7 the Board, I ask your indulgence in terms of moving  
8 the hearing forward this morning. First thing I'd  
9 like to ask, are there any preliminary matters that  
10 need to be addressed? And, if Counsel could also  
11 introduce themselves. So we'll start with the City.

12 MR. ZALMAN: Good morning. Patrick Zalman,  
13 outside counsel for the City of Fort Lauderdale.  
14 Along with me is attorney Ken Miller and Building  
15 Official John Travers is representing the City of Fort  
16 Lauderdale.

17 CHAIR ADELSON: Good morning, gentlemen.

18 MS. BLEAU: Denise Bleau, attorney on behalf of  
19 John Madden and Mr. Madden is here as well.

20 MS. TURIN: Is the Board going to go straight  
21 into Item 5 Appeal of Termination, or are you going to  
22 review the meeting minutes?

23 CHAIR ADELSON: Why don't I review the meeting  
24 minutes of --

25 MS. TURIN: September 28, 2017, if you want to

1 approve those.

2 CHAIR ADELSON: And I believe there was a  
3 correction that Bob was going to address.

4 MR. BALDWIN: I have no problem with the minutes  
5 except it was brought to my attention on page 1 that  
6 where it says those present be "Active Special Counsel  
7 recently appointed at the December 12, 2017," it  
8 should be December 15.

9 MS. TURIN: Fifteenth. The City will note that.

10 CHAIR ADELSON: And with that said, the motion  
11 to approve the minutes?

12 MR. BALDWIN: I move to approve the minutes with  
13 that amendment.

14 CHAIR ADELSON: And I will second them, you were  
15 not present, so minutes are seconded and approved.

16 MS. TURIN: Seconded and approved. Thank you.

17 CHAIR ADELSON: You're welcome. Item 5. I am  
18 going to request if there are any preliminary matters  
19 to be heard, and thereafter to give the Board Members  
20 about ten minutes to go over the books that we were  
21 provided this morning and the briefings. Then we'll  
22 get started with the actual hearing itself. So, are  
23 there any preliminary matters that need to be  
24 addressed before we take a couple minutes to go over  
25 the documents that were provided?

1 MS. BLEAU: Just one legal matter. The City  
2 originally provided us a witness list and they've  
3 subsequently provided a modified witness list that  
4 does not include all the people they originally  
5 notified us about.

6 Under a case, *Grice v. City of Kissimmee*, 697  
7 So.2<sup>d</sup> 186, the Court had found that a police officer  
8 was denied due process when termination was based on  
9 disputed testimony and he was not afforded the  
10 opportunity to confront and cross-examine his  
11 witnesses.

12 Obviously, the only time Mr. Madden has an  
13 opportunity to cross-examine any of the witnesses  
14 would be in this proceeding. So, to the extent the  
15 City wants to rely on any testimony provided by  
16 witnesses that are not going to be produced and here  
17 to testify today, we would object.

18 MR. ZALMAN: If I may?

19 CHAIR ADELSON: Yes, sure.

20 MR. ZALMAN: First of all, under the City  
21 Charter and the personnel rules that City Personnel  
22 and, I believe, the Board are bound to, there are no  
23 formal rules of evidence for this hearing other than  
24 the Board's power to subpoena and power to compel  
25 documents, which would have to be invoked.

1           Also, we have previously given Mr. Madden's  
2 counsel all the documents that we could possibly use  
3 in this hearing, which include the entire  
4 investigation of Mr. Madden that led to his  
5 termination. And I believe he actually had a copy of  
6 that report before he ever requested this hearing.

7           To that effect, all of the statements that  
8 Counsel is referring to were statements given  
9 conducting the investigation and are attached to that  
10 investigation. So, they've had the opportunity to  
11 review all of the individuals whose statements were  
12 taken.

13           And this is their opportunity to cross-examine  
14 witnesses. And they had the benefit of they could  
15 call any witness that they want to for to put on their  
16 case. We're calling the specific witnesses that we  
17 believe are pertinent to our case. They should have  
18 called the witnesses that they needed to call today.

19           They had plenty of opportunity to call whoever  
20 they needed to call. And if they haven't done that,  
21 we will waive that right. And if this was in a trial  
22 court setting, it would be the same. This is an  
23 appeal and the Board has to review the entire  
24 investigation that led to the termination.

25           So, those statements that are part of the

1 investigation, it is up to the Board to review them to  
2 see if due process was followed before we get to this  
3 hearing. Also, I just add a point, while Counsel has  
4 had every document produced by the City for weeks now,  
5 we have not received any documents from Counsel and  
6 ask for a mutual exchange of information which is  
7 their right to refuse.

8 But we have no idea who they are calling and we  
9 have -- we have an idea of who they are calling, I  
10 stand corrected. They gave us a list of individuals.  
11 But we have no idea what documents they intend to use  
12 and if there are any statements in those documents.

13 Thank you.

14 CHAIR ADELSON: If I may, Counsel.

15 MS. BLEAU: Yes.

16 CHAIR ADELSON: When did you receive the updated  
17 witness list?

18 MS. BLEAU: About thirty minutes ago.

19 CHAIR ADELSON: And were these witnesses already  
20 people that were previously identified in the course  
21 of these hearings?

22 MS. BLEAU: Yes. There's two, I think, two  
23 classes of witnesses for just edification purposes, so  
24 the record's clear. And let me put the witnesses  
25 aside for a minute, regarding the documents -- I think

1 Patrick's corrected himself -- but just to be clear,  
2 we had made public records requests going back six  
3 months ago, saying please let us know what it is you  
4 are going to be using at the hearing.

5 Ultimately, about a week ago, I think, we  
6 received a response to, actually, multiple requests.  
7 And the response was, "Here's the universe of  
8 documents that we may or may not use for this  
9 proceeding." Okay. So, we had to wait until we got  
10 here today to find out exactly what out of that  
11 universe of documents they intend to use, which  
12 statements they were going to use. When we showed up  
13 this morning, about 9:30, Patrick handed me and -- I'm  
14 sorry, I can't remember your last name --

15 MR. ZALMAN: Zalman.

16 MS. BLEAU: Zalman? Yeah, I don't mean to be  
17 disrespectful at all. Mr. Zalman handed me the  
18 notebook that said, "Here's the exhibits that we're  
19 going to use." So, I knew thirty minutes ago which  
20 exhibits they were going to use, which statements they  
21 intended to use. And I knew about ten minutes ago  
22 that they weren't going to call all the witnesses they  
23 said they were going to call.

24 MR. ZALMAN: I'm sorry, just to add, again,  
25 months ago we had asked if they would like a mutual

1 exchange of information, which was refused. As to the  
2 witness list, we haven't added people to the witness  
3 list, we have subtracted people.

4 Once we got the agenda, we were worried that we  
5 might not - we didn't want to run out of time. So, we  
6 streamlined it and removed some people that we thought  
7 might be redundant. Again, all of their names would  
8 have appeared in the investigative file. So, it's  
9 removal of witnesses.

10 And again, even if they intended to cross-  
11 examine or direct one of our own witnesses, if this  
12 was a trial court setting, they would have had their  
13 own witness list and they could have called our  
14 witnesses to have a direct examination of them. And  
15 they've had this information, they've had that entire  
16 investigation file with all of these names that are in  
17 the folders in front of you that you must review for  
18 this appeal for weeks.

19 MS. TURIN: This is Mimi Turin, for benefit of  
20 the Court Reporter. I'm going to draw the Board's  
21 attention to Section 6.04(e) of the City's Code which  
22 delineates the powers of the Board. And first  
23 sentence says, "The Board, each member of the Board,  
24 and the Secretary to the Board shall be designated by  
25 the City Manager, shall have power to administer

1 oaths, subpoena witnesses, and compel the production  
2 of books and papers pertinent to any investigation or  
3 hearing authorized by this charter." I'm not aware of  
4 any pending requests for subpoenas.

5 CHAIR ADELSON: That would be incorrect.

6 MS. TURIN: But I do understand from staff that  
7 there may have been an issue regarding subpoenas  
8 yesterday. I don't know if either of the counsels  
9 want to bring that issue to the Board now. I haven't  
10 seen anything.

11 MS. BLEAU: I'm not aware. The latest status I  
12 heard was that subpoenas had not yet been issued. Is  
13 that still the case?

14 MS. TURIN: Are there subpoenas?

15 MR. ZALMAN: There --

16 MS. TURIN: I think so.

17 MR. ZALMAN: There are no subpoenas. The City  
18 itself does not have subpoena power for this hearing.

19 MS. TURIN: Right.

20 MR. ZALMAN: That may have been some other  
21 confusion that we were trying to clean up yesterday.

22 MS. TURIN: Okay.

23 MR. ZALMAN: It's the Board that has -- and you  
24 just read it -- the Board has the power to subpoena.  
25 However, we're willing to figure something out for

1           that. We want a fair process for all parties.

2           MS. TURIN: Okay, that being said, because I  
3           never received any emails yesterday, but that's okay  
4           because we haven't had one of these hearings in quite  
5           a while and I understand that. If there are subpoenas  
6           floating around right now, is there a request for the  
7           Board to execute them and give them back to whoever  
8           brought them to the Board's attention? You don't have  
9           subpoenas. Do you have subpoenas?

10          MS. BLEAU: No. My understanding was that was  
11          being taken care of. My employment goes way back. I  
12          worked for Palm Beach County government for many  
13          years. I represent currently a lot of cities in Palm  
14          Beach County. Generally speaking, the employee tells  
15          the employer, "Make these witnesses available." And  
16          they make them available.

17          I got an email two days ago from Patrick saying,  
18          "These employees don't want to come." I said, "Okay."  
19          Some of these employees. And so I said, why are they  
20          being given a choice? They're at work, you're paying  
21          them. The employer can say, "Please show up at the  
22          County Chamber at this time to give testimony in this  
23          proceeding." And that's generally the way it's  
24          handled.

25          He said, "Well, we're going to send them later."

1 He said, "We're going to subpoena them." And I said,  
2 "Great." And then, the last word I got was an email  
3 saying that subpoenas had not yet been issued. That's  
4 all I know.

5 MS. TURIN: All right. From staff, are they  
6 just being -- is it a matter of printing them out and  
7 having, maybe the Board Chair perhaps sign off?

8 MS. SMITH: That's correct.

9 CHAIR ADELSON: Okay, so they're in a printer  
10 nearby.

11 CHAIR ADELSON: So, I have permission of Counsel  
12 we're going to sign subpoenas to ensure the witnesses  
13 that were asked to appear, appear?

14 MS. BLEAU: Yes, I would have to amend that now.  
15 Based on the two new pieces of information that I  
16 have, one) which is -- now I know what documents and  
17 statements they want to use, and two) now I know they  
18 are not intending to call some of the witnesses they  
19 said they were going to call, I would like to subpoena  
20 every person whose statement they want to use, so that  
21 I can cross-examine them today, or in these  
22 proceedings.

23 MS. TURIN: To the Chair, I believe Counsel  
24 would have the right to cross-examine any witnesses  
25 that City's going to put on anyway.

1 CHAIR ADELSON: Correct.

2 MS. BLEAU: Yes, but my understanding from the  
3 papers that I've been provided, that you have now been  
4 provided, there are statements in here of witnesses  
5 they do not intend to call.

6 CHAIR ADELSON: Oh, and I thought that's who the  
7 subpoenas were for, that we were talking about those  
8 missing people.

9 MS. BLEAU: Before today, I didn't know which  
10 statements they were going to use, so until I knew  
11 that, there were some people I didn't put on my list.  
12 Now that they want to use those statements, I need to  
13 subpoena those as well. And then the two that they  
14 dropped off of their list, I need to subpoena those  
15 because I assumed they were going to be here based on  
16 the representations before today.

17 CHAIR ADELSON: Okay.

18 MS. TURIN: Just so you know, the Board does not  
19 prepare subpoenas. This is a neutral, impartial  
20 board.

21 MS. BLEAU: Sure.

22 MS. TURIN: So, it's a matter of a party,  
23 whichever one it is, who wants subpoenas, to get them  
24 to the Board so the Chair or the Secretary, whomever,  
25 can sign off on them. And then it's that party's

1 responsibility to get them served.

2 MS. BLEAU: So, I need to draft the subpoenas  
3 and have them issued.

4 MS. TURIN: Well, I understand there are some  
5 sitting, being printed in a printer someplace.

6 MS. BLEAU: Okay, I'll just give you a modified  
7 list, then. Right?

8 MS. SMITH: It would be through staff. To the  
9 Chair, if it's the Board's position that she is  
10 requesting additional witnesses, those subpoenas are  
11 not prepared, they'd have to be prepared and if it's  
12 the responsibility of Counsel to prepare them --

13 MS. TURIN: Well, whose counsel office could  
14 perhaps -- who prepared the ones that you currently  
15 have?

16 MS. SMITH: It is my understanding based on the  
17 conversation that was represented with Mr. Zalman,  
18 that request was made of the Secretary of the Board,  
19 which would be me and my office.

20 CHAIR ADELSON: And you prepared those?

21 MS. SMITH: They were prepared.

22 MS. BLEAU: Could you not just take that form  
23 and add -- do the same with the new people?

24 MS. SMITH: I don't have the authority, as I  
25 understand it, from what I just heard. If that

1 responsibility rests with Counsel, I don't want to  
2 overstep and do that. Unless --

3 MS. BLEAU: It's a little hard for me to prepare  
4 subpoenas when I'm here.

5 CHAIR ADELSON: May I make a recommendation?

6 MS. BLEAU: Sure.

7 CHAIR ADELSON: Could you print the blank  
8 subpoenas and they could be filled out and then we can  
9 --

10 MS. BLEAU: By hand, can we do the blanks?

11 CHAIR ADELSON: It can be an accommodation that  
12 can be made so that we can move this along.

13 MS. BLEAU: Great.

14 MR. ZALMAN: So, again, it's a little  
15 disingenuous to say that Counsel was not aware of all  
16 the people that are in the investigative report. That  
17 investigative report and all the statements attached  
18 to it were provided -- not just for this hearing, they  
19 were provided to Mr. Madden after his termination.

20 So, they've known the names of those individuals  
21 for a very long time. And I only bring that up again  
22 because I think there are about twenty individuals.  
23 So, if everybody's being subpoenaed, and counsel  
24 intends to conduct what would be a direct examination  
25 of all of them -- because we have our nine witnesses

1 -- this is going to take longer than -- I mean,  
2 logistically, I'm just not seeing how it will work.

3 And I don't blame Counsel for that part because  
4 the only thing the charter says is that you do have  
5 subpoena power. There's no procedure. And we're  
6 fully aware of that and we want to work together  
7 however we can. But I think that -- to say that  
8 you've had no idea who the individuals were until  
9 today is a little disingenuous.

10 MS. BLEAU: I absolutely had the investigative  
11 report. And I asked you, multiple times, tell me what  
12 you're going to use at the hearing. And you wouldn't  
13 do that until about a week ago when you said, "Here's  
14 the universe of things that we may or may not use."  
15 So, I don't know how I'm supposed to know until today  
16 when you said, "Here's the notebook of what we're  
17 going to use."

18 MR. ZALMAN: And that's when Counsel shows to  
19 use a sunshine law to have a public record request,  
20 and she was able to obtain the entire investigation  
21 file along with other documents. Which I believe most  
22 of those documents Mr. Madden already had. Anything  
23 that we found outside of it, we immediately produced.  
24 There were some single-paged letters and things. But  
25 one of those public record requests was everything we

1 intend to use at this hearing. And under the sunshine  
2 law, that's an exemption. It's our work product.  
3 They're not entitled to have our thoughts, our legal  
4 conclusions, our methodology, and what we plan to do  
5 at this hearing.

6 So, until we had finalized it -- and once we did  
7 we gave a witness list and we have produced the  
8 binders. Actually, everything in the binder, there's  
9 nothing taken out of the link they received for  
10 everything that the City has given them. We've only  
11 organized it so that we can be efficient at the  
12 hearing. Everything's been in there, there's no  
13 surprises. So, they could have provided a list to the  
14 City -- this was already rescheduled once, months ago  
15 -- for who they intended to call and the subpoena  
16 situation could have been worked out with Counsel for  
17 the Board. Now we're working it out the day of.  
18 Which, again, there's no procedure. We're willing to  
19 work together, but I just want to state the exact  
20 narrative.

21 MS. TURIN: With that being said, thank you to  
22 both parties for your presentations. As I understand  
23 it right now, we are getting blank subpoenas as well  
24 as some of those that have already been printed out.  
25 While the Board is having an opportunity to review the

1 materials, Counsel can go ahead and fill in and get  
2 her subpoenas ready.

3 I appreciate the arguments of the parties. If  
4 there's specific witnesses -- for the benefit of the  
5 Board -- if there are specific witnesses that either  
6 counsel has an objection to later on as we proceed  
7 with this case, that it's duplicative or repetitious  
8 or outside the scope, they can always assert an  
9 objection for the Board to take under review at that  
10 time. All right?

11 But that being said, I think the Board has heard  
12 adequately from both sides. So, while they are  
13 administratively looking to get their blank subpoenas  
14 and those that are filled in, the Board can take a few  
15 minutes and review the exhibit booklet. And is there  
16 an extra exhibit booklet? If not, I'll just borrow  
17 one of their later on. No? That's okay, I'll get one  
18 from theirs later on.

19 MR. MILLER: We have one of the witnesses' if  
20 you want to have one.

21 MS. TURIN: Oh, okay. That might be good, only  
22 because I have a funny feeling I'm the person who's  
23 going to be doing, at some point, finding some fact  
24 and conclusions of law. And then I'll give it back  
25 when the witness --

1           And also, I believe, if there is a concern about  
2 running out of time, I believe everybody here today  
3 has their calendars so that if this does exceed the  
4 two days that we've already scheduled, then let's not  
5 forget before we adjourn tomorrow to pull out our  
6 calendars and provide whatever time the parties may  
7 need. I don't think the Board is inclined to cut  
8 anybody off, are you? No. Okay.

9           CHAIR ADELSON: However, we would like to be as  
10 efficacious as possible.

11          MS. TURIN: Of course.

12          CHAIR ADELSON: We want to try to get this done  
13 by tomorrow, as scheduled.

14          [Discussion regarding exhibits and subpoenas off  
15 microphone; parts inaudible.]

16          CHAIR ADELSON: Go back on. I'm just requesting  
17 an update on the status of the subpoenas so we could  
18 move along.

19          MS. SMITH: I'll send a message upstairs, but  
20 the request that was originally made for subpoenas by  
21 Counsel, those were the ones that were originally  
22 prepared, I can't remember how many there were. You  
23 sent a list -- six or seven? And those were the ones  
24 that were actually prepared. Now the request is for  
25 blank ones? They're preparing them right now.

1 CHAIR ADELSON: Thank you.

2 MS. SMITH: You're welcome. I think they're  
3 here.

4 CHAIR ADELSON: Perfect timing, we were just  
5 asking about those.

6 [Discussion regarding subpoenas off microphone;  
7 parts inaudible.]

8 MS. SMITH: I have two sets of subpoenas as  
9 requested by the Board. We have the blank subpoenas,  
10 there are ten copies of blank subpoenas. I'm not sure  
11 if Counsel will need more than that. And we also have  
12 the subpoenas, and these are dated for Thursday and  
13 Friday, the blank subpoenas.

14 CHAIR ADELSON: Excellent.

15 MS. SMITH: In the event that we move as fast as  
16 we'd like to. And the second set of subpoenas are  
17 also for Thursday and Friday, but they are for the  
18 named individuals that Counsel provided to our  
19 offices.

20 CHAIR ADELSON: So we can sign the named ones.  
21 And get moving as you fill out what you believe you  
22 are going to need, there's a blank set for you as  
23 well. You were talking to your client. It's all  
24 right, no worries.

25 [Discussion regarding subpoenas off microphone;

1 parts inaudible.]

2 MS. SMITH: To the Chair, the guides are being  
3 printed as well. We were having an issue with the  
4 printer. For the Board.

5 CHAIR ADELSON: I appreciate that.

6 MS. SMITH: It has been sent by email, but we  
7 don't know if you're able to receive it based on the  
8 Internet issue.

9 CHAIR ADELSON: Well, we can get my five for me  
10 and I do have Internet, so I will see if I have it.  
11 That would be awesome if it was digitally.

12 MS. SMITH: I was just told that yours kicked  
13 back as "File is too big." Sorry.

14 CHAIR ADELSON: I have a very high firewall.

15 MS. SMITH: We're going to give printed copies  
16 for everyone right now. You can keep my copy for now.

17 CHAIR ADELSON: Okay, thank you. I appreciate  
18 it.

19 MS. SMITH: You're welcome.

20 CHAIR ADELSON: Counsel, I would appreciate it  
21 before we start, though, for me to be able to sign off  
22 on the subpoenas, if you're able to do that. We are  
23 trying to move forward, so you'll do it  
24 contemporaneously, is what you're suggesting?

25 MS. BLEAU: Yeah. We can -- for some of this I

1 can see how the testimony goes, as to whether or not I  
2 want to subpoena a witness. We're going to take  
3 breaks and the [inaudible].

4 CHAIR ADELSON: My preference would be to have  
5 them in advance so that we can get that procedural  
6 process out of the way. So, we'll take a couple of  
7 minutes.

8 [Discussion regarding subpoenas off microphone;  
9 parts inaudible.]

10 MS. SMITH: We're running out of the ones that  
11 you had a request for additional blank copies, or  
12 you're okay?

13 MS. BLEAU: Yeah, I'm fine. It's exactly  
14 enough.

15 MS. SMITH: Okay.

16 MS. BLEAU: Thanks.

17 MS. SMITH: You're welcome.

18 MS. BLEAU: For the City employees, are you  
19 taking care of them or do I need a process server?

20 MS: SMITH: To the Chair, I'm not really sure  
21 how the Board wants to handle that. But we are  
22 mindful of the fact that it's the holidays and if the  
23 employees have not been notified before today, I'm not  
24 sure who's available.

25 CHAIR ADELSON: There's a holiday tomorrow?

1 MS. SMITH: No, this time period. There are a  
2 lot of employees taking time off during this time  
3 period, so I'm not sure who's available.

4 CHAIR ADELSON: Let's get them served by the  
5 City to the City employees, and to the extent they are  
6 not available, we'll address that when that arises,  
7 again, with the individual objections over the  
8 witnesses that might be called.

9 MR. MILLER: To address your question, I've  
10 already spoken with some that are [inaudible]. The  
11 City will [inaudible].

12 CHAIR ADELSON: Perfect.

13 MR. MILLER: We do not need a process server.  
14 We will get them the subpoenas. Where they are or  
15 who's there, that I can't answer. But we will handle  
16 getting subpoenas to them, the City will.

17 MS. SMITH: Okay, Counsel, if you can tell me  
18 who your contact is with the City, I can probably  
19 start moving along when we get to that point.

20 MR. MILLER: [inaudible] Richard is coming into  
21 testify.

22 MS. SMITH: Ms. Richard? Oh, Janeen.

23 MR. MILLER: Janeen, yes.

24 MS. BLEAU: Can I just doublecheck the ones  
25 you've had already prepared to make sure they aren't

1 anybody I'm requesting?

2 MS. SMITH: Absolutely.

3 CHAIR ADELSON: Inasmuch as it's possible that  
4 your second witness might be later in the day, I would  
5 recommend that we see if we can find someone else to  
6 facilitate it earlier so that we're not stuck with  
7 people getting a notice at 4:00 this afternoon for  
8 tomorrow? I appreciate, by the way, your attempts to  
9 get it processed. But I'm just seeing, if it's 11:21  
10 at this point, if we can find someone else to assist  
11 us?

12 MS. SMITH: Okay, I guess the question would be  
13 for both Counsel, whether or not all employees are  
14 City employees working for that Department? I'm just  
15 trying to isolate the location so we can make sure we  
16 know where we're going. Are we aware?

17 MS. BLEAU: [inaudible]

18 MS. SMITH: Currently employed? Okay, to the  
19 Chair, for those who are not City employees currently,  
20 the City is not going to assume the responsibility of  
21 service of process.

22 CHAIR ADELSON: I understand that -

23 MS. SMITH: We cannot do that.

24 MS. BLEAU: [inaudible]

25 CHAIR ADELSON: I just want to make sure we can

1 identify the ones who are so we can get them served  
2 immediately. The ones who are not City employees, I  
3 need to get those back to you for service of process.

4 MS. BLEAU: [inaudible]

5 MS. BLEAU: I don't know how fast we can do  
6 that, that's the concern right now.

7 CHAIR ADELSON: Facilitate this and expedite  
8 this - why don't Counsel just look at the subpoenas  
9 together, regards who's City employees, let's get  
10 those served.

11 MR. ZALMAN: The ones that were pre-printed, the  
12 original nine, they're all still City employees.

13 MS. SMITH: Okay.

14 MR. ZALMAN: One of them is -- a Detective  
15 Neilly is on vacation. Other than that, everyone,  
16 unless they took off, I don't know.

17 MS. BLEAU: [inaudible]

18 CHAIR ADELSON: I've signed them. We'll need to  
19 get copies.

20 MS. SMITH: The ones that you just hand printed,  
21 we'll need to get copies of those. The subpoenas that  
22 you filled in, we'll need to get copies of those.

23 MS. BLEAU: Yes, [inaudible].

24 [Discussion regarding subpoenas off microphone;  
25 parts inaudible.]

1 MS. SMITH: To the Chair, are we going to  
2 receive the subpoenas so we can make a composite list  
3 and make the contact with the employees or are we  
4 going to - are you all going to get together, or you  
5 did that already?

6 CHAIR ADELSON: We suggested earlier that you  
7 guys are going to get together and give us a list of  
8 who we have so we can get them out to the employees.  
9 We'll give you a couple of minutes to do that.

10 MS. SMITH: Counsel, if you can make a list of  
11 those witnesses -- I know we have the subpoenas, we  
12 have her going back and forth making copies -- if you  
13 could just make the list, I could start making the  
14 contact with the Department to make sure the witnesses  
15 are available, to give notice to the Board who will be  
16 able to testify today or tomorrow.

17 CHAIR ADELSON: And if I could ask everyone to  
18 use their microphones?

19 MS. SMITH: I'm going to take them so I can make  
20 contact with the Department while you all are putting  
21 on your case, if that's okay?

22 CHAIR ADELSON: And if I might ask for you to  
23 use your microphone, you were not heard clearly before  
24 when you were speaking just now. Just put it closer  
25 to you. Thank you. You were using your indoor voice

1           instead of your outdoor voice.

2                     [Discussion regarding subpoenas off microphone;  
3 parts inaudible.]

4           MS. SMITH: Madam Chair, one of my employees I'd  
5 like to call to take care of the subpoenas, I just  
6 want to make sure she's not a witness, because I don't  
7 have all of them in front of me.

8           CHAIR ADELSON: Okay.

9           MS. SMITH: Counsel, is Brenda Brown one of the  
10 witnesses? I know Janeen Richard is, is Brenda Brown  
11 a witness?

12           MS. BLEAU: She is not.

13           MS. SMITH: Okay.

14           MS. BLEAU: You said you gave me ten blank ones,  
15 but I've been through this twice and I can only come  
16 up with a list of ten and I know one of these was not  
17 on that list. So, I'm not sure -- oh, good.

18           MS. SMITH: How many blank ones did you give  
19 them? You gave them ten? Okay?

20           CHAIR ADELSON: And again to my Counsel and  
21 parties to speak into the microphone. It is being  
22 recorded, so I need to make sure we hear the  
23 conversation.

24           MS. SMITH: Just to be clear, I'm waiting for  
25 the list so I can provide it to staff.

1 MS. BLEAU: So, here's where we are. There were  
2 only eight total, that I got --

3 MS. SMITH: Eight blank?

4 MS. BLEAU: Yes. And seven of these are filled  
5 out and signed and I'm going to give them back to you  
6 because they're City employees. One is not a City  
7 employee, so I will take care of that. And I need one  
8 more blank, because there was somebody that I left  
9 off.

10 CHAIR ADELSON: I heard something about nine,  
11 not ten?

12 MS. SMITH: Okay, of the original list that was  
13 provided by Counsel was nine names.

14 CHAIR ADELSON: Is that accurate, Counsel?

15 MS. SMITH: She said she printed ten, but she  
16 needs another form. Madam Chair, if I can request  
17 from Counsel when she provides me with the subpoena  
18 that she can provide me with the list so we can  
19 reconcile it, check it off.

20 MS. BLEAU: Here's this blank and I need one  
21 more blank.

22 MS. SMITH: Whatever she filled out, she needs  
23 to provide us with a list, and they need to have a  
24 copy as well.

25 CHAIR ADELSON: You're fine. I appreciate your

1 helping facilitate the process.

2 MS. SMITH: Okay, thank you. You have the list?

3 MS. BLEAU: Oh.

4 MS. SMITH: We just want to make sure we have a  
5 list to reconcile because we're giving copies all over  
6 the place to get everything in order.

7 MS. BLEAU: I ended up using this as my list,  
8 I'll make you a new one.

9 MS. SMITH: Okay. We can make a copy of your  
10 list and give it back, it that saves time.

11 MS. BLEAU: That's okay.

12 MS. SMITH: Okay, Brenda, if you could come for  
13 it, please.

14 MS. BLEAU: Is this a list of my initial  
15 requests or just the new ones?

16 MS. SMITH: Whoever you want to be here.

17 MS. BLEAU: All of them. Okay, you got it.

18 CHAIR ADELSON: That's why I want to get the  
19 process out of the way before we started, so we can  
20 move smoothly through the hearing itself.

21 MS. BLEAU: You know, I always think I'm better  
22 at multitasking than I really am.

23 CHAIR ADELSON: We all do.

24 MS. SMITH: Madam Chair, before we leave to go  
25 serve, we want to make sure both counsel have copies

1 of everything and everybody's on the same page before  
2 we leave to try to effectuate service with the City  
3 employees.

4 CHAIR ADELSON: Yes, thank you.

5 MS. SMITH: Okay.

6 MS. BLEAU: That's your list, here's my list.  
7 Patrick, do you have my list that I gave you? I have  
8 it on the computer, but -- I can pull it up if you  
9 don't have it handy. Never mind, I got it.

10 [Discussion regarding subpoenas off microphone;  
11 parts inaudible.]

12 MS. SMITH: Counsel, did you need more  
13 subpoenas, more blank ones?

14 MS. BLEAU: One more.

15 MS. SMITH: Okay.

16 CHAIR ADELSON: Oh, a blank. I'm not signing  
17 that. There you go. Oh, you only needed one more?  
18 May I have the copies of the blank one back? Ma'am  
19 could you make a copy of that list, for me and for  
20 them?

21 [Discussion regarding subpoenas off microphone;  
22 parts inaudible.]

23 CHAIR ADELSON: We've had a request for a  
24 bathroom break, so while we're doing this, this would  
25 be the perfect time for everyone to take care of that

1 and we'll be back.

2 MS. SMITH: Madam Chair?

3 CHAIR ADELSON: Yes, ma'am.

4 MS. SMITH: I reconciled the list that was  
5 provided by Counsel. One of the names we do not have  
6 a subpoena for. So, I need to give her a copy of  
7 that. And we are going to make sure you have a copy  
8 for both Counsel and an additional copy for whoever is  
9 serving for the City. So, if you would sign it -

10 CHAIR ADELSON: You need me to sign one more?

11 MS. SMITH: Yes.

12 MS. BLEAU: Who's the name?

13 MS. SMITH: Jerry Smilen.

14 MS. BLEAU: Yeah, that's the one I have here  
15 that she's not a - she or he? - he is not a City  
16 employee. That's why I have it.

17 MS. SMITH: So, you gave me a list of ones that  
18 was just City employees. Okay.

19 MS. BLEAU: Sorry. No, I gave you the list of  
20 all of them.

21 MS. SMITH: Okay.

22 CHAIR ADELSON: Okay, so that Department is  
23 resolved.

24 MS. SMITH: Yes. So, the Department is sending  
25 someone over right now to pick up the subpoenas for

1 service of process.

2 CHAIR ADELSON: Excellent.

3 MS. SMITH: We just need to get copies. Thank  
4 you.

5 CHAIR ADELSON: I don't think we need to wait  
6 for those copies in order to proceed. Because we had  
7 this procedural delay, I'm going to ask if all parties  
8 and counsel will state their appearances again for the  
9 record so that we're clear who's here to make sure  
10 we're moving forward with the appropriate parties and  
11 counsel present. So, I'll start with the City again.

12 MR. ZALMAN: Good morning again. This is  
13 Patrick Zalman and attorney Ken Miller for the City of  
14 Fort Lauderdale. And to my left is Building Official  
15 John Travers as the City's representative.

16 MS. BLEAU: Denise Bleau, attorney for John  
17 Madden, and to my right is John Madden.

18 CHAIR ADELSON: Excellent. Thank you. So, I'm  
19 going to ask, as per rules, for the City to start.

20 MR. ZALMAN: Good morning again. We're here to  
21 hear the appeal of the termination of Mr. John Madden.  
22 Mr. Madden was terminated by the City Manager on April  
23 3, 2017, from his position with the City. This was  
24 determined after a thorough investigation by Human  
25 Resources in which it was determined he violated these

1 specific policies which were, through due process, Mr.  
2 Madden was informed of throughout: incompetency or  
3 general inefficiency in the performance of duties;  
4 violation of any lawful and reasonable regulation,  
5 order, or direction made or given by a superior  
6 officer where such violation amounted to  
7 insubordination or serious breach of proper discipline  
8 or has resulted in a loss of injury to the public;  
9 personally offensive or abusive conduct or language  
10 toward a public official, fellow employee, or any  
11 member of the general public when acting in an  
12 official capacity as a City employee or representative  
13 or while in uniform; abusive public criticism of City  
14 or departmental policy, rule, or official action when  
15 acting in an official capacity as a City employee or  
16 representative or while in uniform; expression of a  
17 personal, work-related grievance, or bypassing  
18 official documented grievance procedures when such  
19 grievance is not a matter of public concern; and  
20 conduct either while on- or off-duty which reflects  
21 discredit upon the City.

22 It's the City's burden throughout this  
23 proceeding to present through evidence that Mr.  
24 Madden's termination -- leading up to Mr. Madden's  
25 termination was investigated and that the supporting

1 statements and documents from that investigation  
2 warranted termination. We're going to present  
3 evidence through witnesses and the documentation in  
4 front of you that the process -- Mr. Madden did have  
5 due process and that termination was justified.

6 To begin, we'll have the Director of the  
7 Department of Sustainable Development, the department  
8 which Mr. Madden was under, Mr. Anthony Fajardo, who  
9 will begin the narrative when he became the director.  
10 He is going to discuss that, in becoming the director,  
11 he starts hearing complaints from other employees  
12 underneath him, other staff underneath him. And those  
13 complaints were about Mr. Madden's abusive behavior  
14 towards the staff. As these people began coming  
15 forward, Mr. Fajardo realized that Mr. Madden's  
16 behavior may have violated the City's policies on  
17 bullying. In that he, knowing his due process,  
18 knowing what was required, he requested an  
19 investigation from Human Resources.

20 Ms. Janeen Richard will present testimony as the  
21 Employer Relations Manager. And within the HR  
22 Department, she was the lead investigator for the  
23 charges brought of violations by Mr. Madden. She will  
24 testify and show this Board that through the documents  
25 and statements she collected, she determined that

1       there was a pattern of threatening and offensive and  
2       abusive behavior in the workplace by Mr. Madden. That  
3       he publicly criticized the City Manager and the  
4       Building Official, Mr. Travers. That he ignored  
5       directives and countermanded those directives causing  
6       undue delay at jobsites. That he had nominal  
7       productivity in his position as a chief inspector.

8               Next, we'll have Mr. Madden's direct supervisor,  
9       the Building Official Mr. John Travers, sitting to my  
10      left, who will discuss with you and present to you  
11      that the City was trying to engage a new system of  
12      using private providers for inspections and plan  
13      reviews that were authorized by Florida law to make  
14      the process of construction more efficient throughout  
15      the City. Mr. Travers will comment that Mr. Madden  
16      was against this process from the very start and that  
17      he countermanded directives that were related to this  
18      new process of using private providers, which, again,  
19      caused undue delay at job sites and workplace  
20      inefficiency.

21             You will also hear from other City employees  
22      within the Department of Sustainable Development.  
23      These employees will comment of their own personal  
24      experiences that Mr. Madden, in his position with  
25      City, had a practice of intimidating those employees,

1 harassing those employees, threatening those employees  
2 -- not just the employees but the supervisor to his  
3 peers and to his own staff. That Mr. Madden had a  
4 vindictive nature and they will discuss that Mr.  
5 Madden would yell at them in public, ridicule them in  
6 public, would be condescending to them, hostile, would  
7 berate his staff in public, was disrespectful of  
8 peers, and was verbally abusive. You'll see, as we  
9 discuss the City's policy on workplace bullying, it  
10 was almost as if he followed the opposite approach of  
11 what was the guidelines to that policy.

12 Human Resources investigation found that he  
13 violated the policies that I just mentioned and they  
14 recommended that the only possible discipline could be  
15 termination because progressive discipline would not  
16 be suitable for this type of behavior and his  
17 insubordination. The Deputy Director, Alfred Battle,  
18 agreed with HR's recommendation and so did the City  
19 Manager. And as a result, Mr. Madden was justly  
20 terminated from his position.

21 Quite simply, the testimony we present and the  
22 documents in front of you are going to show that Mr.  
23 Madden was insubordinate, was unproductive, disparaged  
24 the City in public, and, moreover, Mr. Madden was a  
25 bully. He threatened City personnel, he threatened

1 contractors and their staff, he made City employees  
2 fearful to be at the workplace, looking over their  
3 shoulders and created an atmosphere of hostility. We  
4 believe that after you hear this evidence and  
5 testimony, that you'll uphold the termination of Mr.  
6 Madden. Thank you.

7 CHAIR ADELSON: Thank you. Counsel?

8 MS. BLEAU: I'm going to need to use the  
9 computer over here, so -- Thank you for your time  
10 today. This is Mr. Madden's first real opportunity to  
11 speak with people who are unbiased so he can have a  
12 fair opportunity to be heard in these proceedings.  
13 This -- hang on one second, I want to get this one --  
14 John, can you help? Can you put it in that mode? I  
15 right clicked and it didn't do it this time.

16 [Discussion regarding computer display  
17 difficulties among several parties; parts inaudible.]

18 MS. BLEAU: Yes, thank you. So, again, thank  
19 you for the time. There was so much more going on  
20 than what you just heard about, and the context is  
21 extremely important. John Madden is an individual  
22 who, at his very core, is the consummate Boy Scout.  
23 I've known John for twenty years, twenty-five? And in  
24 all the thirty-five years that I've been a lawyer, I  
25 have never seen the kind of injustices that have

1 happened to this fine young gentleman.

2 John's a United States Veteran, he served in the  
3 Marine Corps, he fought on the battlefield for our  
4 country, he and his unit earned several awards  
5 including Combat Action Ribbon, Navy Unit  
6 Commendation, and Meritorious Unit Commendation. And  
7 since returning from the war, John has coped with  
8 post-traumatic stress disorder, which he doesn't like  
9 talking about and he doesn't like to label. But he  
10 has been diagnosed and it is what it is.

11 He's a rule follower. And he is passionate  
12 about being a rule follower, particularly those rules  
13 that are intended to protect life and safety. It's in  
14 his DNA. And when he sees others violating the laws  
15 and the rules of the City or the State, it bothers him  
16 to his core. Regardless of personal consequences,  
17 John has always done what he can to fight against  
18 corruption and greed in the building industry which he  
19 believes puts citizens in jeopardy. There are a lot  
20 of examples of the Florida Building Code, the purpose  
21 of which is to establish minimum requirements to  
22 safeguard the public health, safety, and welfare.  
23 There are many examples where the Building Code has  
24 not been followed, bridges have collapsed, buildings  
25 have collapsed, people have died, and John is well-

1 familiar with those consequences when the Building  
2 Code is not being followed.

3 Back in 2012, there was -- I think it was in  
4 April or March, March 15, 2012 -- there was some new  
5 floodplain regulations that were going into effect  
6 here in the City of Fort Lauderdale. And it was the  
7 first time that flood regulations became part of the  
8 Florida Building Code. John Madden, at the time, was  
9 a senior structural person, he was not a chief at the  
10 time, and he was not the interim Building Official,  
11 both of which positions he subsequently held. But in  
12 2012, he was just a guy who was really interested in  
13 figuring out what these floodplain regulations were  
14 all about.

15 You'll see, in the course of these proceedings,  
16 numerous emails where he was communicating with people  
17 outside the City, with his people, with his Chief --  
18 John Heller, at the time -- with the Building Official  
19 at the time, Chris Augustin, trying to figure out what  
20 these floodplain regulations mean and how they need to  
21 be enforced. He went to a seven-hour course that he  
22 thought was really good, solely dedicated to these  
23 floodplain regulations. And he brought it back and he  
24 had recommended that all of the plans reviewers for  
25 the City go to this course.

1           One of the plan reviewers that went to that  
2 course was a gentleman by the name of Glen Osborn.  
3 Glen Osborn was part-time, he served as the Assistant  
4 Building Official when the Building Official was out  
5 from time to time, as did Mr. Madden. And he was a  
6 structural plan reviewer. What happened was, Mr.  
7 Madden and the Building Official Chris Augustin's  
8 interpretation of the floodplain regulations differed.  
9 Ultimately everybody in the City enforced what Mr.  
10 Augustin said was the proper interpretation of the  
11 floodplain code provisions. Mr. Madden went along  
12 with that. Chris Augustin held with the Board of  
13 Rules and Appeals.

14           Just a little background, you may not know this,  
15 in Broward County, Broward County is unique to the  
16 other 67 counties -- I think there's a couple other  
17 counties, maybe in the entire state, but very few --  
18 that have a mid-level sort of certification  
19 requirement for Building Officials. There are the  
20 workers, and then there's chiefs, and then there's the  
21 Building Official. This is the current Building  
22 Official, John Travers. Back then it was Chris  
23 Augustin. In order to work in this industry, in  
24 Broward County, the certifications must be held by the  
25 Board of Rules and Appeals. They're the overseers,

1 you have to qualify and they issue certifications and  
2 they say yes, you can be a plans examiner in Broward  
3 County and yes, you can be a building inspector in  
4 Broward County. And yes, you qualify to be a Chief in  
5 the structural or in the electrical.

6 John Travers is certified in electrical. Chris  
7 Augustin and John Madden were both certified in  
8 structural. They were both certified in the building  
9 aspects of the building code. And so, because John  
10 Madden, who now is Chief of the Building Division,  
11 disagreed with his boss, the Building Official Chris  
12 Augustin, Mr. Madden acceded to his authority, said,  
13 "You have the same certification I do and the way I  
14 read the code, you -- to the extent you have the same  
15 certification as me -- what you say goes. But if you  
16 don't have the same certification as me, what I say  
17 goes." That was always Mr. Madden's understanding.

18 So, the City enforced Chris Augustin's  
19 interpretation until around September or November 2013  
20 when Mr. Augustin changed his position and decided  
21 that Mr. Madden's interpretation was actually correct.  
22 And at that point, people started scrambling because  
23 they had been enforcing this code for a year and a  
24 half or more and there were issues. Things were  
25 allowed to be installed below what the floodplain

1 regulations say these buildings should be built on.  
2 The new regulations required a free board, which is a  
3 technical term that means it was a one-foot or two-  
4 foot free board, meaning that much above wherever  
5 FEMA's regulations say the building should be  
6 constructed.

7 So, Mr. Augustin changed his position and it  
8 quickly became known within the City and the officials  
9 -- actually, I think John brought it to the attention  
10 of the higher-ups in the City -- that there were some  
11 buildings that had been constructed improperly and  
12 against code. The City asked Mr. Madden, who is now  
13 the Interim Building Official -- Chris Augustin is  
14 gone, Mr. Madden is the Interim Building Official --  
15 and the City asked Mr. Madden would he sign  
16 Certificates of Occupancy knowing they were in  
17 violation of the new floodplain regulations. And Mr.  
18 Madden being Mr. Madden, he said no, he would not do  
19 that.

20 And they said, "Will you let Glen Osborn sign  
21 them?" Because, as it turned out, Glen was signing  
22 them before -- and before Mr. Madden's promotion,  
23 unbeknownst to Mr. Madden -- and Mr. Madden said, "No,  
24 I'm the Interim Building Official now. I absolutely  
25 will not let any of my guys sign a Certificate of

1 Occupancy that is in violation of the Building Code.”  
2 And so, Mr. Madden was demoted, removed from  
3 committees, shut out of the process. Glen Osborn did,  
4 in fact, sign those Certificates of Occupancy and the  
5 next thing that happened was an Office of Inspector  
6 General investigation regarding the fact that  
7 Certificates of Occupancy were signed in violation of  
8 the floodplain regulations.

9 Ultimately, the OIG issued a report -- which  
10 will be in your materials and we will be providing to  
11 you -- that says that both Chris Augustin and Glen  
12 Osborn were guilty of misconduct and that they  
13 intentionally violated the code and, ultimately, I  
14 think there were some suspensions and some fines and  
15 the like.

16 Following that report, the Board of Rules and  
17 Appeals decided to do their own investigation into the  
18 floodplain issue. Unbeknownst to Mr. Madden at the  
19 time, the focus of the BORA investigation was him. He  
20 was asked -- you will see in the materials that we'll  
21 be providing in our evidence -- he specifically asked,  
22 “What’s the purpose of this interview?” He asked that  
23 of Bill Dunbaugh, who was the head investigator for  
24 BORA at the time, and Mr. Dunbaugh said, “It’s the  
25 same thing that the OIG’s doing, we just want to get

1 your statement and then we'll close it out and things  
2 will be done."

3 That didn't happen, though. What Mr. Dunbaugh  
4 admitted to in deposition testimony later was, in  
5 fact, that Mr. Madden was the focus of that  
6 investigation. He wasn't given his proper notice, et  
7 cetera, and he was questioned. They never asked him,  
8 never in their investigation, they never said, "John,  
9 did you tell Glen Osborn about the floodplain  
10 regulations?" Never asked him that question. And  
11 they ultimately went before the Probable Cause  
12 Committee and the Probable Cause Committee found  
13 probable cause to believe that Mr. Madden had failed  
14 to do his duty because Glen Osborn said, "Oh, well,  
15 the reason I signed those certificates of occupancy  
16 was because I didn't know about the floodplain  
17 regulations. Mr. Madden didn't tell me. Mr. Augustin  
18 knew, the chief at the time, Mr. Heller, knew, and Mr.  
19 Madden knew, but they never told me."

20 So, you have here just some pieces of evidence  
21 that we have in the record. This is showing the email  
22 from Mr. Madden in February of 2012 telling Ralph  
23 Riles, Harry Colton [phonetic], Glen Osborn,  
24 discussing the floodplain regulations that are about  
25 to go into effect, giving them different references to

1 understand it. That reference there in number 4 to  
2 ASC2405, that's the free board requirement. That's  
3 the one that was violated.

4 The next slide is the meetings that Mr. Madden  
5 held with his staff to discuss the floodplain issues.  
6 This is an email from Mr. Madden following up on  
7 making sure that individuals, including Glen Osborn,  
8 were free to go to the seven-hour course on the  
9 floodplain regulations that Glen Osborn later  
10 testified he didn't know about at all. And, in fact,  
11 Mr. Osborn's the one that sent the list there, you'll  
12 see, to Mr. Madden. Here's the list of people who  
13 have signed up and this the email with the list. And  
14 this is the course, 2010 Florida Building Code  
15 Training for Floodplain Managers. This is the seven-  
16 hour course that Mr. Osborn attended, there's the  
17 workbook that's going to be in your materials.

18 Mr. Madden also sent other links to his staff to  
19 make sure that everybody understood, to help them  
20 understand what was going on. Mr. Madden secured this  
21 quick guide, which was a cute flip thing that was very  
22 easy to understand that came from FEMA, and  
23 distributed them among his staff. So, everybody knew  
24 about the floodplain regulations. He provided these  
25 code masters, which was a little more technical, to

1 his staff. He taught a certified floodplain program,  
2 I'm sorry, class, for people who wanted to become  
3 certified floodplain managers. [Difficulties with  
4 visual aids.]

5 This is the email from Mr. Augustin where he  
6 changes his interpretation in November. [Continued  
7 difficulties with visual aids.] This is the Office of  
8 Inspector Report that was issued in March 2015. To  
9 the right is the Request for Investigation, this was  
10 after they took it to the Probable Cause Committee,  
11 February 17, 2016. And those materials are all going  
12 to be in your reports. These are the email exchanges  
13 at Tab 5 in your notebook, between Mr. Dumbaugh and  
14 Mr. Madden that I referenced earlier. And then in  
15 March of 2016, Mr. Madden gets this email from -- a  
16 letter, actually -- from the attorney for the Board of  
17 Rules and Appeals that tells in the Probable Cause  
18 Committee determined that he had failed to properly  
19 perform his duties as a Chief Structural Inspector for  
20 the City of Fort Lauderdale.

21 The violations were: failed to supervise and  
22 coordinate the efforts of Structural Plans examiners  
23 and failed to provide his interpretation of the  
24 Florida Building Code -- those are the free board  
25 requirements. Because what BORA said is, number one,

1 you never told Glen Osborn about the floodplain  
2 regulations and therefore he didn't know about them  
3 and that's why the floodplain regulations were  
4 violated. And we were able to prove through discovery  
5 email upon email upon email upon testimony that was a  
6 hundred percent false and that Mr. Osborn had, in  
7 fact, not told the truth about that. And they said  
8 the second violation was that Mr. Osborn, as the Chief  
9 of the Structural Plans Examiners in the City of Fort  
10 Lauderdale, that he was ultimately responsible.

11 There's a technical term they use in the  
12 building industry, Authority Having Jurisdiction, A-H-  
13 J. He was the authority having jurisdiction in  
14 Broward County because he's the chief. And John said,  
15 "The way I always read the local rules, I am the  
16 Authority Having Jurisdiction over everything unless  
17 the Building Official, who's my boss, has the same  
18 certifications I am, and therefore he is the AHJ, he  
19 is the Authority Having Jurisdiction."

20 And BORA ultimately litigated that issue and  
21 said, no, that John was wrong, that he alone,  
22 regardless of the certification of the Building  
23 Official, regardless of the fact that he worked for  
24 the Building Official and he was the boss, that  
25 because he was a Chief in Broward County, he is the

1 Authority Having Jurisdiction. This on the screen now  
2 is the Certification Records that were in BORA's  
3 office that showed Glen Osborn attended that seven-  
4 hour course that they -- this is the testimony of Mr.  
5 Osborn where he said that John knew about it but that  
6 he didn't tell anybody.

7 So, after the BORA proceeding, there was an  
8 order in October of 2018 finding John guilty of both  
9 charges. Now, like I said, we were able to produce a  
10 lot of evidence that shows the Glen Osborn statement  
11 was untrue when he said he didn't know about the  
12 floodplain regulations. And I have the deposition  
13 testimony of the Building Officials for BORA was that  
14 the reason they were citing Mr. Madden for failing to  
15 supervise was, in fact, because he didn't tell his  
16 supervisors. And you're going to see that in a minute  
17 and I'll come back to some of these other ones. Let's  
18 see, these are all about -- I think I might have  
19 skipped those. These are all the testimonies, so let  
20 me go back.

21 Anyway, during our proceeding, I will be able to  
22 show you the testimony from Mr. Dumbaugh and from his  
23 boss, Mr. DiPietro, that said very clearly if he had  
24 told anybody about the floodplain regulations he would  
25 not be here. We would not be proceeding against him.

1 And I said, "I want you to remember that." And then I  
2 proceeded to educate them and show them that he had,  
3 in fact, told them. So, instead of dropping their  
4 charges against Mr. Madden, they proceeded against him  
5 anyway for failing to supervise. This time saying,  
6 "You're the Chief, you were responsible. Claims were  
7 approved that were in violation of the flood  
8 regulations and therefore you're liable for failing to  
9 supervise."

10 Where they say, and you'll see, in their  
11 deposition testimony, this specifically said, "If  
12 there were mistakes made, we would not be here. It's  
13 because you didn't tell anybody." So, at the hearing,  
14 they completely changed it once they knew that the  
15 evidence was clear that he had told people. And they  
16 said, "You didn't enforce your interpretation." And  
17 John said, "My interpretation was different than Chris  
18 Augustin's and Chris Augustin had the same  
19 certification I did, and what he said goes." That was  
20 his opinion.

21 But BORA pointed to this section now on your  
22 screen, which is 104.4, when you see designations for  
23 104 or something like that, those are all from Chapter  
24 1. Chapter 1, again, is unique to Broward County.  
25 There is no Chapter 1 in Putnam County where I grew

1 up. Or in Dade County. This is unique to Broward  
2 County. And in Broward County, according to BORA,  
3 under this section here, "It shall be the duty of the  
4 Chiefs and responsibility to supervise and coordinate  
5 the work of all subordinated plans examiners and  
6 inspectors within his or her discipline and the Chief  
7 Inspector shall have the sole authority to render  
8 interpretations of the code, of this code, and adopt  
9 policies and procedures in order to clarify the  
10 application of its provisions within his or her  
11 discipline."

12 Sole authority. Mr. Madden didn't agree. He  
13 thought there was another section that says that a  
14 Building Official can delegate whatever authority they  
15 have, except in categories in which they are  
16 certified. Ultimately -- I never did figure out what  
17 BORA thought that language meant. They basically said  
18 it didn't mean anything. And that, even when Mr.  
19 Augustin was certified in structural, like Mr. Madden,  
20 Mr. Madden's word goes. What he says goes. Chris  
21 Augustin testified in a deposition testimony leading  
22 up to the BORA proceeding and he said himself, even  
23 though he was a Building Official, he said, "It's the  
24 chief, the chief of each discipline, they have sole  
25 authority."

1           This is Mr. Augustin's sworn testimony during  
2 the Disciplinary Hearing as well:

3           "At the time that you as Building Official, Mr.  
4 Madden is Structural Chief, worked for the Building  
5 Services Division, did you have an understanding of  
6 who was responsible for the interpretations of the  
7 Florida Building Code in their respective discipline?"

8           "I believe so."

9           "Who was that person? For structural?"

10          "Yes, it would have been Mr. Madden."

11          "If someone stated that the Building Official  
12 was responsible for the interpretation of the code,  
13 would it be a correct statement?"

14          "No."

15          Mr. Augustin also said -- well, we'll go on to  
16 what Mr. Dumbaugh said. Mr. Dumbaugh testified in his  
17 deposition, I asked:

18          "Can you tell me what the code means when it  
19 says, 'The Chief Inspector shall have the sole  
20 authority to interpret the provisions of this code  
21 within his or her particular discipline?'"

22          And he said, "Well, depending on the discipline,  
23 the Structural Chief Inspector is the only one that  
24 can interpret the structural provisions of the  
25 building code."

1           At the, I think, his deposition testimony as  
2 well, "With all your experience in providing opinions,  
3 assisting in an investigation, or aiding in  
4 determining the meaning and intent of the building  
5 code," which is what BORA's ultimate responsibility  
6 is, "is it your understanding that the Building  
7 Official is responsible for interpreting the Building  
8 Code?"

9           "Not unless he was a chief. But as a Building  
10 Official, he cannot interpret the building code." As  
11 a Building Official, he cannot interpret the building  
12 code.

13           "But if he is a Building Official and another  
14 person is the chief, then it would not be his -- he  
15 would not be the one responsible for interpreting the  
16 code. Is that correct?"

17           "The Building Official would not be responsible.  
18 That's correct."

19           In the disciplinary proceeding, again, Mr.  
20 Dumbaugh references 104.4, that is this interpretation  
21 of the chief being the only person within a  
22 jurisdiction that can interpret the building code for  
23 that jurisdiction. "Is this how the code is  
24 interpreted in Broward County and its municipalities?"

25           "Yes."

1            "How long has it been like that?"

2            "As long as I can remember," he said.

3            Mr. DiPietro, Mr. Dumbaugh's boss, also  
4 testified. "In our code, the Chief is superior."

5            Mr. Dumbaugh said, "I was asked, 'Do you know  
6 how many other municipalities have different  
7 interpretations of the code than what you've stated  
8 here in this email?"

9            And he said, "In Broward County? No."

10           "And that is based on 26 years of experience  
11 between Coral Springs and a BORA Chief Structural?"

12           "Yes."

13           So, all the cities, all the municipalities  
14 within Broward County, according to Mr. Dumbaugh, have  
15 this same interpretation: The Chief is the ultimate  
16 authority. So, I think you all have that point, so  
17 I'll move on.

18           The problem is that simultaneously, while these  
19 proceedings are going on, depositions are being taken,  
20 and ultimately there was a hearing at BORA, that Mr.  
21 Travers actually attended part of and Mr. Madden was  
22 being prosecuted by BORA for not enforcing his  
23 interpretation of the code over that of the Building  
24 Official, in the City, at the same time, Mr. Travers,  
25 here, was complaining that Mr. Madden was questioning

1 his authority.

2 And that Mr. Travers -- who is not certified in  
3 structural like Mr. Augustin, he's only certified in  
4 electrical -- that Mr. Travers had no authority to  
5 interpret sections of the Building Code and enforce  
6 them over Mr. Madden. And Mr. Travers didn't like  
7 that. He knew what was going on in BORA, but he  
8 argues that, somehow, that he has the authority to  
9 enforce his opinion and that Mr. Madden was being  
10 insubordinate by trying to enforce his.

11 You'll see here, in Section 468, "Building Code  
12 Administrator or Building Official is any of those  
13 employees of the City or County Government charged  
14 with responsibility for direct regulatory  
15 administration or supervision of plan review  
16 enforcement or inspection of a building construction."  
17 It is very clear and, as I've already showed you,  
18 that's what BORA said was John Madden's  
19 responsibility: direct supervision and enforcement of  
20 plan review building construction and enforcement.

21 And so, under the Broward County interpretation  
22 of the code -- see, that's a State statute -- so, in  
23 any other city that's not like Broward County this  
24 Building Official would be John Travers because there  
25 are no chiefs. But in Broward County, there's a

1 chief, and in Broward County the chief is the one  
2 responsible. And therefore, in Broward County -- as  
3 weird as it sounds -- he is the Building Official  
4 within the State statute as it is defined. Again,  
5 here's the local Building Official is defined in  
6 Florida statute as "The individual with the governing  
7 jurisdiction responsible for direct regulatory  
8 administration or supervision of plans review  
9 enforcement inspection." That's John Madden. That's  
10 not John Travers. 553791 Plan Review Audit.

11 So, the primary problem that you're going to  
12 hear about arose, in the difference of interpretations  
13 between Mr. Madden and Mr. Travers, was with respect  
14 to private providers and the responsibility of the  
15 City Officials to inspect plans -- review plans and  
16 inspect the properties, the construction. John, can I  
17 get a water please? Thank you.

18 I heard Counsel say in his opening that John  
19 Madden was against -- I can't believe how many Johns  
20 there are, by the way, working in this one department  
21 -- John Madden was against private providers. And  
22 that's not true. It is one hundred percent not true.  
23 As a matter of fact, you're going to hear testimony  
24 that Mr. Madden was instrumental -- involved actually  
25 -- in the process of passing this law in the State of

1 Florida, regarding private providers. And you'll hear  
2 testimony that private providers was not new when Mr.  
3 Travers came to the City of Fort Lauderdale. Private  
4 providers had been around for a long time.  
5 Alternative review process, another thing they call  
6 it. Also, they call it Permit by Affidavit. Those  
7 three things are essentially synonymous.

8 And those things have been around for a long  
9 time in the City of Fort Lauderdale. But what wasn't  
10 around is that when Mr. Travers came from a private  
11 provider to the City of Fort Lauderdale -- he was  
12 working for a private provider that at that time did a  
13 little work for the City -- when Mr. Travers started  
14 working for the City, that private provider started  
15 doing a lot more work with City. And it was Mr.  
16 Travers' opinion that no oversight whatsoever should  
17 be conducted by the inspectors or the plans reviewers  
18 for City on private provider projects. Mr. Travers'  
19 opinion was, if it's a private provider project,  
20 that's the owner's choice. That's what they decided.  
21 We're not going to review the plans for compliance  
22 with the building code and we're not going to inspect  
23 the construction for compliance.

24 The problem is, you're going to hear testimony  
25 that there are projects where Mr. Madden showed up at

1 a project and the building permit and the plans were  
2 -- say, to construct this office over here -- and all  
3 this construction is going on over there that's  
4 outside of the permit. And John says of the private  
5 provider, that Mr. Travers used to work for, "What  
6 about all that work over there?" And the private  
7 provider said, "It's not in our contract. We were  
8 hired to oversee the construction of this office. And  
9 so whatever else is going on over there, it's not our  
10 responsibility."

11 Well, it's somebody's responsibility. You know?  
12 These were like -- this was major work going on. And  
13 Mr. Travers said, "It's a private provider project.  
14 The liability is on them. It's not our  
15 responsibility." Mr. Madden disagreed with that  
16 interpretation.

17 Under the section that's on your screen, it  
18 provides that the City has an opportunity to review  
19 the plans. They have to do it within 30 days and if  
20 they don't do it within 30 days, then they can go on  
21 and do their thing. But the City has the opportunity  
22 to audit the plans reviews and the inspections to make  
23 sure that the private provider's doing his job. And  
24 you'll hear testimony from Mr. Madden -- in all his  
25 years of experience here in the City -- numerous times

1 on private provider jobs when they're audited, they  
2 find the private provider is not doing their job and  
3 there are life safety issues that are being omitted.  
4 And Mr. Madden was not comfortable with Mr. Travers'  
5 interpretation that says, "We're just going to let  
6 them do whatever they want and we're not going to be  
7 involved."

8 And you're going to see emails where there was  
9 some push back from Mr. Madden. But again, recall  
10 that this push back occurred simultaneously with BORA  
11 prosecuting Mr. Madden for not overruling the Building  
12 Official who was certified in structural, and he was  
13 being overruled by a Building Official who was  
14 certified in electrical.

15 In a lot of the statements that are going to be  
16 introduced by the City, you're going to see a lot of  
17 the people that -- first of all, all of the statements  
18 that are being produced by the City, Mr. Madden had  
19 twenty direct reports. Three were interviewed by the  
20 City in this investigation. All the rest are  
21 officials that work closely with Mr. Travers or people  
22 that Mr. Madden has given bad job performance review  
23 to, or other people who have had issues with him.  
24 Three, total, were actually the ones that Richard  
25 interviewed.

1           And one of the non-employees interviewed is  
2           Andre Cross, who has no certifications. He's not a  
3           building person. He's a businessperson and he works  
4           closely with Mr. Travers. And part of his statement  
5           is that he thought Mr. Madden was being insubordinate  
6           because he was not doing what Mr. Travers said he  
7           should be doing. And you'll see that, in statement  
8           upon statement upon statement. The ones that they  
9           produce, all of them thought John wasn't doing what he  
10          was supposed to do because he should have said, "Yes,  
11          Mr. Travers. Whatever you say, Mr. Travers." Except  
12          BORA was saying, "If you do that, we can take your  
13          license away."

14                 This is the Permit by Affidavit project. This  
15                 is the policy that Mr. Travers implemented when he  
16                 came to work here. You'll see in his statement, he  
17                 said one of his primary goals when he started working  
18                 for the City was to implement a policy dealing with  
19                 private providers and this Permit by Affidavit  
20                 process. The policy, if you seen number one there,  
21                 number one says, "No phased permits will be issued, if  
22                 the client or permit applicant is considering the  
23                 private provider option." No phased permits.

24                 And then you're going to hear testimony that  
25                 there absolutely was a project that was done by, I

1 believe again, the company that Mr. Travers worked for  
2 before he came with the City, called M.T. Causley, and  
3 the address was 2900 Rio Mar, and you'll hear that  
4 that project was substantially completed -- no, that's  
5 not the right one, sorry -- that that project was well  
6 under way in construction and Mr. Travers explained  
7 how they could do that without a permit and without  
8 approved plans by saying, "Well, this is a phased  
9 permit process." This was a private provider; Mr.  
10 Travers' own policy said no phased permits for private  
11 providers.

12 This preferential treatment that seemed to be  
13 given to M.T. Causley in particular, and some of the  
14 other private providers, was specifically questioned  
15 by others in the Building Department. Mr. Victor  
16 Blanco, who is now an Assistant Building Official with  
17 the City, questioned why we are giving preferential  
18 treatment to these special providers. John said he  
19 agreed. This is a photograph of Mr. Travers and the  
20 Mayor and some other people at a groundbreaking.  
21 There's evidence of construction in the background,  
22 and this is the project where there was no permit  
23 issued and they were doing construction in violation  
24 of the City's own policies. And Mr. Travers made it  
25 clear to Mr. Madden and made it clear in a statement,

1 that he didn't like the fact that Mr. Madden sent this  
2 picture around and said, basically, "What's going on  
3 here? 553791 gives us 30 days to review the plans,  
4 why are they constructing without plans and a permit?"

5 John said the primary concern with the plans is  
6 the fact that in the initial go-around, the plans in  
7 review is performed indicated numerous deficiencies.  
8 This, again, is 2900 Rio Mar. What happened was,  
9 Ralph Riles inspected the plans, failed the plans  
10 because there were building code violations, and Mr.  
11 Travers -- certified in electrical only -- turned the  
12 back of the plans over, signed the plans, gave them  
13 back to the contractor, and said, "Have fun."

14 In Mr. Madden's understanding of the Florida  
15 Building Code, that was not proper. And Mr. Madden  
16 tried, respectfully, and within the bounds of reason,  
17 to enforce what he thought was required of him and  
18 what he was being told by BORA was required of him.  
19 And he asked Mr. Travers to reconsider and Mr. Travers  
20 said no. Frank Arrigoni, another employee of the  
21 Building Department, when Mr. Travers said, "Not only  
22 are we -- I'm just going to sign the back of the plans  
23 and give it to them," they thought that was enough to  
24 have a permit. Therefore, since they thought they had  
25 a permit, they were constructing under what they

1 thought was a permit, even though it wasn't. So,  
2 we're not going to charge them any fees, either.  
3 Which are generally charged to building people in the  
4 City. If you build without a permit, there's called  
5 ATF fees that are imposed. Mr. Travers said, "We're  
6 not going to impose fees on this private provider."  
7 And Frank Arrigoni said, "What don't we close all ATF  
8 cases that the owner did not think a permit was  
9 required?" He was questioning it, as well, because  
10 this was highly unusual in the City of Fort  
11 Lauderdale. This is not the way business has always  
12 been done.

13           Again, this is an email from Mr. Madden asking  
14 Mr. Travers to reconsider. This is a section -- this  
15 Section 9 of that statute that controls the private  
16 providers -- requires the private provider to provide  
17 notice to the local Building Official the date and  
18 approximate time of any inspections that they're going  
19 to do so that the City can go out there and audit the  
20 inspection at the time of the inspection. If they  
21 don't show up, the private provider can proceed. If  
22 they show up, then the building inspectors have the  
23 right to do that.

24           Here are emails regarding inspections that were  
25 not called, that were done without calling the City.

1 And again, Mr. Travers said, "Yeah, that's okay, too."

2 Private provider is required under Florida law  
3 to post the records of all their inspections,  
4 indicating whether they've passed or failed, and they  
5 should have a logbook on site. You will hear evidence  
6 that Mr. Madden showed up at a place and he asked for  
7 the records -- and we actually have a video where this  
8 exchange occurred -- audio/video, sort of weird, it's  
9 a video without pictures -- and you'll hear that he  
10 asked for it and the owner just said, "I want to speak  
11 to Mr. Travers and Lee Feldman and the City  
12 Commissioner. And, basically, Mr. Madden, I don't  
13 recognize your authority. You have no authority over  
14 me and I'm not going to do what you say." No logbooks  
15 were provided in violation of the requirements. This  
16 is the company, or one of them, there's a couple of  
17 iterations of this, MTCI, it's also called M.T.  
18 Causley, that Mr. Travers used to work for. That was  
19 his business card.

20 You're going to hear that there was an early  
21 start certificate. Don't get confused by that,  
22 because early start certificates, by law, require that  
23 they don't do any more work beyond the first  
24 inspection. And this particular project went well  
25 beyond that. That's the early start law.

1 I'm not going to go through all the rest of  
2 this. I think you have an idea. We have some images  
3 of various building construction that was happening  
4 without permits. Concerns being raised by Mr. Madden.  
5 And then, right when things were sort of maybe coming  
6 to a head, Mr. Madden had had a stop work order issued  
7 and Mr. Travers really didn't like that. George  
8 Oliva, who is a chief, but he's not certified by BORA  
9 in anything, George Oliva held a meeting in the  
10 Department and said, basically, invited anybody who  
11 had anything bad to say about Mr. Madden -- ever --  
12 "Come talk to me." And they got together, and Mr.  
13 Oliva wrote a letter and the City did an  
14 investigation, and they talked about things back in  
15 2013 before Mr. Madden had a heart attack. Without a  
16 doubt, Mr. Madden is a passionate individual. When  
17 building codes are being violated and he thinks that  
18 the citizens are being put at risk, he is passionate  
19 about those things.

20 You will hear, I believe, virtually no testimony  
21 from any of the witnesses about Mr. Madden doing  
22 anything that wasn't in context of trying to enforce  
23 the building code and being concerned about the fact  
24 that current Building Official seemed to not be  
25 enforcing the building code as Mr. Madden understood

1 it. And as Mr. Madden understood his obligation was  
2 to make sure it was enforced. You'll see this  
3 Midguard letter here, this is from Mr. Goldstein, the  
4 gentleman who is on the video, the owner of the  
5 project with the private provider that didn't like the  
6 fact that the City was involved and said, "Get me Mr.  
7 Travers." And shortly after that, even though Mr.  
8 Madden was there with two other individuals from the  
9 City, altogether the complaint came in right around  
10 the same time as Mr. Oliva's letter against Mr.  
11 Madden. And Mr. Goldstein sent a letter complaining  
12 about Mr. Madden, saying he was rude and obnoxious --  
13 and you know, some of the same key words -- abusive,  
14 threatening. You'll see the video. This is what the  
15 video looks like, and you'll hear it. And you tell me  
16 if you think he was rude or threatening or abusive.

17 This is a picture from the video that Mr. Madden  
18 took showing that the plans that MTCI was supposed to  
19 be reviewing weren't signed off on, and he went  
20 through every page of the plans and none of the plans  
21 were signed off on. But the inspections were  
22 supposedly done.

23 I think that's sufficient for today. We have a  
24 lot of evidence that we want you to consider that  
25 backs up, basically, the scenario that I'm telling you

1 -- the situation, the quandary, that Mr. Madden was in  
2 -- and he did everything he could to try to protect  
3 his license, protect the life and safety and welfare  
4 of the citizens of the City of Fort Lauderdale, and  
5 protect his job. And at the end of the day, he was  
6 unable to do all of the three. And so, John being the  
7 type of man that I know he is, he protected the  
8 citizens at the risk of his own job. Thank you.

9 CHAIR ADELSON: I'm going to recommend that we  
10 take a 15-minute break. It's 12:46, we've been here  
11 all morning and I suppose people might need to do  
12 something about food. Unless Counsel and the parties  
13 are prepared to proceed through it. I am happy to  
14 proceed through it, but we might want to take 10 to 15  
15 minutes, so everyone can possibly get a snack or  
16 something before we proceed on with the witness  
17 testimony. It's 12:50, why don't we come back at  
18 1:05.

19 [Recess called for 20 minutes.]

20 CHAIR ADELSON: Okay, we're back on.

21 MS. SMITH: Madam Chair, we have all the  
22 subpoenas that are going by the Department. We had a  
23 Department representative to come and serve them, not  
24 the Department Director, because he is a witness in  
25 this case. So, we have 17 subpoenas at the request of

1 Counsel Bleau that are being served on employees. The  
2 two for the detectives are going to be sent to the  
3 Police Department for them to serve, one of the  
4 employees is not available until tomorrow. And the  
5 others will be served, provided that they are on duty  
6 and in the office today. If not, we'll get a report  
7 back.

8 CHAIR ADELSON: Okay, great. Thank you for the  
9 update.

10 MS. SMITH: And I'll provide copies right now,  
11 too.

12 MS. TURIN: And I believe there is a statement  
13 to be made by one of the Board Members, a disclosure?

14 MS. GIALLUCA: Yes. Shelley Gialluca. I just  
15 wanted to clarify and also disclose that my position  
16 on the Civil Service Board is by nomination of City  
17 employees. I'm retired from the City. I worked for  
18 the City for 32 years. I know a lot of people. I've  
19 worked with John Madden on process improvement  
20 meetings, that I just wanted to disclose that.

21 MS. TURIN: What was your position at the City?

22 MS. GIALLUCA: I worked in IT, I was a project  
23 manager, but I served on some committees that John was  
24 also on.

25 MS. TURIN: And were all of those interactions

1 at arm's length?

2 MS. GIALLUCA: Yes.

3 MS. TURIN: Are you related to John Madden?

4 MS. GIALLUCA: No, not at all, no.

5 MS. TURIN: Has he ever done work at your house?

6 MS. GIALLUCA: No.

7 MS. TURIN: Do you socialize with John Madden?

8 MS. GIALLUCA: No.

9 CHAIR ADELSON: Okay. Thank you.

10 MS. GIALLUCA: Thank you.

11 CHAIR ADELSON: Are there any objections to the  
12 continuance of this Board Member?

13 MR. ZALMAN: No.

14 CHAIR ADELSON: Okay, so the subpoenas were  
15 distributed?

16 MS. SMITH: They are in the process of  
17 distribution right now. It's one person in  
18 [inaudible].

19 CHAIR ADELSON: I've got the copies. Oh, yes,  
20 everything is good. We'll move along procedurally.  
21 All right, great. So, call your first witness.

22 MR. ZALMAN: The City calls Mr. Anthony Fajardo.

23 [Discussion, mostly inaudible, on swearing in  
24 witnesses.]

25 CHAIR ADELSON: I will be happy to. This is my

1 new nomination. I will swear in the witnesses. Do we  
2 have a particular statement of affirmation as opposed  
3 the traditional swearing in? Do you swear or affirm  
4 to tell the truth in this hearing today, to the best  
5 of your knowledge?

6 MR. FAJARDO: I do.

7 MR. ZALMAN: Mr. Fajardo, please state your full  
8 name for the record.

9 MR. FAJARDO: Anthony Greg Fajardo.

10 MR. ZALMAN: And what is your position with the  
11 City of Fort Lauderdale?

12 MR. FAJARDO: I am the Director of Sustainable  
13 Development.

14 [Interruption, mostly inaudible, regarding  
15 microphone volume.]

16 MR. ZALMAN: How long have you been employed by  
17 the City of Fort Lauderdale?

18 MR. FAJARDO: I started in September of 2005.

19 MR. ZALMAN: Could you briefly describe to the  
20 Board the function of the Department of Sustainable  
21 Development?

22 MR. FAJARDO: Sustainable Development is  
23 primarily concerned with development approvals and  
24 building permitting. We have a division of Urban  
25 Design and Planning which handles large-scale

1 development approvals. We have a division of Building  
2 Services which handles all the building permitting  
3 needs. We also have Economic Community Investment and  
4 Community Enhancement and Compliance which is our Code  
5 Enforcement Division. We also have some other  
6 divisions related to zoning and engineering, but they  
7 all interrelate with Building Services and Urban  
8 Design and Planning.

9 MR. ZALMAN: Does the position of Building  
10 Official fall under the purview of the Director of the  
11 Department of Sustainable Development?

12 MR. FAJARDO: Well, yes. On the org chart, they  
13 are under the Director, that's correct.

14 MR. ZALMAN: What position did Mr. John Madden  
15 have at the City of Fort Lauderdale?

16 MR. FAJARDO: He was the Chief Plans Examiner  
17 for structural.

18 MR. ZALMAN: Does the position of Chief Plans  
19 Examiner fall under the purview of the Director of the  
20 Department -- you know what I mean? If I call the  
21 Department of Sustainable Development --

22 MR. FAJARDO: We commonly refer to it as DSD, so  
23 yes --

24 MR. ZALMAN: -- DSD, the Department of  
25 Sustainable Development?

1 MR. FAJARDO: Not as a direct report, but yes,  
2 under the org chart.

3 MR. ZALMAN: I will repeat the question for  
4 clarity. Does the John Madden's former position fall  
5 under the purview of the Director of DSD?

6 MR. FAJARDO: Yes.

7 MR. ZALMAN: You'll see a folder in front of  
8 you. Could you please turn to Tab 3? Do you  
9 recognize this memorandum?

10 MR. FAJARDO: I do.

11 MR. ZALMAN: Who is this drafted by?

12 MR. FAJARDO: Myself.

13 MR. ZALMAN: Could you please provide the Board  
14 some background for what prompted you drafting this  
15 memo?

16 MR. FAJARDO: Yes, so, I was promoted into the  
17 position of Director on July 4, 2016. Prior to that I  
18 was the City's Zoning Administrator. So, my  
19 interactions with staff were on a different level.  
20 Once I was promoted, within about a month or so, I was  
21 approached by staff about issues that they were having  
22 with Mr. Madden in terms of his behavior, his  
23 attitude, and how he was performing his duties at the  
24 Department. As I started looking into the history of  
25 it, I found that there was some history going back to,

1 I believe, 2013 with my predecessors Jenni Morejon and  
2 Greg Brewton and that there was some actions taken  
3 that were taken at that point. Subsequent to those  
4 conversations with a couple of staff members, I had  
5 another ten staff members come and approach me to  
6 discuss their concerns in our conference room. And it  
7 was at that point that I just -- it just really became  
8 apparent that there was a genuine issue here. A lot  
9 of the comments were related to ongoing patterns of  
10 behavior that weren't changing or weren't being dealt  
11 with properly by management. And, quite frankly,  
12 being the Director assigned to the Department, I felt  
13 that it was a responsibility of mine to make sure that  
14 everyone has a safe, healthy, and respectful working  
15 environment. So, I then approached City Management  
16 with the overall concerns, talked it over internally  
17 with my Deputy Directors at that time -- one of the  
18 directors is no longer with the City -- and we decided  
19 that -- I decided that the best course of action after  
20 getting advisement from HR as well as our Legal  
21 Department, was to draft this memo and send it on to  
22 prompt an investigation so that we could see what was  
23 going on with the Department and the issues that were  
24 enumerated there.

25 MR. ZALMAN: What specific conduct by Mr. Madden

1 were you aware of at this time?

2 MR. FAJARDO: The comments were generally  
3 regarding -- I mean, there were multiple things.  
4 There was accusations of abuse of his position, using  
5 his position to intimidate, threatening individuals  
6 with going after their licenses -- which is basically,  
7 in those types of positions, would be detrimental to  
8 someone's income. There were also concerns of  
9 potential violence by some staff. And just generally  
10 abusive behavior and disrespectful behavior.

11 There was also comments about work productivity.  
12 We did some analysis based on the number of permits  
13 that were being reviewed by everybody else, including  
14 the other chiefs for the other trades, which would  
15 have been electrical, plumbing, and mechanical. And  
16 his was much lower. But primarily, just the comments  
17 had to do with bullying, abrasive comments from him to  
18 staff, and how he conducts himself. I had employees  
19 tell me they avoid parts of the building because  
20 they're afraid to go down the hallway. Or they avoid,  
21 certain time, being in the parking lot because they  
22 didn't want to be around him and confronted again. I  
23 had staff tell me, if something's not done, they would  
24 leave the Department, they would quit the City. So,  
25 it was a lot of comments but all pretty kind of

1 consistent in terms of the tone and the concerns.

2 MR. ZALMAN: Did you refer to the City's policy  
3 on bullying in the context of concerning these  
4 complaints by other employees?

5 MR. FAJARDO: Yes, I believe I did. I think I  
6 added it as an attachment if I remember correctly. Or  
7 it's listed a major rule. Right. So, one of the  
8 things we did is we didn't want to take this as a  
9 cavalier-type of action. We knew the -- we respected  
10 the gravity and the weight of this, to make sure we  
11 went through the policies and see which policies, if  
12 any, were being violated, and make sure we tried to  
13 list them out to be clear where we felt these  
14 deficiencies were lying.

15 MR. ZALMAN: Would you please turn to Tab 13?  
16 Is that the policy you reviewed?

17 MR. FAJARDO: Yes.

18 MR. ZALMAN: And what policy is that?

19 MR. FAJARDO: Workplace Bullying.

20 MR. ZALMAN: Just going back to your memorandum  
21 on Tab 3, you can see in this memorandum you reference  
22 some incidents that occurred in 2013. How did you  
23 become aware of these incidents?

24 MR. FAJARDO: There was a memo prior to my  
25 tenure as director that was written by my predecessor,

1 I believe it was Greg Brewton. I think Jenni Morejon  
2 was the Deputy Director at that time. So, I read  
3 those. Also, Mr. Fein did come and talk to me on  
4 occasion. And so, to me, it was establishing a clear  
5 pattern that was not changed.

6 MR. ZALMAN: Please turn to Tab 2. You just  
7 mentioned a letter from Greg Brewton. Is this the  
8 letter you're referring to?

9 MR. FAJARDO: Yes, I believe so. I think  
10 there's more than this letter, but yes, this looks  
11 familiar.

12 MR. ZALMAN: And what did this letter state  
13 regarding Mr. Madden's behavior in the workplace at  
14 that time?

15 MR. FAJARDO: It talks about alleged disruptive  
16 behavior, grievances, and that it will not be  
17 tolerated in the Department. And that they would be  
18 holding weekly one-on-one meetings to discuss these  
19 issues related to the Department.

20 MR. ZALMAN: I want you to refer specifically to  
21 the second to the last paragraph. It begins with, "I  
22 want to reiterate."

23 MR. FAJARDO: Yes.

24 MR. ZALMAN: Could you read that entire  
25 paragraph to the Board?

1           MR. FAJARDO: "I want to reiterate the behavior  
2 inconsistent with this Department's overall employee  
3 relationship will not be tolerated."

4           MR. ZALMAN: Is it your belief that this letter,  
5 specifically that paragraph, put Mr. Madden on notice  
6 that further disruptive behavior would not be  
7 tolerated?

8           MS. BLEAU: Objection. Leading.

9           MR. ZALMAN: You can answer.

10          MR. FAJARDO: I do believe so, because --

11          MR. ZALMAN: Oh, I'm sorry.

12          MS. BLEAU: Objection.

13          CHAIR ADELSON: Yeah, I'm sorry. What was the  
14 objection?

15          MS. BLEAU: Leading.

16          MR. ZALMAN: There's no formal rules of evidence  
17 at this hearing, that's why I directed him to answer,  
18 sorry.

19          CHAIR ADELSON: Overruled.

20          MR. FAJARDO: I can answer?

21          CHAIR ADELSON: Yes, you may.

22          MR. ZALMAN: My apologies [inaudible].

23          MR. FAJARDO: Could you restate the question?

24          MR. ZALMAN: No problem. Is it your belief, as  
25 you sit there today, that this letter put Mr. Madden

1 on notice that further disruptive behavior would not  
2 be tolerated?

3 MR. FAJARDO: I don't see how anyone could not  
4 understand what the comment reads. And if Mr. Brewton  
5 had started to do counseling with Mr. Madden, that  
6 that should have been taken seriously as an indicator  
7 that the Department takes these things very seriously.  
8 I looked at it as a fact pattern, regardless of the  
9 timeline that was involved, there was an establishment  
10 of behavior that was not altered and not changed as  
11 indicated by the letter or any of the actions that my  
12 predecessors took to address the situation.

13 MR. ZALMAN: Is it your belief that this was a  
14 form of progressive discipline?

15 MR. FAJARDO: Yes.

16 MR. ZALMAN: I'd like you to turn to Tab 5. Do  
17 you recognize this document?

18 MR. FAJARDO: I do.

19 MR. ZALMAN: What is this?

20 MR. FAJARDO: This was an email from Luis  
21 Hernandez, the Assistant Building Official, to myself,  
22 Al Battle, Jeremy Earl, who was the other Deputy  
23 Director no longer with the City of Fort Lauderdale,  
24 John Travers.

25 MR. ZALMAN: And what is this email to you from

1 Mr. Hernandez entail?

2 MR. FAJARDO: So, Mr. Hernandez is describing  
3 his interactions with Mr. Madden and his feelings of  
4 how his behavior is affecting the Department. I think  
5 it's describing -- yes, so, I'm kind of rereading it  
6 -- but it generally is speaking about how his  
7 interactions with Mr. Madden are having a detrimental  
8 affect on the Department and himself.

9 MS. BLEAU: Can I just ask why this witness is  
10 testifying about an email from somebody else?

11 MR. ZALMAN: It's to him.

12 MS. BLEAU: Well, okay. I mean, he doesn't seem  
13 to recall receiving it, but go ahead.

14 MR. FAJARDO: No, I said I recall receiving it.  
15 I'm just trying to remember exactly what it says.

16 MR. ZALMAN: Could you flip the page, the very  
17 next tab.

18 MR. FAJARDO: Six?

19 MR. ZALMAN: Do you recognize this document?

20 MR. FAJARDO: I do. This is from Andre Cross.

21 MR. ZALMAN: Was there an attachment to the  
22 email that you were just referring to?

23 MR. FAJARDO: I don't recall if there was an  
24 attachment. Actually, I don't know if this was from  
25 Andre.

1 MR. ZALMAN: If you'll refer back to Tab 5 for  
2 me, do you notice that there's an attachment in the  
3 heading of that email?

4 MR. FAJARDO: Yes.

5 MR. ZALMAN: Still on that email, what is the  
6 attachment titled?

7 MR. FAJARDO: Please read this before our  
8 meeting tomorrow.

9 MR. ZALMAN: And referring to the document on  
10 Tab 6, what is the title of that document?

11 MR. FAJARDO: Please read this before our meeting  
12 tomorrow.

13 MR. ZALMAN: Does this appear to be the  
14 attachment to that email?

15 MR. FAJARDO: It does. And I think I misspoke.  
16 I don't think this is the same thing I was thinking it  
17 was originally. I apologize.

18 MR. ZALMAN: What is conveyed in this  
19 attachment, this letter?

20 MS. BLEAU: Since this witness obviously doesn't  
21 recall, the document speaks for itself.

22 CHAIR ADELSON: One moment to read it. He did  
23 indicate that he has seen the document.

24 MR. ZALMAN: He's just refreshing his  
25 recollection before he proceeds.

1 MR. FAJARDO: I have seen the document. I do  
2 recall --

3 CHAIR ADELSON: Do you recall the contents of  
4 the document?

5 MR. FAJARDO: It's been three years, I'm trying  
6 to remember. I apologize.

7 MR. ZALMAN: If you want to take a moment to  
8 refresh your recollection, that's fine.

9 MR. FAJARDO: Thank you. Yes, I think this is  
10 describing the interaction that Luis had with Mr.  
11 Madden.

12 MR. ZALMAN: If you can, briefly describe the  
13 interaction Mr. Hernandez is complaining of.

14 MR. FAJARDO: If I remember -- if I recall  
15 correctly, it happened in the lobby and it was a  
16 disagreement over how a permit should be handled. I'm  
17 not an expert on the Florida Building Code, so I  
18 really couldn't get into the specifics of the permit  
19 itself. But the manner in which Mr. Madden was  
20 interacting with Luis in front of others and having a  
21 heated discussion made Mr. Hernandez uncomfortable and  
22 he felt was insubordination, him being the Assistant  
23 Building Official and having some authority in that  
24 regard.

25 MR. ZALMAN: Was this one of the things that was

1 provided to you before initiating the investigation?

2 MR. FAJARDO: Yes.

3 MR. ZALMAN: Could you turn to Tab 8, please?

4 MR. FAJARDO: Yes.

5 MR. ZALMAN: Do you recognize this document?

6 MR. FAJARDO: Yes, this is the one I was

7 confusing the other document for.

8 MR. ZALMAN: And what is this?

9 MR. FAJARDO: So, this is an email from Andre  
10 Cross enumerating several interactions that he's had  
11 with Mr. Madden and Mr. DeMaio, who's no longer with  
12 the City of Fort Lauderdale.

13 MR. ZALMAN: Were you to believe these were  
14 complaints by Mr. Cross about Mr. Madden?

15 MR. FAJARDO: Yes.

16 MR. ZALMAN: Was this provided to you before  
17 initiating the investigation?

18 MR. FAJARDO: Yes.

19 MR. ZALMAN: If you could please turn to Tab 9,  
20 do you recognize this document?

21 MR. FAJARDO: I do.

22 MR. ZALMAN: And what is this?

23 MR. FAJARDO: This is an email from Valerie  
24 Arthur to myself regarding her interactions with Mr.  
25 Madden.

1 MR. ZALMAN: Do you recall, does this email  
2 describe complaints by Miss Arthur about Mr. Madden?

3 MR. FAJARDO: Yes, it does.

4 MR. ZALMAN: Was this provided to you before  
5 initiating the investigation?

6 MR. FAJARDO: Yes, it was.

7 MR. ZALMAN: And if you could please go back --  
8 actually, turn to Tab 7. Does this document look  
9 familiar to you?

10 MR. FAJARDO: It does, yes.

11 MR. ZALMAN: And do you recall the subject  
12 matter of this document?

13 MR. FAJARDO: I do. It's interactions that Mr.  
14 Oliva has had or had had with Mr. Madden, along with  
15 comments about, I believe, other interactions that had  
16 gone on with others.

17 MR. ZALMAN: And do you believe that Mr. Oliva  
18 was communicating complains he had about Mr. Madden's  
19 behavior?

20 MR. FAJARDO: Yes.

21 MR. ZALMAN: And did you receive this document  
22 before initiating your investigation?

23 MR. FAJARDO: I did.

24 MR. ZALMAN: I want to take you back to Tab 3,  
25 your memorandum to Human Resources. Does this

1 memorandum outline the emails and complaints we just  
2 went over?

3 MR. FAJARDO: I believe I attached them as  
4 exhibits. But yes, I think I enumerate from those  
5 emails directly into the memo, the comments that I had  
6 been hearing.

7 MR. ZALMAN: And I just want to refer you to  
8 page 3 of your memorandum, and you'll notice the, I  
9 guess first actual paragraph at that bullet point --

10 MR. FAJARDO: Other employees?

11 MR. ZALMAN: Other employees, yes. Could you  
12 please describe what you mean by "Other employees,  
13 including direct reports to Mr. Madden, have also  
14 expressed concern about his behavior"?

15 MR. FAJARDO: So, out of all the people I spoke  
16 to or were comfortable coming to speak to me and  
17 initiating the conversation, there was probably three  
18 or four that were not comfortable coming forward for  
19 fear that there would be retaliation against them by  
20 Mr. Madden. So, I left their names out of all the  
21 documentation, they preferred to be anonymous. But  
22 they basically described the same sort behavior  
23 patterns that were being described by others that were  
24 listed in the report. And so I felt that it was  
25 important to put in the memo that there are others

1 that feel this way, they just had concerns, so they  
2 didn't want to come forward.

3 MR. ZALMAN: And going back to page 1 of your  
4 memo, I think you might have briefly mentioned this,  
5 were those complaints that we are going over briefly,  
6 were these tied to the Major Rule No. 1?

7 MR. FAJARDO: Yes.

8 MR. ZALMAN: And what was Major Rule No. 1?

9 MR. FAJARDO: "Personally offensive or abusive  
10 conduct or language toward a public official, fellow  
11 employee, or member of the general public when acting  
12 in an official capacity as a City employee or while in  
13 uniform."

14 MR. ZALMAN: And is Major Rule No. 1 considered  
15 a violation of the City's Work Rules?

16 MR. FAJARDO: Yes, I believe it is.

17 MR. ZALMAN: And I'm going to refer you to Major  
18 Rule No. 2. What is Major Rule No. 2?

19 MR. FAJARDO: "Violation of any lawful and  
20 reasonable regulation, order, or direction made or  
21 given by a superior officer where such violation has  
22 amounted to insubordination."

23 MR. ZALMAN: At this time, who is Mr. Madden's  
24 direct supervisor?

25 MR. FAJARDO: His direct supervisor would have

1       been Luis Hernandez, I believe, in 2016, as the  
2       Assistant Building Official. It should have been  
3       Luis. It may have been John Travers, I don't recall.

4               MR. ZALMAN: And the Building Official - you  
5       just mentioned John Travers - he would also have a  
6       supervisory capacity over Mr. Madden?

7               MR. FAJARDO: Yes.

8               MR. ZALMAN: What violation of Major Rule No. 1  
9       were you aware of at this time?

10              MR. FAJARDO: At the drafting of the memo?

11              MR. ZALMAN: Yes.

12              MR. FAJARDO: Those previous interactions that  
13       I'd had with staff, both verbally and in writing, that  
14       were on the other tabs that you had directed me to.

15              MR. ZALMAN: Who within DSD has the authority  
16       regarding the administration of the Florida Building  
17       Code?

18              MR. FAJARDO: It's my understanding the Statute  
19       says the Building Official has the final authority.

20              MR. ZALMAN: If Mr. Madden contracts the  
21       Building Official's directive, would you consider that  
22       insubordination?

23              MR. FAJARDO: Contradiction in and among itself  
24       I wouldn't consider insubordination. What I consider  
25       insubordination is once a direction has been given

1 based on everyone's input and an interpretation of  
2 what the statute says, if that then doesn't happen,  
3 then I would say it's insubordination. Which is what  
4 continued to occur.

5 MR. ZALMAN: And if that did occur, if  
6 insubordination did occur, would that be a violation  
7 of a lawful and reasonable regulation, order, or  
8 direction?

9 MR. FAJARDO: I believe it would be, yes.

10 MR. ZALMAN: At the time of your letter - of  
11 your memo - did you believe Mr. Madden to be  
12 insubordinate?

13 MR. FAJARDO: Yes.

14 MR. ZALMAN: Why did you request a formal  
15 investigation?

16 MR. FAJARDO: Because I felt it was something HR  
17 should get involved with. They are the people that  
18 can act as a third party, per se, to have an unbiased  
19 look at the facts and determine if there's something  
20 there that we are either not seeing or if we are not  
21 applying the rules correctly.

22 MR. ZALMAN: And who from Human Resources did  
23 you direct your memo to?

24 MR. FAJARDO: Averill Dorsett.

25 MR. ZALMAN: And do you know who conducted the

1 investigation of these complaints?

2 MR. FAJARDO: I believe it was Janeen Richard,  
3 was the primary person.

4 MR. ZALMAN: I want to refer you to Tab 20. Do  
5 you recognize this document?

6 MR. FAJARDO: I do.

7 MR. ZALMAN: And what is this document?

8 MR. FAJARDO: So, it's a memorandum from myself  
9 to John Madden informing him that he would be on  
10 administrative leave during the investigation and the  
11 reasons why.

12 MR. ZALMAN: Why was Mr. Madden placed on  
13 administrative leave?

14 MR. FAJARDO: We felt that his conduct, being  
15 inappropriate and the topic for the reasons why we  
16 were launching the investigation, it would be best if  
17 he was not in the Department.

18 MR. ZALMAN: Was Mr. Madden paid during this  
19 time?

20 MR. FAJARDO: I don't recall.

21 MR. ZALMAN: Would this document refresh your  
22 recollection if he was paid or not?

23 MR. FAJARDO: With pay. Yes, okay, it was with  
24 pay. Sorry. It's right in the first line.

25 MR. ZALMAN: So, just to be clear, was Mr.

1 Madden paid?

2 MR. FAJARDO: As far as I'm aware, yes, he was.

3 MR. ZALMAN: I want to refer you to Tab 12. Do  
4 you recognize this document?

5 MR. FAJARDO: I do.

6 MR. ZALMAN: And what is the subject of this  
7 document?

8 MR. FAJARDO: Recommendation for Termination.

9 MR. ZALMAN: Why does this document originate  
10 from your Deputy Director, Al Battle, Jr.?

11 MR. FAJARDO: I believe I was out of the country  
12 at the time.

13 MR. ZALMAN: Is there any other reason?

14 MR. FAJARDO: Well, generally speaking, it's my  
15 understanding that the Director of the Department is  
16 also in an appeal position, and so, from a process  
17 standpoint, we relied on HR to give us the  
18 requirements for how these should proceed. And, if I  
19 recall correctly, at that time we were instructed it  
20 should come from the Deputy Director because Mr.  
21 Madden could appeal to me, so the memo should not be  
22 drafted from me.

23 MR. ZALMAN: I want you to refer to Tab 18.

24 MR. FAJARDO: 18, sorry.

25 MR. ZALMAN: Do you recognize this document?

1 MR. FAJARDO: Yes.

2 MR. ZALMAN: And what is the context of this  
3 document?

4 MR. FAJARDO: This is a memorandum from Mr.  
5 Battle informing Mr. Madden that he is being dismissed  
6 from the City of Fort Lauderdale.

7 MR. ZALMAN: Why did Mr. Battle, your Deputy  
8 Director, draft this letter?

9 MR. FAJARDO: Again, I believe it had to do with  
10 the appeal process.

11 MR. ZALMAN: Do you have any concerns if Mr.  
12 Madden's termination was successfully appealed and he  
13 were allowed to return to the workplace?

14 MR. FAJARDO: I do. I mean, it's common  
15 knowledge in the Department what is going on, people  
16 talk. I've had staff come to me and tell me that they  
17 would probably consider leaving the City if he came  
18 back. I've had staff tell me they're completely  
19 stressed out about it. As the Department Director, I  
20 feel responsible for the wellbeing of everyone in the  
21 building. I just do not believe it is in anyone's  
22 best interest that Mr. Madden return to work. I think  
23 it will cause disruption. I think it will cause  
24 emotional stress on staff. I just believe we should  
25 all part ways and move along.

1 MR. ZALMAN: No further questions at this time.

2 MS. BLEAU: Mr. Fajardo, my name is Denise  
3 Bleau. I'm the attorney for John Madden.

4 CHAIR ADELSON: Miss Bleau, I just wanted to ask  
5 the question on the record, so I can make sure that I  
6 -- I am actually going to refrain until I hear from  
7 both sides, if I have any questions.

8 MS. BLEAU: Your testimony, if I understand it  
9 correctly, is that some employees came to you,  
10 complained about some things, they told you specifics.  
11 I assume they didn't just say, "Mr. Madden makes me  
12 feel uncomfortable" or "I think it's a hostile work  
13 environment." Right? They gave you details, I  
14 assume.

15 MR. FAJARDO: Yes.

16 MS. BLEAU: Right? And then you somehow  
17 received after that, if I understand correctly, the  
18 Andre Cross, Luis Hernandez, and -- what's her name?  
19 -- Valerie Arthur memos. How did those -- how did you  
20 obtain those? What happened there?

21 MR. FAJARDO: Mr. Cross, Mr. Hernandez, and Miss  
22 Arthur were also people who came to me and spoke to me  
23 verbally about this and expressed their concerns. I  
24 told everybody who had spoken to me, including the  
25 people that I mentioned earlier that said they didn't

1 want to be named, that it's probably best if you put  
2 what your concerns are in writing so that it's easily  
3 understood and everyone can read it.

4 MS. BLEAU: Okay. So, other than Mr. Cross, Mr.  
5 Hernandez, and Miss Arthur, there were some other  
6 anonymous people and that was it. That was the pool  
7 of people that complained.

8 MR. FAJARDO: There's a letter from George Oliva  
9 as well.

10 MS. BLEAU: George Oliva, excuse me. Okay.  
11 Those four and these anonymous people. What did the  
12 direct reports specifically tell you?

13 MR. FAJARDO: That Mr. Madden would threaten to  
14 go to BORA and challenge their licenses.

15 MS. BLEAU: Okay, let me stop you there. What's  
16 wrong with that? If Mr. Madden felt like somebody was  
17 violating the code and they weren't doing what he was  
18 telling them and he said, "You can get in trouble from  
19 BORA," which is probably what he said. Or he said,  
20 "I'm going to have to turn you in to BORA, or I will  
21 turn you in to BORA," you would say that's bullying.  
22 Is it my understanding that correctly -

23 MR. FAJARDO: I would say that if Mr. Madden  
24 felt that someone did something illegal or wrong, per  
25 the State statute, he should have gone to BORA.

1 Threatening people with that on a constant basis is  
2 not a method for getting anything corrected.

3 MS. BLEAU: Constant basis?

4 MR. FAJARDO: That's what I was told by these  
5 individuals.

6 MS. BLEAU: By who?

7 MR. FAJARDO: By, I believe, Barry Fein, John  
8 Dougherty, I think Jose Aven [phonetic] had an  
9 interaction with him at one point. There were  
10 individuals that said, "We come in on a daily basis  
11 and we never know what we're going to hear and when  
12 we're going to hear it and what's going to be said."

13 MS. BLEAU: Okay.

14 MR. FAJARDO: And --

15 MS. BLEAU: Mr. Fein is dead, so I can't cross  
16 examine him, right?

17 MR. FAJARDO: Understood.

18 MS. BLEAU: Mr. Dougherty, I think we're going  
19 to hear from him in these proceedings, is that right?  
20 And who is the other one, Mr. Aven?

21 MR. FAJARDO: I think Jose Aven [phonetic]  
22 mentioned something to me as well.

23 MS. BLEAU: Is he a direct report of Mr. Madden?

24 MR. FAJARDO: I don't know if he was at one  
25 point.

1 MS. BLEAU: Can you talk into the mic?

2 MR. FAJARDO: I'm sorry, I don't know if he was  
3 at one point. He was moved over to Building  
4 Enforcement, I believe.

5 MS. BLEAU: Right, he worked for George Oliva,  
6 didn't he?

7 MR. FAJARDO: At the time, I'm not sure. He  
8 might have work him at the time, but I'm not sure.

9 MS. BLEAU: Yeah. And so you also referenced in  
10 your -- first of all, let me stick with those people.  
11 As to Andre Cross, he was one of the individuals that  
12 came to you that led you to think that Mr. Madden was  
13 bullying and therefore you should conduct an  
14 investigation. True?

15 MR. FAJARDO: That's correct.

16 MS. BLEAU: Okay. Tell me -- and then you asked  
17 Mr. Cross to put what he told you in writing. Right?

18 MR. FAJARDO: Yes.

19 MS. BLEAU: And did he do so?

20 MR. FAJARDO: Yes.

21 MS. BLEAU: Okay. Tell me where in Mr. Cross's  
22 memo there's a discussion about specific violation by  
23 Mr. Madden of the anti-bullying policy.

24 MR. FAJARDO: Do you recall which tab that is?

25 MS. BLEAU: Sure, it's Tab 8.

1 MR. FAJARDO: Tab 8. [pause] So, in each  
2 bullet point, Mr. Cross is referencing interactions  
3 that he's had. Some of them have to do with meetings  
4 that he was involved with, some of them with comments  
5 that Mr. Madden had said to him in various situations  
6 about how he dresses, how he behaves in meetings. Mr.  
7 Madden, it says, he was rude to him during a meeting  
8 in front of others. It says that he made a comment  
9 that, "She'll get hers, all I have to do is make a  
10 phone call," regarding "Who was authorized for Juan to  
11 report and who told you that?" Let's see. There's  
12 comments in here about questioning Andre on, "Why he's  
13 scheduling me and under what authority," I believe.

14 MS. BLEAU: Okay, but understand, Mr. Fajardo,  
15 my question specifically was what conduct of Mr.  
16 Madden does Mr. Cross describe that you concluded  
17 violated the City's anti-bullying policy?

18 MR. FAJARDO: Because bullying is a list of  
19 actions that make people feel uncomfortable or  
20 intimidated. And Mr. Cross felt that Mr. Madden's  
21 repeated behavior was going in that direction and that  
22 was bullying.

23 MS. BLEAU: Well, first of all, repeated  
24 behavior, there's like three communications discussed  
25 in here, maybe.

1 MR. FAJARDO: Well, there's one, two, three,  
2 four, five, six, seven bullets. And this is what I  
3 asked him to put in writing. Mr. Cross will be in  
4 here, obviously, as a witness, and he can speak for  
5 himself. When he spoke to me, what's in writing is  
6 what's in writing. I also have to take into  
7 consideration what is said to me. It should match. I  
8 understand that. But these people have all come to me  
9 and said they are afraid to be around Mr. Madden. I  
10 have to take that seriously.

11 MS. BLEAU: Yeah, I know you keep saying that,  
12 but honestly, before a man's job can be taken away,  
13 you need to be able to talk about actual things that  
14 he did. Not this nebulous testimony that you keep  
15 offering, which is a bunch of people said some things  
16 to me without any specifics. So, now we're going to  
17 talk about specifics. Is that okay?

18 MR. FAJARDO: It's okay. It's in writing, I  
19 don't know what else you want me to say.

20 MS. BLEAU: All right. So, does Mr. Cross's  
21 memo, in your opinion, describe conduct that is  
22 violative of the City's anti-bullying policy, yes or  
23 no?

24 MR. FAJARDO: Yes.

25 MS. BLEAU: Okay. Each and every bullet, you

1 believe, violates the City's anti- policy or can you  
2 tell me which ones?

3 MR. FAJARDO: I believe in some way, when they  
4 are actions together, they can violate the bullying  
5 policy. If you are behaving -- if you make one  
6 comment, not bullying. Bullying is a defined term.  
7 The City has a zero tolerance policy against it. When  
8 you look at everything in the pattern that's going on,  
9 not with just Mr. Cross's memo or what Mr. Cross has  
10 said, but with everybody else that's involved, yes,  
11 it's a pattern of bullying, in my opinion.

12 MS. BLEAU: Okay. You understand that Mr. Cross  
13 and Mr. Madden had a fundamental disagreement about  
14 whether or not John Travers is the Building Official,  
15 or John Madden as the chief structural person had the  
16 right to interpret the Florida Building Code and  
17 enforce those interpretations.

18 MR. FAJARDO: I am aware of the discussion, yes.

19 MS. BLEAU: Okay. It's not just a discussion.  
20 I mean, a lot of the issues that are mentioned in  
21 these memos from Mr. Hernandez, from Mr. Cross, in the  
22 investigative report, a lot of the discussion centered  
23 around the fact that Mr. Madden was perceived to be  
24 insubordinate, correct?

25 MR. FAJARDO: Correct.

1 MS. BLEAU: And people who thought that Mr.  
2 Travers was the guy that could make those calls and  
3 that Mr. Madden should do what Mr. Travers said did  
4 not like it when Mr. Madden fought against -- pushed  
5 against that and tried to impose his view. True?

6 MR. FAJARDO: Can you restate -- I'm not sure I  
7 understand what you're asking.

8 MS. BLEAU: Sure. A lot of these conflicts  
9 where you say Mr. Madden made people feel  
10 uncomfortable was when Mr. Madden trying to enforce  
11 view, his interpretation of the Building Code as  
12 opposed to actions being taken by Mr. Travers. Is  
13 that true?

14 MR. FAJARDO: I feel like the question is  
15 combining two things that really are irrelevant to  
16 each other. Because it's not about the topic, it's  
17 about how Mr. Madden behaves and how he conveys that  
18 information. If you disagree with somebody -- we talk  
19 about things all the time in the Department. I have  
20 disagreements with the Division managers a lot and  
21 with John Travers. But we discuss them in a civil  
22 manner and try to figure out a path to move forward.  
23 I don't use my position to intimidate them and no one  
24 else should. And threatening somebody -- why  
25 threaten? If you feel that a rule has been violated,

1       there's methods to have that verified by the Board of  
2       Rules and Appeals. Use that method. Why go through  
3       all this other stuff and tell people that "I'm going  
4       to go after your license"? That's a threat. That is  
5       not making a comment to somebody saying, "I'm trying  
6       to protect the City." That's telling somebody, "I  
7       want you to do something or this is going to happen."

8               MS. BLEAU: Okay. And other than the threat,  
9       "I'm going to go after the license," there were no  
10       other threats by Mr. Madden, correct, within the  
11       context that is discussed in the bullying policy, like  
12       "I'm going to beat you up, I'm going to hurt you, I'm  
13       going to call your wife on you" -- I mean, there were  
14       not threats.

15              MR. FAJARDO: No, a statement like, "She will  
16       get hers, all I have to do is make a phone call," is  
17       pretty threatening.

18              MS. BLEAU: To who?

19              MR. FAJARDO: This is in Mr. Cross's back-up on  
20       Tab 9.

21              MS. BLEAU: Who is it threatening to?

22              MR. FAJARDO: To whoever he's referencing. I  
23       have to reread the whole thing.

24              MS. BLEAU: Okay. Well, other than that, let's  
25       --

1 MR. FAJARDO: Other than that? Why does it have  
2 to be other than that? A threat is a threat.

3 MS. BLEAU: That's enough.

4 MR. FAJARDO: The City should take these things  
5 seriously and we should figure out that now is not the  
6 time to ignore stuff like this.

7 MS. BLEAU: Okay. So, did you talk to John  
8 Madden?

9 MR. FAJARDO: I talked to John Madden -- so,  
10 when I took over as Department Director and peoples  
11 started coming to me with these concerns and these  
12 issues and how they were feeling, I did go speak to  
13 John Madden on a more casual, kind of impromptu basis,  
14 in his office. I talked to him about, "How are things  
15 going?" "Do you feel like you need to discuss  
16 anything?" I can't remember the exact verbiage of the  
17 conversation or even how long it lasted -- it wasn't  
18 very long. And then, on top of that, I instituted --  
19 he may not have been here at that point -- but I did  
20 institute where I had the Chiefs come in and sit with  
21 me on a monthly basis to kind of get them away from --  
22 the Building Official and the Official Building  
23 Official so they felt like they had a space where they  
24 could say what they needed to say and talk about  
25 whatever they needed to talk about. So, if it was

1 something important about the Florida Building Code,  
2 they could talk about that. If they thought it was a  
3 staffing issue, they could talk about that.

4 MS. BLEAU: Sounds like a really good decision.  
5 But that wasn't implemented when Mr. Madden was here,  
6 correct?

7 MR. FAJARDO: Okay.

8 MS. BLEAU: Do you remember meeting with him on  
9 a regular basis?

10 MR. FAJARDO: Did I meet with him on a regular  
11 basis?

12 MS. BLEAU: Yeah, like in the context of those  
13 --

14 MR. FAJARDO: Like a standing --

15 MS. BLEAU: -- meetings, like you're describing.

16 MR. FAJARDO: I don't believe so. I think that  
17 probably did happen after he left.

18 MS. BLEAU: Right. So, did you talk to John  
19 Madden and say, "I've had concerns expressed, here are  
20 some concerns, what's your side of the story?"

21 MR. FAJARDO: So, I don't believe I did that  
22 exactly. I, like I said, I spoke to him on probably  
23 one or two occasions, separately. Prior to those  
24 conversations, I hadn't been approached by the ten or  
25 so people that pulled me to the conference room. And it

1 was at that point that I felt like this is - this fact  
2 pattern's already been established from 2013. The  
3 previous Director has already tried to do something  
4 about this. This is not changing. So, I've got all  
5 these people that have these concerns, I need to take  
6 action and do something. So, rather than going  
7 through a prolonged, "Let's have a discussion and talk  
8 this out," I want to turn this over to HR and let them  
9 do their investigations.

10 MS. BLEAU: You said on your direct testimony as  
11 well, and I think you just basically repeated it, that  
12 there was no change in Mr. Madden's behavior from 2013  
13 to 2016, right?

14 MR. FAJARDO: Yes, that's what I said.

15 MS. BLEAU: So, you believe that his behavior  
16 was constant from 2013 to 2016, there was no change.

17 MR. FAJARDO: I believe that what was in the  
18 information that I received on what took place and  
19 what was done about it by previous management was  
20 still occurring in 2016 from 2013.

21 MS. BLEAU: Okay. I want to make sure that I'm  
22 clear, though. You're saying, "I had complaints in  
23 2016 and there were complaints in 2013." My question  
24 is, is it your understand that that same behavior  
25 occurred in 2014 and 2015 through 2016. That there

1 was a constant no-change, which was your testimony.

2 MR. FAJARDO: It couldn't have been constant  
3 because is was out on FMLA. But while he was at the  
4 Department, yes, it's my understanding that behavior  
5 had continued.

6 MS. BLEAU: Where did you get some of the  
7 information that was in your memo from? What were  
8 your sources? For example, regarding Mr. Madden's  
9 FMLA, where did you get those dates from?

10 MR. FAJARDO: I believe it was in a memo from  
11 Greg Brewton if I remember correctly. It was in some  
12 documentation I saw.

13 MS. BLEAU: You also said there was documented  
14 evidence of Mr. Madden's unacceptable behavior back in  
15 mid-2013. Where -- and there are six different  
16 complaints, you said -- where --

17 MR. FAJARDO: What tab is that again?

18 MS. BLEAU: This is your memo at Tab 3.

19 MR. FAJARDO: Tab 3, sorry.

20 MS. BLEAU: Uh-huh [affirmative], first page,  
21 sorry. Through all of the public records requests we  
22 have done, I have never seen any documented evidence  
23 that's referenced in this memo. You didn't attach it  
24 to your memo. Where is that documented evidence?

25 MR. FAJARDO: There is a memo between Mr.

1 Brewton and, I believe, Human Resources that describes  
2 what was happening. I believe it also included Jenni  
3 Morejon.

4 MS. BLEAU: So, this documented evidence was a  
5 memo from Mr. Brewton to Ms. Morejon about statements  
6 made by third parties as Mr. Brewton understood them,  
7 and you just reported them in your memo as if that was  
8 fact, is that right?

9 MR. FAJARDO: To me it was fact.

10 MS. BLEAU: Okay. How many times did Mr.  
11 Brewton meet with Mr. Madden?

12 MR. FAJARDO: I don't know. He said he was  
13 going to do ongoing counseling, but I'm not sure.

14 MS. BLEAU: Would it surprise you to know that  
15 he only met with him twice?

16 MR. FAJARDO: I don't know that it would  
17 surprise me.

18 MS. BLEAU: Okay. So, it would seem that Mr.  
19 Brewton didn't think it was as serious of an issue as  
20 you have understood from a memo from Mr. Brewton,  
21 right?

22 MR. FAJARDO: I couldn't say. I'm not Mr.  
23 Brewton.

24 MS. BLEAU: You couldn't say. That's exactly  
25 right. The memo from Mr. Brewton, which is at Tab 2,

1 the first line of that memo says, "John, please let  
2 this letter serve as the Department's official notice  
3 to the investigation on the grievances filed by  
4 several members of staff." So, there were complaints  
5 by staff about Mr. Madden, Mr. Brewton sent a memo  
6 saying he was going to do an investigation. Do you  
7 know the results of that investigation?

8 MR. FAJARDO: I wasn't the Director at the time.

9 MS. BLEAU: So, the answer is no, you don't.

10 MR. FAJARDO: I'm not saying there wasn't a  
11 result, I'm just saying that I don't know what they  
12 are.

13 MS. BLEAU: You don't know. So, all you really  
14 know is that complaints were made, that Mr. Brewton  
15 said he was going to do an investigation, and you  
16 don't know whether or not those complaints were ever  
17 validated or not. You just accepted them as true  
18 because somebody said it. Is that right?

19 MR. FAJARDO: Because the Director of the  
20 Department said it, and it went through HR.

21 MS. BLEAU: Well, the Director of the Department  
22 said that complaints had been made. That's real  
23 different than saying the complaints were valid and  
24 John Madden did the things that were being complained  
25 of, wouldn't you agree?

1           MR. FAJARDO: I can only comment on the things  
2 that I was involved in. So, again, when we went  
3 forward, we had this information, we established a  
4 fact pattern, and that pattern was occurring in front  
5 of my eyes when I was made director.

6           CHAIR ADELSON: Mr. Fajardo, can I ask you to  
7 speak more directly? Thank you.

8           MR. FAJARDO: I'm sorry. Would you like me to  
9 repeat what I said?

10          CHAIR ADELSON: No, I heard it, but I was having  
11 to strain.

12          MR. FAJARDO: Sorry. And so, I felt that that  
13 pattern had been established, it was written in his  
14 letter, November 8, 2013. I've worked with Mr.  
15 Brewton for several years. I feel like I know the  
16 kind of person he is, and this was an official  
17 document. So, I felt that there was a definitely  
18 warranted taking action and moving forward.

19          MS. BLEAU: You read Mr. Brewton's letter at Tab  
20 2 to say that he found John was guilty of the things  
21 about which people were complaining, is that what  
22 you're telling me?

23          MR. FAJARDO: Yes.

24          MS. BLEAU: Okay. With all due respect, that's  
25 not what he says. But --

1 MR. FAJARDO: That's your opinion.

2 MS. BLEAU: Well, I can read. I'm going to move  
3 on. So, you didn't talk to John Madden after these  
4 complaints in 2016. You don't know anything about Mr.  
5 Madden's conduct in 2014 or 15, is that right?

6 MR. FAJARDO: No, I have the memo that was  
7 written.

8 MS. BLEAU: Where?

9 MR. FAJARDO: The one you just referenced.

10 MS. BLEAU: This is 2013, sir. I said 2014 and  
11 2015.

12 MR. FAJARDO: Well, he was on FMLA for a period  
13 of time. And I wasn't the Director at that time.

14 MS. BLEAU: Do you or do you not know about Mr.  
15 Madden's conduct in all of 2014 and all of 2015,  
16 whenever he was at work?

17 MR. FAJARDO: In all of 2014 and 2015, no, I  
18 don't. What I have is verbal comments from people  
19 telling me that this behavior has been going on  
20 consistently. That's my memo reads the way it does.

21 MS. BLEAU: But all you had when you drafted  
22 that memo was Mr. Brewton's letter and the letters  
23 that we talked about, the four letters, today. And  
24 some anonymous individuals who complained about Mr.  
25 Madden threatening their license.

1 MR. FAJARDO: To start an investigation, yes,  
2 that's what I used to start an investigation.

3 MS. BLEAU: Okay. Do you know who Victor Blanco  
4 is?

5 MR. FAJARDO: Yes.

6 MS. BLEAU: Do you know who Mike Rinkus is?

7 MR. FAJARDO: I do.

8 MS. BLEAU: Do they both work for Mr. Madden?

9 MR. FAJARDO: At the time I think Victor was in  
10 Zoning. But Mike, I believe, did.

11 MS. BLEAU: And did Mr. Blanco have an  
12 opportunity to work with Mr. Madden?

13 MR. FAJARDO: I know they interacted and they  
14 worked together, I don't know -- I think Victor came  
15 over from structural, so he probably would have worked  
16 with Madden directly.

17 MS. BLEAU: Did you talk to either of them about  
18 Mr. Madden and his conduct at work?

19 MR. FAJARDO: No. Not that I recall.

20 MS. BLEAU: When was the anti-bullying policy  
21 adopted?

22 MR. FAJARDO: I'd have to look at it, I'm not  
23 sure.

24 MS. BLEAU: Okay.

25 MR. FAJARDO: What tab is it on?

1 MR. ZALMAN: Thirteen.

2 MR. FAJARDO: Thirteen? I apologize, I lost my  
3 glasses.

4 MS. BLEAU: It says, I believe, May 13, 2016.

5 MR. FAJARDO: Yes, but I believe this is an  
6 update to a previous policy, because this is in a  
7 newer format.

8 MS. BLEAU: Is there any way to tell?

9 MR. FAJARDO: I'm not an expert on the policy,  
10 so I couldn't really tell you.

11 MS. BLEAU: You don't know. You don't know if  
12 there was one before this or not.

13 MR. FAJARDO: I can't say for sure.

14 MS. BLEAU: Okay. Do you know how that policy  
15 was disseminated, if at all?

16 MR. FAJARDO: It's usually promulgated by one of  
17 the department heads and then it's disseminated to the  
18 directors. I'm explaining how it's done today, since  
19 my involvement in these types of things. It's  
20 promulgated by one of the department heads, it  
21 probably would have been done by HR because this is an  
22 HR issue. Although I couldn't say for certain. And  
23 then it's given to the directors and sometimes the  
24 deputy directors for comment and feedback, and then a  
25 final product is -- pardon me -- completed and then

1 it's given to the City Manager for consideration and  
2 authorization.

3 MS. BLEAU: And that's after the issuance of the  
4 policy, what you just described, right?

5 MR. FAJARDO: After the issuance of the policy?

6 MS. BLEAU: Right.

7 MR. FAJARDO: I'm not sure I understand, the  
8 issuance of this policy or any policy?

9 MS. BLEAU: Any policy. But this one in  
10 particular was issued May 13, 2016.

11 MR. FAJARDO: No, it wouldn't be issued until  
12 all the comments had been received and then it was  
13 edited and then authorized by the City Manager.

14 MS. BLEAU: And then how was it disseminated?

15 MR. FAJARDO: Now it's done through LauderShare.  
16 I believe prior to that we had LauderLink? -- was our  
17 previous method of having all documentations for the  
18 City that were available to staff. So, it would have  
19 been posted on that. Now it's done through  
20 LauderShare and LauderShare is more interactive  
21 software. Basically does the same thing, just with  
22 more bells and whistles.

23 MS. BLEAU: You mentioned Jenni Morejon earlier.  
24 Who is she?

25 MR. FAJARDO: Well, she's the former Director of

1 the Department. At the time, well, she was my direct  
2 predecessor and she also functioned as the Deputy  
3 Director of the Department. Prior to that she was in  
4 Planning.

5 MS. BLEAU: Do you know that subsequent to these  
6 complaints to which you refer in your memo, Mr. Madden  
7 was promoted from Chief to Interim Building Official.

8 MR. FAJARDO: I do.

9 MS. BLEAU: Do you know that Miss Morejon was  
10 involved in that decision?

11 MR. FAJARDO: I'm aware.

12 MS. BLEAU: Do you -- can you explain why Mr.  
13 Madden is promoted to Interim Building Official after  
14 these complaints, if they were considered to be  
15 validated and as serious as you now believe them to  
16 be?

17 MR. FAJARDO: I can't speak for Jenny, she's not  
18 here to defend herself and I'm not going to make any  
19 comments to guess. But he was also removed from that  
20 position.

21 MS. BLEAU: Yeah. In your memo you incorrectly  
22 state that Mr. Madden was removed as Interim Building  
23 Official, I think you say because of the complaints?  
24 Is that what you concluded? I'd love to know where  
25 you got that information. Page 2, about the middle of

1 the page, "A combination of grievances and performance  
2 issues resulted in the demotion of Mr. Madden."

3 MR. FAJARDO: That was the way I understood it.

4 MS. BLEAU: From who?

5 MR. FAJARDO: From Al Battle and his  
6 conversations with Miss Morejon, I believe, as well as  
7 discussions with Mr. Brewton.

8 MS. BLEAU: Okay, well, Mr. Madden wasn't  
9 promoted to Interim Building Official until February  
10 or March of 2014, which is in his personnel file. Did  
11 you ever look at his personnel file?

12 MR. FAJARDO: I believe I did.

13 MS. BLEAU: Okay, so you got complaints or you  
14 referenced complaints that Mr. Brewton referenced in  
15 August and June of 2013 -- the personnel file will  
16 show, and we have records that we will show -- that  
17 Mr. Madden was promoted to Interim Building Official  
18 in February or March of 2014. So, he couldn't have  
19 been demoted as a result of these grievances, that's  
20 pretty clear, right?

21 MR. FAJARDO: If you say so.

22 MS. BLEAU: Okay. You think there's some way he  
23 could have been if he was promoted after them?

24 MR. FAJARDO: You're talking about dates and  
25 documentation I don't have in front of me, maybe it's

1 a typo, I can't tell you.

2 MS. BLEAU: That sort of makes two of us.  
3 You're talking about documentation in your memo that I  
4 don't have. And neither does the Board. You said  
5 earlier in your testimony, your direct, that you -- I  
6 don't want to say don't know anything about, but I'm  
7 not sure how to say it, I don't want to be  
8 disrespectful -- but basically you said something  
9 about "I don't know much about the Florida Building  
10 Code," or "Don't ask me."

11 MR. FAJARDO: I believe what I said is that I'm  
12 not an expert in the Florida Building Code. It's not  
13 my background.

14 MS. BLEAU: Okay. Do you know, as between the  
15 Chiefs and the Building Official, who has the sole  
16 authority to interpret the Building Code?

17 MR. FAJARDO: It's my understanding, for each  
18 municipality, it's the Building Official. But again,  
19 I'm not an expert in the Florida Building Code.

20 MS. BLEAU: Okay, are you aware of the  
21 proceeding against John Madden in 2016 for -- by the  
22 Board of Rules and Appeals?

23 MR. FAJARDO: Yes.

24 MS. BLEAU: And do you know that the nature of  
25 that proceeding was against John for not providing his

1 interpretation and that, according to BORA and Chris  
2 Augustin and Bill Dumbaugh and James DiPietro and the  
3 Board of Rules and Appeals and the attorney for the  
4 Board of Rules and Appeals, John Madden is the sole  
5 authority, not the Building Official.

6 MR. FAJARDO: I'm not aware of that.

7 MS. BLEAU: Thank you, sir.

8 [Pause while testing audio equipment.]

9 MR. ZALMAN: I just want to refer you back to  
10 Page 3, I mean Tab 3.

11 MR. FAJARDO: Tab 3.

12 MR. ZALMAN: Specifically, page 4. The second  
13 to the last paragraph, what does the first sentence  
14 say?

15 MR. FAJARDO: Further Mr. Madden?

16 MR. ZALMAN: No, it is in the opinion. Are you  
17 page 4?

18 MR. FAJARDO: No, sir, I'm on page 3. I may  
19 need my glasses again. Second to the last paragraph,  
20 you said?

21 MR. ZALMAN: Yeah, it is in the --

22 MR. FAJARDO: "It is the opinion of the  
23 Department Director and other supervisory personnel  
24 that an investigation should be initiated to determine  
25 the proper course of discipline for this employee. As

1 documented by past Directors and current Department  
2 leadership, past attempts to cure Mr. Madden's  
3 behavior have not worked and I do not expect this  
4 behavior to change."

5 MR. ZALMAN: So, in this memo you don't make the  
6 determination that Mr. Madden should be terminated  
7 from his employment, do you?

8 MR. FAJARDO: No.

9 MR. ZALMAN: And the initial complaints you  
10 received, the emails we went over from Cross, Arthur,  
11 Oliva, and Hernandez, and the other anonymous  
12 complaints, this prompted you to initiate a full  
13 investigation.

14 MR. FAJARDO: Yes, I felt it was something that  
15 needed to be taken seriously. One of the comments  
16 that we had heard, even before I was Director, is that  
17 management doesn't take any action to protect staff  
18 from people they feel are causing an issue. Whether  
19 that's disciplinary action or termination, I felt it  
20 was very important to do something.

21 MR. ZALMAN: Okay. No further questions.

22 CHAIR ADELSON: I do have a couple of questions.  
23 What is your role, because we're uninformed, let's  
24 say, as the Director with regard to staff issues such  
25 as these? I know you, obviously, set forth and put

1 into place an investigation with regard to complaints  
2 you'd gotten from your staff, but what is your role in  
3 that? What are your responsibilities?

4 MR. FAJARDO: So, my responsibility -- well, let  
5 me start with, I maintain an open door policy, so I  
6 let staff come and talk to me about anything they feel  
7 they need to or that's important. My responsibility  
8 is for the management of the Department and ensuring  
9 that it runs smoothly and we maintain our budget. For  
10 the purposes of this, it's my understanding from how  
11 it's been explained to me in the past and what I've  
12 read in policies and procedures, various policies and  
13 procedures, that I can initiate investigations, I can  
14 initiate discipline, but I have to remove myself from  
15 it at a certain point because I'm the appeal  
16 individual in process. So that the Deputy Director or  
17 the direct supervisor would move forward with those  
18 actions if there were any actions to be taken and that  
19 if the staff person felt that they wanted to appeal,  
20 they could come to me. As a first step in an appeal  
21 process.

22 CHAIR ADELSON: I heard you say that, based on  
23 what you knew of Mr. Madden, plus the complaint, you  
24 felt it was important to commence the investigation.  
25 Did you yourself ever witness Mr. Madden's behavior

1 that's described in these complaints?

2 MR. FAJARDO: No, not with the individuals that  
3 came to speak to me or the individuals that remained  
4 anonymous. I didn't not witness anything directly.  
5 The only times -- I've seen Mr. Madden get upset.  
6 I've never seen him behave in the manner that these  
7 individuals have stated.

8 CHAIR ADELSON: Okay, I'm good with my  
9 questions. Does anyone else on the Board?

10 MR. BALDWIN: I have a few questions. First, I  
11 just wanted to divulge, I didn't know because I hadn't  
12 had this back-up. I wanted to make sure that we know  
13 I know Greg Brewton. I was Assistant City Manager  
14 here for years, and I knew him back -- I still know  
15 him, though I haven't talked to him for years. I just  
16 wanted to make that clear because I'm going to refer  
17 to his memo.

18 MS. TURIN: Okay. Am I on? The same questions  
19 that I had to other members, were all of your  
20 relationships with him at arm's length?

21 MR. BALDWIN: Yes.

22 MS. TURIN: You're not related to him?

23 MR. BALDWIN: No, it's all professional. Same  
24 with Lee Feldman and Chris Lagerbloom. I know them,  
25 but --

1 MS. TURIN: And your relationships with any of  
2 those individuals, does it impair in any way your  
3 ability to be neutral and impartial in this  
4 proceeding?

5 MR. BALDWIN: No.

6 MS. TURIN: Okay.

7 CHAIR ADELSON: Let me ask both sides, any  
8 objections to continuing to serve in this capacity  
9 moving forward?

10 MR. ZALMAN: None.

11 MR. BALDWIN: I want to --

12 CHAIR ADELSON: Any objection?

13 MS. BLEAU: No.

14 MR. BALDWIN: One question you just answered,  
15 you didn't witness his behavior. What I'm trying to  
16 understand -- I've been a City Manager a long time and  
17 it's probably what's come into my mind -- if Mr.  
18 Madden is, and you said he's bullying and everything  
19 is very serious, I'm having a little bit of difficulty  
20 understanding why the disciplinary action or remedial  
21 action that began back in 2013, but you weren't here I  
22 guess or weren't the director until 2016, and I don't  
23 see anything that happened from 2013 to 2016. So,  
24 that would either indicate to me it wasn't as serious  
25 as it seems to be or that somebody just wasn't doing

1 what they should have been doing.

2 MR. FAJARDO: I think it's the latter and not  
3 the former. All I can tell you is what I was told by  
4 staff and their interactions with Mr. Madden over that  
5 time period, that it had been consistent. And nothing  
6 had changed from the actions taken by my predecessors  
7 in 2013. I also had comments from people that his  
8 behavior wasn't directed to. The building that we are  
9 in is about 30 -- I think it's almost 38,000 square  
10 feet. Right now there are 242 employees. You're not  
11 going to see everything that goes on. I did have  
12 people come and tell me -- this is one of the things  
13 that got me into the mindset of "I need to look into  
14 this further," before I even had interactions with  
15 some of these other staff that came forward -- was  
16 that you have got to go back there into the Building  
17 Division because it's turning into a mess.

18 Quite frankly, it's been a long time, so I'm  
19 going to be paraphrasing a little bit of what was  
20 told. But the general gist of it was that the  
21 disruptive behavior is causing serious morale problems  
22 in addition to these individuals feeling like they are  
23 being targeted and bullied.

24 MR. BALDWIN: Well, I commend you for taking  
25 action once you became the Director. Do you have any

1 knowledge of why nothing - and maybe I'm overstating  
2 that - there wasn't sufficient action taken? I  
3 believe you said they only met at two weekly meetings  
4 -- do you have any knowledge of that, and if you  
5 don't, I'm not sure you're the right person to be  
6 here. I would think Mr. Brewton would be the one who  
7 would be dealing with that time period before you got  
8 here if we're going to use that as a basis to take  
9 disciplinary action.

10 MR. ZALMAN: Just to address your concern. You  
11 are going to hear from the person who led the  
12 investigation all the way to the person who made the  
13 recommendation to the Fort Lauderdale City Manager.  
14 But just looking at his termination letter, the events  
15 of 2016 are what led to his termination.

16 MR. BALDWIN: Okay. And then I just had one  
17 question I should have asked earlier because Mr.  
18 Feldman's not here anymore, the new City Manager Chris  
19 Lagerbloom, is he supportive of this termination?  
20 Because, obviously, he could overturn the termination  
21 if he --

22 MR. FAJARDO: I have firsthand knowledge he is  
23 supportive of this termination.

24 MR. BALDWIN: Okay. All right, that's all I  
25 have right now, thank you.

1 MS. GIALLUCA: I have a question.

2 MS. BLEAU: I have a problem with that question  
3 and that answer. And I know that this gentleman was  
4 appointed by Mr. Lagerbloom and the fact that he cares  
5 to know whether or not Mr. Lagerbloom was in support  
6 of this termination makes me concerned. And frankly  
7 --

8 MS. TURIN: What is the concern?

9 MS. BLEAU: Well --

10 MR. BALDWIN: I have not discussed it with  
11 anyone.

12 MS. BLEAU: No, I understand. But the whole  
13 point of this process is that the three of you are to  
14 be neutral and separate from the City and not here to  
15 carry out the desires or the wishes of the City. But  
16 to make sure that Mr. Madden has a fair process of  
17 neutral judges.

18 MR. BALDWIN: My only point is, if the City  
19 Manager doesn't agree to the termination, then it's  
20 moot for the Civil Service Board, is the way I would  
21 see it.

22 MS. TURIN: So, it's procedural rather than in  
23 terms of his interaction with the City Manager.

24 MR. BALDWIN: So I think it is just the opposite  
25 of what your fear is.

1 MS. BLEAU: [inaudible] my apologies.

2 MR. BALDWIN: That wasn't my intent. My intent  
3 is, it would be a terminate at that point, this  
4 procedure wouldn't continue with this Board. Because  
5 the City Manager could, obviously, put him back to  
6 work.

7 MS. BLEAU: Understood.

8 MS. GIALLUCA: I just noticed that this memo  
9 from Anthony to Averill, October 12, 2016, is the  
10 formal request to start the investigation, but lists  
11 several items from 2013. So, we're going back to the  
12 past to start an investigation, today going forward.  
13 And then it lists the items in 2016 and it took me a  
14 little while to figure out what the BORA thing had to  
15 do with this because that was tried in a different  
16 entity or agency. So, I'm just wondering if maybe the  
17 policy for disciplinary action, if it's 2016 and you  
18 have some current complaints, how far back do you go?  
19 If he had worked here for 50 years, do you go back 50  
20 years and include everything that's going forward?

21 CHAIR ADELSON: Are you directing a question to  
22 Mr. Fajardo?

23 MS. GIALUCCA: That's kind of the question I  
24 had, why would you go backwards?

25 MR. FAJARDO: When the individuals -- after I

1 was promoted and people started coming, talking,  
2 coming and speaking to me, I started looking back at  
3 some of the history and trying to figure out, is there  
4 anything in a record that substantiates what some  
5 people have been saying, which is that this has been  
6 ongoing and we can't get away from it. So, that's  
7 when it was pointed out to me that there were these  
8 other memos from 2013 and why those memos were  
9 written. The reason I included it is because I felt,  
10 and I think it's important, that you look at someone's  
11 consistency of behavior. I understand where you're  
12 coming from in terms of how far back do you go? I  
13 don't know that there's a clean answer for that and I  
14 don't know that there's any limit. Maybe there should  
15 be. But when you look at the timeline, in a work  
16 environment, to me a year goes by like that. Looking  
17 at 2013 and 2014 and then his FMLA leave and then  
18 coming back and, I believe, basically what I was told,  
19 when he was gone it was just wonderful in the  
20 Department because we didn't have to deal with this  
21 anymore. When he came back, more of the same  
22 behavior. It didn't change anything. And staff had  
23 said -- this is another reason why I included this --  
24 staff had iterated to me that they felt that the  
25 actions that had been taken by previous management

1 were unsuccessful and they didn't see any results of  
2 any actions that were taken. So, I just felt that it  
3 was important to put it in the memo and demonstrate  
4 that this isn't something that just cropped up in  
5 2016. There were other incidences and there was  
6 documentation to help support these comments that were  
7 coming from staff saying that we had to deal with this  
8 on an ongoing basis.

9 CHAIR ADELSON: That will lead me to a different  
10 question of forward looking versus backward looking.  
11 And you might not be the right person for me to ask  
12 this question. Your memo for the investigation was in  
13 October 2016. According to Exhibit 18 he was placed  
14 on suspension February of 2017. That's a bit of a  
15 significant time lapse, from my perspective, in terms  
16 of if this is a bullying issue. What happened -- and  
17 as I said, I don't know if you're the right person,  
18 because it might have gone through other steps -- that  
19 time lapse, what was the reason he was suspended in  
20 February as opposed to upon the investigation being  
21 instigated?

22 MR. FAJARDO: I can tell you what my  
23 recollection, my knowledge of it, was. And I think  
24 others that will testify might be able to add to it.  
25 When HR started the process - there's obviously a

1 formalized process that when through - there were  
2 interviews that were taken of individuals and that  
3 took time to get through everything. And then I  
4 believe there was a rebuttal period and HR had given  
5 Mr. Madden and his attorney time to write a response  
6 that I believe, I'm remembering correctly, happened  
7 sometime in January. And after that response was  
8 given, then HR and staff and management took the time  
9 to review it, see if it caused them to change any of  
10 their stances and how they wanted to proceed. And  
11 that's what resulted in the memo in February. It took  
12 longer than I would have been comfortable with, but  
13 that's the timeline as I recall.

14 CHAIR ADELSON: My final question is, the letter  
15 that came from the civilian, the contractor?

16 MR. FAJARDO: Yes.

17 CHAIR ADELSON: How did that come to be? Did  
18 they send it to you or was there any solicitation of  
19 information outside of just the employee issues?

20 MR. FAJARDO: To my knowledge, there was no  
21 solicitation. I believe you're referring to, I think  
22 his name was Goldstein or --

23 CHAIR ADELSON: I'll see if I can find the page.  
24 This on December 13, 2016 --

25 MR. ZALMAN: Tab 10.

1 CHAIR ADELSON: Tab 10. Thank you. From the  
2 Midgard Group and then it was --

3 MR. FAJARDO: Goldstein, yeah, James Goldstein.

4 CHAIR ADELSON: James Goldstein.

5 MR. FAJARDO: Yep. So, it's my understand that  
6 that letter was the result of interaction that Mr.  
7 Goldstein and/or his staff had had with Mr. Madden on  
8 a construction site. The gentleman was very upset, he  
9 felt like the City had given him direction on how to  
10 do things a certain way, and when Mr. Madden  
11 interacted with them, he didn't have a pleasant  
12 experience with it. So, I don't want to speak for  
13 him. I think the letter can stand on its own. But to  
14 my knowledge, no one solicited anything from him.

15 MS. GIALLUCA: Just a quick question. Kind of  
16 ignoring the 2013 instances in your memo when you  
17 listed 2016 instances. Were these documents solicited  
18 from staff to document the issues that occurred as per  
19 to include as part of your memo here?

20 MR. FAJARDO: The comments from Miss Arthur,  
21 Andre Cross, and Luis Hernandez?

22 MS. GIALLUCA: Yes. They were all dated about  
23 the same time.

24 MR. FAJARDO: Yeah, so they had spoken to me  
25 around the same time. It all kind of happened very

1 fast. There were a couple of people who talked to me  
2 --

3 MS. GIALLUCA: [inaudible]

4 MR. FAJARDO: Yeah, there was a couple of people  
5 that spoke to me and then, within a matter of days,  
6 maybe a week, I was asked to join a bunch of people in  
7 the conference room. It was at that point that I  
8 said, "If you have these concerns and you feel that  
9 they are important, you really should put them in  
10 writing." Which is why you see the dates the way they  
11 are. They were coming to me with the comments, I just  
12 said they should put whatever they felt was important  
13 --

14 MS. GIALLUCA: They didn't formally create a  
15 complaint with HR or the Department in 2016?

16 MR. FAJARDO: They went through management and  
17 DSD. They did not -- I don't believe any of them  
18 formally reached out to HR until the investigation  
19 started. And then at that point, HR would have  
20 reached out to them.

21 MS. GIALLUCA: Thank you.

22 MR. FAJARDO: You're welcome.

23 MS. BLEAU: [inaudible] I just have a few follow  
24 ups.

25 CHAIR ADELSON: Okay.

1 MS. BLEAU: In response to some questioning, you  
2 said that the complaints that you got in 2016  
3 indicated that they had been going on, I think you  
4 said, consistently since 2013. And I just - I see Mr.  
5 Oliva's letter and -- which is at Tab 7 -- and there's  
6 nothing that goes back beyond 2016. Is there?

7 MR. FAJARDO: I would have to reread it. I  
8 think he's describing that were happening currently.  
9 Again, when I spoke to them, I said you need to put  
10 what's happened in writing. I don't think that the  
11 message I was conveying to them or that was perceived  
12 as "give me a history lesson on it." But the comments  
13 in general were about, "This is an ongoing issue that  
14 we can't get away from."

15 MS. BLEAU: Well, comments in general  
16 notwithstanding, the specifics that you were provided  
17 by Mr. Oliva, first incident, second incident, sort of  
18 clearly delay -- and then concludes with a couple  
19 others, always in 2016. Mr. Hernandez's memo actually  
20 talks about one incident, correct?

21 MR. FAJARDO: I believe so.

22 MS. BLEAU: And then Miss Arthur, in 2016. And  
23 Miss Arthur talks about one incident in 2016, correct?  
24 And Mr. Cross started working on January 4, 2016, so  
25 his complaints about Mr. Madden can't go back earlier

1 than that, right?

2 MR. FAJARDO: Yes, that would -- I mean, if  
3 that's his start date, that would be correct.

4 MS. BLEAU: So the only docu -- everything  
5 documented here is with respect to 2016. There's  
6 nothing from 2013, 14, 15, other than your generalized  
7 understanding that it's been going on for a long time,  
8 right?

9 MR. FAJARDO: Yes. And the reason is because  
10 when we were discussing it with HR, the HR Director at  
11 the time advised, to one of the questions that was  
12 mentioned earlier, "How far back do we go?" So, the  
13 comment that I received from them was we should focus  
14 on what's happening in 2016.

15 MS. BLEAU: Oh. Did you give that direction to  
16 the person that conducted the investigation, because  
17 the investigation doesn't read like that.

18 MR. FAJARDO: I don't direct HR staff.

19 MS. BLEAU: Okay. But you said HR told you  
20 that.

21 MR. FAJARDO: It was her recommendation as we  
22 were moving forward and I was discussing what these  
23 issues were and how to initiate an investigation.  
24 Which is what led me to draft the memo.

25 MS. BLEAU: And this investigation, quote

1 unquote, that you were initiating, the second to last  
2 paragraph that your counsel had you read, the last  
3 sentence of that says, "I do not expect his behavior  
4 to change." You had sort of made a decision at that  
5 point as a result of whatever you had been - somebody  
6 had discussed with you - that Mr. Madden's employment  
7 with the City was going to end, did you?

8 MR. FAJARDO: I didn't say his employment with  
9 the City was going to end. His behavior has not  
10 changed and I don't expect it to. I'm basically  
11 asking HR to help me figure out what to do in this  
12 situation.

13 MS. BLEAU: So, you reached that conclusion  
14 before doing an investigation as to whether or not the  
15 complaints were valid.

16 MR. FAJARDO: I felt that what had occurred as  
17 far back as 2013 -- which is why I included it in the  
18 memo -- and the conversations that I had been having  
19 with staff after my promotion into the position were  
20 demonstrating a pattern of behavior that doesn't seem  
21 to want to change.

22 MS. BLEAU: Thank you.

23 CHAIR ADELSON: For the Board, anybody have any  
24 other questions? Okay. Mr. Fajardo, you are  
25 dismissed.

1 MR. FAJARDO: Thank you.

2 CHAIR ADELSON: Thank you.

3 MR. ZALMAN: Could we have a five-minute break  
4 to use the restroom and I'll get the next witness?

5 CHAIR ADELSON: That's a good idea. Five minute  
6 break. It is now 2:38, so let's make it even at 2:45.

7 [Recess called for 12 minutes.]

8 CHAIR ADELSON: We are back on.

9 MS. SMITH: Madam Chair, I wanted to address an  
10 issue. We have a meeting in here, another Board  
11 meeting at 6:00 p.m. And they have a set up  
12 requirement a little bit before that. We have six  
13 witnesses outside, five or six, I'm not sure.

14 CHAIR ADELSON: So, are these City witnesses?

15 MR. ZALMAN: Yes.

16 CHAIR ADELSON: How long do you anticipate  
17 taking with this witness?

18 MR. ZALMAN: This witness I anticipate, based on  
19 the cross and the questions the Board might have,  
20 about as long as the last witness. And then Mr.  
21 Travers is our third witness and he would probably be  
22 just as long. But then, I would think the remaining  
23 witnesses, only be talking about their personal  
24 experiences, might be shorter. But I doubt if they'll  
25 all get done today.

1 CHAIR ADELSON: I'm contemplating dismissing  
2 them for the day, letting them leave, if this is going  
3 to take at least an hour and then Mr. Travers an hour  
4 and we need to be out of the room by 5:00, that  
5 they're not going to be able to go today. Now, are  
6 those the remainder of your witnesses?

7 MR. ZALMAN: Yes.

8 CHAIR ADELSON: Okay. I just need to get Board  
9 consensus in terms of whether or not - we don't want  
10 to prejudice you, obviously, today. But if we have to  
11 be out of here by 5:00?

12 MS. SMITH: Actually, our reservation for the  
13 room is until 4:00 p.m. today, but I have to confirm -

14 CHAIR ADELSON: Oh, so then I would recommend  
15 that we allow those witnesses to leave for today and  
16 we'll start with them again in the morning.

17 MR. BALDWIN: What about Mr. Travers?

18 MS. BLEAU: Did you say we have to be out of  
19 here by 4:00?

20 MS. SMITH: That was my understanding, that's  
21 the reservation for the room for today.

22 CHAIR ADELSON: I'm will go to a little longer,  
23 but if they need the room, can we get a more specific  
24 time as to when we must leave the room?

25 MS. SMITH: I can check with Security to see,

1 because different boards that come in have different  
2 setups. So, whatever time they need to setup or come  
3 in and do whatever they need to do.

4 CHAIR ADELSON: Okay. If you will confirm that.

5 MS. SMITH: Yes, I will.

6 CHAIR ADELSON: And then we'll go ahead with  
7 this witness, presuming that Mr. Travers is not going  
8 to go today unless we get an extra hour, and then we  
9 can relieve you as well to go, unless you want --

10 MR. ZALMAN: He's the representative.

11 CHAIR ADELSON: Oh, you can't go anywhere.  
12 You're stuck.

13 MR. ZALMAN: He gets a front row seat.

14 MR. MILLER: What time will we be starting in  
15 the morning so I can let those people know.

16 MS. SMITH: We're scheduled for 10:00. Can we  
17 start at 9:00?

18 CHAIR ADELSON: I was going to make a  
19 recommendation if we could move it up to 9:30, I would  
20 be okay with that. I would like to conclude this  
21 tomorrow by 4:00-ish, if at all possible. So, I'm  
22 okay if any of the other Board members -

23 MR. BALDWIN: I can start any time tomorrow.

24 MS. GIALUCCA: I can start early, I'm up early.

25 MR. ZALMAN: Whatever the Board - our office is

1 across the street.

2 CHAIR ADELSON: So, proposed time 9:30?

3 MS. SMITH: Let me confirm availability of the  
4 room and everything, Richard, that we can get in here.

5 CHAIR ADELSON: Subject to the City's  
6 availability for the room.

7 [Pause for procedural issues.]

8 CHAIR ADELSON: We're going back on? We're good  
9 for 4:00 today.

10 MS. SMITH: We have to be out by 4:00 because  
11 they have to come in, do testing, or whatever they  
12 have to do.

13 CHAIR ADELSON: Okay.

14 MS. SMITH: And tomorrow morning we're good for  
15 9:30.

16 CHAIR ADELSON: Excellent. Thank you.

17 MS. SMITH: You're welcome.

18 CHAIR ADELSON: Obviously, we'll probably just  
19 get to this witness today as it is 3:00. You may  
20 proceed. Are you okay with your co-counsel being out  
21 of the room? Okay.

22 MR. ZALMAN: The City of Fort Lauderdale calls  
23 Janeen Richard.

24 CHAIR ADELSON: We'll swear you in. Do you  
25 swear or affirm that the testimony that you're going

1 to give today is the truth, the whole truth, and  
2 nothing but the trust.

3 MS. RICHARD: Yes.

4 MR. ZALMAN: Miss Richard, please state your  
5 full name for the record.

6 MS. RICHARD: My name is Janeen Richard.

7 MR. ZALMAN: What is your position with the City  
8 of Fort Lauderdale?

9 MS. RICHARD: I am the Employee Relations  
10 Manager.

11 MR. ZALMAN: And how long have you been employed  
12 by the City of Fort Lauderdale?

13 MS. RICHARD: Since March of 2014.

14 MR. ZALMAN: Could you briefly describe the role  
15 of the Employee Relations Manager and Human Resources  
16 in investigating a City employee for policy  
17 violations?

18 MS. RICHARD: Yes, as the Employee Relations  
19 Manager I'm over the Employee Relations Division,  
20 which consists of two people. The City has a  
21 disciplinary policy whereby when there are allegations  
22 that an employee is demonstrating deficiencies in  
23 either performance or conduct, the Department Head  
24 over that particular employee is to contact Employee  
25 Relations for guidance and, if necessary, to conduct

1 an investigation.

2 MR. ZALMAN: To the Board, can you hear Miss  
3 Richard? Okay. Who decides if there will be an  
4 investigation?

5 MS. RICHARD: I think it's a joint effort  
6 between the Departments and Employee Relations. The  
7 Department would have firsthand knowledge of what  
8 those deficiencies are. They then share them with my  
9 office. We then go over what the allegations are, we  
10 talk about what potential rule violations there may  
11 be, what witnesses, etc. So, it's more of a  
12 collaborative effort in the beginning, as to when the  
13 investigation is initiated.

14 MR. ZALMAN: Can you assign an investigation to  
15 others, or do you always conduct them?

16 MS. RICHARD: It depends. Like it said, I have  
17 an Assistant Employee Relations Manager who also works  
18 in the Employee Relations Division. She also  
19 investigates certain matters. And if it involves a  
20 criminal case, we work with the Police Department. If  
21 it involves issues of possible discrimination, we work  
22 with the Office of Professional Standards.

23 MR. ZALMAN: How were you notified that an  
24 investigation was needed of Mr. Madden?

25 MS. RICHARD: I believe in this case we received

1 a memo from the Director, Anthony Fajardo. I want to  
2 say that may have been in October of 2016. I believe  
3 he authored a memo to the former HR Director, Averill  
4 Dorset, who was my boss at the time.

5 MR. ZALMAN: Could you turn to Tab 3 in the  
6 binder in front of you.

7 MS. RICHARD: Yes, that is the memo that was  
8 sent to Averill Dorset, who was my boss, and then it  
9 was referred to me, to my office.

10 MR. ZALMAN: Did Mr. Fajardo come to any  
11 conclusions in his memo as to the discipline of Mr.  
12 Madden?

13 MS. RICHARD: I don't think at that time, he  
14 laid out sort of the factual history. He mentioned a  
15 few potential rule violations, but I think the overall  
16 tone of the memo was to request an investigation. I  
17 think the last sentence, "I trust that a formal  
18 investigation can occur and conclude expeditiously."

19 MR. ZALMAN: What did you do to investigate the  
20 suspected violation in Mr. Fajardo's memo?

21 MS. RICHARD: What we did, we read the memo and  
22 then, because there were so many witnesses that were  
23 involved, we divided up the witness interviews between  
24 myself, Brenda Brown, who is the Assistant Employee  
25 Relations Manager, and Lillian Rosa, who is the

1 Professional Standards Manager.

2 MR. ZALMAN: Could you refer to Tab 1, please?

3 MS. RICHARD: Yes.

4 MR. ZALMAN: And what is this document?

5 MS. RICHARD: This is, ultimately, the  
6 conclusion of the investigation where I reduce  
7 everything to writing. Again, the policy that the  
8 City has regarding discipline is that once the  
9 investigation is complete, a report is generated and  
10 then sent to the City Manager's Office for their  
11 review and approval. And this is the report that I  
12 prepared, I think it was signed by me in February of  
13 2017.

14 MR. ZALMAN: During your investigation, did you  
15 review materials from 2013 or were you primarily  
16 concerned with the complaints received in 2016?

17 MS. RICHARD: Well, one, I did not work here in  
18 2013, but I believe Mr. Fajardo mentioned some 2013  
19 issues in his memo that was submitted to Averill  
20 Dorset back in 2016. I included a brief reference to  
21 the events of 2013 in the relevant background  
22 information just to give some history and some  
23 context, but I did not consider any of those  
24 allegations for purposes of the discipline at hand.

25 MR. ZALMAN: So, your investigation focused on

1 complaints received in 2016.

2 MS. RICHARD: That is correct.

3 MR. ZALMAN: Referring to the beginning of your  
4 report, the first page --

5 MS. RICHARD: Yes.

6 MR. ZALMAN: -- what were the policy violations  
7 that you charged Mr. Madden with?

8 MS. RICHARD: As a management employee, Mr.  
9 Madden is governed by the personnel rules of the City  
10 of Fort Lauderdale, and there are a list of rules that  
11 could result in potential disciplinary action if they  
12 are in violations. That's under Rule 7 of the  
13 Personnel Rules and, in this case, Mr. Madden was  
14 charged with six potential rule violations.

15 MR. ZALMAN: Are those six rule violations  
16 listed on page 1 of your investigative report?

17 MS. RICHARD: That is correct. And in addition,  
18 he was also charged with violating the City's Policy  
19 Against Workplace Bullying.

20 MR. ZALMAN: I just want to go through the  
21 violations that you listed. Starting with the first,  
22 incompetency or General inefficiency in the  
23 performance of duties. What evidence did you find to  
24 sustain this violation?

25 MS. RICHARD: For that violation, I think

1 primarily I relied on the testimony of John Travers,  
2 that's reflected here in my report as a summary that  
3 Mr. Madden was doing things to interfere with the  
4 proper flow of approvals within the Department of  
5 Sustainable Development. That he would instruct his  
6 subordinates to enter certain letters into the  
7 Community Plus Center, which would have the effect of  
8 stopping inspections or plans reviews from going  
9 forward. Mr. Travers also mentioned in his testimony  
10 that there was a document showing that Mr. Madden has  
11 less productivity than his counterparts and, I  
12 believe, that document is attached to my report. It  
13 was a Community Plus printout, that when you compared  
14 Mr. Madden as the Chief Building Inspector to the  
15 number of plans reviews that were done either by the  
16 Chief Electrical Inspector or the Chief Mechanical  
17 Inspector, his numbers were much lower than his  
18 counterparts. So, I think that was the factual basis  
19 for sustaining the charge of Letter A.

20 MR. ZALMAN: Just briefly, could you explain to  
21 the Board what the Community Plus system is?

22 MS. RICHARD: I will try my best. I know it's  
23 like a software system, I will defer to the  
24 Department, it's like a software system where you  
25 enter information as you go about doing several layers

1 of plans review. I think there's maybe a printout  
2 attached somewhere to my report, and it sort of shows  
3 -- can I look through here? I think it's behind Tab  
4 4.

5 MR. ZALMAN: My question is, just to clarify,  
6 Community Plus is a software system where information  
7 is entered?

8 MS. RICHARD: I want to say yes. I'm going to  
9 say yes.

10 MR. ZALMAN: Could you turn to Tab 4.

11 MS. RICHARD: I will, yes. So, this was that  
12 document that I referred to that Mr. Travers provided  
13 to me and, again, I will do my best to explain. But  
14 you can see, very faintly, there's highlighted  
15 information on the second page to show the number of  
16 plans reviews that were done by the different folks in  
17 charge of the different disciplines within the  
18 Department. And, if you look on a couple of pages in,  
19 I believe Mr. Madden had only 16 while others were in  
20 either the thousands or four-thousands, etc.

21 MR. ZALMAN: So, let's look at that document.  
22 On the second page, there is -- unfortunately it's not  
23 in color -- but it is a grayed highlight.

24 MS. RICHARD: Yes.

25 MR. ZALMAN: What number is highlighted there?

1 MS. RICHARD: I think on the second page, that's  
2 Richard Benton, and it's 4,451. I believe Mr. Benton  
3 is the Floodplain Manager.

4 MR. ZALMAN: And it's your understanding that  
5 that's 4,451 inspections?

6 MS. RICHARD: That was plans reviews, and that's  
7 my understanding based on this document and what was  
8 told me by Mr. Travers, yes.

9 MR. ZALMAN: And turning to page 3, the two  
10 numbers that are highlighted, what are those?

11 MS. RICHARD: That's also other chiefs of the  
12 disciplines and, forgive me, I may be confusing them.  
13 But Joe DeMaio and Scott Dry, one was the Chief  
14 Electrical and the one was the Chief Mechanical. But  
15 I'm not 100% sure which one is which. But you can see  
16 the highlight point, 1,539 for Mr. DeMaio, and 4,421  
17 for Mr. Dry.

18 MR. ZALMAN: And you refer to those two  
19 employees as Chiefs. Is that a position similar to  
20 Mr. Madden's?

21 MS. RICHARD: My understanding is that there is  
22 a Chief -- over each discipline there's a Chief  
23 Building Inspector, a Chief Mechanical Inspector, a  
24 Chief Electrical Inspector, and someone over  
25 Structural? Plumbing, a Chief Plumbing Inspector.

1 MR. ZALMAN: And so they are parallel positions?

2 MS. RICHARD: I think if you look at the org  
3 chart, they're all sort of equal in terms of - with  
4 different subordinates, but equal in terms of the  
5 chain of command, over that particular discipline.

6 MR. ZALMAN: And if you could I flip two pages  
7 forward to where Mr. Madden's data is --

8 MS. RICHARD: Yes.

9 MR. ZALMAN: And how many -- in comparison --  
10 how many did Mr. Madden have?

11 MS. RICHARD: Sixteen.

12 MR. ZALMAN: And below Mr. Madden, what number's  
13 reflected there -- highlighted?

14 MS. RICHARD: I'm sorry?

15 MR. ZALMAN: The next highlighted employee, what  
16 number is reflected there?

17 MS. RICHARD: That is 801, and that is, I want  
18 to say, the Zoning Administrator, Mohammed Malik, I  
19 think is his name.

20 MR. ZALMAN: So, just for general comparison,  
21 the next least amount for employees in a similar  
22 position as Mr. Madden is 800.

23 MS. RICHARD: That is correct.

24 MR. ZALMAN: I want to refer you back to your  
25 report in Tab 1.

1 MS. RICHARD: Okay.

2 MR. ZALMAN: We're going to go to the second  
3 policy violation. Could you read that violation for  
4 us?

5 MS. RICHARD: Violation of any lawful and  
6 reasonable regulation, order, or direction made or  
7 given by a superior officer where such violation has  
8 amounted to insubordination or serious breach of  
9 proper discipline or has resulted in loss or injury to  
10 the public.

11 MR. ZALMAN: In your investigation, what  
12 evidence did you find to support -- to sustain that  
13 violation?

14 MS. RICHARD: I was primary looking at the  
15 insubordination language and that would be from the  
16 testimony or statements that we received from John  
17 Travers, that he would give Mr. Madden a directive and  
18 the directive would either be ignored or be done in a  
19 different way. So that was primarily what sustained  
20 that particular charge of insubordination. And I  
21 guess Mr. Travers felt that Mr. Madden would try to  
22 give conflicting instructions to undermine his  
23 authority as a Building Official. So, one, I checked  
24 to make sure that Mr. Travers is, in fact, a superior  
25 officer, being the Building Official he was in charge.

1 He was, I guess, Mr. Madden's boss, for lack of a  
2 better term. And that the orders that he did in fact  
3 give were made within his authority. And Mr. Travers  
4 felt that Mr. Madden did not follow his orders or put  
5 in roadblocks so that his orders could not be carried  
6 out. And I believe that's reflected in my report  
7 under the testimony of John Travers.

8 MR. ZALMAN: Could you please read aloud the  
9 third policy violation?

10 MS. RICHARD: Personally offensive or abusive  
11 conduct or language toward a public official, fellow  
12 employee, or any member of the general public when  
13 acting in an official capacity as a City employee, or  
14 representative, or while in uniform.

15 MR. ZALMAN: And what evidence did you find to  
16 sustain that violation?

17 MS. RICHARD: I think that would be a lot of the  
18 witness statements that we took that's reflected in my  
19 report: Mr. Madden yelling, pointing his finger,  
20 yelling at Mr. Hernandez in front of members of the  
21 public. Also there was evidence that Mr. Madden had  
22 confronted some employees on a job site and threatened  
23 to have them arrested and threatened their license  
24 suspended. So, I think if you look throughout my  
25 report -- and I can go through it in more detail if

1 you want -- is that we had several employees come and  
2 say that Mr. Madden either made them feel threatened,  
3 yelled at them, screamed at them, like I said, pointed  
4 his fingers in their face, things of that nature.

5 MR. ZALMAN: I want to refer to you to Tab 13.

6 MS. RICHARD: Okay.

7 MR. ZALMAN: And what is this document?

8 MS. RICHARD: Tab 13 is the City's Policy on  
9 Workplace Bullying.

10 MR. ZALMAN: And how does it define workplace  
11 bullying?

12 MS. RICHARD: Should I read it?

13 MR. ZALMAN: Yes, please.

14 MS. RICHARD: Definition where it says workplace  
15 bullying is the repeated form of abusive conduct,  
16 direct or indirect, intentional or unintentional, by  
17 one or more employees against another employee, group  
18 of employees at work that is threatening, degrading,  
19 humiliating, or intimidating, work interference, or  
20 sabotage which prevents work from getting done, or  
21 verbally abusive language.

22 MR. ZALMAN: And there are examples included  
23 underneath that definition. Is that an all-inclusive  
24 list?

25 MS. RICHARD: No, I think it's just that from

1 examples. But we wanted to make it clear to employees  
2 who read this policy to know, what does workplace  
3 bullying look like. So, we just included some  
4 examples.

5 MR. ZALMAN: Could you point out examples of Mr.  
6 Madden's behavior that you learned through your  
7 investigation that match the examples of what would  
8 constitute bullying listed in the policy?

9 MS. RICHARD: Well, I think I found evidence of  
10 slandering. I think there was testimony from several  
11 witnesses that Mr. Madden accused both Mr. Travers and  
12 Mr. Hernandez, who was the Assistant Building  
13 Official, of being on the take, that they were somehow  
14 taking bribes from a company that they used to work  
15 for, which was now doing business for the City. I  
16 think that's a significant statement to accuse a City  
17 employee of possibly being on the take or being in  
18 cahoots.

19 I'm just quoting some of the testimony that was  
20 given as part of our investigation. Also, just a lot  
21 of condescending -- I think a couple of the witnesses  
22 testified that Mr. Madden spoke to them in a  
23 condescending way. He was shouting, red-faced, so I  
24 think when I compared the testimony of the witnesses  
25 to some of these examples, we found there was

1 sufficient evidence -- I found there was sufficient  
2 evidence that he exhibited some of these behaviors  
3 that's referenced in the policy.

4 MR. ZALMAN: I'm going to refer you back to Tab  
5 1, your investigative report. We're in the fourth  
6 violation. What was the fourth violation?

7 MS. RICHARD: The fourth one is abusive public  
8 criticism or a written City or departmental policy,  
9 rule or official action when acting in an official  
10 capacity as a City employee or representative or while  
11 in uniform.

12 MR. ZALMAN: And what evidence led you to  
13 sustain that violation?

14 MS. RICHARD: As we were doing the  
15 investigation, I received a letter from a Mr.  
16 Goldstein that was addressed to Lee Feldman, the  
17 former City Manager. And it was a four page letter  
18 and he detailed some concerns that he had with Mr.  
19 Madden and his behavior when he visited one of his  
20 worksites. Some of the things he said to Mr.  
21 Goldstein, again, publicly criticizing Mr. Travers and  
22 his ability to serve as the Building Official. Also,  
23 I think there were some statements made about the  
24 former City Manager, Lee Feldman, as well.

25 MR. ZALMAN: I'm going to refer you to Tab 10.

1 MS. RICHARD: Yes.

2 MR. ZALMAN: Is this the letter you are  
3 referring to?

4 MS. RICHARD: That is correct. Like I said, as  
5 we were doing the investigation and interviewing some  
6 of the City employees, I received this letter from the  
7 City Manager's Office. And in it, I think, on maybe  
8 the second page, it sort of goes into some of the  
9 statements that Mr. Madden made about both Lee Feldman  
10 and John Travers, that he felt he was -- particularly  
11 on the second page the paragraph where Mr. Goldstein  
12 writes he, being Mr. Madden, he felt he was passed up  
13 for the top job and that he was more capable than John  
14 Travers. He also told me that Lee Feldman had caused  
15 a lot of personnel to other municipalities because --  
16 I'm sorry, should be the loss of personnel to other  
17 municipalities because he wouldn't pay the employees  
18 fair compensation, even though he had millions sitting  
19 in the Department's account, or escrow account, he  
20 asserted he was bringing this out and would get rid of  
21 both men. He had been there a long time and could run  
22 it better.

23 MR. ZALMAN: And we're referring back to your  
24 report on Tab 1, the second to the last violation,  
25 beginning with F3, could you read that aloud?

1 MS. RICHARD: Expression of a personal work-  
2 related grievance or bypassing official documented  
3 grievance procedures when such grievance is not a  
4 matter of public concern.

5 MR. ZALMAN: And what evidence led you to  
6 sustain that --

7 MS. RICHARD: Similar to what I just read, sort  
8 of the information that we received from Mr.  
9 Goldstein. Mr. Goldstein's letter primarily -- I  
10 don't know if I mentioned this as well -- I also  
11 talked about how Mr. Madden came to his jobsite and  
12 threatened to arrest his employees, threatened to  
13 suspend their licenses, and, in my view, aired  
14 personal work-related grievances about Mr. Travers'  
15 ability and whether or not Mr. Madden should have had  
16 the job as Building Official, and that he was going to  
17 get rid of both men.

18 MR. ZALMAN: And the last violation, could you  
19 please read that aloud?

20 MS. RICHARD: Conduct either on- or off-duty  
21 which reflects discredit upon the City.

22 MR. ZALMAN: What evidence led you to sustain  
23 that violation?

24 MS. RICHARD: That would also be the Goldstein  
25 letter. You know, it's not every day that the City

1 gets a letter from a citizen or, in this case, a  
2 contractor/developer. And I think in the letter  
3 itself, Mr. Goldstein says Mr. Madden's behavior did  
4 not reflect well on the City and how the City does its  
5 operations.

6 MR. ZALMAN: How did you weigh each piece of  
7 evidence or statement in your investigation?

8 MS. RICHARD: I think we just did the totality  
9 of the circumstances, to say it's more likely than not  
10 that these facts support a rule violation. I can't  
11 ascribe a particular weight to one factor. I think,  
12 when we looked at it holistically, yes, we did find a  
13 violation of each work rule, but some facts support  
14 one or more, some facts support all of them. And  
15 after looking at all of them, it was my opinion, as  
16 the investigator, that there was sufficient evidence  
17 to support a violation of all of the listed work  
18 rules, in addition to the Workplace Bullying Policy.

19 MR. ZALMAN: I want to refer you all the way to  
20 the back Tab 21.

21 MS. RICHARD: Yes.

22 MR. ZALMAN: What is this memo regarding?

23 MS. RICHARD: This is what's called an  
24 informational meeting notice, and in that policy that  
25 I mentioned earlier, once all of the facts have been

1 gathered and witnesses have been interviewed and  
2 documents have been reviewed, what we do is we then  
3 provide all the information to the employee in what we  
4 call an informational meeting notice. It gives sort  
5 of the allegations that are being made and also  
6 notifies the employee of the potential rule  
7 violations, ask the employee to come meet with me and  
8 the Department at a certain date and time. They don't  
9 have to come, they can submit something in writing.  
10 They can bring a representative if they want to. This  
11 is sort of our -- I don't want to use the word  
12 charging document - but this is sort of our document  
13 where we let the employee know, again, the allegations  
14 and the rule of violations.

15 MR. ZALMAN: Did Mr. Madden attend this meeting?

16 MS. RICHARD: He did not. I believe he  
17 exercised his option to submit something in writing.

18 MR. ZALMAN: And I want to refer you to Tab 11.

19 MS. RICHARD: Yes.

20 MR. ZALMAN: Does this document look familiar?

21 MS. RICHARD: Yes, that is Mr. Maddens written  
22 response that was sent to my attention.

23 MR. ZALMAN: Did you review this statement?

24 MS. RICHARD: Yes.

25 MR. ZALMAN: And what impact did it have on your

1 investigation?

2 MS. RICHARD: I reviewed all eight, I think it  
3 was eight, pages, maybe more, and all of the emails  
4 attached. I also -- I included a summary of his  
5 response in my report. I also attached the complete  
6 response to that the City Manager's Office could  
7 review it in its entirety. But from my view, it  
8 didn't really directly address a lot of the witness  
9 statements that were provided to Mr. Madden. So I  
10 gave it as much weight as I could.

11 MR. ZALMAN: But you did consider the  
12 information within his statement as part of HR's  
13 evaluation.

14 MS. RICHARD: That is correct. And you will see  
15 in my report that there is a paragraph dedicated to a  
16 summary of his response, and I also, again, attached  
17 the complete response to my report if I didn't give  
18 the summary its due justice.

19 MR. ZALMAN: What information was Mr. Madden  
20 given to consider before drafting his report?

21 MS. RICHARD: If my memory serves me correctly,  
22 I believe Mr. Madden's attorney made a public records  
23 request for all the information that we generated or  
24 had as part of the investigation. I sent all of the  
25 witness statements that had been reduced to writing, I

1 think I sent emails and documents. I think everything  
2 I had in my possession at the time was sent to Mr.  
3 Madden for his review. If I'm remembering correctly,  
4 they had asked for an extension to review the  
5 information, which we happily granted.

6 MR. ZALMAN: And was Mr. Madden made aware of  
7 the specific policy violations he was being charged  
8 with?

9 MS. RICHARD: Yes. I believe, I was not present  
10 at the time, but the informational meeting notice was  
11 served on Mr. Madden and I believe he references it in  
12 the first line of his written response. So where it  
13 says, "According to the memorandum from John Travers  
14 on December 22, 2016." That is the informational  
15 meeting notice that you referred to me under Tab 21.  
16 So he was given that notice, and in addition he was  
17 given copies of all of the witness statements and  
18 other documentary evidence.

19 MR. ZALMAN: In reviewing Mr. Madden's  
20 statement, did you notice any specific denials of some  
21 of the complaints that were brought by Mr. Madden, I  
22 mean, brought by employees against Mr. Madden?

23 MS. RICHARD: I did not, and that was really  
24 what I was looking for. Because some of the witnesses  
25 gave specific examples of dates and times and places

1 and things and how they felt. And I did not see any  
2 direct response to that. I think there may have been  
3 a general statement that "These are employees that I  
4 have tried to discipline in the past." But nothing to  
5 say, "That didn't happen, that never happened, this is  
6 not true." And give to me direct testimony against  
7 what was provided to him.

8 MR. ZALMAN: Are you talking about claims of  
9 hostile work behavior brought by employees that  
10 weren't denied?

11 MS. RICHARD: That is correct. I think at one  
12 point -- just by way of example -- he was given the  
13 statements from Valerie Arthur and she was very clear  
14 on her interaction with Mr. Madden and why she felt he  
15 was hostile to her or abusive. And the only response  
16 that I got regarding her statement was that she  
17 previously worked for another vendor for years. The  
18 pages aren't numbered, but it's about four pages in.  
19 It didn't at all address anything that was in Miss  
20 Arthur's statement. Also, I think he mentioned Andre  
21 Cross, he said, "Oh, Andre Cross," he didn't say  
22 anything specifically about the statements that were  
23 made by any of the employees, in my view.

24 MR. ZALMAN: Were you aware that there were  
25 claims against Mr. Madden to the Board of Rules and

1 Appeals, or BORA?

2 MS. RICHARD: Vaguely, yes.

3 MR. ZALMAN: Did these BORA claims or claims to  
4 the Board of Rules and Appeals have anything to do  
5 with your investigation of Mr. Madden?

6 MS. RICHARD: Not at all.

7 MR. ZALMAN: Did they have any impact on your  
8 overall recommendation to the City Manager?

9 MS. RICHARD: No, I mean, I mentioned it in the  
10 relevant background information, again, to give  
11 context to the entire report. And in part because I  
12 think the majority of Mr. Madden's response was about  
13 BORA. So I felt like I had to give it some mention in  
14 the report because when I sent it upstairs to the City  
15 Managers to review, they sort of understand how it  
16 fits into the overall process. But it didn't have  
17 anything to do with my investigation. I was focused  
18 only on those events that occurred, I guess, from 2016  
19 on. Like I said, I didn't consider anything from  
20 2013. I didn't consider anything related to BORA  
21 because I only had a vague understanding of what BORA  
22 is. But my investigation was tailored to the  
23 complaints that were made by the employees, their  
24 statements, and also the Goldstein letter.

25 MR. ZALMAN: I want to refer you back to Tab 1,

1 which is your report, specifically page 9.

2 MS. RICHARD: Yes.

3 MR. ZALMAN: What is your overall conclusion?

4 MS. RICHARD: Well, my overall conclusion, that  
5 there was sufficient evidence that Mr. Madden violated  
6 the referenced Personnel Rules and the City's Policy  
7 Against Workplace Bullying. And I just summarized,  
8 sort of, evidence that I believe supports those rule  
9 violations. That was ultimately my conclusion.

10 MR. ZALMAN: And what was your recommended  
11 discipline of Mr. Madden?

12 MS. RICHARD: Well, under the City's policy, the  
13 Department first makes a recommendation and Employee  
14 Relations either concurs with our recommendation, and  
15 in this case, we concurred with the recommendation  
16 from the Department of Sustainable Development. And  
17 that was for termination.

18 MR. ZALMAN: Thank you. And why was termination  
19 sustained?

20 MS. RICHARD: I think, in this case, when we  
21 looked at all of the evidence - and we recognize that  
22 Mr. Madden did not have any prior disciplinary history  
23 of - I don't think he had any or of any significance -  
24 but we felt that because of the facts and all of the  
25 employees and what, in my view, not a direct refuting

1 of the facts of the witness statements, that his  
2 conduct was so sufficiently severe that we could  
3 support the ultimate sanction of termination.

4 MR. ZALMAN: In your position as an Employee  
5 Relations Manager, do you have any concerns if Mr.  
6 Madden were to return to the workplace?

7 MS. RICHARD: Do I have concerns? I have  
8 concerns, I think, for the employees. They came  
9 forward, admittedly, I didn't interview all of them,  
10 but from reading their statements and hearing their  
11 stories and hearing about the people who were afraid  
12 to come forward -- I think that's mentioned in Mr.  
13 Fajardo's memo -- we weren't even able to get the  
14 names of those people and interview them. But I think  
15 when you look at all of the testimony from the  
16 different employees, and just about his temperament  
17 and what they felt was abusive conduct, I would have a  
18 concern that -- not for anyone's safety, we didn't  
19 charge him with violence in the workplace, I don't  
20 think he's dangerous. I also don't think, to his  
21 credit, I think a lot of people said he was a really  
22 good inspector. I think two witnesses testified that  
23 he was good at his job, I guess, when he was  
24 performing his job. But just his temperament and his  
25 way of dealing with employees was just a clear case of

1 workplace bullying and the City enacted this policy,  
2 while I was here, so that employees don't have to be  
3 subject to an intolerable working environment. And  
4 so, if that answers your question, I guess I would  
5 have a concern.

6 MR. ZALMAN: No further questions at this time.

7 CHAIR ADELSON: Miss Bleau.

8 MS. BLEAU: Thank you. Miss Richard, this is  
9 the first time I am learning that you were not the one  
10 that did all of these interviews. It's not reflected  
11 anywhere in your report, is it?

12 MS. RICHARD: I think in the witness statements  
13 themselves, you'll see at the top it says who did the  
14 interview. So, there's some that say, "Interview  
15 conducted by Lillian Rosa," some that say, "Interview  
16 conducted by Brenda Brown," and I think some that say,  
17 "Interview conducted by Janeen Richard." On the  
18 statements themselves.

19 MS. BLEAU: Okay, so looking back, turning back  
20 to Tab 16 --

21 MS. RICHARD: Yes.

22 MS. BLEAU: -- which is where the statements  
23 are. Then Tab A, Mohammed Malik, that was you.

24 MS. RICHARD: That was me, that was correct.

25 MS. BLEAU: Bobby Marsula was you.

1 MS. RICHARD: Yes.

2 MS. BLEAU: Richard Benton was you.

3 MS. RICHARD: Yes.

4 MS. BLEAU: Charlie Nickert was Lillian?

5 MS. RICHARD: Correct.

6 MS. BLEAU: Francine was Lillian.

7 MS. RICHARD: Yes.

8 MS. BLEAU: Luis was Lillian. Valerie was  
9 Lillian.

10 MS. RICHARD: Uh-huh [affirmative].

11 MS. BLEAU: Mr. Gonzalez, Scott Dry, and Andre  
12 were Brenda.

13 MS. RICHARD: Uh-huh [affirmative].

14 MS. BLEAU: And Lillian did Greg and Barry.  
15 Yes?

16 MS. RICHARD: Yes.

17 MS. BLEAU: So, you only did one, two, three.  
18 Three.

19 MS. RICHARD: That sounds about right, yes.

20 MS. BLEAU: And there is not a statement for Mr.  
21 Oliva, George Oliva, or John Travers. But there's  
22 lots of content regarding their statement in your  
23 report. Why is that?

24 MS. RICHARD: That is correct. Mr. Travers, I  
25 met with him personally, I did not reduce that to

1 writing. And if I can just say, for the interviews  
2 that I did do, Miss Brown actually typed them because  
3 she's a better typist than I am. It's hard for me to  
4 type and talk at the same time.

5 MS. BLEAU: So you took notes and she typed them  
6 up?

7 MS. RICHARD: No, she was present in the  
8 interviews with me, the ones for Mr. Malik or Mr.  
9 Mohammed, Bobby Marsula, Richard Benton, and she typed  
10 as I was talking.

11 MS. BLEAU: As you were talking, wow, that's  
12 impressive.

13 MS. RICHARD: That's why she was there, I cannot  
14 do that.

15 MS. BLEAU: Was she with you when you talked to  
16 John Travers?

17 MS. RICHARD: I don't think so. And I spoke to  
18 Mr. Travers, I think, on more than one occasion  
19 because admittedly it took me a while to understand,  
20 sort of, the building world, what this Permit by  
21 Affidavit or Private Provider thing is. So I met with  
22 Mr. Travers several times and I do not recall if Miss  
23 Brown was there.

24 MS. BLEAU: And what about Mr. Oliva? Who met  
25 with him?

1 MS. RICHARD: I believe Mr. Oliva submitted a  
2 written statement and --

3 MS. BLEAU: The report only contains what was in  
4 his written statement? He wasn't interviewed?

5 MS. RICHARD: I believe he was interviewed. Let  
6 me double check, because -- that I don't recall. I  
7 know I did not interview him. But there is something  
8 from writing that I did review from him.

9 MS. BLEAU: I'm sorry. Are you saying that the  
10 statements in the report are only based on Mr. Oliva's  
11 written statement or he was interviewed?

12 MS. RICHARD: I can't recall, to be honest with  
13 you. It's been a while. But I do recall seeing a  
14 written statement from him. And I may have attached  
15 it to my report. If you'll give me one second, I can  
16 look.

17 MR. ZALMAN: It's all been separated now, it's  
18 Tab 7.

19 MS. RICHARD: Yeah, I see. I listed it as an  
20 attachment, the written statement from George Oliva as  
21 Number 5 in my report. So, I do have a specific  
22 recollection of reading it. I don't know if there was  
23 a follow-up interview with him. I don't know.

24 MS. BLEAU: How did you decide who to interview?

25 MS. RICHARD: That information was provided to

1 the Department, as I testified earlier, under the  
2 City's policy the Department provides all of the  
3 information to Employee Relations because, again, they  
4 have first-hand knowledge who has relevant knowledge  
5 for an investigation.

6 MS. BLEAU: Who in the Department provided you  
7 the names of the people to speak with?

8 MS. RICHARD: I believe it was maybe Mr.  
9 Fajardo. Because if you see in his memo, I think he  
10 references there are about a dozen employees. And I  
11 recall either sending to him or maybe Al Battle,  
12 "Please give me the names of these dozen or so  
13 employees."

14 MS. BLEAU: Okay, so your understanding is the  
15 dozen or so employees in Mr. Fajardo's memo are the  
16 same dozen or so employees that were interviewed in  
17 your investigation?

18 MS. RICHARD: That is my understanding. I have  
19 a specific recollection of asking who these folks are  
20 and the names were given to us. Us being the Employee  
21 Relations Division.

22 MS. BLEAU: Were you looking to find support for  
23 Mr. Fajardo's memo that seems to suggest Mr. Madden  
24 should be terminated? Or were you looking to get a  
25 clear picture and a fair picture of Mr. Madden in the

1 workplace?

2 MR. ZALMAN: I object. The fact's not into  
3 record. It's a misrepresentation that Mr. Fajardo's  
4 letter was for termination, he just said that he  
5 wasn't making a determination as the discipline in  
6 termination of Mr. Madden.

7 CHAIR ADELSON: I'm going to overrule that  
8 objection.

9 MS. RICHARD: Can you repeat the question  
10 please?

11 MS. BLEAU: The way I read Mr. Fajardo's memo,  
12 it appears clear that he made up his mind that Mr.  
13 Madden should be terminated and couldn't be fixed as a  
14 result of whatever reports were made to him. And my  
15 question was, in your investigation, was the purpose  
16 of it to get a fair and clear picture of Mr. Madden in  
17 the workplace or was it to gather evidence to support  
18 a termination?

19 MS. RICHARD: I think the role of Employee  
20 Relations is to do a fair and thorough investigation,  
21 with the understanding that we are getting the  
22 information from the Department. Because, obviously,  
23 I don't work in the Department of Sustainable  
24 Development, so we rely on them to give us what facts  
25 or what witnesses they think support what they think

1 is a potential disciplinary action. But we don't go  
2 into any investigation thinking that somebody's going  
3 to get terminated and we have to then find the  
4 information to do that.

5 MS. BLEAU: So, once you initially get a list of  
6 witnesses from the Department, in order to conduct a  
7 fair investigation, would you not find out through  
8 your investigation maybe the name of other witnesses  
9 you should talk to?

10 MS. RICHARD: I think we do that. We ask if  
11 there are other witnesses to what you're saying,  
12 what's other support, do you have a document, did you  
13 send an email? So while we're interviewing the  
14 witnesses, we ask for whatever additional evidence  
15 they have other than their verbal statement.

16 MS. BLEAU: Do you know how many of the  
17 witnesses who were interviewed actually reported to  
18 Mr. Madden?

19 MS. RICHARD: Reported to him like in official  
20 reporting to him? Like in the chain of command? I do  
21 not.

22 MS. BLEAU: Or were supervised by him?

23 MS. RICHARD: I do not.

24 MS. BLEAU: Would it surprise you to know it was  
25 three out of thirteen.

1 MS. RICHARD: That wouldn't surprise me, no.

2 MS. BLEAU: Are you aware that 20 people  
3 reported to Mr. Madden on a daily basis?

4 MS. RICHARD: That sounds about right.

5 MS. BLEAU: And it never crossed the minds of HR  
6 conducting this investigation to talk to people that  
7 work for Mr. Madden to get a better context of what  
8 was going on than just people who had some beef with  
9 him?

10 MS. RICHARD: Well, I think when employees come  
11 forward that they feel that they've been -- I'm going  
12 to use their words -- threatened, abused, mistreated,  
13 we have an obligation to interview those employees. I  
14 mean, I didn't think I had to go and look for more  
15 employees that felt that way. But we were focusing on  
16 their stories and their complaints. Not necessarily  
17 to look to see if other people who felt differently  
18 about Mr. Madden. It was really their issues that we  
19 were trying to address.

20 MS. BLEAU: Did you develop the questions for  
21 the interviews?

22 MS. RICHARD: For the ones that I did, yes.

23 MS. BLEAU: What about for the ones that Miss  
24 Rosa or Brenda -- I keep forgetting --

25 MS. RICHARD: Brenda Brown. We didn't sit down

1 and have a set list of questions. I think they have  
2 their experience as investigators themselves, so they  
3 most like formulated their own questions.

4 MS. BLEAU: Today, before your testimony, did  
5 anybody talk to you about the issue as far as the  
6 impact of the 2013 issues had on your investigation?

7 MS. RICHARD: Before today?

8 MS. BLEAU: Yes.

9 MS. RICHARD: No.

10 MS. BLEAU: Today, before your testimony. So,  
11 between the time you arrived today --

12 MS. RICHARD: Yes.

13 MS. BLEAU: -- and before you started  
14 testifying.

15 MS. RICHARD: No. Today? No.

16 MS. BLEAU: Okay. Because you testified that  
17 the 2013 employment history of Mr. Madden did not  
18 impact your recommendation, is that right?

19 MS. RICHARD: That's correct.

20 MS. BLEAU: But in your report, in what you  
21 title "Relevant Background" --

22 MS. RICHARD: Uh-huh [affirmative].

23 MS. BLEAU: -- you talk about those 2013 --

24 MS. RICHARD: I think maybe I devote two  
25 sentences to it, yes. Two sentences.

1 MS. BLEAU: So, was it relevant or not relevant  
2 to your investigation?

3 MS. RICHARD: It was relevant to the point -- it  
4 says, "Relevant Background Information." So, like I  
5 say, I always try to give the employee's history, how  
6 long they've been here, and significant details  
7 because - and I mentioned 2013 issue because one) it  
8 was referenced in Mr. Fajardo's memo and one) I want  
9 to say one witness mentioned issues that he had with  
10 Mr. Madden back in 2013. I think that was Bobby  
11 Marsula. So, I just wanted to give a very short  
12 reference to it. But in my view, it didn't affect my  
13 decision because I felt that what happened in 2013 had  
14 been resolved. And I think I asked Mr. Marsula,  
15 "Since 2013 have you had any other issues with Mr.  
16 Madden?" And he said, "No." So, my view was it  
17 didn't carry any weight for what was going in 2016.

18 MS. BLEAU: Right. Mr. Marsula actually  
19 testified that after Mr. Madden's heart attack and  
20 going out on leave, he had changed, right?

21 MS. RICHARD: Yes.

22 MS. BLEAU: And he hadn't had any issues with  
23 him since.

24 MS. RICHARD: He had no issues, that is correct.

25 MS. BLEAU: All right. Mr. Malik Mohammed

1 testified that he didn't have any issues with Mr.  
2 Madden either, correct?

3 MS. RICHARD: That is correct.

4 MS. BLEAU: Okay, so that's two.

5 MS. RICHARD: Yes.

6 MS. BLEAU: And Richard Benton testified that he  
7 didn't have issues with Mr. Madden.

8 MS. RICHARD: He didn't have any personal  
9 issues, but he -- I think he observed some bad actions  
10 on behalf of Mr. Madden. But he didn't have any  
11 personal issues with him, that's correct. So, the  
12 three people I interviewed, I guess coincidentally,  
13 didn't have any personal issues with Mr. Madden.

14 MS. BLEAU: Mr. Nickert didn't report any  
15 bullying of Mr. Madden, did he?

16 MS. RICHARD: Can I look at my report first?

17 MS. BLEAU: Sure.

18 MS. RICHARD: Thank you. I believe in his  
19 statement he did say he had not heard Mr. Madden yell.  
20 But he implied that Travers and Hernandez were getting  
21 kickbacks. So, yeah, he did.

22 MS. BLEAU: And Mr. Dry, Scott Dry that was  
23 interviewed at Tab I, he didn't report any bullying  
24 from Mr. Madden, correct.

25 MS. RICHARD: It does not appear so, correct.

1 He said he had very little interaction with Mr.  
2 Madden, yes.

3 MS. BLEAU: And I believe Mr. Fein said since  
4 2013 he hasn't had any issues with Mr. Madden,  
5 correct?

6 MS. RICHARD: And that's probably also why I  
7 mentioned 2013 in my Relevant Background Information,  
8 because he raised that, but it didn't really, again,  
9 have any weight. What I wanted to do, I wanted to  
10 include everybody's testimony who came forward, even  
11 if they didn't have a lot of information. For  
12 example, Robert Gonzalez didn't really have anything  
13 to say, but I didn't want to exclude them because they  
14 did come forward.

15 MS. BLEAU: Right, Mr. Gonzalez also said he  
16 didn't have any problem with Mr. Madden.

17 MS. RICHARD: That's correct, yes.

18 MS. BLEAU: So, I'm a little confused. Mr.  
19 Fajardo said thirteen employees complained to him, you  
20 interviewed those thirteen employees, and at least  
21 half, if not more than half, told you they didn't have  
22 any problems with Mr. Madden, right?

23 MS. RICHARD: Well, I think they may have said  
24 they didn't have any personal problems, but to a  
25 certain extent they either witnessed something or they

1           --

2                   MS. BLEAU: Or more often than not they're heard  
3 something from somebody else, right? That was a lot  
4 of the testimony that you received, wasn't it?

5                   MS. RICHARD: I wouldn't say that. I would say  
6 a few of them had witnessed it with their own eyes. I  
7 don't think it was more reputation, I think some of  
8 them, well, you know, Mr. Madden didn't personally be  
9 offensive to them, they witnessed it in some way. I  
10 think Mr. Benton said he had witnessed this and that  
11 and a red face and has heard him raise his voice when  
12 frustrated, and he also believed that Mr. Madden is  
13 capable of retaliation. So, he may not have had a  
14 personal issue with Mr. Benton [sic], he was a witness  
15 to some of his bad temperament. And I think in Mr.  
16 Benton's statement he mentions Mr. Madden's  
17 temperament and how it permeated throughout the  
18 workplace.

19                   MS. BLEAU: So, being red-faced when one is  
20 frustrated and raising your voice - is that bullying  
21 under the City's policy?

22                   MS. RICHARD: I think that's one of the examples  
23 that's in the bullying policy.

24                   MS. BLEAU: Can you show me?

25                   MS. RICHARD: Yes.

1 MS. BLEAU: Okay.

2 MS. RICHARD: Do you know what tab that's under?

3 MR. ZALMAN: Thirteen.

4 MS. RICHARD: I stand corrected. There is no  
5 reference to being red-faced.

6 MS. BLEAU: Did you or any other of your  
7 investigators investigating these complaints review  
8 Mr. Madden's personnel file?

9 MS. RICHARD: Yes. I did.

10 MS. BLEAU: So, earlier when you said no  
11 disciplinary history or at least no significant  
12 disciplinary history, the truth is, he had no  
13 disciplinary history in his personnel file.

14 MS. RICHARD: That is correct.

15 MS. BLEAU: Okay.

16 MS. RICHARD: When I said no significant, I was  
17 just talking about the 2013 memo from Greg Brewton.

18 MS. BLEAU: Can we turn to that for a second?

19 MS. RICHARD: Sure.

20 MS. BLEAU: Tab 2.

21 MS. RICHARD: Uh-huh [affirmative]. But no  
22 formal discipline, that's correct.

23 MS. BLEAU: In the memo from Mr. Brewton, begins  
24 "Please let this letter serve the Department's  
25 official notice to the investigation of the grievance

1 filed by several members of staff involving your  
2 alleged disruptive behavior." Right?

3 MS. RICHARD: Yes.

4 MS. BLEAU: So this is notification of an  
5 investigation which is going to begin. There was  
6 never anything -- first of all, this wasn't in Mr.  
7 Madden's personnel file, was it?

8 MS. RICHARD: No.

9 MS. BLEAU: No, [inaudible]. And where did you  
10 get this?

11 MS. RICHARD: I got this from, I want to say,  
12 the Departments because when I received Mr. Fajardo's  
13 memo, it referenced something in 2013. I looked in my  
14 files, we don't have a file on Mr. Madden. So, I was  
15 just curious as to what it was about.

16 MS. BLEAU: In 2016, HR had no file on Mr.  
17 Madden.

18 MS. RICHARD: That is correct.

19 MS. BLEAU: Mr. Madden had absolutely no  
20 disciplinary history, negative disciplinary history,  
21 in his personnel file. And the one letter that you  
22 have that suggests a negative history is actually a  
23 letter notifying him of an impending investigation.  
24 Correct?

25 MS. RICHARD: Correct.

1 MS. BLEAU: Did you look at Mr. Madden's  
2 reviews?

3 MS. RICHARD: Yes.

4 MS. BLEAU: Did you look at Mr. Madden's June  
5 2016 review from John Travers?

6 MS. RICHARD: Yes.

7 MS. BLEAU: And was there anything in Mr.  
8 Travers' 2016 evaluation of Mr. Madden that would  
9 suggest there was an issue in June of 2016.

10 MS. RICHARD: My memory of that is that it came  
11 out to an overall above-satisfactory rating, but there  
12 were some satisfactory ratings and maybe attitude and  
13 interpersonal relationships. Now, also remember that  
14 maybe Mr. Travers changed some of the ratings to make  
15 them better. So, like I said, no one is disputing --  
16 and I don't think Mr. Travers would as well -- Mr.  
17 Madden's technical ability to serve as a Chief  
18 Building Inspector. It was just his temperament or  
19 bad behavior.

20 MS. BLEAU: Do you recall -- I could put it up  
21 on the screen but it would take a minute, I'm just  
22 trying to move along -- if you recall, do you recall  
23 that actually with respect to interpersonal relations,  
24 Mr. Travers gave Mr. Madden a satisfactory with  
25 respect contractors and said that he had improved.

1 And he got an above-satisfactory in interpersonal  
2 grading for coworkers.

3 MS. RICHARD: That could be true. I want to  
4 defer to Mr. Travers, because I'm going strictly on my  
5 memory and this was from 2017.

6 MS. BLEAU: And what do you mean, he changed his  
7 score?

8 MS. RICHARD: I think there was maybe some  
9 scores that he changed for the better for attendance.  
10 Because we have a weird system where the attendance  
11 rating is automatically generated based on the number  
12 of absences you have. I do remember Mr. Travers  
13 changing that because Mr. Madden was out for a leave  
14 of absence. And I remember him maybe changing some of  
15 the other ratings making them higher or better. But  
16 don't quote me on that, please.

17 MS. BLEAU: Did you review the personnel file to  
18 see that subsequent to these allegations of issues in  
19 2013, that Mr. Madden had been promoted to Interim  
20 Building Official?

21 MS. RICHARD: That is correct, and I noted that  
22 in my report as well.

23 MS. BLEAU: You also noted in your report that  
24 three years earlier, the Board of Rules and Appeals  
25 had found probable cause against Mr. Madden. What

1 relation did that have to your determination and why  
2 is it in your report?

3 MS. RICHARD: I put it in my report because when  
4 I read Mr. Madden's response, I felt a lot of it was  
5 devoted to that BORA proceeding. That was how I read  
6 it. It was a difficult read, but that's how I read it  
7 to mean. So again, I wanted to put that in my final  
8 report to sort of give a little bit of context to his  
9 written response. This was attached to my report.

10 MS. BLEAU: The context, though, you conclude in  
11 your report that Mr. Madden mentions the BORA  
12 proceeding and I think you said -- here it is --

13 MS. RICHARD: Yes.

14 MS. BLEAU: "Madden's primary defense appears to  
15 be the pending BORA proceeding charging him with  
16 committing acts inconsistent with the Building Code.  
17 While the BORA proceeding is undoubtedly unpleasant,  
18 it cannot be used to condone bad behavior,  
19 insubordination, or failure to perform duties required  
20 of the Building Inspector." So, your read of Mr.  
21 Madden's explanation regarding the BORA proceeding was  
22 that he was saying, "This was a stressful time for me,  
23 therefore, forgive my bad behavior"?

24 MS. RICHARD: I wouldn't necessarily say that.  
25 I would say that, like I say, when you read his

1 response, I would say 90% of it was related to the  
2 BORA proceeding. I use BORA proceeding in very  
3 general terms because I don't really understand the  
4 full significance of it. But it seemed to be  
5 something related to what he was dealing with with  
6 BORA. And like I said in my report or my testimony,  
7 he just did not, in my view, directly respond to the  
8 witness statements that were provided.

9 MS. BLEAU: You said, in your direct --

10 CHAIR ADELSON: Counsel, I'm sorry to interrupt  
11 you.

12 MS. BLEAU: That's okay.

13 CHAIR ADELSON: We are literally being asked to  
14 be done by four on the dot -

15 MS. BLEAU: Really.

16 CHAIR ADELSON: We have three minutes. So, do  
17 you want to hold off on your next question, or would  
18 you like to take the next minute and a half to try to  
19 get a question and answer.

20 MS. BLEAU: I'd actually like to take that  
21 minute and a half, if I can, thank you.

22 CHAIR ADELSON: You're welcome.

23 MS. BLEAU: All right, Miss Richard, in your  
24 direct testimony, Counsel took you through your  
25 different violations, policy violations, and other

1 than the abusive language one, you had insubordination  
2 involving Mr. Travers, slandering involving Mr.  
3 Travers, the two Goldstein letters that tangentially  
4 is -- well, maybe not tangentially -- involving Mr.  
5 Travers.

6 MS. RICHARD: Uh-huh [affirmative]

7 MS. BLEAU: So, it sounds to me like you didn't  
8 take the time to try to understand the issues  
9 regarding BORA and how it relates to Mr. Travers. Let  
10 me just -- in Mr. Madden's response, he specifically  
11 explained to you, "Mr. Travers states, 'I'm charged  
12 with insuring compliance with the Florida Building  
13 Code without interference from any person. Before  
14 BORA charged me with failing to perform my duties, I  
15 would have undoubtedly agreed. However, it has been  
16 alleged by the BORA Administrative Staff, along with  
17 BORA's attorney, Charles Kramer, that I am responsible  
18 for any failures on the part of the City which come  
19 under the purview of the Chief Structural Inspector.  
20 According to sworn statements by Jim DiPietro, Bill  
21 Dumbaugh, Brian Parks, and Cris Fardelmann, I am the  
22 sole authority having jurisdiction and responsible for  
23 enforcing the building elements in the Florida  
24 Building Code. In the employee statements regarding  
25 the information meeting with John Travers, many of the

1 employees complain that my decisions as Chief  
2 Structural Inspector are in conflict with decisions of  
3 John Travers and they believe I am supposed to defer  
4 to the Building Official. On the other hand, BORA's  
5 charges against me are for actions and inactions on  
6 the part of the Building Official because I believe I  
7 am the ultimate authority regarding - because they  
8 believe I am the ultimate authority regarding  
9 structural matters. I am caught between a hot rock  
10 and a hard place.'" Did you understand that to mean  
11 that all Mr. Madden was saying was this BORA  
12 proceeding was stressful?

13 MS. RICHARD: No.

14 MS. BLEAU: But you didn't understand -- did you  
15 investigate the substance of what Mr. Madden was  
16 saying, that the body in charge of overseeing the  
17 Building Department was prosecuting him for not  
18 overruling the Building Official's decisions at the  
19 same time you're issuing a report charging him with  
20 insubordination for overruling the Building Official's  
21 decisions.

22 MS. RICHARD: My understanding of that is that  
23 Mr. Travers was the Building Official at the time, and  
24 that's how he explained it to me, and I'm sure he'll  
25 explain it to this Board, is that he was doing things

1 within his authority. And I think at one point he  
2 said, "If you think -- I'll take the hit for this if  
3 this is not something right." So Mr. Travers is the  
4 man in charge is rolling out this new program and  
5 giving directives to his staff, and he seems to be  
6 undermined by Mr. Madden.

7 MS. BLEAU: I'll leave the rest of my questions  
8 for tomorrow.

9 CHAIR ADELSON: We are literally being kicked  
10 out. We will continue until tomorrow at 9:30 a.m.  
11 Please be timely so we can start right away. We are  
12 adjourned [4:01 p.m.].

13 [End of recording.]  
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CERTIFICATE

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STATE OF FLORIDA )  
 ) ss:  
COUNTY OF BROWARD )

I hereby certify that I was authorized to and did transcribe the foregoing and the transcript is a true record of the proceedings to the best of my ability.

I further certify that I am not of counsel, I am not related to or employed by any party to this matter, and I am not interested in the outcome thereof.

Dated this 30th day of December, 2019.

*Lisa G. Tayar*  
\_\_\_\_\_  
LISA G. TAYAR

STATE OF FLORIDA )  
 ) ss:  
COUNTY OF BROWARD )

SWORN TO and SUBSCRIBED before me the day and year above written by Lisa G. Tayar, who is personally known to me.

*Brigitte Chiappetta*  
\_\_\_\_\_  
BRIGITTE CHIAPPETTA, Notary Public  
State of Florida

Notarial Seal:

