

APPROVED

MINUTES

CITY OF FORT LAUDERDALE CIVIL SERVICE BOARD MEETING Via ZOOM

Friday, March 12, 2021 - 9:00 AM

<u>Board Member</u>	<u>Attendance</u>	Cumulative Attendance 01/01/2021 – 3/12/2021	
		<u>Present</u>	<u>Absent</u>
Lori Adelson, Chair	P	2	0
Shelley Gialluca	P	2	0
Robert Baldwin	P	1	1

Call to Order

Ms. Adelson called the meeting to order at 9:00 AM.

Roll Call

Staff Present:

Jerome Post – Deputy Director of Human Resources
Kerry Arthurs - Administrative Supervisor and Board Clerk

Other Attendees:

Mimi Turin, Esquire – Board Counsel
Kenneth Miller, Esquire – Outside Counsel for the City of Fort Lauderdale
Denise J. Bleau, Esquire – Counsel for John Madden, Appellant
John Madden – Appellant
John Travers – Building Official, Department of Sustainable Development

Attachment

Transcript of Proceedings – Prototype Inc.

Meeting Adjournment

the meeting was adjourned at 4:47 PM.

CITY OF FORT LAUDERDALE
CIVIL SERVICE BOARD HEARING

TRANSCRIPT OF PROCEEDINGS

APPEAL OF TERMINATION OF EMPLOYMENT - JOHN MADDEN

DATE HELD: FRIDAY, MARCH 12, 2021

TIME: 9:00 a.m. - 4:47 p.m.

PLACE: Via Zoom

APPEARANCES BY**BOARD MEMBERS:**

LORI ADELSON

SHELLEY GIALLUCA

ROBERT BALDWIN

STAFF:

JEROME POST, Acting Board Secretary and Deputy Director
of Human Resources

KERRY ARTHURS, Administrative Supervisor and Board
Clerk

MAURICIO BAQUERO, City Moderator

JAMIE OPPERLEE, Prototype, Inc., Recording Secretary

COUNSEL:

KENNETH MILLER, ESQUIRE

Haliczer, Pettis & Schwamm

Outside Counsel for the City of Fort Lauderdale

One Financial Plaza, Seventh Floor

100 SE Third Avenue

Prototype Inc. (954) 249-2177

1 Fort Lauderdale, FL 33394-0015

2
3
4 DENISE J. BLEAU, ESQUIRE

5 Ward, Damon, Posner, Pheterson and Bleau

6 *Counsel for John Madden, Former Employee*

7 4420 Beacon Circle

8 West Palm Beach, FL 33407

9
10
11 MIMI TURIN, ESQUIRE

12 Turin Center for Dispute Resolution

13 *Board Counsel*

14 11352 West State Road 84, Suite 58

15 Davie, FL 33325-4007

HEARING

March 12, 2021

[COMMENCING AT 9:00 A.M.]

CHAIR LORI ADELSON: All right everyone, it's 9:00. I just want to make sure if anyone was going to join outside, from the public, if they had an opportunity to get started on time. I'm going to call this morning's virtual Civil Service Board Meeting to order and do roll call. So, I will call everyone's name out and just say "present" if you're here.

And I'll start with the City's folks. Jerome Post?

JEROME POST: Present.

CHAIR ADELSON: Kerry Arthurs?

KERRY ARTHURS: Present.

CHAIR ADELSON: Attorney, Mr. Miller.

KENNETH MILLER: Good morning, I'm here.

CHAIR ADELSON: Denise Bleau?

DENISE BLEAU: I apologize. I'm here.

CHAIR ADELSON: Shelley Gialluca?

SHELLEY GIALLUCA: Here.

CHAIR ADELSON: John Madden?

JOHN MADDEN: I'm here.

CHAIR ADELSON: Robert Baldwin?

ROBERT BALDWIN: Here.

1 CHAIR ADELSON: Mimi Turin?

2 MIMI TURIN: Here.

3 CHAIR ADELSON: John Travers?

4 JOHN TRAVERS: Present.

5 CHAIR ADELSON: And we have assisting us with
6 technology, Mauricio Baquero and Jamie is recording.
7 All right.

8 MR. POST: Chair Adelson, it's Jerome.

9 CHAIR ADELSON: Yes.

10 MR. POST: Just a reminder that I'm required to
11 read through the introduction for virtual meetings for
12 the City, so if I may?

13 CHAIR ADELSON: Yes, sir.

14 JEROME POST: Okay, bear with me please. Good
15 morning. Thank you for joining the City of Fort
16 Lauderdale for today's Civil Service Board Meeting.
17 The meeting is being conducted using Zoom Video
18 Conferencing in order to maintain proper social
19 distancing during Covid-19.

20 This meeting is open to the public and is being
21 recorded. If any member of the public would like to
22 speak in today's meeting, please visit the Board's
23 website at www.fortlauderdale.gov/government/civil.
24 There you can complete the brief speaker form and, once
25 completed, you will be granted access to the meeting

1 and you will be called upon at the appropriate time.
2 If you're having trouble signing up, please email
3 virtualmeetingsadmin@fortlauderdale.gov. That's
4 virtualmeetingsadmin@fortlauderdale.gov.

5 To help ensure we follow the same protocols
6 that we do during in-person meetings and to ensure
7 online security, we ask that you please abide by the
8 following guidelines: This meeting is to conduct
9 official business for the City of Fort Lauderdale. Any
10 behavior that is disruptive, distractive, profane,
11 and/or inhibits the meeting in any way is prohibited.

12 While you are the phone waiting for your
13 opportunity to speak, please mute any other broadcasts
14 you are watching simultaneously to avoid a known delay
15 in our broadcast. Once you have completed your
16 speaking time, feel free to return to your broadcast.

17 The City of Fort Lauderdale will be controlling
18 your ability to speak during the virtual meeting. You
19 have automatically been added to the listen-only mode.
20 You will be granted access to speak when recognized.

21 I would like to remind Board Members,
22 presenters, and participating members of the public to
23 please remember to mute yourself if you are not
24 speaking and to silence all electronic devices to limit
25 the amount of interference.

1 Regarding the process for today's meeting, for
2 each of today's meeting agenda items, we will abide by
3 the following protocol: First the item's main speaker
4 will be given ample opportunity for the presentation.

5 When the main speaker has concluded his or her
6 comments, I will read through my list of Board Members.
7 When called upon, each Board member will be given a
8 chance to provide for comment or ask follow up
9 questions.

10 Finally, we will be setting aside time for
11 public comment. Any resident who wishes to sign up to
12 speak will be given three minutes to comment on the
13 item. Again, members of the public can participate by
14 going to www.fortlauderdale.gov/government/civil.

15 If a vote is required, we will then defer to
16 the Board Chair to call on the vote and the recording
17 secretary will call out each Board Member by name. I
18 will now turn it over to the Board Chair to start the
19 meeting. Thank you.

20 CHAIR ADELSON: Thank you, Mr. Post. As we
21 noted, we did do roll call in advance of the order, but
22 everyone who is supposed to be here is present.

23 So, I'm going to move on to review and approval
24 of the Meeting Minutes for January 15th and January 22nd
25 of 2021. I'm going to defer to Shelley, because

1 Shelley seems to pretty regularly be able to confirm
2 whether or not there are any issues. I don't have any
3 discussions for them. Shelley?

4 MS. GIALLUCA: Yeah, I had to move to another
5 location to do this. So, I do have a few and I'm going
6 to try to make this quick. So, page 14, line 20,
7 "Garden" should be "Gardner." Page 25, line 19, "Lien"
8 should be "Lean." Page 87, line 1, "Jerry" should be
9 "Terry" with a "T." Page 92, "What" should be "Why."
10 Page 102, line 10, "sent" should be "send." Page 113,
11 line 12, "remailed" should be "emailed." Page 114,
12 line 13, "now" should be "no." 121, line 13, "Avrill"
13 should be "Averill." And page 132 and different pages
14 throughout the document, a person speaking is the
15 letters "BM:" Not sure who that is supposed to be in
16 the recording.

17 And let me skip to -- I think the biggest and
18 most important is starting on page 220, line 18 through
19 25, looks like a copy/paste from page 7, line 7, where
20 it breaks into the introduction of Mr. Madden. And,
21 so, it continues onto page 221, up to line 20, and line
22 23 is where Mr. Miller starts. So, I'm not sure if the
23 copy and paste was put there in error or if it actually
24 is covering up some testimony. I'm not sure. I
25 couldn't tell that anything was missing, so I'm not

1 sure how that should be handled.

2 CHAIR ADELSON: Shelley, so you think we have
3 missing pages?

4 MS. GIALLUCA: No, I don't think we have
5 missing pages. On page 220, there's text copied from
6 page 7, so it's redundant information in the incorrect
7 place. Why that happened, I'm not sure. If it's
8 pasted on top of some other text, I can't tell.

9 CHAIR ADELSON: So, that will be looked at and
10 see if it needs to be corrected and if it's a missed
11 text because there is something on top of the other --
12 unless somebody has an idea of what might be
13 appropriate in that section. If not, we'll just have
14 it reviewed and looked at.

15 MS. ARTHURS: Excuse me, Madam Chair, can you
16 clarify which of the Minutes you are referring to?

17 CHAIR ADELSON: Shelley?

18 MS. ARTHURS: January 15th or January 22nd?

19 CHAIR ADELSON: Shelley, which minutes are you
20 referring to?

21 MS. GIALLUCA: I'm sorry, the 22nd.

22 CHAIR ADELSON: I didn't want to speak out of
23 turn. January 22nd?

24 MS. GIALLUCA: Yeah, and it starts on page 220,
25 line 18 where the introduction of Mr. Madden and a

1 couple of paragraphs are pasted there that came from
2 page 7 of those meeting minutes.

3 CHAIR ADELSON: Okay, so Kerry, you'll have
4 those looked at and we'll see what --

5 MR. MILLER: I read that. It looks like, it's
6 right before I began my cross-examination of Mr. Madden
7 and for some reason two or three paragraphs from the
8 beginning of the session just got repeated at that
9 point in the transcript.

10 CHAIR ADELSON: So, nothing is missing?

11 MR. MILLER: I do not believe there's anything
12 missing. I think it was just reprinted in the wrong
13 place for a second time for some reason. But my cross-
14 examination starts right after that. There's nothing
15 missing that I'm aware of.

16 MS. GIALLUCA: On line 23, Mr. Miller starts.

17 CHAIR ADELSON: Okay, so then if those
18 paragraphs can be stricken, and that will be
19 appropriate so that we're able to move from the end of
20 the direct to the beginning of the cross. Shelley,
21 anything else?

22 MS. GIALLUCA: No, that's it. Thank you.

23 CHAIR ADELSON: Mr. Baldwin, I think you
24 weren't present at the last one, but were the prior one
25 before. Do you have any comments on the minutes?

1 MR. BALDWIN: Yes. I wasn't at the last
2 meeting, so I don't know if I can vote on the minutes,
3 but I did listen to the tape. Kerry was kind enough to
4 send it to me. I'm sure it was the best meeting I
5 attended and I wasn't even there. I listened to it late
6 at night, I heard everything. I just thought it was a
7 much-improved meeting.

8 CHAIR ADELSON: Excellent.

9 MR. BALDWIN: Anyway, I don't know if I can
10 vote on it. Can I vote on the minutes?

11 MS. TURIN: Yes, you can.

12 CHAIR ADELSON: Yes, you heard the video, so
13 yes.

14 MS. TURIN: You have reviewed them; you are
15 present; there's not a conflict; yes, you can vote on
16 them as long as you reviewed them. By the way, is
17 there a motion?

18 CHAIR ADELSON: So, is there a motion to
19 approve the minutes for January 1 15th and January 22nd?

20 MR. BALDWIN: I make a motion to approve.

21 MS. TURIN: As corrected.

22 CHAIR ADELSON: As corrected.

23 MR. BALDWIN: As corrected.

24 CHAIR ADELSON: Thank you.

25 MS. GIALLUCA: And second.

1 CHAIR ADELSON: So, all in favor?

2 MS. GIALLUCA: Aye.

3 MR. BALDWIN: Aye.

4 CHAIR ADELSON: So, the minutes are approved.

5 Next is for public comment. I don't think we
6 have anyone in the waiting room. Mauricio?

7 MR. BAQUERO: No one is here.

8 CHAIR ADELSON: Excellent, and now we move onto
9 For the Good of the Order.

10 I have a couple of administrative -- I have a
11 hard stop today. I must be off by 5:00, so if there's
12 going to be any -- at the end we usually do some
13 scheduling and the like, so we'll probably stop at like
14 4:45, if we're intending to go to 5:00 in any event.

15 Anyone else have any other administrative
16 issues or anything we need to deal with before we get
17 started this morning? Anyone need any particular
18 breaks during the day? Any timing issues?

19 MR. BALDWIN: Could I mention something, Madam
20 Chair?

21 CHAIR ADELSON: Of course.

22 MR. BALDWIN: I had thought we were going to
23 meet on the 15th and that got cancelled. I had intended
24 to recommend to the Board that we pass a -- I would
25 make a motion that the Civil Service Board would

1 recommend that the City Manager and Mr. Madden sit down
2 again and see if they could come to some kind of
3 settlement before the final vote today, and
4 unfortunately, that was not held.

5 So, as you know, this is my final meeting and I
6 don't know that you want to do that at this point, but
7 I just offer it up as a suggestion. And then possibly,
8 when we take breaks or something, people could talk and
9 maybe come up with some kind of solution to this before
10 the final vote. That's all I have.

11 CHAIR ADELSON: Okay, thank you. So, Mimi, in
12 terms of procedural, I mean there is probably not
13 enough -- I don't believe we're going to get to
14 deliberations today. We might. In the event Mr.
15 Baldwin -- this is his last meeting. I mean, how is
16 that going to impact or effect the deliberations?

17 MS. TURIN: I was hoping that we would get
18 through to deliberations today as well. Mr. Baldwin is
19 an appointed position, just as you are, so he would
20 have to have a replacement appointed.

21 That person, I would recommend that they review
22 all of the minutes and the video that's available or
23 the recordings to bring them up to speed on all of the
24 evidence so that they don't come in here without
25 knowing the background of the case.

1 Let me also point out that Ms. Gialluca's seat
2 technically expired in January, but she serves and
3 holds over in that slot or in that position until a new
4 individual is voted in and those results are certified.

5 I believe that they've started the process in
6 terms of the election; however, there is a
7 certification process that has to go through the City
8 Commission, which may be scheduled in April. I'm not
9 sure of that. So, you're going to be having another
10 seat that's going to be opening up.

11 If this case is not completed by then as well,
12 you would have the same situation of an individual who
13 is going to have to go back and review all of the
14 minutes, the exhibits, whatever video or audio
15 recordings that there are, to bring themselves up to
16 speed.

17 CHAIR ADELSON: I am also in the same position.
18 I'm actually only serving through the end of -- I did
19 it a little differently. I agreed to serve only to the
20 end of this hearing so that I could complete it, so
21 that there was no gap with my position.

22 So, I think the goal today is try to endeavor
23 to get done where we can have deliberations. I heard
24 Mr. Baldwin's motion. I think that it is one that we
25 need to consider or request for a motion.

1 I think that we will obviously take a lunch
2 break, usually it's short, but maybe we use an hour
3 today to try to facilitate some sort of conversation
4 between the City and Mr. Madden for some sort of
5 amicable resolution from the parties, as opposed to the
6 possibility where the testimony runs over and we're
7 unable to finish deliberations today, requiring us to
8 wait for a new seat and continue this into the future.
9 So, Mimi, yes? I see your hand is up.

10 MS. TURIN: Yes, the only thing I would say is
11 in terms of Mr. Baldwin's motion, which I always
12 encourage parties to try and work things out
13 themselves, the Board could not facilitate in that
14 manner.

15 You can issue a lunch break, of course, and ask
16 them to talk, but the Board would not be, of course,
17 involved in any kind of a discussion because you're
18 here as a decision maker, not as a facilitator. So,
19 that's something that they would have to do.

20 Like during lunch, maybe they could sit down
21 and talk to each other and see if there's any
22 resolution possible and just let us know. And, if
23 not, then the Board needs to continue with the case.

24 CHAIR ADELSON: That was my suggestion that
25 during lunch they take an opportunity -- obviously we

1 can't force them to do that, so I would open this to
2 the attorneys for -- you know, it's hard for me to make
3 a motion to require them to sit down and talk.

4 However, I would like to -- as Mimi said, I'm
5 always open. I'm a mediator by profession, so it would
6 be to take that opportunity and make a motion to take
7 that lunch break as an opportunity for the parties to
8 speak. If they choose not to, that's obviously their
9 option.

10 So, with that said, the motion by Mr. Baldwin
11 is that the City and Mr. Madden take an opportunity
12 during the hearing today to speak to each other to try
13 to come to a resolution amongst themselves.

14 My amendment to that would be to do it -- quite
15 frankly, just speaking, still discussion -- it might be
16 more productive to do it before we get started into
17 testimony than while we're -- unless you, Mr. Miller,
18 feel that you have to finish his testimony before you
19 have a conversation with them.

20 MR. MILLER: Well, to be candid, any decisions
21 come from the City Manager and the City Attorney. I
22 clearly have no authority to enter into any kind of
23 deal on behalf of the City.

24 I don't even have a clue if they're working
25 today. You know, I wasn't planning on talking to them

1 today, so I don't want to delay this for me to go chase
2 them and not be able to find them and then we can't
3 finish.

4 CHAIR ADELSON: Understood.

5 MR. MILLER: I have taken into account where
6 we're at. I have cut down dramatically what I intend
7 to ask Mr. Madden. I'm going to talk at warp speed
8 because I want to get through this today.

9 And my closing, I think I've cut down
10 dramatically as well because I think we need to get
11 this to a conclusion. I don't know how this hearing
12 can continue after today substituting a new Board
13 Member in with somebody that's not listened to the
14 evidence.

15 I don't know how that can be done. I don't
16 think I would ever agree to allow that to happen. If
17 that happens, I think we're at the point where we have
18 to start over again and that -- I do not want that.

19 CHAIR ADELSON: I agree. I knew the process
20 would be significantly impacted so, why don't we move
21 forward. Mr. Baldwin, I'm going to table your motion
22 inasmuch as I think we need to get through and finalize
23 the hearing. I do think I am encouraging, obviously,
24 Mr. Miller to see if he can reach out to whomever he
25 can between the course of today, or someone in his

1 office. Obviously --

2 MR. BALDWIN: May I ask a question? Does Mr.
3 Madden have any objection to trying to resolve
4 something, or Ms. Bleau?

5 MS. BLEAU: I can tell you, Mr. Baldwin, we
6 have engaged in attempts throughout, sort of, this
7 process with the City. Mr. Miller and I have spoken,
8 Mr. Zalman and I before, about potential resolution,
9 and unless the City's position changes, it doesn't seem
10 like they're interested.

11 MR. BALDWIN: Okay. Thank you.

12 CHAIR ADELSON: Okay, so let's proceed, and we
13 will -- although Mr. Madden was previously sworn in,
14 I'm just going to swear him in again this morning,
15 since it's been a little while, and then we'll proceed
16 with Mr. Miller's cross of Mr. Madden.

17 Mr. Madden, do you solemnly swear to tell the
18 truth, the whole truth, and nothing but the truth?

19 MR. MADDEN: I do.

20 CHAIR ADELSON: All right, Mr. Miller.

21 MR. MILLER: Thank you. Good morning.

22 MR. MADDEN: Good morning.

23 MR. MILLER: Mr. Madden, maybe I missed it
24 throughout this entire time, but can you tell us where
25 are you working currently?

1 MR. MADDEN: I teach for the Building Officials
2 Association of Florida and then I work for a private
3 engineering firm on a contractual basis.

4 MR. MILLER: Okay, and how long have you been
5 teaching? Did it start right when you got terminated
6 or when did you start on that?

7 MR. MADDEN: I don't remember the exact date
8 when I started teaching for them. I'm on an as-needed
9 basis or when they call me.

10 MR. MILLER: And same question with the
11 engineering firm you said you're doing consulting work
12 with, how long have you been doing that?

13 MR. MADDEN: It's the same thing. They contact
14 me when they need something done and I don't know when
15 exactly I started with them.

16 MR. MILLER: Other than those two positions,
17 have you worked anywhere else since leaving the City?

18 MR. MADDEN: I don't think I have. No, I don't
19 think I have. Maybe helped some friends and family
20 members out, but not in your typical employee
21 relationship.

22 MR. MILLER: When we left off last time, we had
23 started talking about the response that had been
24 written and given to the City back in January of 2017.
25 Do you recall we were talking about parts of that?

1 MR. MADDEN: I do.

2 MR. MILLER: And for the record, that's Exhibit
3 Number 11 in the City's notebook as Mr. Madden's
4 statement. Am I correct that other than that 12-page
5 statement, you never submitted anything else in writing
6 to the City, correct?

7 MR. MADDEN: I don't know what you mean,
8 "submitted anything to the City." In response to me
9 being terminated?

10 MR. MILLER: No, during the process --
11 obviously there was the hearing with Al Battle, there
12 were some other things that you did along the way --
13 other than the original 12-page letter, did you ever
14 formally submit any other writings on your own behalf
15 during the process?

16 MR. MADDEN: I don't recall exactly if I did or
17 I didn't. I don't recall.

18 MR. MILLER: We talked last time about the memo
19 that you received from Mr. Travers in December that
20 laid out all of the charges against you. Do you recall
21 talking about that?

22 MR. MADDEN: I do recall talking about the
23 letter that I received or memo that I received from Mr.
24 Travers, yes.

25 MR. MILLER: And again, for record purposes,

1 that document is Exhibit 21 in the City's notebook.
2 It's dated December 22nd, 2016, and it's two pages. You
3 recall receiving that, right?

4 MR. MADDEN: I do.

5 MR. MILLER: Now in that document itself, one
6 of the things that it specifically says -- and I'm
7 reading it verbatim, "Your behavior also violates the
8 City of Fort Lauderdale Workplace Bullying Policy, City
9 of Fort Lauderdale Policy and Standards Manual, Chapter
10 6.10.9." And, according to the memo, a copy of that
11 policy was actually attached to the memo and sent to
12 you. Do you remember reading that particular policy?

13 MR. MADDEN: I don't recall reading that
14 policy, no.

15 MR. MILLER: You would have read it in the
16 memo, though, where Mr. Travers outlined that you were
17 being accused of violating that policy, correct?

18 MR. MADDEN: I don't recall if the policy was
19 actually attached to the memo.

20 MR. MILLER: Okay. Certainly, though, the fact
21 that he cited it in the memo, you would have read that?

22 MR. MADDEN: Read the memo?

23 MR. MILLER: Yes, sir.

24 MR. MADDEN: Yes, sir, I did.

25 MR. MILLER: Okay. My question is, is there a

1 reason you can tell us why in your 12-page response you
2 do not mention the Workplace Bullying Policy and the
3 alleged violation a single time in your response?

4 MR. MADDEN: Well, I don't recall the exact
5 words in my document, but I think I addressed the
6 issues that I was charged with in that document and I
7 thought that I covered all of those items.

8 MR. MILLER: So, if, in fact -- I mean, the
9 document speaks for itself, right? Whatever is in
10 there, is in there? Correct?

11 MR. MADDEN: Yes.

12 MR. MILLER: So, if in fact there is nowhere in
13 there where you even deny that you violated that
14 policy, you can't tell us why, correct?

15 MR. MADDEN: Well, the issue of what exactly
16 what is meant by that policy, I mean, what are the
17 specifics in there? But I think if you look at what I
18 wrote in that memo, or my response to the City, was --
19 I answered and I felt that I was covering the charges
20 and I actually thought that they were going to call me
21 in and talk about it, just like they called the other
22 witnesses, when they interviewed the other witnesses.
23 But, nobody ever interviewed me.

24 MR. MILLER: You certainly, when you wrote your
25 response, were aware that you were accused of violating

1 that policy, correct? Whether you saw the policy or
2 not, you knew from the memo you were accused of
3 violating the policy?

4 MR. MADDEN: Well, the things that I was
5 accused of, I thought I answered in my response.

6 MR. MILLER: I understand that. And my
7 question is simply, when you wrote your response, you
8 knew that was one of the things you were accused of?

9 MR. MADDEN: Yeah, I mean, I read the -- I
10 think there was four things?

11 MR. MILLER: Okay. All right. Let me move on.
12 The last time we got together on the 22nd, during the
13 direct examination by Ms. Bleau, you were asked a
14 series of questions -- and this is actually on page 26
15 of the transcript -- having to do with whether or not
16 you had ever been disciplined before by the City. Do
17 you remember her asking you those questions?

18 MR. MADDEN: I do.

19 MR. MILLER: She asked you specifically, "Since
20 you were there, had you ever been disciplined, had you
21 ever received a written reprimand, had you ever
22 received a poor performance evaluation, or had you ever
23 been placed on a performance improvement plan?" And
24 you said no to all of those, correct?

25 MR. MADDEN: Yes.

1 MR. MILLER: You're not suggesting, are you,
2 sir, to this Board, that you've never had issues with
3 the City?

4 MR. MADDEN: Oh, I've had issues with the City
5 on many things.

6 MR. MILLER: In particular, though, your
7 performance and behavior -- there have been multiple
8 instances where people have called out your behavior
9 before this investigation, isn't that true?

10 MS. BLEAU: Let me just object for the record.
11 This is like following the bouncing ball. Mr. Baldwin
12 had raised at the very first day that anything
13 occurring in 2013 would be inappropriate to be
14 considered.

15 And, also the City's own disciplinary policy,
16 the Progressive Disciplinary Policy, that wasn't
17 included in the City's materials, it wasn't provided to
18 us, other than Ms. Gialluca's repeated request that we
19 finally obtain, made it clear that counselings -- which
20 is at most what Mr. Brewton's email could be
21 characterized as, if that -- cannot be considered
22 longer than a year.

23 We're talking about multiple years. And, so
24 the City keeps stipulating on the one hand that Ms.
25 Richard's claims that she didn't consider Mr. Brewton's

1 letter even though it's the first exhibit in her
2 report, and on the page under "Relevant Background" is
3 where she talks about Mr. Brewton's letter. But then
4 she said, well she didn't consider it.

5 Al Battle actually admitted that he considered
6 that 2013 Greg Brewton letter, but the reality is that
7 the policies of the City's themselves, and the decision
8 of this Board, is that that is improper.

9 And, Ms. Richard admitted that an employee
10 terminated -- you should only consider the conduct
11 around the time of the termination -- not to reach back
12 for years before to try to build a case against this
13 employee, and that's what Mr. Miller is doing and
14 that's the basis of my objection.

15 MR. MILLER: Okay. I did not raise this issue.
16 Counsel raised this issue on direct examination by
17 specifically asking whether or not from 2006 to the
18 present, he had ever been disciplined or had these
19 issues. They have opened the door to this.

20 I did not go into this; I did not bring these
21 things up; I've not talked about them. They have done
22 that now in the direct examination and this is
23 impeachment at this point. Because, frankly, what he
24 testified to is misleading.

25 MS. BLEAU: I did not ask him if he's ever had

1 any issues with the City, as you just did. And I did
2 not ask him did he ever have any discipline or issues
3 with the City, as you just characterized.

4 I asked him if he'd ever been disciplined,
5 received a written reprimand, any counseling, or
6 whatever, and all of that, under the City's policies,
7 the answer is, no, he has not.

8 CHAIR ADELSON: Objection overruled. Proceed
9 Mr. Miller.

10 MR. MILLER: Thank you. Back in 2013, there
11 were at least seven employees that filed grievances
12 against you because of your behavior, was there not?

13 MR. MADDEN: I don't know the people or the
14 extent of their grievance.

15 MR. MILLER: Do you know there were multiple
16 people though that complained about the way that you
17 were treating them, correct?

18 MR. MADDEN: I don't know the exact extent of
19 that complaint.

20 MR. MILLER: Do you know who Barry Fein is?

21 MR. MADDEN: I do.

22 MR. MILLER: You remember Barry Fein filed a
23 complaint against you?

24 MR. MADDEN: I do.

25 MS. BLEAU: For the record, Madam Chair, I need

1 to have a continuing objection to this. This violates
2 the City's policies and is completely improper.

3 MR. MILLER: Robert Masula, did he file a
4 complaint against you over your behavior towards him?

5 MR. MADDEN: I don't recall seeing anything
6 written by Bobby -- maybe.

7 MR. MILLER: His complaints included the fact
8 that you dropped F-bombs and were cursing at him. Do
9 you recall that?

10 MR. MADDEN: Bobby?

11 MR. MILLER: Yeah.

12 MR. MADDEN: Oh, I've dropped the F-bomb.

13 MR. MILLER: Okay. I'm not going to go through
14 all of these, but these are the issues that led up to
15 the memo for Mr. Brewton that we've discussed in this
16 case, correct?

17 MR. MADDEN: The memo from Greg to me,
18 basically, was saying, "John, you've had a lot of
19 allegations here and we need to look into it." I said,
20 "Okay, let's talk about it." Those weren't any
21 findings, he just talked about it. He said, "Let's
22 talk about this." I said, "Okay."

23 MR. MILLER: So, when he wrote to you, "As
24 previously discussed with you, the type of behavior
25 identified in the grievance plan will not be tolerated

1 by this Department." What did you take that to mean?

2 MR. MADDEN: That he wanted to talk about it.

3 He said he wanted to talk about it, because there's two
4 sides to the story with Bobby and Barry.

5 MR. MILLER: Okay.

6 MR. MADDEN: And when I brought my side of the
7 story up with Greg, then he understood what was going
8 on.

9 MR. MILLER: So, why then would he encourage
10 you to seek anger management counseling?

11 MR. MADDEN: I don't know. He wrote that. But
12 I never went to anger management counseling. It was
13 only Greg and I and we only talked two times in his
14 office.

15 MR. MILLER: All right.

16 MR. MADDEN: Then they promoted me like a month
17 or two after that.

18 MR. MILLER: Right. The point is, in your
19 history with the City, before 2016, there was at least
20 one period of time where you were counseled at a
21 minimum by Greg and at least talked to about these
22 behaviors. Would you agree with that?

23 MR. MADDEN: We talked about it, but like I
24 said, Mr. Miller, there's two sides to that and then
25 when they heard my side of the story, and they heard my

1 side of the situation, and they heard the actual
2 telephone messages that were left on my desk
3 complaining about Bobby and Barry.

4 And I received an email from the homeowner
5 where Barry didn't go up on the roof, and the homeowner
6 witnessed him not going up on the roof on her final
7 roofing inspection. And so, when she called me and she
8 wrote that email, those are the things that I talked
9 with Greg about.

10 And then Bobby was very similar. It was just a
11 situation where, yeah, did I drop a few "F" bombs?
12 Yeah. But when Greg saw my side of the story and he
13 witnessed that, then he just said he understood what
14 was going on. Now, that's why nothing was ever -- I
15 wasn't disciplined for that. Look at my annual
16 performance from that year.

17 MR. MILLER: So, if, in fact, they raised
18 complaints about your behavior, were they lying?

19 MR. MADDEN: Well, lying to the degree of what
20 I did or what I said. I don't think I have the same
21 recollection of what occurred as they do.

22 MR. MILLER: Now, after 2013, we've talked
23 about this, at some point in 2014, I think it was, is
24 that when you went out with your health issues?

25 MR. MADDEN: I did, I had the heart attack in

1 May of 2014, and then I came back in, I think, August
2 of 2014.

3 MR. MILLER: Okay. And, when you returned in
4 August of 2014, had Mr. Travers been hired at that
5 point as the Building Official?

6 MR. MADDEN: No.

7 MR. MILLER: So, when you came back in August,
8 there was no Building Official?

9 MR. MADDEN: There was.

10 MR. MILLER: Who was the Building Official?

11 MR. MADDEN: I don't know. I think it was an
12 interim basis, but I think John Travers started in the
13 end of 2014.

14 MR. MILLER: Okay. So shortly after --

15 MR. MADDEN: The fall of 2014. I'm sorry.

16 MR. MILLER: So, shortly after you returned is
17 when Mr. Travers got hired?

18 MR. MADDEN: Yeah, he got hired a couple
19 months, I think, after I returned. Yes.

20 MR. MILLER: Okay, and when you returned, your
21 position was as Chief of Structural, correct?

22 MR. MADDEN: Yeah, I was the Chief Building
23 Inspector. Yes.

24 MR. MILLER: Okay. And that was still the role
25 that you and Mr. Travers had in 2016? Correct? You

1 were the Chief, he was the Building Official?

2 MR. MADDEN: Yes.

3 MR. MILLER: Now, in the response you wrote to
4 the City's allegations, and frankly during this hearing
5 thus far, you've spent a considerable amount of time
6 talking about what was going on between you and BORA.
7 Correct?

8 MR. MADDEN: Could you say that again, Mr.
9 Miller?

10 MR. MILLER: Sure. If we look at the response
11 you wrote to the City back in 2017, and we go back
12 through your testimony and others in this particular
13 hearing, you have spent quite a bit of time talking
14 about the investigation that BORA was doing of you
15 during this 2016 window, correct?

16 MR. MADDEN: Actually, it was BORA'S first
17 interaction with me regarding this was in July or
18 August of 2015, when I was asked to come and speak to
19 the BORA investigator.

20 MR. MILLER: And you have spent a great deal of
21 time explaining to everybody during this hearing what
22 BORA was investigating and what you believe they
23 determined, what the outcome of that hearing was.
24 Right?

25 MR. MADDEN: Yeah, it's part of my issues.

1 Yes.

2 MR. MILLER: Okay. You have talked on several
3 occasions about the fact that BORA determined that you
4 should have overruled the Building Official when it
5 came to structural. Correct?

6 MR. MADDEN: Well, BORA'S position is when --
7 whatever discipline that Chief is, the Chief of that
8 discipline, in my case it would be Building,
9 Structural. You know, it's not just Structural, it's
10 Building. And it deals with a number of things in the
11 Building Code.

12 BORA'S contention is that regardless of who the
13 Chief is -- and who the Building Official is -- so in
14 this situation, the Building Official, Chris Augustin,
15 both Chris and I had the same certifications. Chris
16 had GC, he had his Building Inspector Certification,
17 his Plans Examiner Certification, and he had his
18 Building Official Certification.

19 So, my feeling is -- just as it is today -- and
20 BORA doesn't agree with me, that when you have a
21 Building Official whose certifications are in the same
22 discipline, in this case where it's me, then the
23 Building Official is the authority having jurisdiction.
24 And that's the difference between John Travers and
25 myself.

1 MR. MILLER: That's not actually what BORA
2 found you guilty of though, is it?

3 MR. MADDEN: BORA's initial charge with me was
4 -- and they said I failed to supervise and I failed to
5 inform the people under my authority. So, I told, in
6 the initial meeting with Bill Dumbaugh, I told him,
7 just as I'm doing now throughout this case, "Look at my
8 emails. Look at what I've done and your charges with
9 me are wrong." I did inform them, I did send emails, I
10 did do that, I did supervise.

11 And, then when BORA finally realized that their
12 charges were not, in fact, consistent, but they said
13 that, "No," when Mr. Kramer's opinion, along with the
14 Board's opinion when they said, "You failed to
15 supervise," that means you failed to do everything
16 under your authority.

17 You failed to inform, you failed to overrule,
18 you failed to make a decision, you failed to interpret.
19 All of those things they incorporated into that charge
20 of "failure to supervise."

21 MR. MILLER: The specific things that they
22 claim that you violated, though, were a failure to
23 supervise and coordinate the efforts of the Structural
24 Plans Examiners in Fort Lauderdale. That was Charge
25 number one, correct?

1 MR. MADDEN: Yes, and that charge, basically,
2 they were saying I should have overruled the Building
3 Official.

4 MR. MILLER: Okay. That's nowhere in the BORA
5 Order though, is it?

6 MR. MADDEN: Yes, it is. It's in their final
7 decision. We discussed it.

8 MR. MILLER: Okay.

9 MR. MADDEN: And it was even in testimony by
10 Bill Dumbaugh. It was the testimony of Chris Augustin,
11 the previous Building Official. In the hearing, he
12 even said, "I cannot overrule the Chief, the Chief is
13 the authority."

14 And I looked at him like, "Wait a minute. You
15 and I are the same certifications. What are you
16 talking about?"

17 MR. MILLER: Let's look at the actual Order
18 what they said. Can you see that on the screen?

19 MR. MADDEN: Yes.

20 MR. MILLER: This is the BORA Order Finding
21 Probable Cause. Correct?

22 MR. MADDEN: No, this is the initial -- this is
23 the probable cause, right?

24 MR. MILLER: This is the one after they had
25 the hearing in October of 2018.

1 MS. BLEAU: Yeah, it is.

2 MR. MILLER: Can you see the date down there at
3 the bottom?

4 MR. MADDEN: Okay, so the final thing that was
5 signed by Mr. Lavrich.

6 MR. MILLER: Yes. You've seen this, right?

7 MR. MADDEN: Yeah.

8 MR. MILLER: Okay. And, here, under "A" and
9 "B," these are the two things that they said you
10 violated, right?

11 MR. MADDEN: "Pursuant to this Complaint, the
12 Petitioner against Respondent, the Respondent guilty of
13 nonfeasance, probable cause to fail to supervise."
14 Yeah, that's exactly what they're saying.

15 They said that when Glen was following Chris'
16 interpretation and Glen was following Chris' ruling, I
17 didn't interfere. When Chris said to Glen, "These are
18 okay," or to sign that off, I didn't interfere.

19 So, that's when they said that, "No, you failed
20 to supervise. You were the ones that should have done
21 that. You should have inserted your interpretation."

22 And I told them, "That's not the way I see the
23 Code. And they said, "Well that's the way the Code's
24 always been." And I'm like, "Okay."

25 MR. MILLER: Can we agree that the words on

1 this piece of paper are the findings of BORA against
2 you?

3 MR. MADDEN: Well, the way they wrote that is
4 the way they interpreted it. When we discussed it,
5 when we held the hearing and my testimony and Chris'
6 testimony and Bill Dumbaugh's testimony.

7 MR. MILLER: Right, and after all the
8 testimony, BORA rejected your position and entered this
9 Order, correct?

10 MR. MADDEN: That's not true, Mr. Miller.
11 That's not what that says.

12 MR. MILLER: So they didn't find you guilty of
13 violating the Code?

14 MR. MADDEN: They found me guilty of not
15 overruling the Building Official as the Chief. They
16 said, "John, you violated the Code because you are the
17 Chief and you are the one that should have gave that
18 interpretation."

19 So, the mistake that I made was probably being
20 more assertive and, in this case, being insubordinate
21 with Mr. Augustin. And I didn't agree with the Board.
22 I could not overrule Mr. Augustin. I could not insert
23 my interpretation of the Code.

24 And they said, "That's where you failed to
25 enforce the Building Code." I'm like, "I don't see it

1 that way. Chris and I are both the same
2 certifications."

3 So, when this situation with John, it was
4 completely different. I don't think there's any
5 ambiguity at all. If I said something in the Code that
6 it needed to follow with respect to the building and,
7 John felt otherwise, and then John says, "Well I as the
8 Building Official can go with an alternative
9 procedures" -- and I can't think of the words right
10 now.

11 MR. MILLER: The bottom line was, you didn't
12 agree with BORA'S findings and you appealed their
13 findings to Circuit Court, and the Circuit Court agreed
14 with BORA and rejected your position, correct?

15 MR. MADDEN: Well, I think the appeal that
16 Denise and did was on the procedural thing, not on the
17 actual Building Code itself. I think it was on a
18 procedural -- that was what we petitioned was the
19 procedural process.

20 MR. MILLER: The bottom line, though, is after
21 all of the BORA proceedings were over, you believe BORA
22 was wrong. Correct?

23 MR. MADDEN: We have a difference of opinion
24 and difference of interpretation. So, if BORA -- for
25 one, if BORA says that "John, as the Chief Building

1 Inspector, you are the sole authority for interpreting
2 the Code," if that's the way I interpreted the Code,
3 how can I be held guilty for interpreting the Code when
4 they said that "You're the sole authority for
5 interpreting the Code"?

6 MR. MILLER: I'm sorry, I didn't mean to talk
7 over you.

8 MR. MADDEN: Go ahead, Mr. Miller.

9 MR. MILLER: Okay. When the entire BORA
10 investigation of you began, you also -- I think you
11 testified on direct that you were either mislead or not
12 told that you were going to be the subject of the
13 investigation?

14 MR. MADDEN: Initially when Bill Dumbaugh -- I
15 don't know if he called me or he emailed me, or both,
16 whatever it was, and I said, "Bill, what's this about?"
17 And he goes, "Oh it's the same thing that we're going
18 through, whatever," I think was his response. Same
19 thing we went through the OIG or whatever.

20 And I said, "What do I need to talk about? Why
21 are we meeting?"

22 MR. MILLER: You agree, do you not, that
23 because you were being investigated by BORA had nothing
24 to do with why the City terminated you?

25 MR. MADDEN: I'm sorry?

1 MR. MILLER: You're being investigated by BORA
2 had nothing to do with why the City terminated you,
3 correct?

4 MR. MADDEN: Oh, that's not -- I don't agree
5 with that statement at all, Mr. Miller.

6 MR. MILLER: Okay. So, you believe that
7 somewhere in all of the documents, the City cited your
8 investigation as a reason for terminating you?

9 MR. MADDEN: I think this -- if I am
10 insubordinate and I am not following the chain of
11 command or I am not following Mr. Travers' procedure, I
12 was being put back into the same situation.

13 But even worse because I knew that John
14 Travers, even though he's a Building Official -- in
15 Broward County, if we take it outside of Broward
16 County, anywhere else, I think outside of Broward
17 County -- John is correct.

18 If these same situations were outside the
19 County, if John says, "This is what we're doing. I
20 think this meets Code. That meets Code." I'm okay
21 with that. But, in Broward County, we're the only ones
22 that I'm aware of where it says the Chief is the sole
23 authority.

24 So, that puts John in a conundrum, it puts me
25 in a conundrum, it puts all Chiefs in a conundrum.

1 When the City looks at it, John is the authority having
2 jurisdiction. John is the Building Official. I would
3 love for John to have all that. I think it would be
4 awesome. And then if John says, "This meets Code,"
5 I'm okay.

6 I'm gonna say if it's a life safety thing. But
7 when Broward County says that, "You, John Madden, are
8 the sole authority, you're the Chief." They're the
9 ones that certify me. They're the ones that certify
10 John, everybody. And when they were threatening me
11 with that, it would have been even a heck of a lot
12 worse.

13 MR. MILLER: At the point in time that you were
14 suspended in October of 2016, BORA had not made any
15 decisions yet, had they?

16 MR. MADDEN: Oh, I met with Jim DiPietro. I
17 talked to him. I talked to Bill Dumbaugh. I talked to
18 Chris Fardelmann. I talked to them all. I says [sic],
19 "You guys are nuts!" I says [sic], "You don't read it
20 the same way I do."

21 He says, "No that's the way it's always been.
22 And they said to me, "If you challenge this thing, all
23 bets are off. There's no guarantee what can happen
24 with you."

25 And then when they started to move forward with

1 those proceedings, they were serious and I took them
2 very serious. And I'm like, "No, you guys aren't
3 playing around."

4 So, I went to Jim DiPietro's office, I talked
5 to Jim Dumbaugh, I talked to Chris Fardelmann when he
6 was at the City. And I said to them and they said,
7 "No, John. You are the sole responsible person." And
8 I'm like, "I don't agree with you."

9 MR. MILLER: So, your position is that because
10 you had been told by BORA that they were going to
11 investigate you, that it was appropriate for you, when
12 you thought your interpretation was different from John
13 Travers, to insert your interpretation with the other
14 employees of your Department. Correct?

15 MR. MADDEN: I was responsible. If you look at
16 Broward County, if you look at the Building Code in
17 Broward County -- no different than what happened last
18 year with the OIG in the City of Fort Lauderdale.

19 But, Broward County last year -- I'm sorry,
20 what was my thought? When the BORA proceedings were
21 going against me, I was taken very serious. I was
22 taken -- "You guys could decertify me; you could do a
23 number of things against me; and you're holding me
24 accountable."

25 And so, when you look at the Code, everybody

1 that's certified as a Building Inspector -- you have
2 people in zoning, you have people in code, you have
3 this and that -- and if they're citing the Florida
4 Building Code in any way, shape, or form, and that
5 falls under my authority, then I'm the one responsible
6 for that.

7 And that's what happened with Glen. Glen
8 Osborn was the Assistant Building Official. When Chris
9 would go on vacation or go out of the office, Chris
10 would put Glen in charge in his absence because Chris
11 knew that I had a different interpretation.

12 So, when Chris would leave -- if he left town,
13 and something came up, I would have denied it, because
14 I felt that I was the authority having jurisdiction.
15 But, because Glen followed Chris' interpretation and
16 not mine, Chris would put Glen in charge as opposed to
17 me.

18 So, when he would go out of the office on
19 vacation for a week or two, Glen would sign the COs,
20 Glen would do this, Glen would do that, and Glen worked
21 for me.

22 MR. MILLER: I just want to make sure I'm
23 clear. Your position is that because BORA found in
24 2018 that you should have overruled the Building
25 Official or inserted your own judgment, that justified

1 the way you were acting in 2016. Correct?

2 MR. MADDEN: Mr. Miller, in 2016, they made it
3 real clear. "You can pay the fine and you can move
4 forward and we're done."

5 MR. MILLER: Okay.

6 MR. MADDEN: "If you don't and you challenge
7 this thing, all bets are off." I took that very
8 serious. I was doing everything I could to not get
9 into trouble, to not be found guilty of this, and I
10 still don't think I'm guilty of it.

11 MR. MILLER: Okay. Fair enough.

12 Now, would you agree with me that in an office
13 setting such as the DSD -- right, you would agree that
14 within the confines of the DSD -- you would
15 characterize that as an office setting?

16 MR. MADDEN: I do.

17 MR. MILLER: Okay. Would you agree with me
18 that certain people certainly react differently to
19 people lecturing them, dictating to them, yelling to
20 them, talking to them, disciplining them? Everybody
21 responds differently to those types of situations,
22 right?

23 MR. MADDEN: I think in an office setting, I
24 think in the world as we see it and we live it,
25 everybody reacts different on many different aspects of

1 life.

2 MR. MILLER: And there are -- certainly, in
3 your career, you've come across people who, if they get
4 yelled at, it rolls off their back. There's other
5 people, if they get yelled at, they shrink in a corner.
6 People react differently to that type of interaction,
7 correct?

8 MR. MADDEN: I agree with you.

9 MR. MILLER: And you would agree with me
10 further that the way people feel when they are treated
11 that way is not something that anybody else can
12 control, right?

13 MR. MADDEN: Yeah, the way that people feel,
14 the way they react, we're all different. It's part of
15 life.

16 MR. MILLER: All right. So, if people feel
17 that the words that are being spoken to them are
18 demeaning or hurtful, that's just how those particular
19 people react to that, right?

20 MR. MADDEN: Yes.

21 MR. MILLER: Now, in your response that you
22 wrote in this case, one of the things you said was that
23 you believe if people are afraid of you because of your
24 actions, that's their problem, right?

25 MR. MADDEN: Did I say that?

1 MR. MILLER: Well, let's see how you phrased
2 it. You said the following: "Many of the statements
3 are obviously based on supposition and an irrational
4 fear without any basis in reality." Those are your
5 actual words that you wrote. Okay?

6 MR. MADDEN: Okay.

7 MR. MILLER: So, how is it that you're able to
8 tell if people are reacting to things that you have
9 said and done to them with an irrational fear and
10 without a basis in reality? How can you determine that
11 about somebody else.

12 MR. MADDEN: Well, I think this way -- I think
13 that in a couple of those statements that referenced to
14 me being in the military, or me being a Marine, or me
15 being a combat veteran, I think when you put everybody
16 into the same category is just as unfair as putting
17 other people in the same category.

18 So, in the situation when you say that a
19 veteran is going to go crazy or shoot the place up, or
20 stuff like that, I think that's a disservice to the
21 millions of veterans that have served our country.
22 And, I just don't think that was fair.

23 And I think to categorically put everybody into
24 the same boat is wrong. No different than putting
25 every person into the same category and what they see

1 and what they perceive is wrong. We're all part of our
2 life, our experiences, how we live, how we've grown up,
3 the experiences that we've had in life.

4 MR. MILLER: So, when you wrote that -- I'm
5 sorry, again I don't mean to keep talking over you. I
6 apologize.

7 MR. MADDEN: Go ahead, Mr. Miller. I'm sorry.

8 MR. MILLER: So, when you wrote that, that's
9 really the portion that you had in mind that you were
10 responding to, the things that you read where people
11 made comments about you being a Marine or having a
12 weapon. That's really what you were referring to with
13 those comments?

14 MR. MADDEN: You know, Mr. Miller, I don't --
15 we're going back four years and my total thought
16 process at that time with the information that I had is
17 different than today. Today, I know a lot more today
18 than I did then.

19 MR. MILLER: All right. You talked at great
20 length during your direct examination about the Tiffany
21 House project, 2900 Riomar. Do you remember discussing
22 that?

23 MR. MADDEN: I do.

24 MR. MILLER: There were photographs that were
25 shown of some of the work that was being done. You

1 commented on those. You recall that?

2 MR. MADDEN: Yes.

3 MR. MILLER: Those photographs, if I recall,
4 and that interaction was taking place in September of
5 2016. The original building permit application for
6 that job was received on June 8th, 2016. You're aware
7 of that, right?

8 MR. MADDEN: That's not correct.

9 MR. MILLER: It's not?

10 MR. MADDEN: No.

11 MR. MILLER: So, the Broward County Uniform
12 Building Permit Application received June 8th, 2016, for
13 that project, that's not correct?

14 MR. MADDEN: That's not correct.

15 MR. MILLER: Why is it not correct?

16 MR. MADDEN: What permit are you referring to,
17 Mr. Miller?

18 MR. MILLER: I'm referring to 2900 Riomar
19 Street, Description of Work: 12-story, 129-units.
20 Private Provider: Birch Oceanfront Sub 19-26, etc.
21 It's executed on June 8th, 2016, and received in the
22 office that same day.

23 MS. BLEAU: Is this part of your exhibits, Mr.
24 Miller, or are you asking this witness about something
25 none of us have seen.

1 MR. MILLER: This is one of the documents you
2 showed him.

3 MR. MADDEN: What's the permit number?

4 MS. BLEAU: You know which one, so I can pull
5 it up?

6 MR. MILLER: Well, in my hand I have the
7 application. I don't have the actual permit in my
8 hand. I was asking about the application.

9 MS. BLEAU: So, it wasn't the document I showed
10 him?

11 MR. MILLER: Well, I didn't pull this out of
12 the air. I got it from somewhere.

13 MS. BLEAU: Okay. I don't know what you're
14 looking at and I don't think Mr. Madden does either.

15 CHAIR ADELSON: So, can you share it with him?
16 That way we can see and then we can identify where it
17 is in the documents.

18 MR. MILLER: I don't have the ability to do
19 that at the moment because this is not saved on my
20 computer.

21 CHAIR ADELSON: Mimi, is there anything wrong
22 with me if he scans it in -- well, if he can scan it
23 in, maybe then he could share it, or just emailing it
24 to you and we could share it for him -- either way. Or
25 we can come back to it if you can't do it right this

1 moment.

2 MR. MILLER: All right. I'll come back.

3 MS. TURIN: If it's just a single page, a
4 screenshot?

5 MR. MILLER: It's a single page, but I have to
6 get it scanned in to get it onto my computer.

7 CHAIR ADELSON: Got it.

8 MR. MILLER: I'll move onto something else and
9 I'll come back to that.

10 CHAIR ADELSON: Okay.

11 MR. MILLER: Did you during your time ever
12 accuse John Travers and Luis Hernandez of being in
13 cahoots with MTCI?

14 MR. MADDEN: No.

15 MR. MILLER: So, if others heard you say that,
16 they're all lying?

17 MR. MADDEN: I didn't say cahoots. I've never
18 said cahoots.

19 MR. MILLER: Okay, if I take out the word
20 cahoots, did you use some other word suggesting that
21 they had some type of alternative arrangement with
22 MTCI?

23 MR. MADDEN: The words I used is, "Something's
24 going on," and I think I used that in my last hearing
25 date.

1 MR. MILLER: And what did you mean by that?

2 MR. MADDEN: Something's going on, that was
3 highly unusual for an Assistant Building Official and a
4 Building Official to be at a job site where they did
5 not have a permit. And then when I asked John about
6 it, and he did say that he was there at the job site,
7 he and Luis were there. And I'm like, "John, where's
8 the permit? They didn't have a permit."

9 And in my 25-plus years, I have never run into
10 a situation where a Building Official has been on the
11 job site and the job is almost completely done and the
12 Building Official -- typically the Building Official
13 would probably be yelling at me. I'd never experienced
14 that. That was beyond my comprehension.

15 MR. MILLER: What's your understanding of what
16 a PXA1 was?

17 MR. MADDEN: A PXA1 -- there's two PXAs.
18 There's a one and a two. One is just inspections and
19 the other one is inspections and plan review. And
20 that's a policy that was created by John and Luis.

21 MR. MILLER: So, if a job was being done as a
22 PXA1, what was the role of the City for that particular
23 type of permit?

24 MR. MADDEN: Well, in the sense of the City
25 itself, what is PXA1?

1 MR. MILLER: I'm sorry. And I'm showing you
2 asked me.

3 MR. MADDEN: The question is, what is PXA1,
4 what policy?

5 MR. MILLER: It's part of the Private Provider
6 permit system. My question was, if a permit is applied
7 for and it's a PXA1, what role does the City have? You
8 mentioned a minute ago --

9 MR. MADDEN: I don't know.

10 MR. MILLER: Inspections versus plans?

11 MR. MADDEN: There's two of them.

12 MR. MILLER: Right.

13 MR. MADDEN: And they both are very distinct,
14 so they have different roles and different
15 responsibilities that the City plays in accordance with
16 that policy.

17 MR. MILLER: Right. And that's my question, do
18 you know what the difference is between a PXA1 and
19 PXA2?

20 MR. MADDEN: I don't have the policies in front
21 of me. If you bring up the policies, we can take a
22 look at it.

23 MR. MILLER: Okay. So, you recognize them,
24 though, as being part of the Private Provider Program,
25 right? Those were the two categories?

1 MR. MADDEN: The PX Policy, the one and two?

2 MR. MILLER: Yeah.

3 MR. MADDEN: Yeah, that's part of the policy
4 that was created by John and Luis.

5 MR. MILLER: Who was Harry Coulter?

6 MR. MADDEN: Plans Examiner.

7 MR. MILLER: Okay.

8 MR. MADDEN: And Inspector. I don't think he
9 was just a Plans Examiner. I think he was maybe an
10 Inspector, too, but he did plan review and inspections.

11 MR. MILLER: For which trade?

12 MR. MADDEN: Building. Harry worked for me --
13 or he reported to me.

14 MR. MILLER: And, as far as when the Department
15 received a set of plans to be reviewed, is there any
16 kind of time requirement on how quickly that has to be
17 done?

18 MR. MADDEN: What type of plans and under what
19 policy? Are we still -- I don't know what you're --

20 MR. MILLER: Well, the job that you just
21 referred to, where you said John went out there and you
22 thought something was strange, there was a set of plans
23 submitted on April 29, 2016, that didn't get reviewed
24 for three months by Mr. Coulter, and I'm trying to find
25 out if that was typical for review of plans at that

1 point in time.

2 MR. MADDEN: Well, the issue at hand is if a
3 permit came in under the Statute 553.791, under
4 Alternative Plan Review and Permits, there is a
5 timeframe involved. And the timeframe requirements say
6 that the City has to issue the permit if they do not
7 find anything wrong.

8 And if they have not responded that the City
9 must issue a permit. So, you issue a permit card, you
10 issue a set of plans, it's in the computer indicating
11 that the permit has been issued. That's what the
12 Statute says, so that's what we would have to follow.

13 MR. MILLER: Okay. And if, in fact, the plans
14 weren't reviewed and it just sat there, is the permit
15 supposed to be issued in a certain period of time
16 anyway, or is it not supposed to be issued at all?

17 MR. MADDEN: No, if the review did not give any
18 indication of any deficiencies found by the City
19 Building Department Plans Examiners, if it is in fact
20 one of the two policies that deals with plan review and
21 permitting, then the City is obligated to issue a
22 permit.

23 So, when you look at the permit in the
24 computer, it will show that the permit was issued, a
25 permit card was printed, and the set of plans will be

1 at the job site.

2 MR. MILLER: And what I'm getting at is this.
3 And since I don't know how it worked, I'm actually
4 asking at this point, in that scenario where the City
5 fails to review the plans in the appropriate time, is
6 it automatically that the permit is issued or does
7 somebody have to physically go in and do that?

8 MR. MADDEN: That's John's responsibility on
9 permit issuance.

10 MR. MILLER: I see.

11 MR. MADDEN: So when we as inspectors, or we as
12 people going out to a job site, like I've said and I've
13 always done throughout my career, show me your permit
14 card, show me your plans issued by the City, and show
15 me your -- in this case -- it would be a logbook.

16 So, however that is, the only way we would be
17 able to determine that the permit was issued is with
18 that information at the job site. And the Building
19 Code says that permit documents, the permit set of
20 plans, the permit card, must be on the job site at all
21 times while work is underway. That's what the Code
22 says.

23 MR. MILLER: Okay. Would you agree with me
24 that in your role as the Chief, one of the
25 responsibilities that you had was to actually make sure

1 that the processes were working on behalf of both the
2 City, to ensure what they had to ensure, and the
3 builders, who are basically partners with the City.
4 That, in general, was one of your responsibilities, was
5 it not?

6 MR. MADDEN: It was, and, in fact, I sent out
7 an email to that effect.

8 MR. MILLER: Okay. So, you did not view your
9 job, did you, as one where your role was to go out and
10 stop things? That wasn't your job, was it?

11 MR. MADDEN: Pardon me?

12 MR. MILLER: To go out and stop building, that
13 wasn't part of your job, was it?

14 MR. MADDEN: Well, I think my responsibility as
15 a licensed Code official is to find out whether or not
16 if something complies with the Code. So, I wouldn't
17 limit it to any part of that other than the
18 responsibility that's given to me by the certifications
19 that I have.

20 MR. MILLER: So, if you were to go out to a job
21 site in particular and, for whatever reason, you found
22 that the plan approval wasn't on site or the permit
23 card wasn't there, what did you perceive your role to
24 be in that scenario?

25 MR. MADDEN: Well, it was kind of like -- it

1 was to help through this process, as they developed
2 this process, this PX policy -- which was new to
3 everybody -- is to help get through that, not only for
4 the people in the field, but for those of us in the
5 office. Prior to this PX policy, every experience that
6 I had with the City, it worked fine.

7 MR. MILLER: Okay.

8 MR. MADDEN: The plans came in, the permits
9 were issued, even though it was done by the Private
10 Provider. They would call, schedule their inspection,
11 our Inspectors would go out. Everything was okay.
12 Everything was passed. It was good.

13 The plan reviews, the same thing. That process
14 went through and if it worked and the plans were okay
15 and they met Code, it was fine. I'm okay with it.

16 But this PX policy was something entirely
17 different. It was a whole new process and way of doing
18 this, so when it was first put out there, there was a
19 lot of questions involved.

20 We were all trying to figure out how to get
21 this thing, stay within the requirements of the Code,
22 stay within the requirements of the Statute, and still
23 meet our customer's needs -- I mean, what the intent
24 of the whole process is.

25 MR. MILLER: So, in your understanding of your

1 position as the Chief, if you got to a job site and
2 there were questions about what had been done, you
3 agree your job was to try to facilitate a resolution of
4 that, correct?

5 MR. MADDEN: That's part of my job.
6 Absolutely, that's part of my job.

7 MR. MILLER: That complied with the Code,
8 protected the City, protected everybody, protected the
9 public. That's what your job was, right?

10 MR. MADDEN: Oh, I agree with you one hundred
11 percent, Mr. Miller.

12 MR. MILLER: So, it wasn't your job to ride
13 around, for example, and secretly take pictures and
14 record people on the opportunity that you could get
15 somebody, right? That wasn't what your job was
16 supposed to be, was it?

17 MR. MADDEN: Well, I don't know if I can speak
18 on that when you say secretly record and secretly do
19 things? If that's --

20 MR. MILLER: I mean, do you think that was part
21 of your job? If you did, tell us.

22 MR. MADDEN: That was a task that I was given.

23 MR. MILLER: Okay. I want to ask you about
24 some of the specific people that you've commented on
25 during your testimony. You talked at length about the

1 testimony of Mr. Cross in this case, and you said that
2 you were very surprised by what he said and that you
3 didn't have an explanation as to why he would say those
4 things, right?

5 MR. MADDEN: Yes.

6 MR. MILLER: Was he lying in his testimony?

7 MR. MADDEN: His perception, as we talked
8 earlier, his perception of the conversations that we
9 had -- the interactions that Mr. Cross and I had --
10 were not the same perceptions as I had. And, his
11 perception of me demeaning him, or making him feel less
12 of a man, or things like that, no, that was never, ever
13 my intention. I like Mr. Cross.

14 MR. MILLER: But as far as the actual words
15 that he claims that you said, was he telling the truth
16 or was he lying?

17 MR. MADDEN: Which words?

18 MR. MILLER: About "You're a big guy, I've got
19 something that can stop you," that whole conversation.
20 Did that happen, or was he lying about that?

21 MR. MADDEN: I don't remember my exact words,
22 but I never threatened Mr. Cross with any physical
23 harm. I never threatened him with anything that would
24 hurt him, that would injure him, that would kill him.
25 I never threatened Mr. Cross. Never!

1 MR. MILLER: All right. Valerie Arthur, did
2 she lie?

3 MR. MADDEN: On what?

4 MR. MILLER: Her testimony before this panel.

5 MR. MADDEN: Give me exact -- and I'll tell you
6 whether she lied or not.

7 MR. MILLER: The accusation she made about you
8 yelling and demeaning her in the public area of the
9 building.

10 MR. MADDEN: I did not demean her and I did not
11 yell at her in the public realm.

12 MR. MILLER: So, if she said that, she's lying?

13 MR. MADDEN: Yes.

14 MR. MILLER: You've already told us, I think,
15 during your direct examination, you believe that Mr.
16 Goldstein, the contractor who wrote the letter, that he
17 was lying. Right?

18 MR. MADDEN: On many aspects of his written
19 letter, yes.

20 MR. MILLER: John Dougherty, he came in and
21 testified before this panel. Did he lie about what he
22 said about the way you treated him?

23 MR. MADDEN: Give me an example of what he said
24 and I'll tell you whether he was not telling the truth
25 or his perception was different than mine.

1 MR. MILLER: So you agree, do you not, that
2 many of the people who we have heard from in this case,
3 it's entirely possible their perception of what you
4 said to them was different than what you intended to
5 say to them?

6 MR. MADDEN: Well, there is perception and also
7 motive.

8 MR. MILLER: Ah. Okay. So, did all the people
9 that have testified against you have a motive to do so?

10 MR. MADDEN: I wouldn't say all.

11 MR. MILLER: Certainly, many of them, though,
12 you've accused of having a motive to testify against
13 you, correct?

14 MR. MADDEN: If you tell me by name, I'll tell
15 you if I feel that they had a motive.

16 MR. MILLER: Mr. Dougherty.

17 MR. MADDEN: Yes.

18 MR. MILLER: Mr. Oliva.

19 MR. MADDEN: Yes.

20 MR. MILLER: Mr. Hernandez.

21 MR. MADDEN: Yes.

22 MR. MILLER: Mr. Travers.

23 MR. MADDEN: Yes.

24 MR. MILLER: Now, you believe and have
25 testified that with regard to, for example, the Tiffany

1 House, that we were referring to a moment ago, that the
2 people -- in particular, John Travers -- and the people
3 that allowed that project to proceed were in the wrong
4 because certain things were not done correctly at that
5 point, right? They didn't have the appropriate
6 permits. The job had progressed beyond where it could
7 go. Those are some of the things you talked about in
8 your direct exam, correct?

9 MR. MADDEN: I agree.

10 MR. MILLER: And, so much so that even after
11 you were terminated from the City, you have complained
12 to various boards and people about that particular job,
13 correct?

14 MR. MADDEN: Yes.

15 MR. MILLER: You went to BORA about that job,
16 right?

17 MR. MADDEN: Yes.

18 MR. MILLER: You went to the Office of the
19 Inspector General about that job, right?

20 MR. MADDEN: Yes, I believe I did.

21 MR. MILLER: Okay. You specifically accused
22 the Private Provider of violating the engineering rules
23 on that job, correct?

24 MR. MADDEN: I'm not sure how the Private
25 Provider can violate engineering rules if they're not

1 governed by the Florida Board of Professional
2 Engineers.

3 MR. MILLER: All right. So, do you recall
4 filing a complaint against MTCI with the State of
5 Florida, Florida Engineering Management Corporation?

6 MR. MADDEN: I filed a complaint with the
7 Florida Board of Professional Engineers.

8 MR. MILLER: And that was something that you
9 did after you were terminated from the City, correct?

10 MR. MADDEN: That's correct.

11 MR. MILLER: This is -- actually in Mr.
12 Madden's notebook, this is Exhibit number 88, but I'm
13 going to share the screen in a moment, if I can find
14 it.

15 MS. BLEAU: Want me to do it?

16 MR. MILLER: I have it. I'm just not seeing it
17 on screen for a second. Just give me one second.

18 MS. BLEAU: I have it up.

19 MR. MILLER: Sorry about this everybody.

20 CHAIR ADELSON: Technology is not always our
21 friend.

22 MR. MILLER: Yes, I know. Can everybody see
23 that now? Did I actually get it right?

24 MS. BLEAU: Yes.

25 MR. MILLER: So, this is what I'm referring to

1 Mr. Madden. You can see this complaint filed by you on
2 June 27th, 2017, against MTCI, correct?

3 MR. MADDEN: Yes.

4 MR. MILLER: And the complaint was what? What
5 were you complaining about with regard to the engineers
6 on this job?

7 MR. MADDEN: Well, that's why this was
8 dismissed, is because I was making the complaint
9 against MTCI, who I thought was the threshold inspector
10 or the engineer responsible for that, and the Florida
11 Board of Professional Engineers said that, "We do not
12 recognize or enforce the Florida Building Code."

13 And MTCI, in their response, said that they
14 cited a section in the Florida Building Code that
15 doesn't exist in Broward County, but it exists
16 throughout the State of Florida.

17 So, when I talked to the representative from
18 the Florida Board of Professional Engineers, she said
19 that, "We do not enforce the Florida Building Code;
20 therefore, your complaint against MTCI, who is not
21 acting as the engineer of record or the threshold
22 inspector." And they said, "It's not valid. This is
23 not the Board you make that complaint to."

24 MR. MILLER: They investigated this for two
25 years, right?

1 MR. MADDEN: I don't know how long they
2 investigated it.

3 MR. MILLER: Well, I'm showing you the Order of
4 Dismissal was entered in March of 2019, and you made
5 the complaint in June of 2017.

6 MR. MADDEN: Yeah, that was the dismissal
7 because there was a debate with them when I was going
8 back and forth with them. They initially found
9 probable cause to proceed. They found that, yes, there
10 was actual things that violated whatever rules that
11 they were seeking, but in the end it was the
12 interpretation that the Florida Board of Professional
13 Engineers doesn't recognize or enforce the Florida
14 Building Code. So, I left it at that.

15 MR. MILLER: So, the conclusion was the
16 complaint that you made was dismissed, correct?

17 MR. MADDEN: Yes.

18 MR. MILLER: And what they wrote, as you can
19 see on the screen, is that there is no evidence
20 provided to indicate MTCI violated any of the laws and
21 rules governing the practice of engineering. That was
22 --

23 MR. MADDEN: Yeah, the practice of engineering.
24 That doesn't mean that they didn't violate the Building
25 Code. They just said that this Board that oversees

1 MTCI's responsibility, because they were not the
2 engineer of record.

3 So, they didn't design the structure and their
4 role -- if you look at 553.791 -- their role is plan
5 review and inspections. And in this case, has nothing
6 to do with the responsibility of a threshold inspector,
7 the responsibilities of the oversight of a threshold
8 building that's specifically tasked by the Florida
9 Building Code, Chapter One in Broward County.

10 So, they said that this is not the Board --
11 their responsibility and their role as engineering this
12 is not governed by the Florida Board of Professional
13 Engineers.

14 MR. MILLER: So your complaint --

15 MR. MADDEN: I have that. There was an email
16 that they sent in clarifying that.

17 MR. MILLER: The point is the complaint you
18 made against MTCI turned out to be incorrect.

19 MR. MADDEN: Well, the complaint was not
20 incorrect. They just told me that this Board is not
21 the one that you should be complaining to.

22 MR. MILLER: So, in the span of a year and a
23 half, at least, we know with regard to your involvement
24 with other matters, BORA disagreed with you, found
25 against you; the Professional Engineers ruled against

1 the complaint you made. So, on at least two occasions
2 that we know of, people have determined that the
3 complaints that you're making about things were
4 professionally incorrect, right?

5 MR. MADDEN: Well, no, I don't agree with that.
6 And the reason why I don't agree with the initial
7 statement when you said that "BORA didn't agree with
8 you on your complaints," I don't know if BORA has
9 finished their investigation.

10 MR. MILLER: [Unintelligible]

11 MR. MADDEN: Nor do I know if OIG has completed
12 their investigation either.

13 MR. MILLER: I was referring to the
14 investigation into you.

15 MS. BLEAU: You said that -- Mr. Miller, you
16 said regarding complaints that he made to BORA. He
17 didn't make a complaint to BORA about that, so --

18 MR. MILLER: No, that's not what I said in my
19 question. If I did, I misspoke.

20 MS. BLEAU: You did.

21 MR. MILLER: Okay. I'll ask the question
22 again. We know in 2018, BORA, an outside professional
23 organization, reviewed your conduct, disagreed with
24 your interpretation of things, correct?

25 MR. MADDEN: No, I disagreed with their

1 interpretation.

2 MR. MILLER: Okay.

3 MR. MADDEN: I disagreed with what they said.

4 MR. MILLER: They didn't disagree with you, you
5 disagreed with them. Okay.

6 MR. MADDEN: Pardon me?

7 MR. MILLER: So, they didn't disagree with you,
8 you disagreed with them?

9 MR. MADDEN: We agreed to disagree.

10 MR. MILLER: Okay. I've made my point. I'll
11 move on. Now, obviously in this particular case, the
12 City disagreed with you when they decided to terminate
13 you, correct?

14 MR. MADDEN: Well, I don't know if they
15 disagreed with me. I don't think the City had all of
16 the evidence that I have shown and presented in this
17 hearing.

18 Well, they did have the evidence, they just
19 didn't use it or they didn't extract it from my
20 computer or my telephone. But, they certainly had the
21 emails, they had the video, they had my phone, they had
22 my computer. They had all that information. And I
23 even told them.

24 MR. MILLER: Right. And they had your
25 response, right?

1 MR. MADDEN: They had my response, yes.

2 MR. MILLER: Now, you testified back on the 15th
3 in this case and it's at page --

4 MR. MADDEN: The 15th of?

5 MR. MILLER: -- 145 of the transcript, about
6 the following. Again, I'm going to share the screen,
7 so you can read along with me what it is I want to ask
8 you about. Okay? Can you see this?

9 MR. MADDEN: Yes.

10 MR. MILLER: And the question that led up to
11 this was, you were talking about somebody had brought
12 it to your attention that something was going on out at
13 the BSO project, and that's how you originally went out
14 there. You remember talking about that?

15 MR. MADDEN: I do.

16 MR. MILLER: So, you testified in response to
17 Ms. Bleau's questions about people would come to things
18 that they thought might not be going on above board.
19 And you said, "They do come to me. They did come to
20 me. And they still come to me." Those were your
21 words, correct?

22 MR. MADDEN: That is correct.

23 MR. MILLER: And then Ms. Bleau said, "This
24 many years after you were terminated from the City,
25 they're still coming to you about issues that they

1 think are going on?" And you said, "Yes." She asked
2 you, "Why do they come to you?" I objected.

3 Ms. Bleau asked you again, "Why do you think
4 the reason is?" And this is your answer: "Oh I know
5 why they come to me. I mean, I can't -- Mr. Miller, I
6 don't know exactly, but I guess they come to me because
7 they know I'm going to do something about it." My
8 question to you is --

9 MR. MADDEN: Can you scroll that down. I want
10 to read that, because I couldn't see all that.

11 MR. MILLER: Sorry. Yes, sir.

12 MR. MADDEN: Oh, okay.

13 MR. MILLER: Okay?

14 MR. MADDEN: Yep.

15 MR. MILLER: So, my question to you, sir, is,
16 since being terminated from the City, what has been
17 brought to you that you have done something about it?

18 MR. MADDEN: There was a project -- this was
19 another MTCI project at 1919 Southeast 10th, and this
20 project, once again, was constructed without permits,
21 constructed without a permit being issued, and it went
22 to, I don't know, the third floor, fourth floor, maybe
23 even higher than that.

24 So, I sent some emails to the City and then I
25 followed up and I saw where a stop work order had been

1 issued, the job was put on hold, the work stopped, the
2 work had -- let's see what else there was on that --
3 but they were working without a permit. The permit had
4 not been issued and it went beyond the scope of the
5 permit. That was one job that comes to mind.

6 There was another job where it was a warehouse
7 district and it was turned into a bar, and the bar was
8 filled with people on the weekends. So, someone called
9 me about that.

10 So, I went down there and confirmed that the
11 bar was operating. It was a warehouse district. It
12 was in a regular warehouse. And, so when I did the
13 permit history and the permit search on it, they didn't
14 have a permit for that.

15 In fact, they had been cited by Code and then
16 the Code, I think, case stopped. I'm not sure exactly
17 all of the steps in the process, but I think that they
18 did actually -- I think I wrote an email on that.

19 And then there was another job that wasn't
20 MTCTI. Both of those were MTCTI. There were other jobs.
21 And that was one of them.

22 And then the City's job, I think it was called
23 -- the football player? Up on the beach, the turn-
24 around on A1A -- that work was -- they were progressing
25 on that job. Someone called me on that one, said they

1 were progressing without permits on that.

2 So, I went and looked at the job and saw that
3 they were under construction without permits and I
4 think I sent an email to the people on that. And then
5 that job stopped for quite a while until they got the
6 permits.

7 And I think there was a couple other things.
8 There's one about, I believe it was a sewer -- raw
9 sewage that was being pumped into the City's streets,
10 and someone told me about that.

11 So, I went down and I was standing there on the
12 sidewalk on AlA and the raw sewage was bubbling out of
13 the sidewalk; and people were walking through it in
14 their sandals and so forth. So, I sent an email on
15 that. I can't recall exactly all of the jobs now.

16 MR. MILLER: So, who is it that's calling you
17 with all of these things?

18 MR. MADDEN: I don't know exactly the names of
19 the people for each of those cases, so I wouldn't be
20 fair to say who they are and who have been giving me
21 those names, because I don't keep track of the name on
22 any particular project. So --

23 MR. MILLER: But are these people that work
24 within the Department, or are you talking about public
25 citizens?

1 MR. MADDEN: Both.

2 MR. MILLER: Okay. So, you think it's
3 appropriate that somebody that still works in the
4 Department would bring that to you, an outsider, as
5 opposed to going to somebody within the Department to
6 do something about this?

7 MR. MADDEN: Well, I think they bring it to me
8 because if they bring it and they push the issue, like
9 I did, they'll probably wind up in the same predicament
10 that I am currently in.

11 MR. MILLER: Okay.

12 MR. MADDEN: Because, it just seems to work
13 that way.

14 MR. MILLER: So, someone who still works there,
15 you believe, thinks that you can effectuate a fix to
16 the problem better than the actual people working in
17 the Department?

18 MR. MADDEN: Seems to work when I get involved.
19 The work does stop and then when I look at the history
20 of the activity on the permit, it does seem to stop.
21 And it didn't stop -- if they were bringing it to the
22 attention of people in the office and it wasn't
23 stopping -- but when I wrote the emails and sent them,
24 then the work stopped.

25 MR. MILLER: When we spoke last time, I had

1 asked you about the October 12, 2016, memo that Anthony
2 Fajardo had authored that initiated the investigation
3 into you. And you told me as of last time, that you
4 did not recall ever having seen that document before.
5 Do you remember saying that?

6 MR. MADDEN: I did not get that document and I
7 did not see that document until around the time this
8 hearing started.

9 MR. MILLER: Okay. So, as of January, when I
10 had first started questioning you, you had seen that
11 document?

12 MR. MADDEN: Pardon me?

13 MR. MILLER: You had seen that document as of
14 January of this year?

15 MR. MADDEN: I did see the document, yes.

16 MR. MILLER: Mr. Madden, I don't have any more
17 questions for you. I think I'm done. Thank you.

18 MR. MADDEN: You're welcome.

19 MS. BLEAU: Madam Chair, would this be a good
20 time for a quick break?

21 CHAIR ADELSON: Yes. Let's take a ten-minute
22 break, comfort break, or whatever, food break, and
23 we'll see you back here at let's just say 10:40, seven
24 minutes.

25 [BREAK FROM 10:33 A.M. - 10:44 A.M.]

1 CHAIR ADELSON: Timer is still on. Share
2 screen. It looks like everyone's back though. All
3 right. So, we're back on. It is 10:44.

4 MS. BLEAU, did you have any redirect?

5 MS. BLEAU: I do, ma'am.

6 MS. TURIN: Kerry isn't back.

7 CHAIR ADELSON: Oh, sorry. Thanks, Mimi.
8 Everyone's all over in different places. All right,
9 let's wait till Kerry gets back.

10 MS. TURIN: Back on the recording, and the
11 recording also.

12 CHAIR ADELSON: Mr. Travers is present. Thank
13 you. So, we'll just wait for Kerry, and I guess, the
14 recording. We're recording.

15 MR. BAQUERO: Yes, I haven't ended the
16 recording. The recording has been on.

17 CHAIR ADELSON: Yeah, the little button up
18 there's --

19 MS. TURIN: Oh great, okay.

20 CHAIR ADELSON: We just have to wait for Kerry.

21 MS. ARTHURS: I'm back. Sorry about that.

22 [TIME: 10:46 A.M.]

23 CHAIR ADELSON: All right. So, we can get
24 started with redirect of Mr. Madden by Ms. Bleau.

25 MS. BLEAU: Okay. Thank you. Mr. Madden, I'm

1 going to try to just follow up and hopefully clarify
2 for the Board, because I'm not sure the record is
3 clear, what actually happened with respect to the BORA
4 proceeding that Mr. Miller was asking you about. And
5 I'm going to share my screen and try to make this
6 clear.

7 Do you recall that at the beginning of this
8 proceeding, there was a PowerPoint -- are you all
9 seeing that, the PowerPoint?

10 MR. MADDEN: I can see it.

11 MS. BLEAU: Okay. Thanks. At the beginning,
12 and we ran through some of this, but hopefully this
13 will be clearer. So this first thing that I'm showing
14 you, which is Tab 5 in your exhibits, part of it, is an
15 email where you asked Mr. Dumbaugh what the nature and
16 purpose of the interview was, and then Mr. Dumbaugh's
17 response is below.

18 Prior to this, briefly, what was the issue that
19 arose that led to BORA doing this investigation? What
20 happened at the City, briefly?

21 MR. MADDEN: In 2012, it was when the new Code
22 changed, I had read the new Code changes and what was
23 about to take place and what was going to take place
24 was something Building Officials and Code Officials had
25 never been specifically tasked with, and that was

1 enforcing flood plain regulations.

2 I mean, we collected elevation certificates,
3 but not actually now enforcing a new regulation. So,
4 we had the regulation, we were reviewing it, and
5 there's a lot of emails that exchanged regarding that
6 interpretation of what the Code said and what the
7 standard said.

8 And, John Heller, who was the Chief at the time
9 -- I wasn't the Chief, I was an Inspector 3 -- John
10 Heller and I had the same interpretation of the Code
11 and Chris did not have the same interpretation, and
12 Chris was the Building Official.

13 So we met at the City Attorney's office. We
14 met several times. And John Heller left the City and I
15 assumed the role of Chief until I was promoted to
16 Chief. And Chris maintained his interpretation and I
17 didn't agree with it, but, like I said, I felt he was
18 the one ultimately responsible and because he held the
19 position. And I followed what he said until he changed
20 his interpretation in November --

21 MS. BLEAU: 2013.

22 MR. MADDEN: -- 2013. And when he changed his
23 position, then I met with the structural guys and met
24 with people and I told them what they needed to do, and
25 I gave them Chris' revised interpretation and that was

1 it.

2 So the OIG investigated it and Chris Augustin
3 and Glen Osborn were ultimately charged with misconduct
4 by the OIG and the State of Florida prosecuted Chris
5 and Glen and then Board of Rules and Appeals sent me
6 this email.

7 MS. BLEAU: Okay. Very good. Glen Osborn was
8 prosecuted for signing Certificates of Occupancy on
9 buildings that clearly did not meet the new flood plain
10 regulations, correct?

11 MR. MADDEN: Correct.

12 MS. BLEAU: So, Mr. Dumbaugh sends you this
13 email that says he wants to interview you. You ask
14 what the purpose of the meeting is, and he tells you
15 that they just want to close the case out.

16 And "We already have interviewed Chris and
17 Glen; once we interview you, we can complete the report
18 and be done with it. I have mentioned an attorney, but
19 I don't think there's a need for an attorney in case
20 you want it." Right?

21 MR. MADDEN: Yes.

22 MS. BLEAU: And then these are the findings --
23 actually part of the findings of the Broward Office of
24 Inspector General report, which was issued in March of
25 2015, involving corruption and abuse. They determined

1 probable cause that Augustin and Osborn engaged in
2 misconduct, which involved corruption and abuse.

3 That's a page from that report, correct?

4 MR. MADDEN: Yes.

5 MS. BLEAU: This is the original Request for
6 Investigation by BORA. If I engaged these, these would
7 have popped up separately, so I apologize if it looks
8 funny.

9 And Mr. Osborn gave a statement under oath that
10 indicates that you, as the Chief, was his supervisor,
11 and he said that you and Mr. Madden knew about the
12 changes in the Florida Building Code, but did not share
13 that information with him; that you knew about the
14 changes and advised Augustin about the changes in
15 August of 2012.

16 And Mr. Osborn stated that he did not believe
17 that any of the three other Plans Examiners knew about
18 the changes. Correct?

19 MR. MADDEN: That's what Glen said.

20 MS. BLEAU: That's what Glen said. So then we
21 go to eight, Mr. Dumbaugh's testimony. After charges
22 were brought against you, I took his deposition right
23 around the 2016 timeframe that we're focusing on with
24 you working at the City, correct?

25 MR. MADDEN: I was still working at the City.

1 I was still there.

2 MS. BLEAU: And I asked Mr. Dumbaugh -- he was
3 the Chief Investigator and he's also the Chief
4 Structural guy at BORA, right?

5 MR. MADDEN: Yes.

6 MS. BLEAU: And I asked him, "And you didn't
7 follow up with the Plans Examiners as part of your
8 investigation to determine whether or not this
9 statement was true or not. He answered, "No." I said,
10 "Why is that?" And he said, "Didn't feel like the need
11 to do it." I said, "Did you ask for the emails and
12 look at calendars to actually see what John did and
13 what he didn't?" "No." "Why not?" "Didn't feel the
14 need to."

15 And I said, "The responsibilities John had as
16 acting Chief Structural Inspector, you think was to
17 make sure everyone was aware of the Code changes?"
18 "Yes." "And based on your investigation, what steps
19 did he take to do that?" and he answered, "None."
20 Correct?

21 He said you did nothing to inform the Board --
22 sorry, your staff about the Code changes and that was
23 your Failure to Supervise charge, wasn't it?

24 MR. MADDEN: That's what Bill said. In fact,
25 when he interviewed me, I told him, just like I'm doing

1 now, "Get my emails. I got hundreds or thousands of
2 emails." As everyone knows, I send emails. "Look at
3 the emails. It's going to show you what I did. It's
4 going to show you that I did inform them."

5 MS. BLEAU: So, then after the investigation,
6 you get the formal complaint against you, again stating
7 that you did not share the information, according to
8 Osborn's sworn testimony, and that he indicated that he
9 didn't know about it and he didn't think anybody else
10 knew about it.

11 And then we're going to go to -- so, here's an
12 email that you sent in February. Now, you weren't the
13 Chief then, right, February of 2012?

14 MR. MADDEN: No.

15 MS. BLEAU: John Heller listed on this email
16 was the Chief at the time, but you were -- this is one
17 of the many emails, and I'm not going to pull them all
18 up -- that you sent where you're talking about the Code
19 and you're trying to understand what it means for the
20 Building Department. Is that true?

21 MR. MADDEN: Yes.

22 MS. BLEAU: And this email, this first one was
23 sent February 17 at 8:42. This email was sent 11:38
24 and Ralph Riles, Harry Coulton, and Glen Osborn were
25 sent a very similar email, right?

1 MR. MADDEN: It is the email. The Board had
2 the email that I sent to the other people. The Board
3 did not have this email. So, they used the other
4 email, saying that I did not inform the Plans
5 Examiners. And in this email I did email the Plans
6 Examiners, just the same email, the same day. I sent
7 them the same thing.

8 MS. BLEAU: You're right. I forgot about that.
9 Because actually you had sent this email and then this
10 was the response where Mr. Heller said what he thought
11 interpreted the flood plain to be --

12 MR. MADDEN: Right.

13 MS. BLEAU: -- and you said, "That is my
14 understanding." Based on what you had sent him, this
15 was his conclusion. You said, "That's my
16 understanding," and it was this email that was
17 specified by BORA as proof that you and Mr. Heller and
18 Mr. Augustin were aware, but Mr. Osborn was not.
19 Right?

20 MR. MADDEN: That's what the Board was saying.
21 They used -- they didn't have all the emails. They
22 only were given the emails that showed that I didn't do
23 anything, so they reached that conclusion that I didn't
24 inform the Plans Examiners, which I did. I totally --
25 I sent them the same email, the same day.

1 MS. BLEAU: So here's the complaint, which is
2 Tab 9 in our exhibits. I'm sure Mr. Miller had this,
3 but Violation One is that you failed to supervise and
4 coordinate the efforts of the Structural Plans
5 Examiners.

6 And, sort of connected to that, the conclusion
7 is that you were aware of the Code change, as evidenced
8 by the February 17th email and the August 3rd email, but
9 failed to instruct the Plans Examiners about it until
10 Chris' written interpretation in November of 2013. Is
11 that right?

12 MR. MADDEN: Yeah, but look at Violation Two.

13 MS. BLEAU: I know. I'm getting there. So,
14 the second violation is that you failed to provide your
15 interpretation of the flood plain regulations and it
16 was also in what Mr. Miller pulled up, as "B." He was
17 only asking you about "A." We can look at that in a
18 minute.

19 But in the complaint that was filed against
20 you, the second charge, "Failed to provide
21 interpretation," and again it says, "You were aware of
22 the interpretation evidenced by the email that you" --
23 oh, sorry, this one is -- excuse me, I'm not making
24 this clear.

25 Number Two says, "Mr. Madden was also aware of

1 the staff interpretation of 104.4, as evidenced by the
2 email Mr. Madden was sent to Jim DiPietro on 10/15/15,
3 in which he quoted an email sent to him from Mr.
4 Dumbaugh on 4/4/12, stating that" -- and here's the
5 important part -- "only the Chief Inspector can
6 interpret the Building Code." Right?

7 And that was their charge, that you didn't
8 interpret the Code and that you knew that only the
9 Chief Inspector could interpret the Building Code.

10 MR. MADDEN: That was because I asked Bill a
11 question. I wasn't the Chief at the time, and I asked
12 Bill Dumbaugh a question back in whenever that was --
13 2012.

14 I asked him the question and Bill wrote back to
15 me that, and he said, "You" -- in fact, I included that
16 email when I sent that to him -- "That you as the
17 Chief, you are not the Chief, and only the Chief can
18 interpret the Code."

19 MS. BLEAU: Okay. So I was going to see if I
20 can find that. It's in here somewhere, but -- it's in
21 our records. So, you get charged with that. Now I'm
22 going to stop sharing for a second.

23 Next, we're going to take a look at your sworn
24 statement and discussion with Mr. Dumbaugh, because Mr.
25 Miller doesn't, or the Board doesn't have to take your

1 word for it. We have it in writing. So, this is, for
2 the record, Tab 158. This is your interview, July 28,
3 2015, before you were charged by BORA for not informing
4 your staff of the flood plain regulations and for
5 interpreting the Code.

6 And you all were having discussion about which
7 Code was in effect and Mr. Dumbaugh says, "Well, as
8 Chief, you were the one, you're the only one,
9 authorized to interpret the Structural Building Code."
10 And you said, "That is not correct." And he said,
11 "Well, that is how Chapter One is written." And you
12 said, "I suggest you read that." And he said, "Okay.
13 I will re-read that one." And you said, "Want me to
14 help you out?" And he said, "Nope. I'll re-read it
15 later."

16 And then you helped him out anyway. And you
17 said, "You see, your interpretation of that is
18 different than mine." And he says, "It is. In there,
19 it's my interpretation, it is," and then he says, "My
20 interpretation says the Chief for each discipline is
21 the one, the only one that can interpret the Code."
22 And then you said, "That's not what it says. Under the
23 sections of the Building Code, Florida, Chapter One,
24 the Building Official is the sole person responsible
25 for interpreting the Building Code; however, if the

1 Building Official is not licensed under a particular
2 section or discipline, then the Chief in that
3 particular discipline is the one to interpret the
4 Code." Did I read that accurately?

5 MR. MADDEN: You read that accurately.

6 MS. BLEAU: And he said, "Okay." And you
7 said, "Under the duties are the responsibilities of a
8 Building Official, so if the Building Official at the
9 time is structurally certified, Chief Building
10 Inspector, a Chief Inspector, a Chief Plans Inspector,
11 and the Building Official, that, I believe, says he's
12 the authority having jurisdiction."

13 MR. MADDEN: That's right. I still think that
14 today.

15 MS. BLEAU: I know. And Mr. Dumbaugh said,
16 "Well, we will agree to disagree on that one."
17 Correct?

18 MR. MADDEN: Yes.

19 MS. BLEAU: Sort of what it seemed like Mr.
20 Miller was trying to say -- your disagreement with
21 BORA, it was that you disagree with them, not that they
22 disagree with you, because your interpretation was in
23 the Augustin situation, you were not the authority
24 having jurisdiction, he was. Correct?

25 MR. MADDEN: Yes.

1 MS. BLEAU: But in Mr. Travers' situation, you
2 and BORA actually agree that you're the authority
3 having jurisdiction, not Mr. Travers.

4 MR. MADDEN: Correct.

5 MS. BLEAU: I thought I actually pulled up the
6 Code section, so you could actually look at 104. Hold
7 on one second. Actually, before I do that, let's just
8 go back and --.

9 I'm going to go back to the PowerPoint. I just
10 want to sort of address did you tell your staff about
11 the Code changes, and we already looked at the email,
12 the exact same email that you had sent to Mr. Heller,
13 where you were talking about it. What is this?

14 MR. MADDEN: The one on the right is an
15 announcement for a class that was put on by a guy by
16 the name of John Farinelli, really sharp guy, real
17 sharp, cool guy. And the book that he gave in this
18 class is the picture on the right. So the flyer for
19 the seminar is on the left and the picture is on the
20 right.

21 And he gave a big book out on the flood
22 provisions of the Code. So, it told all of us, "This
23 now is part of your responsibility in the Code." It
24 was like a one-day seminar and I just thought it was a
25 great seminar.

1 MS. BLEAU: And you went?

2 MR. MADDEN: Oh yeah.

3 MS. BLEAU: You --

4 MR. MADDEN: I sent the Plans Examiners to it.

5 MS. BLEAU: I know. I was going to find the
6 email where you did that. This email is where you --
7 it's Exhibit 37 of our exhibits --

8 MR. MADDEN: Announcement? Right there. 38?
9 Is that PowerPoint?

10 MS. BLEAU: Yeah.

11 MR. MADDEN: I think if you right-click you can
12 bring it forward. I think so. If you right-click that
13 box.

14 MS. BLEAU: The Exhibit 37, I think, was to
15 Dumbaugh's depo. It's actually Exhibit 15 here. So,
16 this is the email that you sent. You went July 13, you
17 sent it to, again, Glen Osborn, who said he knew
18 nothing about the flood plain provisions as well as a
19 bunch of other people, and thanked them for their
20 commitment; your understanding of the Florida Building
21 Code. "I attended this course; I highly recommend it,"
22 right? And this course is the Flood Provisions of the
23 2010 Code that you attended. Is that right?

24 MR. MADDEN: Correct. Yes.

25 MS. BLEAU: And you asked to get confirmation

1 of who was going to attend. Glen Osborn was listed as
2 attending. He's on the list of people who are going to
3 attend. And then you actually arranged to make sure
4 that they were scheduled off that day so they could
5 attend the seminar. Is that right?

6 MR. MADDEN: Right.

7 MS. BLEAU: And, we know from this document,
8 which is Tab 16, this is Glen Osborn's certification --
9 which you all have to do periodically, you have to say
10 what courses and you have to take so many courses?

11 MR. MADDEN: Yeah, when you renew your
12 certificate for the State as well as Broward, you've
13 got to include all of the courses that you took and
14 CEU's and attach that with the application to renew
15 your certification. We do that every couple years.

16 MS. BLEAU: And this shows that not only do we
17 know that Glen Osborn knew about the flood plain course
18 and that he registered to attend it, but we know he
19 actually attended it because he said he did, and
20 received seven hours of credit for attending a seven-
21 hour long course on the flood plain provisions that he
22 later said he didn't know existed. Do I have that
23 right?

24 MR. MADDEN: Yes.

25 MS. BLEAU: So, when you proved through the

1 discovery all of this and much more -- the pamphlets
2 that you bought and all the other things that you did
3 to educate your staff about flood plain regulations --
4 BORA still proceeded with the prosecution of you.
5 Correct?

6 MR. MADDEN: Yes, even when they were given the
7 evidence on that.

8 MS. BLEAU: And their new basis, or the basis
9 that they convicted you on was solely -- not that Mr.
10 Osborn didn't know, because we proved that that was not
11 true -- but that you did not provide your
12 interpretation and make sure that your interpretation
13 was enforced and that that led to your staff not
14 reviewing the plans properly, because they were
15 applying Mr. Augustin's interpretation, and that led to
16 the flood plain issue. Is that an accurate summary?

17 MR. MADDEN: When they ruled in that hearing,
18 they said I failed to supervise, and I failed to
19 provide my interpretation of the Building Code.

20 MS. BLEAU: And the failure to supervise was
21 simply that people you supervised approved plans that
22 were not in accordance with what the ultimate
23 determination of the Code requirements to be. Is that
24 right?

25 MR. MADDEN: Yes.

1 MS. BLEAU: And just to put that back up for a
2 second if anybody -- this is what Mr. Miller was
3 showing earlier when he kept asking you about "A"
4 Failing to Supervise. "B" is Failed to Provide Your
5 Interpretation. And again, this is in reference to the
6 flood plain provisions. Is that right?

7 MR. MADDEN: Yes.

8 MS. BLEAU: Let's go to Mr. Dumbaugh's
9 testimony, a couple of pages here and there. I don't
10 know that there's any confusion at this point.

11 "I'd asked Mr. Dumbaugh during the deposition
12 before the BORA proceeding, 'So, other than knowing
13 about the Code and, in your opinion, not making sure
14 Mr. Osborn knew about the Code, did your investigation
15 find that John did anything else wrong?'

16 "And he said, 'We didn't investigate anything
17 else. We found, no, we didn't. We didn't investigate
18 anything else. That was the purpose of the
19 investigation.'

20 "And I said, 'So if John knew about the Code,
21 even though you and a lot of other professionals
22 didn't, that maybe should have, and if John made sure
23 that his people knew about the Code, he wouldn't be
24 being brought before the Board today. Is that
25 correct?' And he said, 'Correct.'"

1 And again on five, "I asked, 'When an issue
2 arises in an area that the Building Official is
3 certified, is it appropriate for the Building Official
4 to divert responsibility for interpreting the Code to
5 other Chiefs, also certified in that same area?' And
6 he said, 'The Code requires him to do that.' And I
7 said, 'To divert it?' And he said, 'Yes.'

8 And "I said, 'So the Building Official is
9 prohibited under the Code from issuing any
10 interpretations of any Code regardless of his
11 certifications?' The Chief Investigator from BORA and
12 the Chief Building Inspector said, 'The Chief
13 Structural Inspector for each discipline interprets the
14 Code. You can tell that to the Building Official, the
15 Building Official could print it, but it, not as his
16 interpretation, as the Chief's interpretation.'

17 And I said, "Now answer my question." He said,
18 "I thought I did." And I said, "Is it your testimony,
19 the Building Official is prohibited from interpreting
20 the Code?" And he said, "Yes."

21 As this testimony was going on, and you were
22 hearing from the officials of BORA that the Building
23 Official is prohibited from interpreting the Code and
24 it is a hundred percent on you, your responsibility, at
25 the same time Mr. Travers is doing things with respect

1 to projects for the City and saying that it's his call,
2 not your call. Is that accurate?

3 MR. MADDEN: That's accurate.

4 MS. BLEAU: And just so we all understand why
5 you thought what you thought -- which is also how I
6 read it --

7 MR. MADDEN: There's a question?

8 MS. BLEAU: Yep, it's coming.

9 MR. MADDEN: Sorry, could you say that again.

10 MS. BLEAU: No, I didn't ask a question. I was
11 leading up to it. So, this is the 104.1.2 is what
12 existed at the time -- I don't know if that's what it
13 still says or not -- which says that "The Building
14 Official is hereby authorized and directed to enforce
15 the provisions of this Code and the Building Official
16 shall" -- shall -- "delegate powers, duties and
17 assignments to certain chief inspectors, to render
18 interpretations of this Code and adopt policies in
19 categories in which the Building Official is not
20 certified." Right?

21 MR. MADDEN: Correct.

22 MS. BLEAU: And that's why you interpret this
23 as saying if the Building Official and the Chief have
24 the same certifications, the Building Official makes
25 the call, which would have been Chris Augustin. And if

1 the Building Official and the Chief don't have the same
2 certifications, the Chief makes the call. Right?
3 That's your interpretation?

4 MR. MADDEN: My interpretation is if the
5 Building Official and I -- my interpretation -- if the
6 Building Official and I hold the same certifications,
7 my interpretation -- I'm going to follow the Building
8 Official. But that's not going to be the way it is
9 now, but it was prior to 2018. And if the Building
10 Official is not certified as Structural or Building,
11 then I believe that says that the Building Official
12 shall say to the Chief, "It's your responsibility to
13 interpret the Code and adopt policies and procedures in
14 order to clarify the application of the technical
15 provisions of this Code."

16 So, it puts it all on me, and that's what they
17 kept saying to me. "You are -- you're the one." And
18 what am I supposed to do? John knew that. John and I
19 talked about it. He knew how much pressure I was under
20 with the City.

21 We exchanged emails and I said, "John," and the
22 Board wanted to prosecute me in August. They wanted to
23 go right to the meeting in August or September of 2016.
24 They were giving me like a deadline to be prepared for
25 this case.

1 So, I'm trying to prepare for the case, I'm
2 trying to deal with what's going on with these work
3 without permits, and they were moving forward.
4 Because, I'm not going to agree to what their
5 interpretation is and I wouldn't.

6 So, they're like, "Okay, we're going to move
7 forward. You better get your case ready, because
8 you're going before the Board." I'm like, "Wait a
9 minute. I don't even have all the stuff I need for the
10 Board. I've asked the City for documents. I've asked
11 them to help me out."

12 MS. BLEAU: And what did the City say you had
13 to pay in order to get all your emails?

14 MR. MADDEN: Twenty Thousand Dollars -- like
15 Nineteen Thousand Dollars! "You want stuff to defend
16 yourself? Give us Nineteen Grand." I'm like, "Wait a
17 minute. I've worked for you guys. I worked for the
18 City. Why are you charging me Nineteen Thousand or
19 Twenty Thousand Dollars to get the documents, so I can
20 defend myself?"

21 MS. BLEAU: You okay? I want to move on to a
22 different topic. Permit by Affidavit or Private
23 Provider projects -- is a permit required?

24 MR. MADDEN: For a Permit by Affidavit?

25 MS. BLEAU: Yeah.

1 MR. MADDEN: The Building Department of the
2 local government is responsible for issuing that
3 permit. They are the ones responsible and a permit
4 must be issued.

5 MS. BLEAU: And the Private Provider policy,
6 which I put on the screen here, talks about before
7 permit is issued, and certain things that should occur;
8 which also suggests that a permit has to be issued.
9 Right?

10 MR. MADDEN: Yes.

11 MS. BLEAU: Because I thought from Mr. Miller's
12 questions of you, he seemed to be implying that a
13 permit isn't necessary if it's a Permit by Affidavit
14 situation?

15 MR. MADDEN: No, the Statute says it's got to
16 be issued and that policy says it has to be issued.

17 MS. BLEAU: What did you ultimately find out
18 about the Threshold Inspector for 2900 Riomar?

19 MR. MADDEN: The Threshold Inspector that John
20 said was -- there were some email exchanges when all
21 this stuff was starting to come to surface, and John
22 sent me an email and I think -- I don't know who else
23 was on there -- and he said, "They don't have a permit.
24 They don't have an early start. So, they're going to
25 issue a stop work order."

1 And then he said that NV5 is the Threshold
2 Inspector, Threshold Consultant, or something like
3 this. So, I'm like, "Who verified their credentials?"
4 Because in that policy, the PX policy, and the State
5 Statutes in both of those documents it doesn't address
6 threshold buildings.

7 And the Building Code specifically tasks me,
8 the Chief Building Inspector, to make sure that that
9 Threshold Inspector is qualified and licensed and
10 certified to make inspections on a threshold building.
11 So, once again, John is saying again that NV5 is the
12 Threshold Inspector and they're the ones doing the
13 inspections.

14 And, I'm like, "Who's making sure that this
15 is?" So, before I left the City, before I got out of
16 there, I never saw these documents. They never gave
17 them to me, and I was never even given the opportunity
18 to look at them.

19 MS. BLEAU: And what did you ultimately find
20 out? That they weren't in [unintelligible]?

21 MR. MADDEN: Well, when the hearing started, I
22 said that I want to look at all the documents for 2900.
23 And that took over a month to get those. And then they
24 gave them to me like three or four days before the
25 hearing.

1 So, I went down there one day and I went
2 through rolls and rolls of plans and documents and I
3 found it, and I found the threshold inspection. I
4 found the pile logs. I found the letters from NV5.

5 So, I got copies of those and then I went to
6 the Florida Board of Professional Engineers. I went to
7 their website, just like I told the Plans Examiners.
8 "Go to the website. You can look up the individual's
9 name or the license number and you can see if they're
10 qualified and licensed to be a threshold inspector."

11 So, when I looked that up and I saw those
12 individuals that signed that document, or the engineers
13 that signed it for the threshold inspection on the
14 piling installation, they're not qualified. They're
15 not licensed by the Board to certify that those piles
16 are installed on a threshold building.

17 MS. BLEAU: And whose responsibility is it to
18 make sure that they're qualified?

19 MR. MADDEN: Me, the Chief! The Code
20 specifically says. That's very specific in 110.10.3.,
21 I think it is. It says, "The Chief Building Inspector
22 is responsible for making sure and checking the
23 credentials," or something to that effect, "for the
24 Special Inspector." And I'm looking at that and I'm
25 like, "Who signed that off?"

1 And John said that NV5 was the Threshold
2 Inspector. Did he check their credentials? He's not
3 responsible for it. Even MTCI is not responsible for
4 checking their credentials. The contractor is not
5 responsible. That's me, the Chief Building Inspector.

6 MS. BLEAU: And MTCI is responsible, though, as
7 the Private Provider, for making sure that the project
8 is built in accordance with the permit issued -- that
9 there is a permit issued, that the plans are approved,
10 and that it's built in accordance with those plans. Is
11 that true?

12 MR. MADDEN: See now, that's the debate. The
13 debate is, is the Private Provider the one doing
14 alternative plan review and permits? They're tasked
15 with doing the plan review -- whatever the 1 or 2 --
16 the X1 or X2. They're responsible.

17 When they take that responsibility, they look
18 at the plans, but they're not looking at the
19 credentials of the Threshold Inspector. And, if you
20 look at the Statute, the 553.791, it doesn't mention
21 threshold buildings in there.

22 MS. BLEAU: Okay, John, just to interrupt, I
23 moved off of threshold and I'm just asking in general.
24 Is it the Private Provider -- when there's a Private
25 Provider under PX1 or PX2 -- is it their duty to make

1 sure that what is constructed is in accordance with a
2 permitted project and approved plans?

3 MR. MADDEN: Yes.

4 MS. BLEAU: I have nothing further.

5 CHAIR ADELSON: Mr. Miller, you're in the
6 middle of my screen now instead of the top left-hand
7 corner. Mr. Miller, do you have anything, any re-
8 cross?

9 MR. MILLER: I have one question. That is all.
10 And this goes back to what you were just talking about,
11 the Threshold Inspector report that you looked up.

12 MR. MADDEN: Yes.

13 MR. MILLER: The person you're talking about is
14 the person who signed that, right? But you found them
15 on the website, and they were not qualified?

16 MR. MADDEN: The person that signed that pile
17 --

18 MR. MILLER: The document. Yeah.

19 MR. MADDEN: Yeah, I looked at the -- the Board
20 prints and puts out a list of Special Inspectors.

21 MR. MILLER: So, you didn't see that the person
22 who signed that was simply an officer of the company,
23 not the person that had actually done the inspections,
24 right?

25 MR. MADDEN: Well, under the Florida Board of

1 Professional Engineers -- in fact, they just put out
2 something recently -- that the person that signs a
3 document is the one that's responsible for the
4 information on that document. So, there used to be
5 people that would simply allow a corporate person or
6 somebody else to sign for that corporation.

7 But, under the interpretation of the Florida
8 Board of Professional Engineers, that you can't divert
9 that responsibility. So, that engineer that signs that
10 document is the one that's saying that the information
11 on that document is in accordance with the practice of
12 engineering.

13 MR. MILLER: It didn't say, though, he's the
14 one that did the inspections, did it?

15 MR. MADDEN: No, the one that certifies the
16 inspection.

17 MR. MILLER: Okay. That's it. I don't have
18 anything else.

19 CHAIR ADELSON: So, for the Board Members,
20 does anyone have any questions before we take our break
21 and then move to closing arguments, for Mr. Madden?

22 MS. GIALLUCA: I just have one question, Madam
23 Chair.

24 CHAIR ADELSON: Go ahead. Proceed.

25 MS. GIALLUCA: I could go back and look through

1 all the materials, but at one point there was another
2 attorney's office involved, and I don't know if it was
3 with BORA, but who was Kramer? I'm not clear on who
4 was Kramer.

5 MR. MADDEN: Are you asking me?

6 MS. BLEAU: Yes.

7 MS. GIALLUCA: Yes.

8 MR. MADDEN: Kramer is the attorney for the
9 Board of Rules and Appeals.

10 MS. GIALLUCA: BORA, okay. That's what I
11 wasn't sure of. Okay, thank you.

12 MR. MADDEN: You're welcome.

13 MR. BALDWIN: Madam Chair, is this an
14 opportunity to question Mr. Madden, or will it be later
15 are we having --

16 CHAIR ADELSON: I mean, when we deliberate, I
17 assume if we have questions, we can obviously follow up
18 with them, but this would be your time.

19 MR. BALDWIN: I believe Mimi had told me that
20 we may consider each charge, or something, or I didn't
21 know if I should wait to speak for each one of those if
22 we're going to do that. I don't know really. Or, if I
23 could go ahead and make the comment now?

24 CHAIR ADELSON: Not comments, questions. Right
25 now is question time.

1 MR. GIALLUCA: Of the witness.

2 CHAIR ADELSON: Of the witness. Correct.

3 MR. BALDWIN: I'll [unintelligible], then.

4 CHAIR ADELSON: I actually do have a couple of
5 questions. I had some confusion still. I know we've
6 hearing testimony for quite a while now. You were
7 asked a question by Mr. Miller regarding certain
8 individuals, and when he asked you specifically about
9 Mr. Dougherty, Mr. Travers, Mr. Hernandez, that you
10 stated that you felt they all had motives.

11 Was that motives regarding why you were
12 terminated, or motives regarding something else?
13 Because I'm really not clear as to what this issue
14 about their motivation goes to.

15 MR. MADDEN: Well, I think when I say motives,
16 I think John Dougherty's motive was he saw my review of
17 him and in his testimony he said that, I think, upper
18 management had warned him or told him that he may be
19 terminated or his job may be on the line. And that
20 wasn't the case at all. No, I recommended John for
21 that position. No, that wasn't the case.

22 And then George Oliva, his motivations, from my
23 perspective, on some of the things that he had done
24 because he as the Chief, I think, was being told that
25 you are a Chief and you work directly for John, and the

1 interpretations of that.

2 So, I think when George wrote that, his
3 motivations were that it was in retaliation for my
4 complaining of him using the term Chief. And what he
5 was doing was he was creating confusion between his
6 folks and the interpretation of the Code. And George
7 retaliated against my complaining about him and the
8 expressions that I had.

9 Did you have somebody else?

10 CHAIR ADELSON: Yes, I did. But, I suppose my
11 question is, none of these folks, however, from what
12 I've heard so far, brought the complaints to the City.
13 The City itself, after having gotten one particular
14 complaint from multiple parties about your behavior,
15 asked them the questions and that was brought to light
16 afterwards.

17 So, in terms of their motivation, are you
18 suggesting that they specifically were targeting you to
19 get you terminated? That's what I'm confused about in
20 terms of this testimony about all of these individuals,
21 because there's multiple parties with multiple issues.

22 MR. MADDEN: Yeah, well, I think not all of
23 them were purely -- let me put it this way, I would say
24 that when they said the things that they said, if you
25 look at when they initially wrote them and they

1 originally put those together, their wording, their
2 things that they put in there are not the same as when
3 Denise was examining or questioning them. And their
4 use of words or what they remembered was not the same.

5 So, with respect to me, personally, I'm direct
6 and I'm blunt, and I've used colorful language in the
7 past, and we all are different in our personalities.
8 We're all different in the way we interact and the way
9 we see things.

10 And when someone says to John, me, I don't care
11 if I was an inspector. I don't care if I was a Plains
12 Examiner. I don't care if I was a Building Official or
13 Chief.

14 If someone says to me, "John, I'm relying upon
15 you to look at my house. I'm relying upon you to look
16 at my building. I'm relying upon you to enforce the
17 Code, because you are my eyes and ears." And I take
18 that very seriously.

19 I don't care if I like you or I don't like you.
20 If I believe that there is a violation of the Code that
21 could result in injury or death, I'm going to let you
22 know. And if I think that you did something wrong, I'm
23 going to pull you aside. I'm going to let you know.

24 But if you to continue to do it again or you
25 say, "You can't make me do this, or you can't make me

1 do that because you're not my boss, and you're not my
2 Chief, and you're not the Building Official," and yet,
3 BORA is saying to me, "John, you know you're
4 responsible."

5 I take that very serious and I take it because
6 I don't want anybody hurt. I don't want anybody
7 injured. I don't care if it's today, tomorrow, or the
8 case that just happened this week at the Rickards
9 Middle School.

10 Those buildings were designed 40 years ago.
11 Something was wrong. Something caused that to happen,
12 and I take that serious, and sometimes I rub people the
13 wrong way and I rub people the right way.

14 But, we're not in an office setting in the
15 sense of exchanging files and writing memos or things
16 like that. Yes, but ultimately, at the end of the day,
17 me, John Madden, as a Building Inspector, as a Building
18 Plans Examiner, as a Chief, whatever it is, the people
19 are saying, "We're looking at you. You are my eyes and
20 ears. You're the one that I'm counting on." And I
21 take that serious.

22 CHAIR ADELSON: Anyone else have any other
23 questions before go to --

24 MR. BALDWIN: I do have one thing I need some
25 clarification on, and maybe Mr. Madden can answer this.

1 I mean, being a City Manager 40 years in Broward
2 County, the South Florida Building Code, the Building
3 Code, the Florida Building Code, I've always been told
4 the Chief Building Official interprets the Code. He is
5 the final say when interpreting the Florida Building
6 Code.

7 And, I mean, I've been through Building
8 Director, Building Director, Building Director. That's
9 what they've always said. In 2018, did that change or
10 was that just a misunderstanding of the Code?

11 MR. MADDEN: I think when you say Chief
12 Building Official -- if you get ten Building Officials
13 in the room, you might get 15 answers, and that's the
14 situation.

15 Even when I talk to people today, there are
16 Building Officials that say, "No, John. The Chief is
17 your responsibility." And then I'll talk to another
18 Building Official that says, "No, no. I am the
19 Building Official and the buck stops with me."

20 MR. BALDWIN: Yeah, I'd always heard that.
21 It's the Building Official and that's the Building
22 Inspector.

23 MR. MADDEN: I would love for that to be like
24 that, Mr. Baldwin. I think it would be great. But the
25 Board says, "No. At the end of the day, you are the

1 Chief. You are the sole responsibility."

2 And I said to Dumbaugh and I disagreed with him
3 even when he was interviewing me, I said, "That's not
4 what that says." And then Bill says, "We'll agree to
5 disagree," and I'm like, "Yeah." Because I think at
6 the end of the day the Building Official is the
7 Building Official. And I'm okay with that.

8 If Mr. Travers says, "You know, John, this is
9 the way we're going to do it, no ifs, ands, or buts."
10 Hey, you have at it.

11 But if the Board who licensed me says, "What a
12 minute, John. You should not have allowed Chris to
13 continue. You should have not allowed Glen to sign off
14 those COs. You should have stopped it before the
15 permit was issued."

16 MR. BALDWIN: I know Mr. Travers is here and
17 I'm not going to speak for him, but seems like
18 somewhere along the line, it was his interpretation,
19 too, that the Chief Building Official interpreted the
20 Building Code.

21 MR. MADDEN: I would go tomorrow with John
22 Travers and appeal this to the State of Florida and
23 clarify the issue. I don't have any problem with doing
24 that.

25 In fact, in between some of these meetings,

1 John and I talked. He said there was something that
2 was on the Board that he didn't agree with on the
3 Board. And I said, "I agree with your interpretation,
4 John." And it was something about a signature for an
5 owner/builder, or who the owner was, or something like
6 that, and it was an appeal.

7 And so, when John says -- and John was thinking
8 that, and John was saying, "You know, I'm ultimately,
9 I'm the Chief, I'm the Building Official. The buck
10 stops with me." And I'm like, "John, I wish that was
11 the case, man."

12 But the Board is saying, "No, John. John
13 Madden, you should have overruled Chris Augustin. You
14 should have enforced your interpretation. You should
15 have prevented Glen from signing those COs. You should
16 have prevented Glen from issuing those permits." I'm
17 like, "If that were the case" - it's like that in 90
18 percent of the rest of the State.

19 MR. BALDWIN: It just seems like it just
20 created confusion.

21 MR. MADDEN: It's crazy.

22 MR. BALDWIN: That's all I have for now. Thank
23 you.

24 CHAIR ADELSON: So, thank you everyone. Let's
25 take -- it's 11:37. Let's take a 45-minute break until

1 12:15-ish? It's not quite 45 minutes -- 12:15, and
2 then we'll come back and we'll do closings. Okay? All
3 right? Great. Thank you. See everyone in a little
4 bit.

5 [BREAK FROM 11:37 A.M. - 12:15 P.M.]

6 CHAIR ADELSON: It is time for closing
7 statements. Ms. Bleau, if you would like to start?

8 MS. BLEAU: I can, but I thought the City would
9 go first.

10 CHAIR ADELSON: Oh, sorry. Yup, City started,
11 City ends. Go ahead. Sorry about that. My apologies.

12 MS. BLEAU: It's okay.

13 MR. MILLER: I want to start by thanking
14 everybody. And I'm sure I speak for participants and
15 Ms. Bleau as well, this has been frankly an endeavor
16 unlike I have ever had in my 30-year career as a trial
17 lawyer.

18 I have never been involved in a proceeding that
19 unfolded this way, and not even so much just because of
20 the nature of the proceeding, but the impact that Covid
21 has had in this and the shifting we all had to do, and
22 the arrangements, and the work of the folks at the City
23 and Mauricio, and the technical people, so I really do
24 want to express my appreciation to everybody, as well
25 as to the Board members, who have hung in there with us

1 since the beginning.

2 This case started, the hearing started on
3 December 12, 2019. That's 16 months ago. By my count,
4 this is our ninth session over that period of time and
5 my initial thought was, how in the world am I going to
6 summarize in a brief fashion what's gone on over 16
7 months? Yet, that's what I'm going to try to do for
8 you here.

9 First of all, as a starting point, as we know,
10 this is an appeal. This is an appeal of the decision
11 that has already been made, and so the task that is
12 before you is to evaluate that from a review
13 standpoint. This is not the actual termination
14 proceeding. That's already taken place.

15 So, what you have been provided by way of
16 evidence, both through documents and testimony, is what
17 the City did, what they investigated, what they found,
18 what their decision was.

19 And then the witnesses that were brought here
20 were people who I thought could illustrate and
21 elaborate on that for you to help you understand
22 exactly what the issues were, why the City started this
23 investigation, what they found, and why they concluded
24 what they did.

25 And so, in presenting witnesses, we tried to do

1 that same thing, at least in that type of an order.
2 And by that I mean, we started the case with Anthony
3 Fajardo. Mr. Fajardo is the Director of DSD.

4 Mr. Fajardo was the person who asked to have
5 the investigation initiated. And in the City's
6 notebook, his memo is Exhibit number three and it shows
7 exactly why, when, and how he did this.

8 What he told us and what was the starting point
9 of this was the accumulation of complaints that had
10 been received by members of the DSD concerning Mr.
11 Madden, his behavior, and the way he was treating
12 people.

13 And if you look at Anthony's memo, you can see
14 at the outset he says just that. "Please accept this
15 memo as a formal request for an investigation of Chief
16 Building Inspector John Madden in DSD, based upon the
17 documented examples of unacceptable behavior towards
18 other employees and insubordination of the Building
19 Official." That was the starting point.

20 Anthony talked in his testimony about the fact
21 that basically he had a group of employees -- I don't
22 remember the exact number, he may have said the number
23 that came to him -- and basically he found himself in a
24 situation as the Manager that he was going to have a
25 group of people that were ready to walk out.

1 They'd had enough. They were done. They were
2 tired of working in a place where frankly the
3 environment had become hostile. And that's what
4 prompted this investigation.

5 Next, we brought you Janeen Richard. Ms.
6 Richard was actually in charge of doing the
7 investigation. She works for the Department of
8 Employee Relations. She oversaw the taking of the
9 statements. She prepared the investigative report.

10 She was more of the nuts and bolts person who
11 was simply going out collecting data, collecting
12 information, summarizing it, and putting it all
13 together.

14 From there we called a series of DSD employees.
15 We started with John Travers who, as you all know, is
16 the Building Official and was the Building Official in
17 2016. I'll come back to Mr. Travers in a moment as far
18 as what he testified about.

19 From there we called in order, Valerie Arthur,
20 Luis Hernandez, John Dougherty, Jorge Oliva, and Andre
21 Cross. Now, we could have called more people to talk
22 about this. There were more people referenced in the
23 investigation, and, frankly, had we done that this
24 hearing would be going on probably until next year.

25 So, we made a decision as to which folks to

1 bring, what we were going to have them talk about, they
2 expressed their issues to this Board.

3 And then finally at the end, we called Al
4 Battle who was the Deputy Director and who wound up
5 issuing the final memos about the decision to terminate
6 Mr. Madden which then, of course, had to go to the City
7 Manager for approval; because under the City's form of
8 government, the City Manager ultimately has the final
9 say and has to sign off on anything.

10 So, even though within the Department they made
11 the determination that's what should happen, it still
12 had to go to the City Manager for approval which, in
13 fact, occurred.

14 So, that's the overview of the case that we
15 presented to you. So, what really took place? Well,
16 as I said, this started out as, frankly, an
17 investigation concerning behavior and it kind of
18 evolved into a little bit more than that once people
19 started interviewing people and started talking.

20 And ultimately, there were four primary things
21 that were discovered. That has to do with Mr. Madden's
22 behavior vis-à-vis violation of the City's Anti-
23 Bullying Policy, the insubordination, and by that --
24 and this was borne out through his own testimony
25 frankly on direct examination -- that instead of

1 working to advance the business of the City, he was
2 trying to put a stop to it, get in the way, prevent
3 people from doing what could be done.

4 He had an issue with outside vendors and we'll
5 go into that detail in a moment; the whole incident
6 with Mr. Goldstein, the property owner who says that
7 Mr. Madden directly threatened and intimidated his
8 employees, threatened to have them arrested.

9 And finally -- and this was kind of discovered
10 as an after-thought, because nobody knew about this
11 when the investigation started -- and frankly that's
12 Mr. Madden's lack of productivity.

13 The documents are in the file. You have them.
14 What's clear is that compared to all of the other
15 Chiefs, Mr. Madden wasn't doing his job.

16 We know because it's documented that the other
17 Chiefs, for example, Joe DiMaio, who was the Chief of
18 Plumbing in the period in that report, had reviewed
19 1,539 plans. Scott Dry, who was the Chief of
20 Electrical, did 4,400. Mr. Edwin Aquino, who was a
21 Flood Plane Developmental Specialist, did 6,000. Mr.
22 Madden did 16.

23 Now, throughout this hearing you've heard Mr.
24 Madden talk and Mr. Bleau has raised the fact that Mr.
25 Madden had gotten good performance evaluations until

1 his termination, and that's a true fact. That is, in
2 fact, true.

3 It's evidence of the fact, however, that the
4 people there, and even John Travers, didn't know how
5 little John Madden was actually doing. This was
6 discovered during this investigation.

7 And what we learned is, the reason is, is
8 because of doing his job, he was running around trying
9 to play gotcha with people. He's secretly taking
10 pictures, recording people. Why? What on earth would
11 possess a Building Official to do that?

12 You heard him admit today on the stand, his job
13 was to help facilitate, make sure the City's business
14 got done, make sure buildings got built in accordance
15 with the Code to protect everybody. Instead of doing
16 that, what was learned by the City during this
17 investigation, is he was doing the exact opposite.

18 It's clear that he had a real problem with
19 MTCI, who was one of the Private Providers, because
20 practically every complaint you heard about was an MTCI
21 job.

22 Now why did he have a problem with that? We
23 don't know. What we do know is that he found out that
24 John Travers and Luis Hernandez used to work there, and
25 as you heard him admit this morning, he thought there

1 was something inappropriate going on.

2 He also thought it was appropriate to share
3 that opinion with other people in the Department. And,
4 if you look through the statements and listen to what
5 people said, he flat out accused them of somehow doing
6 something illegal, kick-backs, whatever, with MTCI,
7 without a shred of evidence to provide that.

8 That's part of what was discovered during the
9 investigation. That's part of what supports, without a
10 doubt, the insubordination and the level of
11 productivity claims.

12 But, that's really not what the starting point
13 was. It really, really had to do with behavior. And
14 Mr. Madden took the position during this hearing for
15 the first time, five years after he was walked out,
16 that he was never provided all the information that the
17 City relied upon to formulate a response.

18 So, in fact, the only response that he ever
19 provided during this process was a 12-page report. He
20 declined the opportunity to talk to anybody face to
21 face; he declined the opportunity to explain his
22 position; he chose to submit a document in writing.

23 Now, if we've seen one thing about John Madden
24 in this hearing, is that Mr. Madden has the ability to
25 make his opinion known. Whether it's by email, whether

1 it's going down to City Hall, as he said, and scouring
2 through thousands of pages of documents and plans, he's
3 not someone who just sits back and let's things happen
4 and doesn't respond.

5 Yet, he says that's what he did here -- that he
6 wrote a response that was the best he could with the
7 information he had; never supplemented it; never follow
8 it up; didn't do anything.

9 That's what the City had to evaluate when they
10 were deciding to terminate him. And that's really the
11 question that's before the Board, which is based on
12 what was available at the time, did the City act
13 appropriately in their decision making?

14 The fact that Mr. Madden has now talked about a
15 whole bunch of other things that he chose not to raise
16 back then is interesting, but that really isn't even
17 germane to the issue that's before you which is did the
18 City act appropriately based on what was known and what
19 was provided to them? And that included John Madden's
20 12-page statement.

21 So, as I was getting ready to do the closing
22 here, I went back and I looked at Mr. Madden's
23 statement again, because I really wanted to go through
24 this, and it's page 11 in the City's notebook, for the
25 record.

1 And what you see is that in the 12 pages that
2 exist, at least half of it discusses issues that are
3 not germane to his termination. He goes through, at
4 length, BORA, which we've heard ad nauseam in this
5 hearing; we've heard about issues from 2012 and 2014;
6 issues that he had with Chris Augustin; staffing
7 shortages; budget issues.

8 And he goes on for multiple pages, similar to
9 the presentation that they've made in this hearing,
10 because that takes the focus off what the issues are.
11 That takes the focus off what was he actually accused
12 of doing wrong.

13 And as I asked him this morning, and you can
14 read it yourself, there's not a single place in his
15 response where he ever says, "You've accused me of
16 violating the bullying policy. I didn't do it." Not
17 once.

18 So, what it is, is more of deflection,
19 avoidance, "I want to talk about what I want to talk
20 about," as opposed to the issues, which is simply,
21 again, did the City act appropriately in making the
22 decision to terminate him when they did?

23 What else is clear, from his response, his
24 testimony here, and his presentation, is that one of
25 the biggest issues we have here is that John Madden

1 believes he's right. He always believes he's right.

2 Whether he is or he's not, he believes he's right.

3 And he challenges people. He challenged people
4 at the City. He challenged his prior employer with
5 Pembroke Pines. He challenged BORA. He challenged the
6 Professional Engineers Society, among others. There's
7 a whole litany of people he challenged because he
8 believed that he was right. And in every one of those
9 situations it turns out he wasn't.

10 One of the things -- and I understand why he
11 has spent so much time on this -- but even today we
12 went through it ad nauseam, the whole BORA proceeding.
13 I brought it up on cross. I brought it up to show what
14 the issue was because I didn't think we had put up the
15 order in front of you before today.

16 Mr. Madden wants to say that, "Well, because I
17 was being investigated by BORA, that means I had it in
18 my authority to tell everybody not to do what John
19 Travers was telling them to do as the Building
20 Official.

21 "That I had been told with regard to structural
22 issues, I'm the sole authority to interpret the Code,
23 therefore, I get to tell everybody what to do and,
24 therefore, whatever I did was appropriate." That's
25 essentially his argument.

1 But what he doesn't say is the issue is, how
2 did he go about doing that? Anyone who has worked at a
3 company in an office with other people understands that
4 there are disagreements, especially in 2016 when the
5 City was rolling out a new Private Provider Policy that
6 Luis Hernandez was specifically brought in to write.

7 Any time you introduce a new policy, there are
8 going to be hiccups, there's going to be fits and
9 starts, and you have to work through that.

10 But, instead of doing that, instead of trying
11 to foster a way to make sure this was working,
12 complying with the Building Code and whatever other
13 issues he had, he just simply tried to thwart it.

14 One of the things I found fascinating was when
15 you watched Mr. Madden testify. When he was on direct
16 exam with his counsel, he knew the answer to every
17 question, he knew the dates, he knew the emails they
18 were referring to, he knew the policies, he knew the
19 statutes. In fact, he was directing how the exam
20 should go.

21 But, as soon as he got on cross-exam, he didn't
22 remember anything -- "I don't know, I don't recall" --
23 even things as basic as the Private Provider Policy I
24 asked him about this morning. The PXA1 and the PXA2 --
25 said he didn't remember them. Yet on re-direct he

1 actually points out to Ms. Bleau how she was incorrect
2 about what she said about them.

3 That's indicative of everything that has
4 happened here. He wants to show that he is in charge,
5 that he knew everything, and whenever it didn't go his
6 way, he reacted.

7 And that included all of the instances of the
8 people who testified about his behavior, about his
9 yelling, his screaming, about how they felt, and more
10 importantly, the fear of retribution they all had.

11 There's at least three of those witnesses that
12 came into this hearing and talked about that very
13 thing, about how they would be afraid for their jobs if
14 John Madden got his job back. Other people talked
15 about it.

16 There's a statement in there from Scott Dry,
17 his old Co-Chief, who didn't testify in this hearing,
18 but whose statement is part of the materials. Read
19 that.

20 Read what he said, talked about, "John Madden
21 went around accusing Luis and John of doing
22 inappropriate things and knew that people were afraid
23 of retribution." That, by itself, in its nature, is
24 what the heart of the Bullying Policy goes to.

25 The Bullying Policy, which is in the notebook

1 at Tab number 13 says as follows: "Workplace bullying
2 is a repeated form of abusive conduct, direct or
3 indirect, intentional or unintentional, by one or more
4 employees against another employee/group of employees
5 at work that is," and then it gives examples,
6 "threatening, degrading, humiliating or intimidating."
7 That's exactly what these folks testified about.

8 Next, "Work interference or sabotage which
9 prevents work from getting done," -- which clearly we
10 heard about -- "and verbally abusive language."
11 There's no question that took place.

12 Then it gives even further examples actually
13 written in the policy, "Slandering, ridiculing, name
14 calling that's hurtful, humiliating, making rude,
15 condescending, insulting or demeaning statements,
16 including swearing and cursing, using angry, hostile
17 tones, berating staff and colleagues in front of
18 others."

19 The testimony in this case from the witnesses
20 who were interviewed and who testified in this
21 proceeding could not fit those definitions more
22 appropriately.

23 And I would also point out that the policy
24 specifically says, "Employees found in violation of
25 this policy may be subject to disciplinary action up to

1 and including termination." That particular policy
2 doesn't say anything about their needing to be
3 progressive discipline.

4 One of the things we've heard throughout is
5 that, "You know, Mr. Madden claimed he'd never been
6 disciplined before and the City just leapt at us."
7 The policy specific says, "This is one of those
8 policies that if you violate this, and we find you
9 violated it, we can fire you." And they did.

10 Because the alternative to doing something like
11 this is having ten hostile workplace lawsuits filed
12 against them by all the people that are doing the
13 complaining.

14 Now, I'm not suggesting to you that every
15 single person who worked at the DSD felt that way about
16 John Madden. Clearly there were people that did not
17 have issues with him.

18 Some of those were brought by Mr. Madden to
19 testify in this case and that's perfectly fine. But
20 none of those people can say that the folks who did
21 complain didn't have that happen to them.

22 How did Mr. Madden respond to those specific
23 allegations? Well, it's really two-fold. It's either
24 "Everybody had a motive for lying about me," or "They
25 were just lying and I don't know why they were lying."

1 He went out of his way in the presentation in
2 this case to make this case be about John Travers, to
3 make this case be about Luis Hernandez and George
4 Oliva. Their conduct is not in question. No one has
5 accused them of violating any City policies.

6 So, it's convenient to suggest that everybody
7 who had an issue with you is "simply out to get me" or
8 "they have some underlying motive," when the fact is
9 their story, their testimony, their recounting of what
10 happened to them fits the pattern of what other people
11 have said.

12 I went through at one point and I started
13 making a list of every person who, according to Mr.
14 Madden, lied in this case.

15 George Oliva, he lied. Valerie Arthur, she
16 lied. Luis Hernandez, he lied. John Travers, he lied.
17 Janeen Richard when she said she gave him all the
18 materials, she lied. Andre Cross, he lied.

19 The people who were investigating him from
20 BORA, they lied to him. Chris Augustin, he lied about
21 him. Glen Osborn, he lied about him. John Dougherty,
22 he lied about him. James Goldstein, he lied about him.

23 You see the pattern. There's no explanation or
24 justification for his behavior, so the only answer he
25 could give us is, "They're all lying." They're all

1 lying.

2 If you take a look at the response that John
3 Madden filed back in 2017, and you compare it to the
4 allegations and the statements that were taken, you
5 will see he didn't really refute much of what they were
6 saying about him.

7 I thought, based on the way he wrote that
8 response and when he was testifying in this case about
9 all of the things he was dealing with -- the BORA
10 investigation, he talked about some family issues he
11 had in 2016, he talked about a number of things that
12 were stressors for him at that point in time.

13 And I thought the point of raising all of that
14 was to say, "You know, I'm sorry. I didn't mean to act
15 this way. I had all of these problems and it caused me
16 to behave like this when that's not really me." But
17 that's not what he said.

18 He denied doing any of the things that he's
19 accused of doing. Well, what's the point of having
20 talked about all those things then if it's not an
21 attempt at justification? I don't frankly understand
22 why you would even bring them up.

23 Just like in the response letter he wrote,
24 which I asked him about on cross-examination where he
25 specifically wrote the following: "A supervisor

1 yelling at an employee over a serious life safety
2 issue, does not mean the supervisor will go postal or
3 otherwise escalate things to the physical level."

4 I asked him, I said, "When you wrote that, you
5 were basically giving us an explanation as to why it
6 was okay to yell at people." "No, I wasn't." "Well,
7 why did you write that?" "Well, I just wrote that."
8 Folks, if you read his own words, he's acknowledging he
9 did these things.

10 The witnesses in this case who testified, there
11 is a summary of every one of their allegations in the
12 report. It's voluminous and I could literally spend
13 another three hours literally reading through every
14 single one of those and recounting what they all said.

15 But the bottom line is this, the City was asked
16 to do an investigation because they received a number
17 of complaints. The investigation was done.

18 During that investigation, they uncovered
19 evidence that supports the fact that the employee in
20 question, Mr. Madden, violated the City's anti-bullying
21 policy, that he acted in a way that was inappropriate
22 within the Department, that was insubordinate, that he
23 turned out to be unproductive, and that he was creating
24 problems with outside vendors, in particular and as one
25 example, Mr. Goldstein.

1 We've not heard that those things didn't
2 happen. We've heard, "BORA told me I had to interpret
3 this." "I know what's right." "They're all wrong."
4 "I found out about all this stuff." All kind of
5 talking around the direct issues.

6 And that kind of leads us to what I think is my
7 final point -- and, frankly, one that I don't know how
8 else to describe -- and that's this: Mr. Madden
9 proudly admits that since his firing, he's continued to
10 try to interfere in the Department.

11 When he said that, on direct examination, I
12 couldn't believe it the first time and he went through
13 in great detail today some of things that he's been
14 involved in and that he thinks it's okay that as a non-
15 employee that people should bring things to him as
16 opposed to their own supervisors.

17 That's mind boggling to me. And it's
18 absolutely crystal clear from his testimony, he thinks
19 that's entirely appropriate. Folks, that's an example
20 of what everyone was dealing with back in 2016. That's
21 an example of his efforts to go out and basically
22 retaliate.

23 You heard him. He's filed numerous complaints
24 with BORA, the Inspector General's Office, all these
25 groups, since he was fired. Why? Because these are

1 all the people that testified against him in this
2 hearing.

3 That's what you will be subjecting the City and
4 its employees to if you were to find that the City
5 acted inappropriately and reverse their decision and
6 award John Madden his job back.

7 I submit to you that that is not warranted, it
8 is not supported by the evidence, and it will lead to
9 further problems. You've not heard testimony from a
10 single person on either side of this case that the
11 issues that existed in 2016 have continued since John
12 Madden has been gone.

13 Even the people who are still there that Mr.
14 Madden called acknowledged things are calm now. People
15 aren't walking around on edge. People aren't walking
16 around afraid for their jobs all the time. That's what
17 has occurred.

18 That's what the intended consequence of this
19 decision was to remove the source of the problem for
20 violation of the policies and to allow the Department
21 to function normally.

22 It's not really a fair comparison because this
23 is a public entity that Mr. Madden worked for. But
24 let's face it, if he worked for a private employer and
25 had acted in this way, we wouldn't even be sitting

1 here. He would have been fired long ago because this
2 kind of behavior is not tolerable in today's corporate
3 America.

4 The one thing I will say, and there's not a
5 person that's testified here that has ever said
6 anything inappropriate about John Madden's abilities as
7 far as interpreting the Code and with regard to his
8 knowledge.

9 And that, frankly, is the tragedy of this case,
10 is that Mr. Madden is somebody with a wealth of
11 knowledge who could be a valuable asset, but he was
12 unable to perform as part of the team.

13 He was unable to restrain himself and he was
14 unable to comply with policies and edicts from other
15 people. And it got to a point where enough was enough
16 and the City had to do something.

17 I submit to you that on the basis of all of the
18 documented evidence that has been submitted, as well as
19 the testimony, that all of the evidence supports the
20 decision and I urge you to return a decision that
21 upholds the termination and not reinstate Mr. Madden.
22 Thank you.

23 CHAIR ADELSON: Thank you, Mr. Miller. Ms.
24 Bleau?

25 MS. BLEAU: Thank you very much. First of all,

1 I guess I'd start out by reminding the panel -- and I'm
2 sure that you know this -- statements from lawyers are
3 not evidence. Mr. Miller made a lot of statements
4 today that are absolutely not supported by the
5 evidence.

6 And if I have time at the end, I hope to go
7 through a couple of those. But you know what the
8 evidence is, you've heard the testimony, you have the
9 records in front of you. So, you may even know more
10 than I. But statements from a lawyer are not evidence.

11 At the beginning of this hearing, Mr. Zalman
12 acknowledged that it is the City's burden to prove each
13 of the charges brought against Mr. Madden. And he said
14 that, "The City would be calling the specific witnesses
15 that we believe are pertinent to the City's case."
16 That's a quote.

17 Because the witnesses called are the ones the
18 City thought were pertinent to prove their case against
19 John Madden, I would contend that only those witnesses
20 called to testify should be considered in your
21 determination of whether the City carried its burden to
22 show that Mr. Madden was terminated for just cause and
23 was provided due process.

24 As to each and every witness called, we tried
25 to focus on Mr. Madden, what he did, what he didn't do,

1 the manner in which he did something, or didn't do
2 something, instead of what the employee felt or what
3 they thought Mr. Madden's motivations were.

4 And in every instance where an interaction with
5 Mr. Madden occurred in front of a witness, we brought
6 the witnesses in to testify, to test the validity of
7 the complainant's description of the interaction.
8 Without exception -- without exception -- every single
9 time there was an uninterested, impartial witness that
10 was said to have been a witness to the altercation or
11 interaction, they testified it didn't happen.

12 While we focused on the facts, Mr. Miller and
13 Mr. Zalman encouraged the witnesses to talk about their
14 thoughts and feelings and much more, and about "Are you
15 going to be afraid if Mr. Madden returns?" -- and all
16 of the things that are consistent with the City's theme
17 in this case.

18 It's interesting that Mr. Miller said, "The
19 testimony could not fit the anti-bullying policy
20 better." I would agree with him on that. His
21 witnesses absolutely testified as to their feelings and
22 their thoughts so consistent with the policy it's
23 almost like that's what they were trying to do.

24 But again, your job is to look at the facts.
25 What actually happened? What did Mr. Madden do? And

1 did whatever he did reasonably engender that thought or
2 that feeling? That's the question for you regarding
3 the anti-bullying policy. Mr. Madden's termination
4 should not be sustained on unsubstantiated statements
5 by bias witnesses regarding their thoughts and
6 feelings.

7 So, not everyone appreciated Mr. Madden's
8 passion for building safety, protecting the City, and
9 doing the right thing. I think that's clear. He could
10 be a thorn in the side of those who would thwart the
11 law or the City's regulations, and he also demanded
12 that those reporting to him -- those 20 individuals or
13 so that he supervised, reporting to him -- did their
14 job competently.

15 So, for example, Mr. Dougherty, who allowed an
16 entire building to be constructed using a completely
17 different method of construction than what was approved
18 in the plans, resulting in the Building Official, the
19 City Manager, and elected officials all getting
20 involved, these are the kind of things that Mr. Madden
21 took very seriously.

22 Ron Gardner, who we called to testify, said
23 that he spoke with Mr. Dougherty about this and he
24 never took responsibility for his actions and he
25 continued to blame others. Mr. Madden had prepared a

1 negative performance review for him, but didn't intend
2 to terminate him, as he apparently was told by some
3 official above Mr. Madden.

4 Valerie Arthur knew her testimony about the One
5 Solution Program -- commonly referred to as No
6 Solution, according to Mike Rinkus. Valerie Arthur was
7 involved in that program.

8 And shortly before Ms. Arthur complained about
9 Mr. Madden, he had written a letter, an email,
10 actually, to the City Manager about the four years and
11 \$300,000 spent on the One Solution System that did not
12 work. That email is in our exhibits at Tab 127.

13 Mr. Madden notified Mr. Feldman that the City
14 had gotten nothing in return for its money and
15 countless hours, because, again, these are the kind of
16 things that Mr. Madden cares about. Not because he had
17 it out for Ms. Arthur, not that he was trying to hurt
18 anybody. Mr. Madden is passionate about building
19 safety and he also is loyal to the City and wants to
20 make sure that they're not wasting their money on
21 projects that don't work.

22 So, a couple months later, after this email to
23 Mr. Feldman, Ms. Arthur received an email from Mr.
24 Madden about reviewing Plan Review Stops on the
25 Goldstein project, which had been constructed without

1 permits, and Mr. Madden wanted to know why this was
2 done.

3 Perhaps Ms. Arthur was afraid Mr. Madden was
4 again going to complain to the City Manager; so she
5 decided a good defense is a good offense. We don't
6 really know for sure. But what we do know is that her
7 email complaining about Mr. Madden was not written
8 until a week after this alleged interaction occurred.
9 And we know that her sworn testimony, given in this
10 proceeding, contradicts that email and is not credible.

11 Ms. Arthur claimed that Mr. Madden screamed at
12 her when she testified before you. She said she was in
13 fear of her personal safety and she said that all of
14 this happened in front of Robyn Randall. But Ms.
15 Randall testified that she never witnessed any exchange
16 like that at all and had she, she would have remembered
17 it.

18 Ms. Arthur also testified that as she started
19 to walk away from Mr. Madden, Richard Benton called her
20 into his office, shut the door, and asked her if she
21 was okay. But once again, that testimony was refuted.
22 Mr. Benton testified that never happened.

23 In fact, he said his office is "practically
24 right next," that's a quote, "practically right next to
25 the Plans Review area where Ms. Arthur said this

1 exchange had occurred," and Mr. Benton said he never
2 heard anything and if he had heard something
3 significant enough to pull Ms. Arthur into his office
4 to see if see if she was okay, he certainly would have
5 remembered.

6 Mr. Zalman asked Ms. Arthur, as the City did
7 with each of their witnesses, if they felt threatened
8 by Mr. Madden, and of course she said yes. But look at
9 her email that she sent to the City before this theme
10 of being threatened and scared had been developed.

11 She accused Mr. Madden of yelling at her and
12 being confrontational. And she said, "In situations
13 like this, my way to separate is to separate myself
14 from the situation, so I turned and walked away."

15 She never said she was scared, she didn't say
16 she felt threatened, she didn't say she feared for her
17 safety, or that she was even emotional. She said in
18 response to a confrontation with Mr. Madden, she turned
19 and walked away, period.

20 Is it logical that she would have felt in
21 danger but not said anything like that in her email or
22 complained to anyone in the City, any time, until these
23 proceedings when she was called here to testify?

24 If she was willing to complain about Mr.
25 Madden, why wouldn't she mention this in her report or

1 email? Because it never happened. And Ms. Arthur's
2 testimony was embellished to fit the City's theme
3 against Mr. Madden.

4 In fact, based on Ms. Randall and Mr. Benton's
5 testimony, it appears that even her email that alleges
6 Mr. Madden yelled may have been exaggerated, because
7 neither Ms. Randall nor Mr. Benton ever heard Mr.
8 Madden yell at Ms. Arthur as she alleged.

9 Now, he may have spoken harshly to her. And it
10 appears Mr. Madden did not -- it appears he didn't
11 yell. He certainly didn't scream, which is how she
12 testified in questioning from me, and he didn't
13 threaten her in any menacing way as she would have had
14 you believe, and her testimony should be disregarded.

15 Luis Hernandez -- he believed he was superior
16 to Mr. Madden because he was the Assistant Building
17 Official. But even John Travers agreed that because of
18 Mr. Madden's certifications and the way things work in
19 the building industry, it was Mr. Madden's authority
20 that was the authority on projects above Mr. Hernandez.

21 Specifically, on day two, Mr. Travers testified
22 on page 184-185, he said, "Mr. Madden, as the Chief
23 Structural Inspector, would have a position that was
24 higher than Mr. Hernandez."

25 But if you look at what Mr. Hernandez wrote

1 about Mr. Madden, he was offended right off the bat
2 when he started working for the City because he thought
3 Mr. Madden didn't recognize his superior authority over
4 him. Mr. Hernandez worked for MTCI, as Mr. Miller
5 said, before coming to the City, as did John Travers.

6 And after they started working for the City,
7 the MTCI work significantly increased and numerous
8 problems arose with buildings being constructed without
9 permits, without approved plans, or without necessary
10 inspections.

11 And as we'll discuss later, as you know, now
12 BORA said that John Madden was responsible for anything
13 under his area of responsibility, even when he's
14 overruled by the Building Official or the Assistant
15 Building Official. It's John Madden's license that was
16 on the line and that's what he was being told in 2016.
17 And that's what John Madden was telling John Travers in
18 2016 when he talked to him about the BORA proceeding.

19 Mr. Hernandez told Richard Mercede that he
20 needed a shoring permit. But there's not such thing as
21 a shoring permit. And, as the Chief Building
22 Inspector, Mr. Madden had already been dealing with Mr.
23 Mercede about what he needed.

24 Mr. Hernandez testified that Mr. Madden
25 confronted him in a crouching stance, beet red, and he

1 said, "At some point, I think I saw him ball his
2 fists." And Mr. Madden testified here, denied that
3 that ever happened.

4 George Oliva, who was present during the
5 exchange with Mr. Hernandez and Mr. Madden, did not
6 corroborate Mr. Hernandez' testimony. He testified
7 that Madden got very loud, period. That's all he said.
8 No crouching, no beet red, no threatening, no looks
9 like he was going to take a swing at him, nothing.
10 None of those embellishments.

11 In his written complaint at Tab 7 of the City's
12 Notebook, Mr. Oliva said Mr. Madden was speaking very
13 loudly and unprofessionally to the ABO. He never
14 described any of the type of behavior Mr. Hernandez
15 said.

16 But according to Mr. Oliva, there was another
17 witness to the exchange, Karen Essayan. So once again,
18 we called Karen Essayan to testify as to what she
19 observed. We asked her did she hear a heated exchange
20 where Mr. Madden screamed and yelled and looked like he
21 was off his meds, as also alleged by Mr. Hernandez.
22 "No," Miss Essayan said, she did not see or hear
23 anything like that.

24 And she further offered that she has never
25 heard John Madden scream or yell or shout or confront

1 anyone at any time during her employment with the City.
2 Once again, an unbiased, uninterested witness presented
3 to testify about what actually occurred did not
4 substantiate the testimony of the City's witness.

5 Mr. Hernandez also wrote an email. So you look
6 at that and see, does that contemporaneous email that
7 he said was written the night of the interaction with
8 Mr. Madden. So what did he say then? Did he say
9 anything then that was consistent with how he testified
10 before you?

11 That email, first we see that he offered much
12 more detail about the exchange. It was more facts,
13 less hyperbole. Mr. Hernandez described what he said
14 to Mr. Madden, then what Mr. Madden said to him, and
15 what he said in response.

16 Mr. Hernandez says nothing -- nothing about Mr.
17 Madden crouching, balling his fists, fearing that he
18 was going to take a swing at him, thinking that he was
19 off his meds, anything like that. Nothing.

20 Mr. Hernandez said only that Mr. Madden spoke,
21 "In a tone of voice for all to hear." That's it. In a
22 tone of voice for all to hear. That's a far cry from
23 what he testified to in these proceedings after the
24 City developed its theme against Mr. Madden.

25 Whatever Mr. Madden's tone was, we know that it

1 must not have been too loud or too confrontational
2 because Ms. Essayan said she didn't notice anything.
3 Is it likely that Mr. Hernandez forgot to include these
4 details in the email that he was specifically writing
5 to John Travers to complain about John Madden?

6 Or is it much more likely that Mr. Hernandez
7 later embellished his story, like a shark sensing blood
8 in the water? Mr. Hernandez' own contemporaneously
9 written email, Ms. Essayan's testimony, and Mr. Oliva's
10 testimony are all inconsistent with the picture painted
11 by him and his testimony is not credible.

12 As I mentioned, George Oliva's written
13 complaint about Mr. Madden is found at Tab 7 of the
14 City's Notebook. He had testified that he wrote this
15 formal complaint against Mr. Madden because Mr. Madden
16 filed a complaint against him with BORA and the
17 Inspector General.

18 And you may recall that the subject of that
19 complaint was about Mr. Oliva's use of the Chief
20 Building Inspector title. When he was testifying in
21 these proceedings, Mr. Oliva acknowledged being advised
22 by BORA in the beginning of April, 2016, that he had to
23 stop using that title, Chief Building Inspector.

24 He was told that there was only one Chief and
25 it caused confusion just like Mr. Madden testified here

1 today. But we introduced evidence that showed that Mr.
2 Oliva didn't stop using it, even though he had been
3 told to. In the grand scheme of things, why does that
4 matter?

5 The issue of Mr. Oliva's improper use of the
6 job title is not a matter for this Board, admittedly,
7 but Mr. Oliva's credibility is. You have to decide, is
8 Mr. Oliva a teller of truth? Or is he someone who will
9 say whatever he believes -- that he thinks is in his
10 best interest?

11 Mr. Oliva denied using the Chief Building
12 Inspector title after that April '16 date, but that's
13 not true. For example, Ms. Richard identifies him in
14 her report as the Chief Building Inspector.

15 Mr. Oliva said -- he swore to you, he swore
16 under oath, that he never told Ms. Richard that that
17 was his title, and he said, "She just typed it wherever
18 she was typing." She just typed it wherever she was
19 typing, whatever that means.

20 When I asked Mr. Oliva about his City badge
21 reflecting this title as well, he said that that was an
22 old badge, it was before he was told to stop using it.
23 And then I pointed out that his badge, which is at Tab
24 130 in your records, in Madden's Exhibits, reflects a
25 renewal date of June 13, 2016, two months after the

1 April email from BORA.

2 Mr. Oliva also swore that he did not ever use
3 the Chief Building Inspector title in the Code
4 Enforcement hearings where he testified -- after being
5 told not to by BORA. He said, "I always testified
6 after that date as the Chief Building and Construction
7 Enforcement Division."

8 But I showed Mr. Oliva the May, 2016, Minutes,
9 marked as Exhibit 134, reflecting his title as Chief
10 Building Inspector. Mr. Oliva again swore that he had
11 never used that title and he said the minutes were "a
12 clerical error."

13 But we also obtained the audio recording of the
14 May, 2016, Code Enforcement proceeding, and that's
15 Madden Exhibit 161, and three minutes and twenty-five
16 seconds into that audio recording, Mr. Oliva is heard
17 very clearly introducing himself as "George Oliva,
18 Chief Building Inspector." So, not a clerical error.

19 In fact, Exhibit 162 is another audio
20 recording, this one several months later and, again, at
21 the 36-second mark, Mr. Oliva is heard introducing
22 himself as, "George Oliva, Chief Building Inspector."

23 So under oath, he repeatedly denied to you that
24 he had even used that title, even though there was no
25 consequence to him telling the truth. None, absolutely

1 none. But he lied anyway, repeatedly, and over and
2 over.

3 He did tell it to Ms. Richard, the Minutes were
4 a clerical error, his badge was renewed before he was
5 told numerous times. He was given the opportunity to
6 come clean, and he chose not to. This is not someone
7 who is concerned about the oath that he took to tell
8 the truth, the whole truth, and nothing but the truth.

9 Mr. Oliva also claimed that shortly before Mr.
10 Madden was terminated in 2016, he had asked Assistant
11 City Attorney if the Building Official is or is not the
12 authority having jurisdiction and he swore that he
13 received a response from her saying that yes, John
14 Travers was the authority having jurisdiction.

15 So, I asked to clarify was that an opinion of
16 Ms. Hassan in writing, and he said, "It was in an
17 email, but I didn't save the email. To be honest with
18 you, I didn't save the email that I sent her either."

19 So right up front, when I asked if it was in
20 writing, he says it was, but the email he sent to her
21 and the email she sent to him, he didn't save - "to be
22 honest with me." Which is always something you ought
23 to be concerned every time a witness says, "to be
24 honest."

25 But I sent a public records request to the City

1 and Mr. Miller has stipulated that the City was unable
2 to locate any of those emails -- the one from Mr. Oliva
3 or the one allegedly from Ms. Hassan. So once again,
4 the evidence does not support Mr. Oliva's sworn
5 testimony.

6 He who is dishonest about little things will be
7 dishonest about more important things. His testimony
8 should be disregarded by this Board, I would submit,
9 unless it's corroborated by trustworthy testimony or
10 documentary evidence. Because otherwise, we see that
11 Mr. Oliva does not always tell the truth.

12 At the time of Mr. Madden's employment, Mr.
13 Oliva was not a Certified Plans Examiner, and he was
14 not legally supposed to be reviewing plans. And you
15 recall that Mr. Oliva was asked about that, whether or
16 not had reviewed any plans, and he said he had not.

17 But if you look at Tab 4, that Mr. Miller was
18 referring to earlier, that's the City's exhibit where
19 they say that it shows all of the plans reviewed by all
20 the individual employees. It shows Mr. Oliva reviewing
21 plans 250 times. He testified to zero. The document
22 submitted by the City, supposedly reliable information,
23 said 250 times. So either the document is flawed, or
24 Mr. Oliva was dishonest once again.

25 At the last hearing Mr. Miller laughed and

1 today in his closing argument made a similar
2 suggestion. He laughed at my suggestion that a number
3 of witnesses providing testimony against Mr. Madden may
4 not be credible.

5 And I get it. I really do. You expect people
6 to be honest for the most part, and we hope that only a
7 small percentage of people who knowingly make false
8 statements under oath would do that. Unfortunately,
9 that's not always the case.

10 Jurors are told when a witness has made a prior
11 inconsistent statement that this should be considered
12 in evaluating the credibility of a witness' testimony.
13 They're told to consider where a witness has a personal
14 interest in the outcome of the proceeding. And jurors
15 are cautioned not to make decisions based on how many
16 witnesses have testified for one side or the other.

17 We have established through the testimony of
18 uninterested witnesses and through actual audio
19 recordings that a number of the City's witnesses have
20 offered testimony that is not credible: Robyn Randall,
21 Richard Benton contradict Ms. Arthur's; Ms. Essayan
22 contradicts Mr. Hernandez; the Code Enforcement
23 Minutes, City Badge, audios, Ms. Richard's report all
24 contradict Mr. Oliva's claims.

25 And the video recording of Mr. Madden's visit

1 to Mr. Goldstein's property contradicts pretty much
2 every word in Mr. Goldstein's letter. It's unfortunate
3 that there is not a witness or audio recording
4 available to test every claim against Mr. Madden. But
5 every time, without fail, when there is a witness or an
6 audio recording identified, and we turn to that witness
7 or audio recording to see if the testimony is true, the
8 claims are contradicted by the eyewitness or audio
9 recording, and the story turns out to be false.

10 As we discussed and Mr. Zalman said, "The City
11 would be calling the specific witnesses that we believe
12 are pertinent to our case." So it stands to reason
13 that if the City didn't call a witness, that witness'
14 testimony was not deemed by the City, in Mr. Zalman's
15 words, "to be pertinent to the case."

16 Or maybe Mr. Zalman and Mr. Miller are good
17 lawyers. Maybe they selected those that they thought
18 would be the best, most credible witnesses to testify
19 for their case.

20 But as we've seen, on cross-examination, their
21 stories being tested against impartial and unbiased
22 evidence, their stories turn out to be not credible.
23 It would be unjust to rule in favor of the City, based
24 on summaries of unsworn statements from witnesses the
25 City consciously chose not to produce.

1 We talked about the BORA proceeding earlier and
2 how Mr. Madden was told that they were going to be
3 investigating and it was all going to be closed and
4 then that turned out not to be true.

5 I showed you the sworn statement that Mr.
6 Madden gave and the discussion from Bill Dumbaugh
7 making it very clear that BORA's position -- and BORA
8 is the authority.

9 What John Travers thinks is not important here.
10 John Travers reports to BORA as does Mr. Madden. BORA
11 is the official that supervised the licenses of the
12 Building Officials in Broward County, and Mr. Dumbaugh
13 was telling Mr. Madden, you are the authority having
14 jurisdiction, not John Travers.

15 And I've showed you that in black and white
16 evidence -- not testimony -- evidence. Unrefuted
17 evidence. Rock, meet hard place. That's where Mr.
18 Madden was during the same time period where, where at
19 the one end BORA is telling him, "It's your license,
20 you're responsible, you're on the line."

21 And on the other hand, during the same time
22 period, all these irregularities are popping up all
23 over the City on a number of projects -- many of which
24 are MTCI's projects where the Building Code was not
25 being enforced -- and the Building Official is

1 insisting that he's the ultimate authority.

2 Mr. Madden explained this to Ms. Richard. This
3 exact dilemma was described very clearly in his written
4 response under the heading, "Authority Having
5 Jurisdiction."

6 Ms. Richard could not have read Mr. Madden's
7 response because she said in her report, giving very
8 short shrift to his entire response, but regarding this
9 particular issue she said, "Madden's primary defense
10 appears to be the pending BORA proceeding charging him
11 with committing acts inconsistent with the Building
12 Code. While the BORA proceeding is undoubtedly
13 unpleasant, it cannot be used to condone bad behavior,
14 insubordination, or failure to perform duties required
15 by the Chief Building Inspector."

16 No one who reads Mr. Madden's response, the two
17 pages or so that he devotes to Authority Having
18 Jurisdiction regarding the BORA dilemma, no one can
19 reasonable make that conclusion that that's what he was
20 saying.

21 Further, I want to point out, Mr. Madden was
22 not ever charged with committing acts inconsistent with
23 the Building Code. That was the point.

24 It was Mr. Augustin and Mr. Osborne, the
25 Building Official and the Assistant Building Official,

1 who were convicted for committing acts inconsistent
2 with the Building Code.

3 And then Mr. Madden was charged for allowing
4 this occur, even though there's an abundance of
5 evidence in the record, if you look at our exhibits
6 over and over and over, where he did everything he
7 could to stop it.

8 In his written response to the City, Mr. Madden
9 explained that even though BORA says he's the authority
10 having jurisdiction, a lot of the employee statements
11 accusing him of insubordination because he was
12 attempting to enforce the Code the way he thought they
13 needed to be enforced. So if you see that, over and
14 over, if you look at those statements, that they
15 thought Mr. Madden was being insubordinate, and all he
16 was trying to do was balance BORA telling him one thing
17 and his boss taking a different position, contrary to
18 the authority in Broward County.

19 2900 Riomar, as you know, is one of the
20 examples of projects where conflict arose. Major
21 construction was happening, all without required
22 permits, and the Building Official was onsite having
23 his picture taken with construction evident in the
24 background.

25 When Mr. Travers testified here, he claimed to

1 be unaware of the permit status of the project and he
2 insinuated that they were just moving dirt and doing
3 site prep work, which he told you did not require a
4 permit.

5 But the evidence shows that that is not the
6 case. Also at Madden Exhibit 102, you see an email
7 from Charlie Nickert to Mr. Travers the morning before
8 he left for the groundbreaking telling him what permits
9 had been issued.

10 And the photos that we produced, introduced
11 into evidence, regarding the time around the
12 groundbreaking, you can clearly see installed pilings,
13 grade beams, a pile rig, a concrete truck, all on site.

14 Now I will admit to you that because of the way
15 the City's groundbreaking photo had been copied, those
16 things were not so evident in the City's version of the
17 photo.

18 So if, you know, Mr. Travers' only point of
19 reference was that photo, you might understand why he
20 seemed to be unaware. But we all know that Mr. Travers
21 was there, in person, at the time the photo was taken.
22 He was in the photo.

23 Yet when I was asking Mr. Travers about work he
24 observed on-site, and about Mr. Madden's claim that
25 work was being done beyond the early start permit, Mr.

1 Travers looked each of you in the eye and he said this,
2 "The Board needs to understand that you can put
3 construction equipment on a site prior to the issuance
4 of a permit and you can put a pile of dirt on the site
5 for the City Commissioners and the Mayor to put a
6 shovel into, because that does not necessarily mean
7 that that's work without a permit."

8 Of course, that was before he knew that we had
9 clearer pictures showing that there was much more
10 happening than a pile of dirt to put a shovel in or
11 site work being done. The pictures tell the
12 indisputable true story and, once again, the oral
13 testimony appears to be unbelievable.

14 Frank Arrigoni was called and he testified
15 about 2900 Riomar and the unpermitted work that was
16 being done on the site. And he said he had issued a
17 stop work order because the grade beams were being
18 formed and reinforced steel was being installed.

19 He said he went back a couple days later, after
20 serving the stop work order, and work was continuing.
21 And he said he observed at that time deficiencies in
22 the construction which were in violation of the
23 Building Code and they were life safety issues.

24 And Mr. Arrigoni said that it is the job of the
25 Private Provider to make sure the construction is

1 performed in accordance with the issued permit and the
2 approved plans. But the opposite seemed to be
3 happening with MTCI.

4 Mr. Arrigoni testified that Officer Maura went
5 out to that job and he told the supervisor that was
6 doing structural work that he could face arrest if he
7 did not follow the stop work order. Mr. Arrigoni said
8 that they then stopped work for a short period of time.
9 And then he said, "But when I went back out there, they
10 had started it again." Mr. Arrigoni said, "The first
11 day they had stopped. He said he didn't want to get
12 arrested, so he was going to stop. But then I went
13 back out there and he told me that he was assured that
14 there would be no arrests."

15 Obviously, there are not many people who would
16 have the authority to give such assurances. But
17 someone in a position of authority was allowing the
18 construction to continue with the substandard grade
19 beams and ties and in violation of the stop work order.

20 One of the charges identified in Ms. Richard's
21 report is F-3: Expression of a personal work-related
22 grievance or bypassing official documented grievance
23 procedures when such grievance is not a matter of
24 public concern. Mr. Miller didn't address this at all
25 in his closing.

1 But it's an important part of the rule that Mr.
2 Madden is being charged with. It's difficult,
3 actually, to imagine anyone concluding that Mr.
4 Madden's concerns about buildings being constructed
5 without permits, without approved plans, without
6 required inspections, was not a matter of public
7 concern. In fact, when I asked Ms. Richard this she
8 said, "In general, I guess, how buildings are
9 constructed and permitted and approved would be a
10 matter of public concern."

11 Furthermore, as you know, Florida Building Code
12 116.1.2 states that "Structures commenced without a
13 permit shall be presumed and deemed unsafe." Much of
14 the testimony in the HR investigation related to the
15 issues surrounding this 2900 Riomar project, that Mr.
16 Madden's efforts to try to make sure that the
17 construction did not continue without permits, plans,
18 and inspections.

19 Clearly, those are matters of public concern.
20 And so the charge of F-3 cannot be sustained on this
21 record. Under the City's own policies, he cannot be
22 disciplined for raising these issues.

23 2900 Riomar was just one example of work being
24 done without proper permits, plans, or inspections.
25 Mr. Goldstein's project at 1415 Northwest 62nd Street

1 was another. As you know, the owner of that property
2 complained about Mr. Madden's enforcement efforts in
3 the hope of getting him terminated. The statements in
4 Mr. Goldstein's letter are false.

5 The City would have known Mr. Goldstein's
6 statements were false if they had watched Mr. Madden's
7 video recording which depicts Mr. Madden's first and
8 only interaction with Mr. Goldstein. No one bothered
9 to review it before finding Mr. Madden guilty as
10 charged.

11 Ms. Richard admitted that she never listened to
12 the recording and at times seemed to not be aware that
13 it existed. But as we know, Mr. Madden did tell the
14 City that the recording existed in his written
15 response.

16 So on the one hand, the City had an owner, who
17 was being accused of constructing without a permit, and
18 violating a stop work order, and they were complaining
19 about the Building Chief who was trying to enforce the
20 Building Code.

21 On the other hand, you have a long-term City
22 employee who informed the City that the charges were
23 false and he informed the City that there was a video
24 recording of his interaction with the complainant, and
25 without bothering to review the recording or asking Mr.

1 Madden for additional information, the City accepted
2 Mr. Goldstein's claims at face value.

3 Without bothering to interview Burt Ford, Joe
4 Pasquerillo, Alberto Torres, or Felix Rodriguez -- all
5 of whom were with Mr. Madden during his first visit to
6 the site -- the City accepted Mr. Goldstein's claims at
7 face value.

8 There was zero effort to determine whether
9 those claims were true or not. That is not due
10 process. And that is not just cause. That is a flawed
11 investigation.

12 The City didn't call Mr. Goldstein here to
13 testify and, arguably then, the Board should not
14 consider his unsworn letter because Mr. Madden can't
15 confront him here and cross-examine him, and test the
16 veracity of his testimony. But I would submit that
17 saying that to you, that you should not consider Mr.
18 Goldstein's letter is like a judge telling a jury to
19 disregard something highly prejudicial that they just
20 heard. I think it's very difficult to do. Fortunately
21 for Mr. Madden, we don't have to cross-examine Mr.
22 Goldstein to prove that his claims are not credible.
23 The video recording does that.

24 As you heard from Mr. Madden, he went to that
25 site after someone complained to him about the City

1 looking the other way while work was being done without
2 a permit.

3 While Mr. Goldstein appears to validate at
4 least that part of the claim when he tells Mr. Madden
5 on the recording that the City's Building Official and
6 Assistant Building Official had been onsite several
7 days before and he said they were aware of what he was
8 doing.

9 But if that was the case, why was Mr. Goldstein
10 permitted to proceed without a permit and without
11 approved plans and inspections? Mr. Travers never
12 explained that, he just claimed to not be clear about
13 what permits they had or what construction was being
14 done. But the record evidence and the other testimony
15 regarding that project make it clear there was no
16 permit. And work was almost nearly completed, I think,
17 in Mr. Goldstein's words.

18 We learn from listening to the recording that
19 this as an MTCI project and we hear Mr. Madden's
20 request to review the inspection logs, and that request
21 was denied.

22 We've learned from watching the video recording
23 that the stamps on the back of the plans for this
24 nearly completed construction project had not been
25 filled out.

1 You may recall this -- I'm going to share the
2 screen -- when I originally had done my opening
3 statement, I had showed this picture in one of the
4 PowerPoints. I talked about how none of the plans had
5 been signed. That might look familiar to you, that's a
6 photo that was taken from Mr. Madden's video.

7 During Mr. Travers' direct testimony, without
8 ever being asked a question about these unsigned plans
9 in this photo, Mr. Travers attempted to explain away
10 the photo. I'll show you his testimony in that regard.
11 On Page 147, Mr. Travers is asked by Mr. Zalman, "Could
12 you briefly summarize the concerns you had about Mr.
13 Madden's behavior in the workplace." Nothing about the
14 plans or not being signed.

15 He talks for a while about some other things
16 and then on 150 he says to you: "Now, those drawings
17 have a lot of extra pages in them. So if we look at
18 the picture that was submitted earlier in the opening
19 statement by Mr. Madden's counsel, she showed you a
20 picture of a stamp on the back of a page that did not
21 have any initials on it."

22 "There's a number of reasons that that could
23 have happened. Number one, normally the first page of
24 a set of drawings is the architect's concept of what
25 the final building would be, the address and also the

1 designer's information. There's really nothing to
2 review on that page."

3 "Additionally, the last page of the complete
4 document set of prints can often be a blank page
5 because those prints get moved around, handled, opened
6 and closed a lot. So, quite often, the architectural
7 firm will include a totally blank page on the back to
8 act as a kind of buffer or filter so that an actual
9 page with data on it doesn't get damaged, ripped, torn,
10 or smudged in any way."

11 He went on, "And then additionally, even some
12 designers will insert blank pages to differentiate
13 between the different disciplines to create a kind of
14 tab effect, so that when you move out of your
15 Structural to Electrical there could be a blank page
16 there."

17 "At any rate, whether it would be our
18 Inspectors or our Plans Examiners or the Private
19 Providers' plans examiners, if there was nothing of
20 merit on that page there would be no reason for them to
21 enter any initials on that page."

22 So this was Mr. Travers' explanation. However,
23 you now know, after looking at Mr. Goldstein's video
24 and Mr. Travers would have known had the City bothered
25 to look at the video, that none of those printed,

1 proposed scenarios is correct.

2 The video shows very clearly Mr. Madden turning
3 page after page after page while speaking to Mr.
4 Goldstein. And you could see on the video that there
5 were no initials or signature on the back of any of the
6 plans.

7 It wasn't the first page or just the last page
8 or a blank page in the middle as a divider, it was
9 every page. And when Mr. Madden had returned to the
10 office after that September 2nd visit, he wrote an email
11 detailing the fact that work was being done beyond the
12 early start permit.

13 Mr. Madden also shared that Mr. Travers and Mr.
14 Hernandez had visited the site the week before,
15 according to the contractors, and that was Tab 54 of
16 that email.

17 Mr. Travers confirmed during my cross-
18 examination that they had been on the site and you
19 would think that they would have seen that the plans
20 had not been signed and that they didn't have the right
21 permits onsite as required, unless they didn't look at
22 the plans or permits. But if that's the case, what
23 were they doing there? We've learned from watching and
24 listening to the video recording that a stop work order
25 had been issued, but the contractors were continuing to

1 work.

2 Mr. Goldstein defied the stop work order, even
3 in the face of Mr. Madden's second visit. And he
4 brazenly demanded that Mr. Madden contact Mr. Travers
5 and Mr. Hernandez who, according to Mr. Goldstein, were
6 "aware of what he was doing."

7 So, I said before that we know for a fact from
8 the video recording that Mr. Goldstein's statements are
9 false. We know first and foremost that this is the
10 only time they'd ever met because we heard on the video
11 when Mr. Goldstein walked in and Mr. Madden asked him
12 who he was, and then they introduced themselves to each
13 other.

14 Because of this, we know for fact that Mr.
15 Goldstein and Mr. Madden didn't have any interaction
16 before the recording. And we know that Mr. Goldstein
17 wrote this letter to complain about Mr. Madden. He
18 dishonestly -- dishonestly -- tried to make it seem as
19 though he personally observed whatever conduct he was
20 complaining about, even though he clearly couldn't
21 have.

22 In his letter, Mr. Goldstein states that Mr.
23 Madden and others came by the BSO jobsite unannounced
24 on September 2nd and he says, "They took the position we
25 did not have any permits or authorization to do the

1 work. They began taking pictures throughout the
2 space."

3 Now, we know from the evidence in the record
4 that Mr. Madden, Burt Ford, and those other gentlemen I
5 named, did go to the site on September 2nd. We know
6 that from the email at Tab 54, and that Mr. Madden
7 wrote an email to Mr. Oliva, that email, afterwards
8 when he returned.

9 We know that pictures were taken and, since the
10 work was being done without proper permits, it's very
11 likely that this was communicated to the contractor on
12 site. But, Mr. Goldstein was not there on September 2nd
13 as he alleges because he and Mr. Madden didn't meet
14 until September 8th.

15 Mr. Goldstein next says in the letter, "The
16 general contractor introduced himself and took them to
17 the early start permit and logbook and told them that
18 Mr. Travers was aware of the work. At this point I
19 came on the jobsite and saw them looking over the
20 plans."

21 Well, we know that didn't happen on September
22 2nd, which is what he says in his letter. We also know
23 that Mr. Madden was not looking at any logbooks when
24 Mr. Goldstein walked in because we hear him ask to look
25 at the logbooks and the request was denied.

1 Mr. Goldstein next says that after he walked
2 into the jobsite and saw Mr. Madden looking over these
3 plans he said, "John Madden was threatening to have
4 people arrested and/or licenses suspended. My
5 contractors were definitely intimidated."

6 He then says, "The tone and words used were
7 threatening." The tone and words uses were
8 threatening. He attempts to mislead the City into
9 believing that he personally observed this conduct that
10 he alleges occurred, but you heard Mr. Madden speaking
11 with Mr. Goldstein. This description could not have
12 been further from the truth.

13 If the City had bothered to listen to Mr.
14 Madden's recording, they would have known first-hand
15 that Mr. Madden's tone and words were not threatening,
16 as Mr. Goldstein alleged.

17 Mr. Goldstein next says, "Mr. Madden began
18 recording from his phone and I told him on the record
19 not to threaten us." So again, Mr. Goldstein wants the
20 City to believe Mr. Madden made these threats and that
21 these threats were made in front of him, but before the
22 recording was began. And we know for a fact that none
23 of that is true. The recording began and then Mr.
24 Goldstein walked in and Mr. Madden took care to let him
25 know that the conversation was being recorded.

1 And we also heard on the recording almost the
2 very first words out of Mr. Goldstein's mouth to Mr.
3 Madden was, "What I have heard," -- what I have heard -
4 - "is you have been here multiple times, sending people
5 over in an intimidating fashion." And then he demands
6 to have a meeting with Mr. Madden, Travers, Feldman,
7 and City Counsel Member.

8 So if he had, in fact, had heard that Mr.
9 Madden had been there multiple times, he was obviously
10 ill-informed. Because the record is clear that Mr.
11 Madden was only there one other time, on September 2nd.

12 Also, Mr. Goldstein told Mr. Madden on the tape
13 what he told him he heard about Mr. Madden's conduct
14 was very different than what he put in the letter later
15 alleging that he personally observed.

16 He went from saying that Mr. Madden was sending
17 people over in an intimidating fashion -- that is all
18 he said -- to claiming that he personally witnessed
19 these threats in word and tone by Mr. Madden. That's a
20 huge difference.

21 We know that Mr. Masula was also on the site at
22 some point because George Oliva had sent him out there,
23 and we know that Mr. Travers and Mr. Hernandez were
24 there at some point. Mr. Goldstein may have viewed all
25 of those visits as intimidating. So be it. He was the

1 one constructing almost a completed project without a
2 permit and without approved plans, as we see on the
3 video.

4 We also know from Burt Ford, who was present
5 during Mr. Madden's first visit -- unlike Mr.
6 Goldstein, who was not present -- what happened when
7 they were there. Mr. Ford made it clear that there was
8 [sic] no threats, there was no intimidating. He said,
9 "We were blunt but we weren't rude." You know, that
10 was his testimony. So obviously Mr. Goldstein's claims
11 are not credible. First of all, they're hearsay,
12 they're not actually personal observances -- could not
13 be. And secondly, they're not credible.

14 Without listening to the video or considering
15 any of that, Ms. Richard testified that she found Mr.
16 Madden guilty of "confronting some employees on a
17 jobsite and threatening to have them arrested and
18 threatening to have their license suspended."

19 There is no competent evidence to sustain that
20 finding, and you must find in Mr. Madden's favor on
21 that charge. It just simply didn't happen.

22 Now, I told you at Tab 54 -- I might have the
23 tab number wrong -- Mr. Masula wrote pages and pages
24 about violations of Mr. Goldstein's project. And he
25 said he thought the contractor was "blatantly and

1 deceitfully exceeding the scope of work." So, I'm not
2 the only one who questions Mr. Goldstein's credibility.

3 But Mr. Masula said he was "blatantly and
4 deceitfully exceeding the scope of work." Did he say
5 something to the contractors when he was onsite about
6 his thoughts about this? Maybe. Perhaps he did. He
7 seemed very passionate. If you look at the exhibit,
8 he's very passionate about the violations and the fact
9 that he thinks they're trying to pull a fast one.

10 But what we know is that there was nothing in
11 Mr. Madden's demeanor that was intimidating on the
12 second visit and we know from Mr. Ford that there was
13 nothing rude or threatening on the first visit. So
14 that charge cannot be sustained.

15 Ms. Richard found that Mr. Madden "publicly
16 questioned Travers' ability to serve as the Building
17 Official and accused the City Manager of mishandling
18 personnel matters." And she said that violated Section
19 4.F.2, Abuse of public criticism of an official. And
20 again, that allegation is solely made by Mr. Goldstein
21 in his letter. Like everything else, that statement is
22 false.

23 And while there's not video recording or a
24 witness or a document that I could point to, to use to
25 show to prove that did not occur, it's the City's

1 burden to prove that it did occur.

2 And I would submit, given a significant number
3 of false statements in Mr. Goldstein's letter, it's not
4 competent, trustworthy evidence and needs to be
5 disregarded.

6 Also, the City chose not to call Mr. Goldstein,
7 and so all you have is his unsworn, hearsay statements,
8 which have been proven to be unreliable. But I also
9 point out that Mr. Goldstein clearly had an intention
10 of getting Mr. Madden fired. Mr. Madden was the one
11 who was trying to enforce the Code and make sure that
12 the issues on the site were not ignored.

13 And then we hear from -- I brought in Mr. Leroy
14 Jones to testify. Because after he had failed the
15 jobsite for being in violation of the Code, he was told
16 by Mr. Goldstein's superintendent -- insolently, in my
17 opinion -- that Mr. Jones could not fail the jobsite.

18 And he said, "He better choose who he's going
19 to follow, because Mr. Madden is not going be working
20 there any longer." Think about that.

21 Shortly before this investigation occurred, Mr.
22 Goldstein's superintendent is tell Mr. Jones, "You
23 better think about who you're following, because Mr.
24 Madden is not going to be working there anymore." And
25 he was right.

1 Mr. Madden went to Detective Maura and had Mr.
2 Jones reveal his testimony about what happened. Mr.
3 Madden also played the video of his conversation with
4 Mr. Goldstein with Anthony Fajardo and the Chiefs.

5 And he was passionate about what was happening
6 out there. And that is, if you look at the statements,
7 that is where the statements were made that something
8 is happening. And something clearly was happening.
9 What was happening? I don't know that it was ever
10 decided.

11 But a few short days later, after Mr. Madden
12 played that Goldstein video, that's when George Oliva
13 called his meeting to gather complaints about Mr.
14 Madden.

15 Mr. Fajardo had said 13 employees. Mr. Miller
16 couldn't remember the number. Mr. Fajardo said 13
17 employees had complained to him and that HR had
18 interviewed those 13 employees.

19 But, if you look at their interviews, at least
20 half did not complain about any personal issues with
21 Mr. Madden at any time in 2016. According to Richard
22 Benton, those in Mr. Oliva's meeting were, "Trying to
23 rally everyone against John."

24 So you have Mr. Goldstein violating the
25 Building Code; Mr. Madden showing the video and

1 complaining about Mr. Goldstein violating the Code; Mr.
2 Goldstein saying Mr. Madden will no longer be working
3 for the City of Fort Lauderdale; and then Mr. Oliva
4 calling a meeting to rally everyone together to give
5 statements against Mr. Madden.

6 And then Mr. Fajardo acknowledged that the
7 statements, the complaints, regarding Mr. Madden all
8 came in around the same time and then Mr. Madden was
9 put on leave.

10 Mr. Fajardo said, "Yeah, this is a quote.
11 Yeah, so they had spoken to me around the same time.
12 It all kind of happened very fast. There was a couple
13 of people that spoke to me and then, within a matter of
14 days, maybe a week, I was asked to join a bunch of
15 people in the conference room."

16 Exactly. Mr. Oliva had called all these
17 employees into a room to rally them against Mr. Madden
18 and then they complained to Mr. Fajardo and called him
19 into a meeting. That's what happened.

20 Mr. Benton said he pointed out in this meeting
21 that the issues John was raising were legitimate. Mr.
22 Masula said the same thing in his statements, but
23 nobody seemed to care.

24 Ms. Richard acknowledged that she never
25 investigated the validity of Mr. Madden's concerns

1 regarding possible illegal activity even though she
2 acknowledged that they were matters of public concern.
3 And when I say illegal activity, I mean on the
4 projects.

5 I would also note that even if Mr. Madden was
6 wrong, if he had a good faith belief that these things
7 were happening, the City's own rules prohibit him from
8 being disciplined for raising these issues.

9 Charlie Nickert, Scott Dry, Barry Fine, Robert
10 Gonzalez, Richard Benton did not report having any
11 personal issues with Mr. Madden yelling or bullying.
12 None.

13 And only three out of the twenty persons who
14 reported to Mr. Madden were interviewed by HR, even
15 though those who complained had other reasons for
16 wanting Mr. Madden out of the City.

17 Our exhibits include two notebooks of
18 recommendations and commendations that Mr. Madden
19 received both during his employment and then after his
20 termination, describing Mr. Madden as professional,
21 honest, helpful, friendly, kind, et cetera. A very
22 different picture from the one the City has been trying
23 to paint.

24 Ms. Richard relied on Mr. Goldstein's letter
25 without listening to the recording and she essentially

1 ignored Mr. Madden's written response that we've
2 discussed.

3 She found him guilty of these violations
4 without one specific -- one specific example of alleged
5 action or establishing the timing of such act. In the
6 last sentence of the first paragraph of Ms. Richard's
7 findings, she concluded that Mr. Madden made slanderous
8 statements, accusing Travers and Hernandez of
9 committing illegal acts and of taking bribes from one
10 of the Private Providers.

11 Mr. Miller repeated that statement, basically,
12 in his closing, telling you that Mr. Madden "flat out
13 accused them."

14 But we're going to talk about the actual
15 evidence and you'll hear that that is a hundred percent
16 not accurate. The evidence -- not one witness was
17 called to support this statement.

18 First of all, none of the witnesses testified
19 said that Mr. Madden had ever done this. Now we do
20 know that Mr. Madden raised these questions about
21 certain MTCI projects and how they were being allowed
22 to proceed without permits or approved plans.

23 And we noted about the meeting with Mr. Fajardo
24 where he played the Goldstein video. And it's in that
25 meeting, according to some of the witnesses, where Mr.

1 Madden had said, "Something is going on here." That's
2 what Scott Dry says. And then Mr. Dry said that Mr.
3 Madden "basically" accused them of being in cahoots.
4 And he "basically" accused them of doing something
5 illegal.

6 Ms. Richard's finding cannot reasonably be
7 based on a generalized statement from Mr. Dry about
8 what he inferred, by what he thought Mr. Madden was
9 trying to imply. That is not competent evidence.

10 Also, Mr. Nickert -- the same is true with
11 Charlie Nickert, who supposedly said that Mr. Madden
12 implied that Mr. Travers and Mr. Hernandez were getting
13 kick-backs. Again, if Mr. Nickert inferred this from
14 the questions being asked by Mr. Madden or a statement
15 that something is going on here, that is a far cry from
16 evidence that Mr. Madden made these statements. And it
17 certainly is not evidence that he "flat out accused
18 them."

19 Not one person in the record ever said that Mr.
20 Madden accused Mr. Travers or Hernandez of committing
21 illegal acts or taking bribes from MTCI. Nobody
22 testified to that, in the writing, in the summaries of
23 the testimony given, in the report, or in the testimony
24 before you.

25 Also, I would point out that slander is not

1 slander, as Ms. Adelson certainly knows, unless it's
2 untrue. And Ms. Richard admitted that she never
3 actually tried to determine whether what she thought
4 Mr. Madden was accusing Mr. Hernandez and Travers of
5 was true or false.

6 And she also said, if an employee is concerned
7 about something illegal, that she would never encourage
8 them -- this is actually a quote, she said, "She would
9 never encourage anybody that's aware of any concern to
10 keep it to themselves out of fear that they would be
11 terminated." Really?

12 Well, then, if Mr. Madden had thought that Mr.
13 Travers and Mr. Hernandez were on the take and he was
14 concerned about that, and he never said that -- and I'm
15 not saying he did -- but if he had, this is a matter of
16 public concern and certainly something that he should
17 have not been terminated for. And that charge, as
18 well, is unsubstantiated.

19 So another thing in Ms. Richard's report is
20 that quote, "Several coworkers recalled examples of
21 shouting, verbal abuse, threats, slamming of doors,
22 clenched fists, and belligerent behavior." But Ms.
23 Richard admitted on cross that her report concluding
24 that several coworkers had recalled examples of these
25 things was misleading.

1 And one would think that if Mr. Madden had
2 actually engaged in that type of behavior in 2016 or
3 even 2015, that the City would have been able to come
4 up with at least one witness who could testify under
5 oath that this occurred on X date under Y
6 circumstances.

7 You have not heard that testimony. Not one
8 person for the slamming of doors says, "I had a
9 conversation with Mr. Madden and he was mad and he left
10 and he slammed his office door." Not one. Not one.

11 In fact, every witness that I asked if they'd
12 ever observed that behavior said they had not. Mike
13 Rinkus, whose office is located in the same vicinity as
14 Mr. Madden's, was asked, "Did you ever hear him slam
15 his door at any time?" Answer: "No, I did not."

16 Ron Gardner, who said he was six feet away from
17 Mr. Madden, was asked, "Have you ever heard or seen
18 anything in all the hours that you spent six feet from
19 Mr. Madden's office what would be characterized as
20 slamming doors, being off his meds, being violent,
21 threatened people, yelling and screaming, belittling,
22 bullying, any of that?" Mr. Gardener responded: "No,
23 never."

24 Ms. Richard acknowledged that she was not
25 provided any specific examples of Mr. Madden clenching

1 fists or slamming doors or engaging in belligerent
2 behavior to support her statement. And no one
3 interviewed by HR provided any such details, like, "We
4 had this conversation; it was in this context; he came
5 in, and he clenched his fists; or he slammed the door."
6 As I said, none of that.

7 Ms. Richard acknowledged that the statement she
8 received as part of her investigation offered nothing
9 more than claims that this behavior happened at some
10 point, period. She acknowledged that she didn't know
11 when it happened and that there were no specific
12 examples of it happening.

13 She also acknowledged that it was only Mr.
14 Hamilton who alleged that Mr. Madden would clench his
15 fists or slam doors. And it's interesting that Mr.
16 Hernandez did not say that in a contemporaneous email
17 or even later in a statement to HR. But when he came
18 to testify, he testified he thinks that that's what
19 happened. All of a sudden Mr. Madden is clenching his
20 fists.

21 To summarize, there's no evidence Mr. Madden
22 ever accused Mr. Travers of taking bribes or kickbacks.
23 The HR investigation did not reveal once instance of
24 slamming doors or clenching fists. And the employees
25 whose offices were located near Mr. Madden's said none

1 of that ever happened.

2 Ms. Richard acknowledged on page 35 to 36 of
3 her testimony that one would normally look only to
4 recent conduct when considering terminating a long-term
5 employee, but she admitted that in John Madden's case
6 she was unaware of the dates of the events and she did
7 not know whether they were recent or happened years
8 ago.

9 Regarding threats, Ms. Richard was asked
10 whether Mr. Madden threatened anyone in the last year
11 of his employment and, if so, who and what did he say?
12 And she said that she believed that Mr. Madden
13 threatened Mr. Goldstein's employees to have them
14 arrested and their licenses suspended.

15 And for the reasons we've already talked about,
16 there's no competent evidence to support that claim.
17 Mr. Madden denies it, and it's clear that Mr.
18 Goldstein's allegations without corroboration or some
19 independent document could not be deemed to be
20 credible.

21 Ms. Richard clarified or made clear that there
22 were no physical threats or threats of harm in any way.
23 Although, I think Mr. Miller and Mr. Zalman through
24 these proceedings have tried to make you think that Mr.
25 Madden was dangerous in some way. But Ms. Richard made

1 clear that was not the finding of the City.

2 In her report, Ms. Richard did discuss Mr.
3 Madden's email forwarding Mr. Travers' May 16 email,
4 and directing the Chiefs to disseminate to their staff
5 his instructions about what to enter into the computer.
6 And Ms. Richard said that Mr. Madden forwarded that
7 email to the Inspection Team and she said, "He included
8 a citation" -- he being Mr. Madden -- "He included a
9 citation to Florida law as it relates to Code officials
10 faithfully performing their duties and adding a warning
11 that each licensee is accountable for their actions as
12 they relate to the Code and the interpretation
13 thereof."

14 How that content could be viewed as offensive
15 or threatening is hard for me to understand. Ms.
16 Richard in her report said, "Travers believes Madden's
17 email to his staff was threatening and a direct attempt
18 to undermine and interfere with his authority as the
19 Building Official."

20 But when Mr. Travers testified in these
21 proceedings about this email, Mr. Travers did not agree
22 with Ms. Richard's statement. Regarding this
23 particular statement in Mr. Madden's email, Mr. Zalman
24 asked, "And what do you take from that? How do you
25 interpret that?"

1 And Mr. Travers responded, "I would think that
2 he's notifying each of the people mentioned in the "To"
3 portion of the email that they need to be cognizant of
4 what their licenses require and to be accountable for
5 their actions."

6 Mr. Travers later added, "My opinion is that
7 the wording of this sentence, if I were reading it an
8 Inspector, puts me on notice that I am accountable for
9 everything I do. There is nothing wrong with that."
10 "There's nothing wrong with that." So evidently Ms.
11 Richard was mistaken.

12 And based on Mr. Travers' sworn testimony in
13 these proceedings, this is yet another conclusion
14 reached, forming the basis of Mr. Madden's termination,
15 that is not supported by any evidence.

16 I would also note that in that same email, Mr.
17 Madden specifically instructed his staff to comply with
18 Mr. Travers' directions regarding what to enter into
19 the C Plus system.

20 Ms. Richard implied a number of times that her
21 investigation would have been more thorough and she
22 would have nailed down the dates and specifics of the
23 events in her report if Mr. Madden had denied the
24 allegations in his written response. But he did deny
25 them and, if you look, you'll see them very clearly.

1 I thought it interesting that Mr. Miller
2 suggested that a denial of the acts alleged to have
3 violated the bullying policy was not enough, that Mr.
4 Madden actually had to say, "And, therefore, I did not
5 violate the City's bullying policy." I think that's a
6 bit of sleight of hand, frankly. Mr. Madden denied
7 that the conduct that was being alleged about him
8 occurred.

9 The HR report by Ms. Richard devoted one
10 paragraph and fourteen lines of text, most of which
11 reflects a poor understanding about the issues and
12 denials raised in Mr. Madden's twelve-page response.

13 Furthermore in her report, she relied heavily
14 on Mr. Travers' statements to her. But because these
15 statements only appear in her final report -- and I
16 think this is really important for the Board to
17 understand -- no separate statement was ever created
18 from Mr. Travers, and none of Mr. Travers' statements
19 were provided to Mr. Madden before his written response
20 was due.

21 You know, Mr. Miller said that Mr. Madden
22 didn't point out that he didn't get this information in
23 his written response. Well, you don't know what you
24 don't know if you don't know it. Right?

25 And Mr. Madden didn't know that Mr. Travers had

1 given this statement and that it would, in large part,
2 be relied on by HR and the City in terminating him when
3 they didn't ever give him an opportunity to respond.
4 That is not due process and that is not just cause.

5 Ms. Richard acknowledged that every statement
6 in her investigation discussed Joe DeMaio as well as
7 Mr. Madden, but she said she didn't know why. We do
8 know that on at least one occasion Mr. Madden was
9 accused of doing something that was actually Joe
10 DeMaio.

11 You will recall Robyn Randall's testimony where
12 she recalled Mr. Madden yelling at Paul LaRoche and
13 getting angry and getting in his face. In actuality,
14 as Mr. LaRoche testified, it was not Mr. Madden, it was
15 Joe DeMaio, and Ms. Randall was mistaken.

16 There may be other examples of that. Again, if
17 I'm not cross-examining the witnesses, there's no way
18 to know for sure. But regarding Ms. Randall's
19 testimony about the interaction with Mr. LaRoche and
20 Mr. DeMaio, in response to Mr. Miller's questions, Ms.
21 Randall said she would have been afraid if it had been
22 her [sic] Mr. DeMaio was yelling at. And she said that
23 Mr. LaRoche looked afraid.

24 So, what happened in that instance as a result
25 of the conduct which seemingly violated the City's

1 anti-bullying policy? According to Mr. LaRoche's
2 testimony, he complained, Joe DeMaio apologized, and it
3 was over. No discipline, no corrective action.

4 Have you heard any testimony from anyone
5 regarding any one instance where Mr. Madden allegedly
6 did something, it was complained about, and then Mr.
7 Madden was talked to, counseled, or disciplined about
8 this action? Not one instance. Not one instance in
9 all of 2015, 2014, 2016.

10 Instead, in the midst of the projects being
11 built without permits and BORA officials testifying Mr.
12 Madden is responsible for all things Madden; and Mr.
13 Madden having two family members diagnosed with serious
14 Stage 4 cancer; in the midst of all that, no one talks
15 to Mr. Madden. No one.

16 No one ever gave him an opportunity to speak
17 about a particular instance. "This person complained
18 about you. What do you say, Mr. Madden?" Why that was
19 not part of the HR investigation is bizarre.

20 I just did one for Martin County where I did an
21 80-page report on one complainant and a 50-page report
22 on the other. You've got to find out all the facts,
23 not just what's being complained about, and then say,
24 "Okay, defend yourself. Oh, you're guilty." And
25 that's what happened here and that is not just cause.

1 And that certainly is not due process.

2 Ms. Richard charged Mr. Madden with
3 insubordination and the only evidence offered to
4 support that charge was the claim that Mr. Travers gave
5 a directive to enter certain letters into the Community
6 Plus system, but Mr. Madden told his staff to enter C
7 instead.

8 Now, Mr. Miller seems to be implying in his
9 closing that, oh, it was much more than that and that
10 Mr. Madden was committing insubordination by
11 interfering with these projects and stopping them, or
12 whatever other accusations he was making. But that was
13 not Mr. Travers' testimony. And that was not Ms.
14 Richard's testimony. And, as I said, statements from a
15 lawyer are not evidence.

16 It was clear once we figured out what they were
17 accusing Mr. Madden of, as far as insubordination, we
18 were able to clearly show that there was no basis on
19 that charge as well, and that the instructions to enter
20 letters -- the instructions by Mr. Travers came from
21 the PXA1 and PXA2 policies. And pursuant to those
22 policies, people were supposed to enter letters,
23 whatever they are, not C.

24 And then the claim was that Mr. Madden, on the
25 face of that, or the heel of that, sent an email

1 instructing his people to enter C into the system. And
2 what we have shown you is, you know, by the miracle of
3 dates and calendar, one did not happen before the
4 other.

5 The policy was entered and issued after Mr.
6 Madden's email and, therefore, cannot be
7 insubordination for not complying with Mr. Travers'
8 policy. Now, Mr. Travers attempted to support that
9 charge still by saying that he thought there was an
10 earlier version of the Permit by Affidavit Policy, and
11 he was still suggesting that his directives were
12 violated.

13 And again you'll recall that we did a public
14 records request for that from the City of any prior
15 versions, drafts, of this policy, and they produced the
16 information, which was produced to you, and it showed
17 very clearly that there was no prior version of this
18 policy prior to the date of Mr. Madden's email.
19 Therefore, there was no insubordination.

20 Regarding the bullying, Ms. Richard said she
21 found Mr. Madden violated the Workplace Bullying
22 Policy. But, you should look at the policy and the
23 language of it because it defines bullying as:
24 repeated form of abusive conduct by one employee,
25 basically against another. A repeated form of abusive

1 conduct.

2 Is there any testimony before you that anyone
3 said that Mr. Madden repeatedly bullied them? That he
4 repeatedly threatened, degraded, humiliated,
5 intimidated, interfered with the flow of work, was
6 verbally abusive to them? No, you didn't.

7 And I don't think there's any evidence of that
8 in the record. Frankly, the HR statements gathered
9 against Mr. Madden by a handful of employees who did
10 not like him for one reason or another, were full of
11 mean-spirited and unsubstantiated, slanderous,
12 discriminatory accusations.

13 There were a number of disparaging remarks
14 about Mr. Madden being an ex-Marine. There were
15 statements about him being off his meds. Where in this
16 record is there any evidence of Mr. Madden ever
17 attacking another employee? And where is there any
18 evidence of Mr. Madden ever saying anything -- anything
19 like that -- so mean-spirited as that? Not one person.
20 I think Andre Cross complained that Mr. Madden and Mr.
21 DeMaio used to tease him about being such a great
22 dresser. Seriously?

23 That's not okay, and Mr. Madden should be
24 terminated, but the type of statements made about Mr.
25 Madden in that HR investigation are something the City

1 condones and supports?

2 And Ms. Richard tried to explain it away by
3 saying, "Well, they were made in the context of an HR
4 investigation." First of all, as one who does those
5 for many other counties, I don't think that's a
6 justification by any stretch of the imagination. But,
7 even if it were, the statements themselves are, "I
8 heard so-and-so. So-and-so told so-and-so that Madden
9 was going to come in and spray the place with bullets,"
10 or something like that. Completely inappropriate,
11 completely offensive, abusive language that should not
12 have ever been permitted.

13 Mr. Madden never did any of that. Did he get
14 passionate about his job to enforce the Code? Did he
15 get passionate about making sure that buildings were
16 constructed safely? Absolutely.

17 Did he ever raise his voice? I'm sure he
18 probably did. Did he ever use the F-bomb, as he said?
19 He admitted yes, he did. But none of that is repeated
20 form of abusive conduct by one employee against another
21 employee.

22 It is up to this Board to decide whether or not
23 Mr. Madden was provided due process by the City and
24 whether or not there is just cause for his termination.
25 While not included, as I mentioned, in the City's

1 materials, the City has a uniform system of progressive
2 discipline to correct performance deficiencies or
3 misconduct by regular employees.

4 The policy provides certain rights to Mr.
5 Madden and must be followed, but the City did not apply
6 that policy. Mr. Zalman told this Board in his opening
7 statement that progressive discipline would not be
8 suitable for this type of behavior. But, the City's
9 Progressive Discipline Policy finally, ultimately,
10 provided to this Board, after numerous and repeated
11 requests, clearly applies. The question is, pursuant
12 to that Policy was termination the only option?

13 According to the Policy, when deciding the
14 appropriate level of discipline, certain factors should
15 be considered. The Policy also provides what should
16 not be considered, for example, written counselings
17 older than a year.

18 Mr. Madden had a clean record, had never been
19 disciplined, and all of his performance reviews were
20 above average. The City, therefore, included that 2013
21 memo from Greg Brewton in the documents in an attempt
22 to bolster their case against Mr. Madden.

23 Regardless, under the terms of Progressive
24 Discipline, Mr. Brewton's letter absolutely should
25 never have been considered, no matter what it was.

1 And, as I mentioned, Mr. Alfred Battle said he did
2 consider it, in violation of Mr. Madden's rights.

3 The City can't reach back years in violation of
4 its own policy to try to justify their decision. They
5 have to provide you competent evidence supporting their
6 decision to terminate this gentleman's job, based on
7 contemporaneous conduct and specific examples and
8 specific testimony of offenses and things that he did,
9 and credibly so.

10 Each step of the Progressive Discipline Policy
11 must be followed unless there is justification based on
12 the nature or severity of an offense to skip a step.
13 That's what the policy says. Here, the City didn't
14 skip a step, they skipped them all.

15 Mr. Madden was not provided one word of
16 caution, warning, or reprimand about his behavior
17 before being terminated. And, in many instances, such
18 as Andre Cross, Mr. Madden had no idea he was doing
19 anything to offend.

20 A couple of months before he was placed on
21 leave, Mr. Travers gave Mr. Madden an evaluation
22 telling him he was doing a better-than-average job, and
23 not just in enforcing the Code, but he also gave him
24 good marks for interacting with his coworkers.

25 Every expert in every treatise on just cause

1 will tell you the first basic tenet of just cause is
2 notice. Did the employer give the employee forewarning
3 or foreknowledge of the possible or probable
4 consequences of the employee's conduct?

5 Generally, the forewarning required under the
6 law can be oral or in writing, but in the City's
7 Progressive Discipline Policy, it is required to be in
8 writing. Mr. Madden never received notice or had an
9 opportunity to correct his behavior. Therefore, as a
10 matter of law, Mr. Madden was not terminated for just
11 cause.

12 We ask you to treat Mr. Madden fairly. Apply
13 the law and restrict your analysis to the facts. Thank
14 you.

15 Is somebody talking? I'm sorry? Waiting for
16 the Chair?

17 MR. BALDWIN: Yes.

18 MS. BLEAU: Thank you.

19 CHAIR ADELSON: Sorry. I don't hear anyone
20 talking. I just turned off mine because there was
21 noise in the background.

22 MS. BLEAU: I'm all finished.

23 CHAIR ADELSON: It could be Shelley because
24 she's in a car in order to avoid the noise.

25 MS. BLEAU: I don't hear it now. I just

1 thought maybe my speaker was off.

2 MS. GIALLUCA: I had to come to my car. I
3 couldn't hear a thing hardly, so, I had to get out of
4 there.

5 MS. BLEAU: Sorry, I was trying to speak up.

6 MR. BALDWIN: I've got the same problem, but I
7 can't go to my car.

8 CHAIR ADELSON: Ms. Bleau, are you still going,
9 because I --

10 MS. BLEAU: No, I finished.

11 CHAIR ADELSON: -- okay, I heard you say what
12 you wanted us to do, but I didn't hear you say --

13 MS. BLEAU: I said thank you.

14 CHAIR ADELSON: All right. I didn't want to
15 cut you off. Thank you both. I think we should take a
16 little break and then we can come back and begin our
17 deliberations. Shelley, Robert, how much time do you
18 want? Ten, fifteen minutes just to kind of clear your
19 head, get your notes together?

20 MR. BALDWIN: Fifteen minutes is fine.

21 CHAIR ADELSON: Okay, so we'll come back at
22 let's say 2:30. It's 2:20, so let's say 2:35.

23 MS. GIALLUCA: Okay, I'm going to head back
24 upstairs, but I think I might have to leave because
25 they are actually jack-hammering outside the building.

1 CHAIR ADELSON: I had that two hearings ago.

2 MS. GIALLUCA: It's horrible. Okay, 2:30?

3 CHAIR ADELSON: 2:35.

4 MS. GIALLUCA: 2:35, perfect.

5 CHAIR ADELSON: Thanks everyone.

6 [BREAK FROM 2:20 P.M. - 2:35 P.M.]

7 CHAIR ADELSON: All right, it looks like we're
8 all here. So, I do want to echo Mr. Miller's
9 sentiments in thanking everyone for their persistence
10 during what was a very challenging time to schedule,
11 coordinate, this hearing during Covid. It has been a
12 long process, but we're here, we're towards coming to a
13 conclusion and a resolution.

14 I do want to ask that if during any of these
15 breaks there's been an opportunity for the City and Ms.
16 Bleau, Mr. Madden to talk or speak. Has there been any
17 changes in where we are in terms of resolution before
18 we start our deliberations?

19 MR. MILLER: I will tell you that this morning
20 I emailed the City Attorney after the suggestion was
21 made. I got a response that said he appreciates
22 everyone's position, but he did not think there would
23 be any way to accomplish anything today, even if he
24 wanted to.

25 And he thought it best that the hearing go

1 forward because he does not want to delay this, knowing
2 the issues we have with Board Members. So,
3 unfortunately, I don't have anything else to offer or
4 add to that.

5 CHAIR ADELSON: Thank you for that effort.
6 Just wanted to give everyone one last opportunity, as
7 having noted that my main profession these days is
8 mediation. So, resolution between the parties is
9 always something that I encourage.

10 With that being said, I'm going to give Mr.
11 Baldwin and Ms. Gialluca an opportunity to start
12 opening the conversation about the evidence, about what
13 we've seen, and how they have viewed the testimony, the
14 evidence, the documents. Do one of you want to start?

15 MS. GIALLUCA: Sure, Madam Chair. I've never
16 been through deliberations before. Can you tell us how
17 this is going to work?

18 CHAIR ADELSON: I can, but I think I will defer
19 to Mimi [inaudible] process.

20 MS. TURIN: Thank you. Let me just go over a
21 couple of things with the Board. I'm going to your
22 attention to, first of all, the Code, which does not
23 speak in detail as to what actions the Board takes.
24 But it does say that after hearing the evidence and all
25 of that, the Board shall make the final decision

1 disposing of the appeal.

2 If such final decision is in favor of the
3 employee, the City Manager shall reinstate the employee
4 without loss of pay and benefits. And that's pretty
5 much the extent of the guidance and direction provided
6 by the Code.

7 Now, in normal employment-type appeal, there's
8 usually a two-pronged approach. The first one is to
9 determine whether or not there's been any wrongdoing by
10 the employee.

11 If there's been no wrongdoing by the employee,
12 then there's not need to get to discipline because
13 there's been no wrong-doing, which is a preliminary
14 issue that has to first be determined. And, I'm not
15 saying Yea or Nay, or anything like that. I'm just
16 giving a global overview for the benefit of the panel.

17 Now, the way the City's Code is written and the
18 blank or the form Final Order that the City has
19 provided me, basically just provides for the Board to
20 make a decision either to grant the appeal or deny the
21 appeal.

22 So, my advice to the Board would be, of course,
23 to follow the established Employment Protocol, which is
24 to first make a determination of guilt or innocence as
25 to the charges and, then, if there is a finding of

1 guilt, you go forward with either granting or denying
2 the appeal as to the discipline that was imposed.

3 Now, in this case, I think there are six rule
4 violations alleged as well as a policy. The Board can
5 do that either one at a time, unless somebody makes a
6 global motion that says, either way, innocent on all
7 charges or guilty on all charges. And, if there's a
8 second, that might give the Board some guidance.

9 If it dies for lack of a second, then the Board
10 may have to start considering each alleged rule
11 violation and policy violation individually, and then
12 can get to whether or not you grant or deny the appeal.

13 I would also point out that in deliberations --
14 this is the Board, the Board sitting as both the judge
15 and the jury -- so you can weigh out the evidence, the
16 policies. It's your decision.

17 So, this is your opportunity to basically hash
18 it out with each other as to how you view credibility,
19 the process, the procedure, the evidence, the exhibits.
20 If you have questions, you can also raise [inaudible].

21 That being said, I don't know if either of the
22 attorneys has a different view as to how the Board is
23 going to act on this. If they do, this would be the
24 time to speak up.

25 But other than that, this is how I see the

1 City's Code and how employment cases are reviewed by
2 most Civil Service Boards that I've had experience
3 with. So, does the Board [inaudible] me, starting with
4 the Chair?

5 CHAIR ADELSON: You go ahead, Shelley.

6 MS. GIALLUCA: Okay. Yeah, I just wanted to
7 make sure that I understand the process and it sounds
8 pretty cut and dry, and I'd like to make a motion to
9 approve the appeal.

10 MS. TURIN: Is that granting or denying or is
11 it a motion to discuss it? Because usually first is to
12 make a determination as to guilt or innocence first.

13 MS. GIALLUCA: Okay, I'm granting the Motion.
14 I think that Mr. Madden is innocent in the charges.

15 MS. TURIN: Okay, I understand better now. Is
16 staff taking --

17 MR. BALDWIN: This is for discussion? Is it a
18 motion?

19 MS. TURIN: Is staff going to be --

20 CHAIR ADELSON: Do the attorneys have any
21 concerns about the methodology that Ms. Turin has set
22 up? Let's answer that, and let's go through that
23 process first.

24 MS. BLEAU: I do not.

25 CHAIR ADELSON: Okay, Mr. Miller?

1 MR. MILLER: No.

2 MS. TURIN: Another procedural issue. Who is
3 taking the notes on the motions and seconds and
4 discussion? Is staff recording that, or not?

5 MS. OPPERLEE: I am. This is the recording
6 secretary. I have that motion.

7 MS. TURIN: Okay, thank you.

8 CHAIR ADELSON: All right. So the first thing
9 that we need, we're going to do then, is let's just
10 decide whether or not we're going to address each
11 violation on its own or just all the violations in
12 totality.

13 I would move the totality of the issues,
14 inasmuch as I don't believe any one individual aspect
15 was the determining factor. Although, I do believe
16 some of them may have had more weight than others. So,
17 if we could, Mr. Baldwin and Ms. Gialluca, if we could
18 address that first.

19 MS. GIALLUCA: Okay, yeah, that's fine.

20 CHAIR ADELSON: Mr. Baldwin, in totality or
21 individually?

22 MR. BALDWIN: Well, I clearly think there are
23 some

24 CHAIR ADELSON: Excuse me?

25 MR. BALDWIN: I mean, I'm will to do it either

1 way. I don't know how the attorneys feel, whether they
2 would like it one way or the other. To some degree --

3 CHAIR ADELSON: They have indicated that they
4 are good with whatever we put forth as a methodology
5 that we're going to use. So, now it's up to us to
6 decide how we want to proceed in regard to the issues
7 at hand.

8 MR. BALDWIN: There's a motion and then
9 discussion, right?

10 CHAIR ADELSON: Correct. So, the motion that
11 I'm making is that we address all of the issues in
12 totality and not break down each of the violations as
13 to whether or not Mr. Madden was wrongfully or
14 correctly terminated from his employment.

15 MR. BALDWIN: Okay.

16 CHAIR ADELSON: So, with that being said, I
17 think rather than moving to whether or not we agree or
18 disagree as to upholding the appeal or denying it, I
19 think we need to look at the issue -- and Ms. Turin
20 uses the word wrongdoing of the employee -- but I think
21 that both sides of it are looked at from whether the
22 City appropriately terminated Mr. Madden based on their
23 findings of these rule violations.

24 So, looking at it from that perspective, I do
25 want to have some discussion about the circumstances

1 surrounding Mr. Madden's termination. For me --

2 MS. TURIN: Excuse me, I know you made a
3 motion. Is there a second on the motion?

4 CHAIR ADELSON: Sorry, Bob went "okay," so I
5 guess I just kind of took it as a second.

6 MR. BALDWIN: Second.

7 CHAIR ADELSON: All in favor?

8 MS. GIALLUCA: Yeah, we'll go with that.

9 CHAIR ADELSON: So we're going to look at it
10 from a totality of circumstances.

11 My biggest concern with regard to the
12 circumstances with Mr. Madden's termination is that I
13 don't feel that anybody in their closing -- and maybe
14 this was just an oversight -- addressed Mr. Battle's
15 final statement about why the City ultimately
16 terminated Mr. Madden.

17 And if I'm not mistaken, this is a little bit
18 of a concern for me in terms of -- I've got to find it,
19 I I had it marked, so I apologize. Can someone, if you
20 don't mind, do you have the final note from Mr. Battle
21 recommending the termination? If you could just help
22 me find it.

23 MS. BLEAU: Tab 12.

24 CHAIR ADELSON: Thank you. I just want the
25 Board to address this because I know there seems to

1 have been some conversation about the why. Whereas I
2 had found that Mr. Madden clearly -- no one is
3 addressing his performance, no one is concerned about
4 his motivations in terms of why he did what he did. I
5 think it's the how. And I think we have to remember
6 that the City has to have a cohesive workforce where
7 others don't feel that there is a conflict-driven
8 situation and if one employee might be causing that,
9 notwithstanding his otherwise competency.

10 And Mr. Battle specifically addresses that.
11 And he says, "The opinion of the Department Senior
12 Management is that Mr. Madden's actions have directly
13 contributed to department culture and atmosphere where
14 operation conflicts in building construction
15 inspections, plan reviews and building permits cannot
16 be resolved without confrontation, verbal abuse, or
17 insubordination."

18 And I think that was, for me, extremely
19 compelling based on the testimony and the documents in
20 evidence. Now there was a lot of testimony outside the
21 scope of the initial findings. There was a lot of
22 testimony outside -- where Mr. Madden did not address
23 in his initial note to the City.

24 There is a contradiction, a big one, with Mr.
25 Goldstein. Mr. Madden did directly and specifically

1 address that Mr. Goldstein's statement was inaccurate,
2 in his response. That is the only place I see him
3 denying that his behavior, his conduct, didn't violate
4 the bullying policy.

5 And Ms. Bleau, with all due respect, you talked
6 about it as it impacts a person. It is actually as to
7 a group, as well. And overall, I'm concerned that his
8 behavior towards the group is where the problem lies.

9 It wasn't repeated towards one person; it was
10 repeated misconduct or outbursts or statements or
11 curses or tone which, from my perspective, is where the
12 bullying policy does come into play.

13 And there's an email on July 12, 2016, at Tab
14 11, where Mr. Madden puts in big letters, "LET ME BE
15 CLEAR." Now, that sounds like to me like a shout out,
16 like he is yelling with his big verbal words.

17 In his testimony, I also had concerns that, as
18 Mr. Miller suggested, he did not answer his questions
19 directly, didn't remember things that he remembered
20 specifically upon being asked in direct, was a bit
21 emotional, and a bit confrontational.

22 So, if those are the behaviors that were
23 exhibited by him during his employment and the employer
24 felt that these were not appropriate behaviors for an
25 employee, I don't know that the employer did not follow

1 the rules and regulations.

2 Now, did it rise to an immediate dismissal? I
3 don't know that that's necessarily the case, except for
4 the circumstances where he may have engaged in this
5 pattern of bullying. But he was given an opportunity
6 to respond.

7 Other than with Mr. Goldstein's situation,
8 which I heard the tape. He absolutely defended himself
9 and it does not appear that Mr. Goldstein's letter was
10 necessarily accurate. So, with regard to that
11 particular area -- but Mr. Madden had an opportunity to
12 defend himself before and didn't.

13 Also, I feel like there was a lot of evidence
14 about this BORA hearing that was seemingly to deflect
15 from the fact that Mr. Madden may have had behavioral-
16 type issues, confrontational -- kind of a vigilante-
17 type attitude rather than working within the
18 environment that he was invited into to do his job --
19 to kind of call things out in a way that may not be
20 appropriate with regard to his employment.

21 So, I just want to make sure that none of that
22 was missed, regardless of how the finding is, that
23 there was some definite misstatements and overlooks by
24 the City in their investigation. But, I don't know
25 that holistically, that the investigation was not done

1 in a thorough manner.

2 I also don't know that all of these people that
3 testified could all be out to get Mr. Madden and all
4 lied under oath, so I have a problem with that.

5 And I do appreciate Mr. Madden being forthright
6 and saying about it's perception, how people perceive
7 him. But that perception becomes reality and that
8 perception is how it invades an environment that causes
9 a hostile and conflictual-type of situation.

10 So, I am concerned about reinstating him back
11 into that situation where those employees already
12 testified that these behaviors have existed and there
13 is a concern that they will continue to exist.

14 So, I just wanted to bring that before the
15 Board before we go ahead and decide whether or not we
16 can determine whether or not the employee's wrongdoing
17 was appropriately addressed by the City's behavior.

18 So, if Mr. Baldwin or Ms. Gialluca have any
19 commentary or input or insight on my concerns, I would
20 like to hear them before I go ahead and make any
21 decision, because this is a very big decision about
22 somebody's life and livelihood and I'd like to make
23 sure we are all viewing this, not from an "I feel
24 badly" perspective, but that it follows the rules and
25 the policies and the procedures that the City has to

1 ensure that it has a workforce absent of certain
2 behaviors.

3 MR. BALDWIN: So, you want me to comment on
4 what you just said or --

5 CHAIR ADELSON: Yeah, I'd like to get some
6 feedback from you on my concerns.

7 MR. BALDWIN: I don't disagree with your point,
8 generally. But I think there's so many contradictions
9 in this and I would have to agree Mr. Miller, this is
10 one of the strangest things I've ever been involved
11 with my entire career.

12 And trying to get to the bottom of something
13 with this Covid has been just a nightmare for some of
14 us. Myself, I think you saw my memo to the City
15 Manager, and I don't really feel like anything I say is
16 going to be fair to either party.

17 Because if it were not for this Covid, if we
18 were meeting face-to-face, I could very well have a
19 completely different view. But, my opinion hasn't much
20 changed since the first couple of meetings we had,
21 which I thought were very good, face-to-face.

22 And subsequently, I had real difficulty hearing
23 evidence and participating. I listened to the last
24 tape, which I thought Mr. Madden's testimony was
25 excellent. I thought he made a lot of points that I

1 was thinking, which is why I would think it's
2 excellent.

3 And I know, I think Mr. Miller said it was
4 scripted, but it could have been very well scripted,
5 there were no questions being asked. But, I thought it
6 was very effective. I mean, I've yelled at employees,
7 I've yelled at Mayors and Commissioners and they've
8 yelled at me.

9 Yelling isn't something that really offends me.
10 I don't do it. You'll probably find three people in my
11 career besides Commissioners or Mayors who have said
12 that I yelled at them. And I don't think it's
13 appropriate to yell at subordinates.

14 And managers, if you're in management, then you
15 go into your office and maybe you have words. That
16 doesn't really bother me, either. But from the
17 testimony that I heard, I seemed as if some of the
18 employees were quite intimidated by it.

19 CHAIR ADELSON: That's the policy we're trying
20 to see whether or not he violated, so that's why I
21 wanted to talk about this.

22 MR. BALDWIN: And that is the one that I
23 considered to be the most serious. The others,
24 frankly, I feel that some of those things he didn't
25 even do. But, we're not voting on each one in

1 particular. The one that rises to my concern is the
2 bullying.

3 CHAIR ADELSON: Me too. And that's why I
4 wanted to be very frank. This concerns me. We're
5 taking them as a whole, but if there's bullying
6 existing --

7 MR. BALDWIN: I mean, if you take -- employees
8 who are passionate about their jobs are the ones who
9 are most likely going to yell about something. If you
10 don't care about your job, you just sit there. You're
11 not going to say anything.

12 I think he's very passionate about his job.
13 Everybody says that he's excellent in his ability
14 [inaudible].

15 CHAIR ADELSON: And I don't disagree, but I
16 think the most important aspect here is the behavioral
17 aspect. Nobody's arguing that he wasn't good at what
18 he did when he was doing it. Again, there's that issue
19 with regard to what work he was doing rather this
20 version of insubordination.

21 But, the bullying is concerning me. It
22 concerns me in any workplace. And yes, people yell at
23 each other, but not in a consistent, regular basis
24 where it becomes a complaint to the extent that it
25 became here. And, so I don't want to miss out on that

1 when we're talking about if --

2 MR. BALDWIN: I agree. I agree with you on
3 that.

4 CHAIR ADELSON: -- reinstatement. Shelley, do
5 you have any --

6 MS. GIALLUCA: There's a tremendous - It just
7 started up real loud again. I just want to say that -

8 CHAIR ADELSON: We'll be okay with the noise in
9 the background.

10 MS. GIALLUCA: I just want to say that I
11 understand what you're saying Lori, and Bob, you as
12 well. I've worked for the City 32 years and I've
13 supported different departments. Each department has
14 their own [inaudible].

15 The Building Department -- I used to go to my
16 supervisor and say, "Oh my gosh, they act like this,
17 they say this." And I was always told, "Just ignore
18 it. They're a different breed of people in each
19 department." Not that that gives anyone the right to
20 be a bully, but I'm not sure that it was proven that
21 John was being a bully. He is compassionate about his
22 job.

23 And when I look at the timeline that everything
24 happened and things that were brought up that were not
25 pertinent to his charges -- like the City never had a

1 bullying policy until a few months before he was let
2 go. So, I don't know if I just [inaudible]

3 CHAIR ADELSON: So let me ask you this question
4 --

5 MR. BALDWIN: I can't hear her.

6 CHAIR ADELSON: I can't hear her. That's why I
7 was going to ask her if she could maybe move.

8 MS. GIALLUCA: Can you hear me?

9 CHAIR ADELSON: Now we can.

10 MS. GIALLUCA: Over the noise, can you hear me?

11 CHAIR ADELSON: Yep.

12 MS. GIALLUCA: So, I was just thinking that the
13 bullying policy was pretty much brand new, and I look
14 at the complaints from the employees, the letters from
15 Mr. Goldstein, it's like all that stuff was solicited
16 in preparation for what had happened to him, without
17 getting proper discipline, and [inaudible].

18 CHAIR ADELSON: So I guess what I'm thinking is
19 that a bullying policy is put in place, obviously they
20 were having issues. It's unfortunate potentially
21 [inaudible] that Mr. Madden got [inaudible], but I
22 don't think the mere fact that [inaudible] a few months
23 before he ultimately was subject to it should be the
24 determining factor as to whether or not he did or did
25 not violate it.

1 MS. GIALLUCA: [Inaudible] but those were just
2 a few of the examples.

3 CHAIR ADELSON: Again, I want to really make
4 sure because to me, I know we're looking at the whole
5 thing together, but the bullying aspect of it --. Look
6 having a difference of opinion and appropriately
7 voicing it is not, I don't think, is at issue here. I
8 think the issues are the manner in which it was
9 approached.

10 And again, Mr. Baldwin, you are right, he's
11 passionate about his job. And Mr. Madden, I'm sorry.
12 It's hard to hear the side of deliberation. This is
13 the difference with the public sector and private.
14 Normally this is done outside the presence of you, and
15 so please, I hope you're not taking -- you're going to
16 take this personally. We do need to make sure that
17 we're making the right choice.

18 MR. BALDWIN: I have something -- something
19 I've been concerned about from, I think, the first
20 meeting. Mr. Travers had testified he did not
21 recommend that Mr. Madden be dismissed. I think I
22 subsequently -- and he was his line supervisor.
23 Subsequently, I think I asked -- I don't know if it was
24 the Department Director, I don't recall which one --
25 but it's the one who had written a memo. And his

1 response was, well, I signed a memo, so I guess I
2 recommended it.

3 CHAIR ADELSON: Yeah.

4 MR. BALDWIN: If it was so urgent, I would
5 think the line supervisor would have been concerned
6 about it and would have recommended his termination.
7 That's usually where I put the first onus, is on the
8 line supervisor. If it's the police, it's the
9 sergeant. What does the immediate supervisor feel?

10 CHAIR ADELSON: [Unintelligible]

11 MR. BALDWIN: [Unintelligible} I know what he
12 testified. He testified that he did not recommend that
13 Mr. Madden be dismissed.

14 CHAIR ADELSON: It took at least six months --
15 I think it started in, when was the first memo? So the
16 first report was in -- it ended in February with Mr.
17 Battle's suggestion and then Mr. Feldman approving it,
18 right?

19 It started in November. So, in terms of
20 whether or not his direct line supervisor recommended
21 it, I guess the question is, did they do the proper
22 process? Did they give it the amount of time that it
23 needed? Did Mr. Madden have an opportunity to address
24 it appropriately and fully? And did he engage in the
25 behaviors that ultimately led to his termination?

1 And I think those are the issues that we really
2 need to be looking at. Again, whether it is
3 appropriate to reinstate Mr. Madden based on those
4 factors; and whether or not he did, in fact, engage in
5 the wrongdoing, as Mr. --

6 MR. BALDWIN: Well, I agree. But that I think
7 he's -- a lot of the general points of progressive
8 discipline, I don't think bullying is something
9 necessarily you immediately dismiss somebody for. And
10 the City has a Violence in the Workplace policy, but
11 they didn't charge him with that. So what was the
12 immediacy of it? Why was it so important to do it so
13 quickly?

14 From my understanding, they didn't bring him in
15 and counsel him or anything. Maybe I'm wrong on that,
16 but I believe that was the testimony.

17 CHAIR ADELSON: So let's say, for argument's
18 sake, from what we saw in the evidence, we had an
19 investigation, charges, a response, and then the
20 response was felt to be deemed to be insufficient. And
21 then a termination that went over six months. What
22 else would -- and I'm asking from, you know I'm not at
23 the City -- what else would you have expected the City
24 to have done, absent having terminated him when they
25 received a response that they felt didn't address all

1 of the issues?

2 MR. BALDWIN: I didn't think they actually
3 provided him training or any kind of rehabilitation
4 [unintelligible]. They said that this is accumulation
5 effect. I don't know exactly where it is within the --
6 don't depend on me finding anything at this point.

7 In the termination, it said accumulation of
8 charges or something. It didn't happen in one day. It
9 happened over a five year period, a four year period,
10 or something. Why wasn't he given training or
11 rehabilitation? Why wasn't he given a last-chance
12 agreement?

13 I mean, I would have brought him in and said,
14 "This is what you're doing, you've got to cut it out.
15 Sign here. If you do it again, hit the road."
16 Something like that. That doesn't mean you have to do
17 it that way.

18 CHAIR ADELSON: Right.

19 MR. BALDWIN: Different City Managers do it
20 different ways. But I don't know. It's true that he
21 was just, "You're out of here." That seems a little
22 drastic. That's my own assessment. It doesn't mean he
23 didn't do it. Don't get me wrong. But I think there
24 could have been some way to handle it so that perhaps a
25 long-time employee would have been given more

1 opportunity to correct his behavior.

2 CHAIR ADELSON: So how do we address the lack
3 of work production?

4 MS. GIALLUCA: I know that one solution system,
5 and I know that you, as an inspector, you can go into
6 that system and do work, but not necessarily
7 [inaudible] it's not recording it. I just think that's
8 a very unfair example of work production for somebody.

9 When you're in Structural, I understand that
10 there's multiple things that you have to inspect and it
11 would take longer than some, like Plumbing or
12 Electrical with a light switch. So I kind of
13 understand that. And I don't feel that [on mute].

14 CHAIR ADELSON: You're on mute.

15 MR. BALDWIN: I can't hear her.

16 CHAIR ADELSON: Me either. She muted herself
17 by accident.

18 MR. BALDWIN: Can I add something while we're
19 waiting?

20 CHAIR ADELSON: I don't know if she can hear
21 you, so I'd like Shelley to be able to hear you. She
22 looks like she froze and is muted.

23 MR. BALDWIN: She can't hear?

24 MS. GIALLUCA: I hear him.

25 CHAIR ADELSON: Good. So, I think it might be

1 better if you're not on video.

2 MR. BALDWIN: Mr. Miller testified earlier this
3 afternoon that his production was discovered during the
4 investigation, and that Mr. Travers was not aware of
5 his lack of production. Mr. Travers is a sharp guy. I
6 can't imagine that he wasn't supervising well enough to
7 know what Mr. Madden's production was and, if he
8 wasn't, shame on Mr. Travers.

9 CHAIR ADELSON: But, in an investigation, if
10 you find out that an employee is not doing the work
11 they are supposed to be doing and rather they are doing
12 things they otherwise might not supposed to be doing,
13 does it make a difference when you find out?

14 MR. BALDWIN: Well, probably not, but they
15 should have known. It shouldn't be just discovered.

16 CHAIR ADELSON: The other one that, obviously,
17 we need to look at is what Mr. Travers found as being,
18 you know, insubordinate with regard to his -- that the,
19 I forgot the name of the project -- with the pictures
20 and what he felt was trying to suggest that he might be
21 on the take.

22 I did find that testimony to be somewhat
23 compelling that there's an implication. It may not
24 have been an outright accusation, but that does violate
25 the Abusive Public Criticism F-2. So what do we think

1 about that?

2 Now again, we're going to put these all
3 together, obviously, for the entirety of the decision
4 here. But I do want to look at them. It has been a
5 long time since between, and I just want to make sure
6 we're looking --

7 MR. BALDWIN: I tell you, to my point before,
8 my concern is the bullying. The other charges I would
9 just as easily dismiss. The bullying is what concerns
10 me. And then the other thing that Mr. Miller said. We
11 do have to keep in mind, we're not here to terminate
12 Mr. Madden or not terminate Mr. Madden. He's already
13 been terminated. I forget the language that Mr. Miller
14 used, but the status quo is that he's already been
15 terminated. So, we're here to review whether the City
16 acted properly in terminating.

17 CHAIR ADELSON: Right. That's why I wanted to
18 make sure we're talking about that. Because I wanted
19 to make sure that we're talking about whether or not
20 the City's actions in terminating Mr. Madden -- let's
21 say that the bullying rises to the top of the mix here.

22 With regard to his behavior, regardless of
23 whether the policy was implemented two months, two
24 years, three years -- obviously, an employee needs to
25 behave in an appropriate manner in the workplace in

1 terms of whether or not he committed the wrongdoing.
2 And, if so, does he get the opportunity for the
3 decision to be upheld, or for the decision to be
4 overturned and the appeal granted.

5 Is there any other discussion -- Shelley, I
6 know you can talk now, but your video is off which is
7 helpful.

8 MS. GIALLUCA: Yeah, I'm not sure about that,
9 but I [unintelligible] that bullying. I mean, they had
10 testimony, but then there was testimony that
11 contradicted it. So that's the only thing that kind of
12 makes me sway the other way.

13 CHAIR ADELSON: Again, another issue for me was
14 the scope of evidence that was brought in that was
15 outside the initial process. You know, the opportunity
16 to have defended his position notwithstanding the one -
17 - and it's significant -- with Mr. Goldstein's
18 statement having basically been no denial of that
19 behavior that he was accused of.

20 And that concerns me. And I think, with that
21 in mind, I don't know how much further the City could
22 have gone with having no witnesses. They could have
23 taken time that they engaged in the process.

24 So while, Mr. Baldwin, your point is well-
25 taken, that could there have been some other corrective

1 action? Could there have been some other mediations?
2 The City chose this path and was that path appropriate
3 or not?

4 That's kind of where we are now. And does the
5 appeal get granted or denied? And so I guess first
6 threshold is - and I think we might have exhausted our
7 discussion, because I don't really hear much else.

8 MR. BALDWIN: Well, it's not the way I would
9 have done it, but I wasn't the City Manager and people
10 do it different. So, it's not that it was done
11 inappropriately, it just was done differently. But I
12 think, from my point of view, that if it had been
13 handled -- the City Manager doesn't even know most of
14 the time what's going on with those things.

15 CHAIR ADELSON: [Unintelligible]

16 MR. BALDWIN: -- tell him, you know, give him
17 advice. I don't know -- Mr. Miller, did you draft the
18 charges, did I ask that? Is there a problem with me
19 asking Mr. Miller if he drafted the charges?

20 MR. MILLER: I'm happy to answer, if you think
21 it's appropriate. I don't --

22 CHAIR ADELSON: I don't see any problem with
23 it. Mimi?

24 MR. MILLER: Yeah, no, I was not involved at
25 all in this case at the time when all that was going

1 on. So I have nothing to do with that.

2 MR. BALDWIN: It's often the case that the City
3 Attorney is not pulled in until the last minute. And
4 then the City Attorney is -- I'm not saying this
5 happened, but is trying to, you know, come back and
6 defend the action that has already occurred.

7 CHAIR ADELSON: Mr. Miller, you're outside
8 counsel for this purpose or --

9 MR. MILLER: Yes.

10 CHAIR ADELSON: There was a City Attorney
11 involved -- the City has its own attorney, right?

12 MR. MILLER: Yes. There is a City Attorney's
13 Office. My firm is outside counsel.

14 MR. BALDWIN: So you don't know if they drafted
15 the charges? You wouldn't know that.

16 MR. MILLER: No, sir.

17 CHAIR ADELSON: All right. So, we have one of
18 two choices. Well, let's do it the way Mimi suggested.
19 I think it's the appropriate way. Do we think -- I'm
20 going to move -- unless there's more discussion. I
21 don't want to, obviously, stunt anybody and if anyone
22 wants to look at their notes or look at anything for
23 further discussion. Okay. Shelley?

24 MS. GIALLUCA: No, I'm good.

25 CHAIR ADELSON: Okay. Robert?

1 MS. TURIN: He's muted.

2 MR. BALDWIN: I'm here. Yeah, these variety of
3 charges that have been brought up, we're not ruling on
4 each one, I think --

5 CHAIR ADELSON: Do you think we should? I mean
6 I know we made a motion to do it holistically, but if
7 you feel that it would be more appropriate to do each
8 charge --

9 MR. BALDWIN: To some degree, I mean, I'm sure
10 he feels that what he did was appropriate and the City
11 feels that it was inappropriate. But he's defending
12 his reputation. And I just happen to feel the other
13 charges are rather insignificant in that sense, when
14 you compare it with the bullying. That's why it
15 doesn't bother me if you don't want to go over each
16 charge. But if the idea is to say whether he did or
17 didn't do those other things, I'd be glad to do that
18 too.

19 CHAIR ADELSON: All right. I think that when
20 we look at it from a comprehensive viewpoint, did he
21 engage in any of the behaviors for which he was charged
22 and, if so, did he engage in that wrongdoing and, if
23 so, does the appeal get granted or denied? So I think
24 the first step, what Mimi was suggesting and to make
25 sure I have it correct with the motion that I made, is

1 to determine that out of those charges, did he engage
2 in any of the wrongdoing that he was charged with. And
3 if so, then did the City act properly and, if so, does
4 the appeal get upheld or denied.

5 MS. BLEAU: I think, if I can, you keep saying
6 that and I don't think that's right. I think that the
7 question is, did Mr. Madden commit the offenses is what
8 I hear Ms. Turin say. Did Mr. Madden commit the
9 offenses that he's being accused of and, if so, his
10 termination -- what is the penalty. Is termination
11 appropriate for whatever you find that he did. What
12 you're saying --

13 CHAIR ADELSON: We're not here to determine
14 whether or not he was appropriately terminated. I
15 think we're here to determine whether or not the City's
16 actions in terminating him was appropriate. I think
17 that's the distinction. That's why I asked
18 [unintelligible].

19 MS. TURIN: The Board can either grant or deny
20 the appeal. Those are your options. Grant or deny.

21 CHAIR ADELSON: And how we get there is up to
22 us. Is that --

23 MS. TURIN: How you get there, yes. I guess
24 it's kind of like watching sausage being made, you
25 don't want to see it but in the end you know a

1 legislative or fact-finding body will ultimately, I
2 feel, do the right thing.

3 But, in determining usually guilt or innocence
4 firsthand, it gives clarity to your process to then go
5 forward and say, "Do we grant or deny the appeal?" So,
6 either taking them all together, taking them one by one
7 or doing a threshold inquiry, if there's a motion of
8 either guilt or innocence on everything, see if it even
9 passes for a second.

10 It might give you a little bit of guidance that
11 way. Because I'm seeing that there's some different
12 perspectives among the members, and that's fine.
13 That's why you have a panel with more than one person.

14 CHAIR ADELSON: Right. So what I was hearing
15 though, Mimi, and this is what I'm trying to clarify,
16 is that Mr. Baldwin is indicating that he's finding
17 that there's some guilt on one and not all. So the
18 question is, then is that sufficient to address my
19 motion to address these holistically and ask that
20 question of each Board Member, and then we can move on
21 to the decision.

22 So, let's do it this way. If Shelley was asked
23 does she find that he was guilty of any of the charges,
24 to me that's addressing them holistically. And if the
25 answer is yes to any of those, then the next question

1 is, appeal granted or denied?

2 Let's do it this way. If Shelley was asked
3 does she find that he was guilty of any of the charges,
4 to me that is addressing them holistically. And if
5 answer is yes to any of those, then the next question
6 is appeal granted or denied?

7 Am I missing -- I just want to make sure due
8 process-wise, I don't want to have any due process
9 issues. This is my first go at this. I want to make
10 sure --

11 MS. TURIN: I think you could proceed in that
12 way by process. If I understand, though, Mr. Baldwin's
13 concern is that some of these issues are more important
14 than others.

15 Therefore, in terms of the employee's
16 reputation, to be found guilty of certain charges may
17 inhibit his ability to find other employment. Whereas,
18 being found guilty of lesser charges may or may not
19 provide that same inhibition to his future career
20 goals.

21 If I understand what Mr. Baldwin's saying, I
22 think that's what he was getting at, is that in terms
23 of the employee maybe clearing his name on some of the
24 charges -- which in the future it's like, "Okay, that
25 wasn't such a big deal, but these were a big deal and

1 if he was cleared on this but not on this," it also
2 gives him clarity in going forward with his own career
3 that, "Yes, at least I was found not guilty on these."
4 I think that's what Mr. Baldwin is concerned with. And
5 it sounds like a valid concern.

6 MR. BALDWIN: I think so -- I would be willing
7 to clear him of all charges except the bullying, and
8 then we could address it separately.

9 CHAIR ADELSON: So why don't I just take a vote
10 on that, and do it in that way. And do the same thing
11 with Shelley. And then we can move towards a decision.
12 I think that's fair. Because Mr. Baldwin has made his
13 position crystal clear at this point. So I think that
14 we are moving towards a decision on the first motion.

15 So the first motion is to determine whether or
16 not Mr. Madden is guilty on any or all of the charges
17 presented by the City, which is a modification of my
18 earlier motion, so I'm going to move that that be the
19 threshold question. And then we can move towards the
20 next determination as to the appeal.

21 So the Motion is to determine whether or not
22 Mr. Madden is guilty on any or all of the charges with
23 regard to his wrongdoing or not wrongdoing. So is
24 there a second to do it in that way?

25 MR. BALDWIN: I guess I'm just not clear on the

1 motion.

2 CHAIR ADELSON: The Motion is that the
3 threshold question is to determine whether Mr. Madden
4 is guilty or not of any of the charges, and that will
5 be the first threshold question. Then we can go on to
6 determining whether or not to grant or deny the --

7 MR. BALDWIN: Okay, I'll second it.

8 CHAIR ADELSON: Okay, Shelley?

9 MS. GIALLUCA: Okay, I'll agree.

10 CHAIR ADELSON: So, Mr. Baldwin, since you've
11 expressed your position already, do you believe that
12 Mr. Madden is guilty of any of the charges put forth by
13 the City?

14 MR. BALDWIN: Well, my motion would be to clear
15 him of all charges except the bullying charge.

16 CHAIR ADELSON: Okay.

17 MS. GIALLUCA: Which -- of this letter, can we
18 just clarify A, B, C, D, E, F-1, 2 -- which one is
19 supposed to be the bullying one? Is that F-2? No,
20 that's not F-2. F-1? Just so we have clarification?

21 MR. BALDWIN: Madam Chair, I believe that that
22 would just leave the discussion on the bullying, and
23 then on whether the City acted appropriately.

24 MS. GIALLUCA: I had a question first.

25 CHAIR ADELSON: Yes, so we're trying to figure

1 out which one in particular is the issue with regard to
2 the bullying.

3 MS. BLEAU: If I can help?

4 CHAIR ADELSON: Yes, please!

5 MS. BLEAU: After the A, D, F, F-1, F-2, F-3,
6 H, then there is a separate paragraph that says,
7 "Furthermore." So it's none of the lettered ones, it's
8 the "furthermore."

9 MS. GIALLUCA: Oh, that sentence, that
10 paragraph.

11 MS. BLEAU: Correct.

12 CHAIR ADELSON: Thank you for clarification,
13 and Shelley, thank you for bringing that -- So with
14 regard to the violations of Rule 12, Sec 4, A through
15 H, Mr. Baldwin you would seek to have all of those
16 charges dismissed and that the bullying charge in the
17 "furthermore" section, where Mr. Madden is charged with
18 violating City policy against Workplace Bullying, would
19 be upheld.

20 MR. BALDWIN: We would then discuss that charge
21 in particular.

22 CHAIR ADELSON: Yeah. We want to move past the
23 threshold issue --

24 MR. BALDWIN: Okay, yes.

25 CHAIR ADELSON: -- you believe he might have

1 committed or been at wrongdoing in [unintelligible].
2 So clarify for the record, Mr. Baldwin, would you just
3 state your position as to the charges?

4 MR. BALDWIN: Yes. You'll have to give me the
5 letters again, if you want me to state it.

6 CHAIR ADELSON: Sure, Rule 12, Section 4, A
7 through H, and there is a subsequent paragraph with a
8 charge of Workplace Bullying.

9 MR. BALDWIN: So that all charges except for
10 the subsequent paragraph on bullying be -- I don't know
11 what the proper word would be -- dismissed? -- found --

12 CHAIR ADELSON: Not guilty.

13 MR. BALDWIN: -- not guilty, if that's
14 appropriate.

15 CHAIR ADELSON: And guilty of the bullying
16 charge?

17 MR. BALDWIN: Right. That's my motion. Then
18 we discuss the bullying.

19 CHAIR ADELSON: Oh, so we're at the threshold
20 motion of making where your position is. So you're
21 position, if I can clarify for the record, is that you
22 would, after hearing testimony evidence, you would
23 recommend that charges in Rule 12, Section 4, A through
24 H be dismissed --

25 MR. BALDWIN: Right.

1 CHAIR ADELSON: -- and the charge in the
2 subsequent paragraph on Workplace Bullying be upheld and
3 that Mr. Madden had engaged in that wrongdoing.

4 MS. BLEAU: You keep saying that and that's not
5 what he's saying.

6 MR. BALDWIN: I'm not agreeing to that charge.
7 I'm saying we'll leave it and discuss it.

8 MS. BLEAU: Right.

9 MR. BALDWIN: And then we'll make a ruling on
10 that.

11 CHAIR ADELSON: Okay. Got it. Shelley?

12 MS. GIALLUCA: Rule 12, Section 4, A through H
13 that he is not guilty of, and for "furthermore," that
14 City policy against Workplace Bullying, I feel that
15 there was not enough evidence, but willing to discuss
16 it.

17 CHAIR ADELSON: Okay.

18 MR. BALDWIN: I think that's a second.

19 CHAIR ADELSON: Yes, I think she has. And then
20 obviously, I have to give at least my take on it. I
21 think that Rule 12 Section 4, that with regard to A
22 through F, I think those had not been proven.

23 I think H has been substantiated by the
24 evidence. And that, also, open for discussion about
25 the workplace bullying, I do believe that from the

1 evidence, testimony and the documents, that Mr. Madden
2 had engaged in what would be deemed by City policy to
3 be workplace bullying.

4 So, with that said, we really just obviously --

5 MR. BALDWIN: Do I amend the motion so that H
6 is still up for play, essentially? And we will then
7 discuss it along with the bullying?

8 CHAIR ADELSON: Okay.

9 MS. TURIN: Let's find out from Ms. Giualluca,
10 please, since I believe she had seconded the motion.
11 So, if you're going to amended it, we'll need your
12 second to agree on the amendment.

13 MS. GIALLUCA: I'll agree on the second to
14 agree to the amendment, to "H."

15 CHAIR ADELSON: So, I guess the next discussion
16 is whether the City acted appropriately and properly in
17 its disciplinary action towards Mr. Madden in light of
18 the fact that we seem to have a consensus that Rule 12,
19 Section 4, A through F was not proven as to have been
20 committed by Mr. Madden.

21 And that H, which is "Conduct either while on
22 or off duty which reflects discredit upon the City,"
23 and the subsequent paragraph "Madden is charged with
24 violating City policy against Workplace Bullying" is
25 still open for discussion as to whether or not the City

1 acted appropriately in terminating his employment based
2 on those two alleged violations.

3 MS. TURIN: Actually, if I may, Madam Chair?
4 The ordinance gives the Board authority to grand or
5 deny the appeal. So if I'm understanding what the
6 Board is saying as to A to F, it sounds like the Board
7 will be inclined to grant the appeal as to A to F.

8 CHAIR ADELSON: Right.

9 MS. TURIN: And as to H and the subsequent
10 bullying, there is going to be further discussion as to
11 granting or denying the appeal.

12 CHAIR ADELSON: Correct, thank you. This has
13 been a learning experience for me, so thank you.

14 So, at this time, we would like to take further
15 discussion by Mr. Baldwin and Ms. Gialluca and myself
16 as to whether or not to grant or deny the appeal as to
17 violation to Rule 12, Section 4-H, and the subsequent
18 workplace bullying policy. Someone's talking?

19 MS. GIALLUCA: I have a question for H. What
20 does "discredit upon the City" actually mean?

21 CHAIR ADELSON: Ms. Turin, can you give us a
22 definition? I know what I think it means, but this is
23 a great question.

24 MS. TURIN: Just in general, in terms of civil
25 service rules in general, when you discredit your

1 employer -- substitute employer for City -- discredit
2 is to basically bring a negative opinion as to an
3 action of that employer/city. So when an employer
4 brings discredit as to their employer, it places their
5 employer in a negative light, either as to what they're
6 doing.

7 If an employee is -- if it's a police officer
8 and there's an allegation that they're using excessive
9 force, it brings discredit or negative light on that
10 city's police department.

11 If they're a cashier that works for a county
12 government and somebody sees them taking money and
13 sticking it in their pocket, the action can bring
14 discredit or negative reflection on that employer by
15 virtue of the action being taken by that employee.

16 MS. GIALLUCA: Okay, thank you.

17 MS. TURIN: Employees are generally going to be
18 a representative of their employer. Does that help?

19 MS. GIALLUCA: Yes, it does. Thank you so
20 much.

21 MS. TURIN: Oh, okay. Good.

22 CHAIR ADELSON: So, if there's further
23 discussion, we can discuss it. If not, if we want to
24 take a vote as to each one of those separately, whether
25 to deny or grant the appeal. I got it.

1 MR. BALDWIN: I would just say on H, what did
2 he do that brought discredit upon the City?

3 CHAIR ADELSON: Well, in the testimony that I
4 heard, it appeared that there was -- rather than
5 working within the City process to work with his other
6 staff members, you know, going out and --. Even if Mr.
7 Goldstein was inaccurate in the way that he translated
8 the conversation, portraying that the City wasn't doing
9 things right -- the right way -- and making those
10 statements, I think there was enough testimony that
11 there was enough public, whether it was in the lobby or
12 in other places where he was not necessarily -- and it
13 might just be a matter of the how, not the what, the
14 intent -- acting in the City's best interest how he was
15 approaching his projects and the Planning meetings and
16 the people that he was engaging with outside of --
17 well, inside the City but also outside, as well. And
18 that concerns me from a public perception.

19 MS. GIALLUCA: And Madam Chair, I didn't find
20 that as being substantiated because of the video. It
21 didn't sound like he was discrediting the City and it
22 was actually, I think, Mr. Goldstein that told him he
23 was going to be let go pretty soon. So, I just didn't
24 find there was anything substantiating the fact that he
25 was discrediting the City in anyway.

1 CHAIR ADELSON: Mr. Baldwin?

2 MR. BALDWIN: Well, I've been bad-mouthed so
3 much by employees that I don't pay much attention to
4 it. The criticisms when they say things outside the
5 workplace, it just goes with the territory, in my
6 opinion.

7 CHAIR ADELSON: The question is, though, did
8 the City act appropriately with regard to, not
9 allegation, as opposed to whether or not you can
10 tolerate.

11 MS. GIALLUCA: I don't know, I think it's kind
12 of like Bob said, Mr. Baldwin, it's kind of minor and I
13 don't really -- I didn't really see anything in the
14 testimony where anything was really substantiated and
15 horrible. So, that's kind of where I stand on that
16 one.

17 CHAIR ADELSON: And in terms of the Workplace
18 Bullying policy?

19 MS. GIALLUCA: On H?

20 CHAIR ADELSON: On H, sorry.

21 MS. GIALLUCA: We're talking about H.

22 CHAIR ADELSON: We'll take a vote on that one.
23 I know I had said we were going to do this all, but we
24 did break them down. So, do you believe that the
25 appeal should be granted or denied with regard to Rule

1 12, Section 4, H?

2 MS. GIALLUCA: Yes, appeal should be granted.

3 CHAIR ADELSON: Mr. Baldwin?

4 MR. BALDWIN: I second.

5 CHAIR ADELSON: I think it should be denied,
6 but we have a quorum.

7 MS. TURIN: Madam Chair -- you don't need
8 unanimous on that. You do not need to be unanimous.
9 We have to reflect it on the final order.

10 CHAIR ADELSON: Yes, understood. So as to H,
11 the appeal has been granted.

12 MS. TURIN: Okay, so you have one charge left,
13 I believe, which would be bullying.

14 CHAIR ADELSON: Correct.

15 MS. TURIN: As to policy.

16 CHAIR ADELSON: Mr. Baldwin? Any discussion,
17 or --

18 MR. BALDWIN: Well, as far as -- you know,
19 there's been discussion about what people say and how
20 it's received. I mean, there's obviously two different
21 positions on it. But, I typically think that any kind
22 of yelling at subordinates or in public or in front
23 other people is inappropriate.

24 Again, what I told you earlier, two managers
25 sitting in a room and want to have words, that's fine.

1 I mean, I remember employees actually heard the mayor
2 and I going at it one time, all the way to the end of
3 the hallway, but we were in an office with the door
4 closed. I never yelled at the commissioners or the
5 mayor in public.

6 And the same with the employees and if you have
7 a pattern of doing that, if you're irascible frequently
8 and that's just your nature, it's just not appropriate.
9 That can be received by the other employee as being
10 bullying.

11 CHAIR ADELSON: So, do you vote to grant or
12 deny the appeal as to that charge?

13 MR. BALDWIN: Well, I'd like to know what
14 Shelley has to say before I --

15 MS. GIALLUCA: How I feel about that is that I
16 know the City developed the Workplace Bullying Policy
17 that has been needed, probably, for many years before
18 May or June -- because there's two different dates on
19 the documents provided here -- and I agree with it.

20 But every testimony where someone said that
21 they were yelled at or they were in fear, there was
22 another testimony contradicting that, so I have a hard
23 time with that.

24 CHAIR ADELSON: So, take a vote. Do you want
25 to take a vote?

1 MR. BALDWIN: And what's your opinion?

2 CHAIR ADELSON: Mine?

3 MR. BALDWIN: Yes.

4 MS. GIALLUCA: Yeah.

5 CHAIR ADELSON: I believe that the testimony
6 substantiates that there was workplace bullying in the
7 form that the City has described in its Workplace
8 Bullying Policy and, in general, in the Code of
9 Conduct. So, I'm in agreement with you all as to the A
10 through F and each, you know, we have a difference of
11 opinion about the workplace bullying [inaudible]
12 denied.

13 MS. TURIN: I can't -- I'm sorry, there was
14 some interference. Could you repeat the end of what
15 you said?

16 CHAIR ADELSON: I said that I believe that the
17 Workplace Bullying and Code of Conduct, for which an
18 employee and supervisor is expected to maintain, was
19 violated. And I think that this charge, the appeal
20 should be denied.

21 MS. TURIN: And the other Board Members?

22 MR. BALDWIN: Is that a motion? I'm sorry, was
23 that a motion, Chairwoman?

24 CHAIR ADELSON: Are we taking a vote, I guess?

25 MS. TURIN: I don't think you necessarily need

1 a motion on that because the final order to be entered
2 actually has to have -- well, you probably should take
3 -- but I will need to know how each person is voting
4 because the final order form requires that we reflect
5 who voted how. So if you want to make it in a motion,
6 yes, you can certainly do that.

7 CHAIR ADELSON: Okay, if that is the
8 appropriate manner.

9 MS. TURIN: So I believe that motion would be a
10 motion to deny the grievance as to bullying. Is there
11 a second and then a vote?

12 MR. BALDWIN: Well, I still think it could have
13 been handled with rehabilitation, but I'll second the
14 motion.

15 CHAIR ADELSON: Shelley?

16 MS. TURIN: Can there be a vote, please?

17 CHAIR ADELSON: Okay, so as to the workplace
18 bullying, Shelley?

19 MS. GIALLUCA: I'm going to vote no.

20 CHAIR ADELSON: So as to the Workplace Bullying
21 Policy, Shelley?

22 MS. GIALLUCA: Yeah, I'm going to vote no.

23 CHAIR ADELSON: So, as to the Workplace
24 Bullying Policy, a motion was made that the charge with
25 respect to violating the City policy against Workplace

1 Bullying is sustained and that the appeal denied as to
2 that charge.

3 MS. GIALLUCA: Right.

4 MS. TURIN: All right. Okay, now I'm not sure
5 who is going to be drafting the final order. But I
6 suspect it is going to be me. Is that correct?

7 CHAIR ADELSON: I believe so. I guess -- is
8 Jerome Post and Ms. Arthurs on the call? Yeah. Is
9 that -

10 MR. POST: I believe that is the case, yes.

11 MS. TURIN: Okay, thank you. And I have the
12 form from the City, so I just want to make sure that I
13 do have the decision appropriately reflected here.

14 **As to the Civil Service Rules 12.4 A through F,**
15 **as in Frank, that's correct, it was unanimous, all**
16 **three granting the appeal.**

17 **As to the Rule H, as in Henry, it was 2 to 1**
18 **granting the appeal. Those in favor were Ms. Gialluca**
19 **and Mr. Baldwin. The one opposed, to deny it, was the**
20 **Chair.**

21 **As to the charge of bullying, it is a 2 to 1**
22 **vote to deny the grievance, the two on the denial are**
23 **Mr. Baldwin and the Chair Lori, and on the other side**
24 **would be Ms. Gialluca saying to grant. She was a no on**
25 **the denial. Is that correct?**

1 CHAIR ADELSON: That is correct. Other Board
2 Members?

3 MR. BALDWIN: Yes.

4 MS. TURIN: Okay. All right.

5 CHAIR ADELSON: So, Ms. Turin, Mimi, what is
6 the next step in concluding the hearing?

7 MS. TURIN: I will prepare the final order.
8 Okay, the order will be signed by the Chairperson and
9 attested to by the Civil Service Board's Secretary, and
10 then it will be submitted to the City Manager, I would
11 imagine.

12 Now, I know that we have some changes coming up
13 in terms of personnel. I will not need Mr. Baldwin's
14 signature. I will just need Ms. Adelson's signature.
15 You are continuing, at least in the time being, as
16 Board Member Chairperson. Is that correct?

17 CHAIR ADELSON: Yes, until such time, I
18 believe, Kerry, you'll tell me what we agreed to in
19 terms of the timeframe. You were going to look for a
20 replacement in the near future. But I'm not going to
21 be stepping off until there is a replacement. I know
22 I'll stay on as long as it takes to facilitate this to
23 its end.

24 MS. BLEAU: Mr. Madden seems --

25 MS. TURIN: I'm not going to delay. I believe,

1 Mr. Madden, there is a question or a comment from the
2 public -- I'm sorry, from Mr. Madden. After that I do
3 just have a couple of housekeeping items. So I'll --

4 MS. BLEAU: And I just have one statement for
5 the record as well, but John can go ahead.

6 MS. TURIN: I'll turn that over to the Chair.

7 CHAIR ADELSON: Mr. Madden wanted -- Ms. Bleau,
8 do you want to go before Mr. Madden? All right, I'll
9 take you in order. Mr. Madden?

10 MS. BLEAU: You're on mute, John.

11 CHAIR ADELSON: You're on mute.

12 MR. MADDEN: It was my understanding that, when
13 I was listening to the Board, whether the charges were
14 substantiated or not, and then once that was voted, is
15 whether or not the City followed the Policies and
16 Procedures in going straight to termination rather than
17 the Progressive Policy. I thought it was two separate
18 votes, if I'm not mistaken.

19 MS. BLEAU: Actually, that's what I was going
20 to note in an objection for the record. I don't know,
21 the Chair keeps -- I [inaudible].

22 CHAIR ADELSON: I got it, I understand the
23 concern. I asked Ms. Turin to clarify that for me.
24 And what she had said to me was, determine the
25 wrongdoing and then whether to grant or deny the

1 appeal. So what we thought we were going to do was not
2 appropriate for the Board, we were only allowed, by the
3 Code, to grant or deny. So that's why we did not
4 address --

5 MS. BLEAU: That's true. But, first you have
6 to say, did the offense occur? And you have said, yes.
7 And then you have to say, is termination appropriate?
8 Were the procedures followed? Whatever, however,
9 should the appeal be granted or denied? And you sort
10 of jumped to that. And that may be the Board's
11 decision, but procedurally, I just wanted for the
12 record --

13 MR. MADDEN: Yeah, that's what I thought it
14 was.

15 MS. BLEAU: -- an issue with respect to lumping
16 them all together. If you're guilty, therefore, your
17 appeal is denied and you're terminated. Because you
18 can be guilty and still have Progressive Discipline
19 Policy not followed. You can still be guilty and have
20 termination not be appropriate for the first offense.
21 You can still be guilty for many other reasons. And
22 that's what I want to know for the record.

23 CHAIR ADELSON: And that's fair. I want to
24 just let Ms. Turin address it, because I was
25 understanding that once we made [unintelligible]

1 determination we moved to a decision making. So let's
2 see what she has to say.

3 MS. TURIN: Right. Okay, decision making,
4 though, does encompass if there is some sort of a
5 violation that would lead the Board to believe that the
6 action is inappropriate. It's just that I don't have
7 an in-between that's provided for in the Code. The
8 Code provides for grant or deny.

9 If you find somebody guilty on something and
10 then you go forward with grant or deny, part of the
11 granting or denying would take into consideration, was
12 there a violation of due process; was there a mistake
13 in whatever? So, yes, even though you may not have a
14 separate vote on it, it still comes within the gambit
15 of grant or deny.

16 MS. BLEAU: I was going to what you said at the
17 beginning that the policy, that the rules or whatever
18 were very limited. That's all they say, but -- and
19 then you went on to explain how employment matters are
20 considered. And you're absolutely right in how
21 employment matters are considered are, is the violation
22 sustained? Did Mr. Madden engage in that behavior?
23 And then, separately, is termination appropriate? Do
24 you uphold the --

25 MS. TURIN: Grant or denied.

1 MS. BLEAU: -- that's correct. And the Board
2 did not do that, and that's what I'm talking --

3 MS. TURIN: Yeah.

4 CHAIR ADELSON: The decision making we did,
5 internally, to come to the conclusion --

6 MS. TURIN: But was there discussion on that?

7 MS. BLEAU: No, there was not discussion about
8 -

9 MS. TURIN: And there was --

10 CHAIR ADELSON: [Unintelligible] specifically
11 talked about the fact that he might have done something
12 different, that he believes that it should be upheld.
13 So, I think the transcripts will reflect that. And I
14 do appreciate the commentary on it because I do think
15 it is important to be transparent.

16 MS. BLEAU: Well, it's more than a commentary.
17 I'm reserving my objections. So you said you didn't
18 want to do process issue, I'm trying to --

19 CHAIR ADELSON: No, I understand. I will tell
20 you from my perspective, that was a consideration
21 because I knew it was something that had to be made in
22 making my decision to uphold or not. So, then Mr.
23 Baldwin articulated it as well, and Ms. Gialluca
24 actually had a difference of opinion and we voted
25 differently. So, for the record, I did consider that,

1 in terms of why and how I came to my decision, or vote,
2 that last portion the appeal should be denied.

3 MS. BLEAU: If Mr. Baldwin says that not only
4 does he think Mr. Madden was guilty, but he thinks
5 termination was appropriate, that's fine. I just did
6 not hear him say anything like that. The discussion
7 that you led the Board in voting on was, do you uphold
8 or deny the appeal? And so, if you're --

9 MR. BALDWIN: We haven't voted on the last
10 issue, is that what you're saying?

11 MS. BLEAU: Yes, yes.

12 MR. BALDWIN: That we have not voted on the
13 last issue?

14 MS. BLEAU: Right, that's my point.

15 MR. BALDWIN: Whether the City acted
16 appropriately?

17 MS. BLEAU: That's right.

18 CHAIR ADELSON: Well, I think what Ms. Turin is
19 saying is we don't vote on that, we vote on that in our
20 decision whether or not to uphold or deny. So when we
21 had a discussion --

22 MR. BALDWIN: Yes.

23 CHAIR ADELSON: -- that's when we ultimately
24 resolved by the final decision, which was to uphold or
25 deny. So I want to make sure it's clear, that's -- I

1 know I made that in my decision making process. I
2 heard Mr. Baldwin's conversation and arguments that he
3 may have done it differently, but this was the City's
4 choice in upholding -- in denying the appeal. So I
5 don't know if we needed to make a separate vote in
6 between, which what I think Ms. Turin is saying.

7 MR. BALDWIN: But we do have to explain --

8 MS. TURIN: We don't need a separate vote on
9 that issue, but it's part and parcel of the decision of
10 whether or not to uphold or deny the grievance. So if
11 one of you is saying you thought it was included and
12 one of you is saying you did not think it was included
13 --

14 MR. BALDWIN: I did not think it was included.

15 MS. TURIN: -- now is the time to clarify that.

16 MR. BALDWIN: No, I didn't think it was
17 included. [Unintelligible]

18 MS. TURIN: Do you want to clarify your vote?

19 MR. BALDWIN: I wanted to discuss the
20 appropriateness of the dismissal after we had resolved
21 the charges. We've resolved the charges, so now it's
22 just the discussion about the dismissal.

23 CHAIR ADELSON: Which is whether or not that
24 goes into the termination, right? If it's appropriate
25 action taken by the City, then I believe you're proper

1 response would be to deny the grievance and if you
2 think that the City should have done something else,
3 then ultimately your decision will be to deny the
4 grievance. Is that --

5 MR. BALDWIN: That's the way I would see it.

6 CHAIR ADELSON: Okay, so --

7 MS. TURIN: Okay, so you have a motion -- there
8 was a motion, it was seconded. So is the person who's
9 seconding that motion on the bullying changing their
10 second? And then you can go back into the discussion
11 of that item.

12 CHAIR ADELSON: And that would be Mr. Baldwin
13 who seconded it, right?

14 MS. TURIN: Yes, Mr. Baldwin had as the second,
15 so he was misconstruing the motion which is --

16 MR. BALDWIN: I seconded the motion, I thought,
17 to say that I believed bullying occurred, that it did
18 occur, but I have not voted on whether it rose to be
19 the appropriateness of a dismissal. We have not voted
20 on that yet.

21 MS. TURIN: Okay. All right. Well, as I was
22 saying earlier -

23 CHAIR ADELSON: That's maybe why the rule went
24 through -

25 MS. TURIN: -- it's all in one. So if his

1 understanding was that it was going to be a further
2 discussion, my advice to the Board would be to rescind
3 your seconding, go back into discussion, and clarify it
4 on the record before we close out the hearing. Okay?

5 MR. BALDWIN: Whether the actual dismissal.

6 MS. TURIN: Okay? This is the time to do it.

7 MR. BALDWIN: I make that motion.

8 CHAIR ADELSON: So what is the motion?

9 MR. BALDWIN: That we go back and consider --

10 MS. TURIN: Go back into your discussion now.

11 CHAIR ADELSON: Great. And Ms. Bleau, thank
12 you for clarifying it. I just objected to it, because
13 I do want to make sure we do this right. My
14 understanding was Mr. Baldwin had already articulated
15 his position and, therefore, put it into his --

16 MS. TURIN: But this is also why you have
17 discussion. So, can we get some clarification, then,
18 on what you're going to do? Because that's the now --
19 it's back open to discussion. Okay? And I'll need a
20 new vote, but I want you to clarify, please, on the
21 record, what it is you want to vote on, what it is
22 you're discussing now. This is the time.

23 CHAIR ADELSON: The discussion is, now that
24 there is a vote on the wrongdoing aspect, whether or
25 not the City's actions rose to -- excuse me -- Madden's

1 actions rose a level where the City's actions were
2 appropriate with regard to termination. And, depending
3 on what your answer to that will be, whether you
4 uphold, will you grant or deny the appeal. That is the
5 motion before us now.

6 MR. BALDWIN: I second.

7 CHAIR ADELSON: Okay. Discussion. Mr.
8 Baldwin?

9 MR. BALDWIN: I wanted to -- I think a good
10 example of what causes me concern, and it's nobody's
11 fault -- you read my memo to Chris. The process
12 bothers me. I mean, I can't hear some of this. It's
13 just difficult. I mean, we've had to work our way
14 through it.

15 And I just want to be sure of something. If I
16 make a bad decision -- and Mimi, you and I discussed
17 this -- what are the options for the City and for Mr.
18 Madden relative to any kind of appeal? What are their
19 options? I was speaking to Mimi.

20 MS. TURIN: This is the appeal process to the
21 Civil Service Board. This is the appeal process to the
22 Civil Service Board. What anybody chooses to do after
23 that in the courts would be up to the parties. And
24 that's beyond the scope of what we're doing here. If
25 either party is dissatisfied with the Board's action,

1 they can take advantage of whatever other appeal rights
2 they may have in Circuit Court. But this is the
3 employee's appeal process right now. Does that answer
4 your question?

5 MR. BALDWIN: Yeah, so what you're saying is
6 that there is appeal beyond here if somebody chooses,
7 but that's their decision. Right?

8 MS. TURIN: That's their decision, and there
9 would have to be grounds for it, and there are rules
10 for it, and there's a process if they would want to.
11 As to the City, it depends on what action is taken.
12 But that goes beyond what the Board would do.

13 What the Board is here to do at this point is
14 simply determine whether to grant or deny the
15 employee's grievance as to his termination. And
16 nobody's going to do anything any further in the courts
17 until this Board takes action. And they may not take
18 action. But it is incumbent on this Board to hear his
19 appeal and makes its decision.

20 MR. BALDWIN: Yeah, I just don't want to make
21 an overly onerous decision on either party, but I guess
22 I have no choice.

23 MS. TURIN: If I under --

24 CHAIR ADELSON: Ms. Bleau?

25 MS. BLEAU: There may be one other option. Can

1 we take a five minute break and Mr. Miller and I can
2 talk?

3 CHAIR ADELSON: Of course.

4 MR. BALDWIN: I think that would be good.

5 CHAIR ADELSON: Absolutely. Five minutes,
6 4:00, so let's make it ten minutes, so that we're not
7 rushing you.

8 MS. BLEAU: All right, thanks.

9 MS. TURIN: Just remember there is a hard break
10 at 5:00 tonight.

11 CHAIR ADELSON: I think we'll be good.

12 MS. BLEAU: Ken, write this number down and
13 give me a call?

14 MS. TURIN: 4:05.

15 MR. MILLER: Go ahead.

16 MS. BLEAU: 561-329-9862.

17 MR. MILLER: Okay.

18 MS. BLEAU: Thanks.

19 MR. MILLER: I'll call you.

20 [BREAK FROM 3:59 P.M. - 4:08 P.M.]

21 CHAIR ADELSON: I think everyone is back and we
22 are back on recording. Shelley, you're there but no
23 video, right?

24 MS. GIALLUCA: Correct.

25 CHAIR ADELSON: So, Ms. Bleau, you were going

1 to say something and then we took a break.

2 MS. BLEAU: Yeah, I had an idea of splitting
3 the baby, but Mr. Miller wasn't able to reach anybody,
4 so.

5 CHAIR ADELSON: Is it worth waiting 10-15
6 minutes? I mean, I do have a hard stop, but --

7 MR. MILLER: You know, it's 4:00 on a Friday.
8 I can't honestly tell you that there's anybody even
9 over there that just got the message, so I really have
10 no way of knowing that.

11 MR. BALDWIN: I know I'm willing to wait until
12 5:00.

13 CHAIR ADELSON: Well, not to 5:00. We'd have
14 to wait until 4:40, though. I have to get off no later
15 than 5:00. I have a commitment that I need to make,
16 but I would be willing to wait until 4:45 to see if
17 someone gets back, 4:30?

18 MS. BLEAU: Actually, it may also be something
19 within the purview of the Board, I guess. I'm not sure
20 from what Ms. Turin says. If the Board decides to
21 grant the appeal, then does Mr. Madden have to go back
22 to work? I guess that's what I'm saying.

23 If he were willing to resign, would that be
24 something the Board could do? So, he's not going back,
25 but he wins the appeal. Is that something the Board

1 has authority to do?

2 CHAIR ADELSON: Mimi?

3 MS. TURIN: I do not see language to that
4 effect in the Code that the Board would be able to
5 entertain that. Now, whether or not the City and the
6 employee, Mr. Madden, can work that out between
7 themselves is always an option to discuss. But no, I
8 don't see it within the Code language as something the
9 Board could dictate or approve/not approve. I just
10 don't see that authority.

11 If either one of the attorneys has authority to
12 the contrary, I'm happy to look at it. But in all
13 honesty, the only cases I've been able to find,
14 reported cases involving City's Personnel Board --
15 we're going back to the 1970s -- and neither one of
16 those included any kind of issue like that. They were
17 all disciplinary-type cases.

18 MS. BLEAU: Okay. All right.

19 MR. POST: Mimi, it's Jerome. Would it help if
20 the Board were made aware of what the language in the
21 Charter actually says relative to the Appeals Board and
22 their role? [Unintelligible]

23 MS. TURIN: It was just that little two
24 sentences that I -- hold on -- that I read earlier.
25 And I'm reading from Section 6.04D, D as in dog, at the

1 end of that paragraph.

2 MR. POST: Yeah, that's where I am.

3 MS. TURIN: "Upon a hearing of such appeal,
4 technical rules of evidence shall not apply. The Board
5 shall make the final decision disposing of the appeal.
6 If such final decision is in favor of the employee, the
7 City Manager shall reinstate the employee without loss
8 of pay and benefits." And that's pretty much all I
9 have.

10 CHAIR ADELSON: Read it to me again, please?

11 MS. TURIN: "The Board shall make the final
12 decision disposing of the appeal. If such final
13 decision is in favor of the employee, the City Manager
14 shall reinstate the employee without loss of pay and
15 benefits."

16 CHAIR ADELSON: So there's no provision for if
17 the Board -- as to the Board assisting in the
18 remediation or the remedy. There's only if they
19 [unintelligible].

20 MS. TURIN: I don't see authority for that. On
21 the other hand, I don't see a prohibition in that. But
22 on the hand, I just don't see the authority for the
23 Board to take that type of action.

24 Now, under the duties of the Board in Section
25 C, "The Board does have the authority to review and

1 consider additional personnel rules or amendments to
2 existing rules that may be recommended for adoption and
3 approve or disapprove by motion those rules."

4 I don't know if the Board would want to make a
5 recommendation to the City under the provisions of
6 6.04C2, to consider a rule amendment to that effect,
7 but I don't think that would help you in this
8 particular situation. It's a recommendation.

9 CHAIR ADELSON: That is an unfortunate gap.

10 MS. TURIN: Not within the four corners of this
11 particular proceeding. It has always been my
12 understanding that an employee always has a right to
13 resign. I mean, we don't have involuntary employment,
14 so that being said, it's my understanding an employer
15 can't stop anyone from resigning. But, he's no longer
16 employed there. I mean, I don't want to step on either
17 [inaudible] here, but if somebody wishes to submit a
18 resignation letter dated retroactively, or with a
19 retroactive effective date, whether or not the City has
20 to accept it is a different issue, but I don't know of
21 a prohibition. As I said, we don't have involuntary
22 employment.

23 MS. BLEAU: I didn't really mean that either.
24 I meant that he would resign, like, effective tomorrow,
25 not effective two years from now. But anyway, it's --

1 MR. MILLER: You know what my problem is? I'm
2 sitting here flying blind. I literally have no -- I
3 don't even have a clue, one way or the other on any of
4 this, so it's impossible for me to offer anything that
5 would assist with this question. I just don't have the
6 ability to do that.

7 MS. BLEAU: I think we just need to go forward
8 in the time we have left.

9 MS. TURIN: I think you will, also, in the
10 final order that I am going to prepare for the Board,
11 the final order will bear the date of the vote that the
12 Board has acted upon. And that will be today's date.
13 This is the last hearing that the Board has scheduled,
14 especially with these members. Does the Board want to
15 continue now with its discussion?

16 MR. BALDWIN: Is the problem that there's
17 nobody in charge to accept his resignation if we chose
18 to do that? Is that the problem?

19 MR. MILLER: Among other things, yes.

20 MR. BALDWIN: Is the Assistant City Manager or
21 somebody available?

22 CHAIR ADELSON: There's also no precedent for
23 it, Robert.

24 MR. MILLER: The people that I have access to
25 have not answered the phone.

1 MR. BALDWIN: I mean, an option which doesn't
2 sound very good to me, but it can't happen because I've
3 already resigned, unless Chris Lagerbloom rescinded my
4 resignation for one meeting, which would give you more
5 time to work something out. But you can't get ahold of
6 him anyway, so.

7 CHAIR ADELSON: I'm thinking.

8 MS. TURIN: Mr. Baldwin, are you suggesting
9 that you withdraw your resignation?

10 MR. BALDWIN: If somebody needs more time and
11 rather than vote now, have a meeting after they have a
12 chance to talk about it. And then, the same thing, I'd
13 just vote. So, I would be willing to do that. But you
14 can't get ahold of the City Manager and I resigned with
15 the City Manager. It's going to be up to him whether
16 or not he wants me to hang around for one meeting.

17 MS. GIALLUCA: And I guess I'm confused about
18 what the issue is. If the Board votes so that his
19 appeal is granted and the City Manager has to reappoint
20 him, doesn't he have the right to just resign if he
21 wants to?

22 CHAIR ADELSON: Yes. That is true.

23 MR. BALDWIN: I was just trying to facilitate
24 whatever you're trying to do. I don't really know.

25 CHAIR ADELSON: So, in light of the

1 circumstances, although Mr. Baldwin has indicated that
2 he would be willing to rescind his resignation for us
3 to be able to reconvene, for the parties to be able to
4 try to facilitate a resolution before we take a vote --

5 MR. BALDWIN: For one meeting.

6 CHAIR ADELSON: -- for one meeting, I'm clear.
7 I don't see that as a practical matter occurring today
8 and putting this off any longer. In the event that Mr.
9 Baldwin is unable to rescind his resignation, it would
10 put us in the position for, as Mr. Miller said, to have
11 to start all over again. Which I don't think is a
12 position any of us --

13 MS. GIALLUCA: And also, Madam Chair, I'm not
14 sure that I can continue with this either, beyond my
15 term.

16 CHAIR ADELSON: Understood. So, let's proceed.
17 We were on discussion and final -- remind me, so I'm
18 not passing a step - we were onto a vote as to whether
19 or not, if the Board Members deem the City's actions to
20 be either inappropriate or appropriate, whether or not
21 to deny or grant the appeal. And I think we were done
22 with discussion.

23 MS. TURIN: Well, hold on. You've already
24 voted on 12.4.A to F. You've already voted on H. The
25 only thing that you reopened was the Board's vote on

1 the bullying and whether or not the appeal is to be
2 granted or denied. Part and parcel of that
3 determination includes if it was properly enacted by
4 following whatever protocols the City had to do.

5 So it's the ultimate action. Was it
6 appropriate or not, which would take into consideration
7 the procedural issues raised previously. It's all in
8 one. So have you had sufficient discussion amongst
9 yourselves as to the procedures that were followed, in
10 addition to the substance of the issue?

11 Mr. Baldwin had an issue there. I don't
12 remember if Ms. Gialluca voiced anything on that
13 particular issue in terms of a process.

14 MR. BALDWIN: I mentioned the process.

15 MS. TURIN: When you get to that, it includes
16 everything. You mentioned the process. Is there
17 further discussion?

18 MR. BALDWIN: And I also mentioned that I
19 thought it could have been handled better by some kind
20 of rehabilitation or something like that.

21 [Unintelligible]

22 CHAIR ADELSON: So with that discussion, is
23 there any further discussion that needs to be on that
24 topic for the Board to vote on that action by the City?
25 So here we go again. I want to make sure I get this

1 right. I want to pull up the language.

2 So, as to the charge -- Mr. Madden is charged
3 with violating City policy against Workplace Bullying.
4 Do you deny or grant the appeal as to Mr. Madden's
5 grievance? Mr. Baldwin?

6 MR. BALDWIN: You're asking for a motion from
7 me? That would be a motion?

8 CHAIR ADELSON: The motion was already made.

9 MR. BALDWIN: Well, what is the motion?

10 CHAIR ADELSON: The motion is to vote on --

11 MR. BALDWIN: Grant the appeal?

12 CHAIR ADELSON: -- grant or deny the grievance

13 -

14 MR. BALDWIN: It would be to grant, right?
15 Shelley made the motion to grant?

16 MS. TURIN: Wait, who made the motion? No, the
17 motion is to grant or deny the grievance as to the
18 bullying, which is also taking into consideration any
19 procedural issues that may have existed. Is that the
20 correct motion that you have?

21 CHAIR ADELSON: That's the motion that we had
22 made previously.

23 MS. TURIN: I see you nodding.

24 CHAIR ADELSON: I don't know if we need to re-
25 make it.

1 MR. BALDWIN: I thought we had dealt with that.
2 Now, in fact, Shelley had made the motion to grant the
3 appeal. Am I wrong on that?

4 CHAIR ADELSON: No. The motion -- Shelley had
5 voted to grant the appeal, you had voted to deny it.
6 But then Ms. Bleau brought up a procedural issue of
7 what she believed, and we discussed what might have
8 been a misstep in terms of discussion on the
9 appropriate action taken by the City. And you believed
10 the City's action was appropriate, then you would deny
11 the appeal. If you believe the City's action was not
12 appropriate, then you would grant the appeal.

13 So the motion at hand is to take a vote as to
14 whether to deny or grant the appeal with regard to the
15 Workplace Bullying violation by Mr. Madden.

16 MR. BALDWIN: If you don't mind, I'll let
17 Shelley make that motion.

18 CHAIR ADELSON: All right, I'll second.

19 MS. GIALLUCA: I'm going to vote to grant the
20 appeal --

21 CHAIR ADELSON: I'm trying to get the motion on
22 the record. So, it's the motion now, to either vote to
23 deny or grant the appeal as to the grievance and the
24 action with regard to the termination based on the
25 Workplace Bullying violation.

1 MS. GIALLUCA: Okay, I would like to make a
2 motion on violating the City policy on Workplace
3 Bullying to take a vote to grant or deny the appeal and
4 consider the process followed.

5 CHAIR ADELSON: Seconded. And now we take a
6 vote. Ms. Gialluca?

7 MS. GIALLUCA: I vote to grant the appeal.

8 CHAIR ADELSON: Mr. Baldwin?

9 MR. BALDWIN: No.

10 CHAIR ADELSON: You vote to deny the appeal?

11 MR. BALDWIN: Yes.

12 CHAIR ADELSON: And I also vote to deny the
13 appeal.

14 MS. TURIN: And that's 2 to 1 on denying the
15 bullying, taking into consideration the processes that
16 were followed. Is that correct?

17 CHAIR ADELSON: Yes.

18 MS. TURIN: Okay. Thank you. All right, is
19 there any other substantive --

20 CHAIR ADELSON: Mr. Madden has his hand up.

21 MR. MADDEN: Sure. Can I speak?

22 CHAIR ADELSON: Of course.

23 MR. MADDEN: Okay. Does that mean that I lost
24 the appeal to be reinstated? Or lost the appeal on
25 this charge? Because I don't understand the motion,

1 because I thought it was first to whether or not the
2 charge was substantiated and then, second of all, of
3 whether or not the processes and procedures in
4 terminating me so, you know, to get my job back; or to
5 win my appeal that the policies and procedures were not
6 followed. I'm just -- something I'm trying to make
7 clear.

8 CHAIR ADELSON: Mimi, would you clarify the
9 process?

10 MR. MADDEN: The question I have is, on the one
11 charge, if I'm found guilty of that, but the appeal, my
12 appeal in saying that they didn't follow the policies
13 and procedures or I wasn't given -- you know, I'm not
14 sure what the vote or the motion was. Because I
15 thought I heard two different motions. I'm sorry, I
16 can't hear.

17 MS. TURIN: I have the motions that the Board
18 has ruled on. There's been a total of three motions.
19 The last one was a motion to grant or deny the
20 grievance as to bullying which took into consideration
21 any procedural processes at issue, and it was a 2 to 1
22 vote to deny the grievance. That was the final one.
23 The other two earlier were granting. But on the
24 bullying charge, it was denied.

25 CHAIR ADELSON: I suppose Mr. Madden's question

1 is, what does that mean for him in terms of outcome,
2 and I can't answer that.

3 MS. TURIN: Exactly, he would have to refer to
4 his attorney on that. That would go outside the scope
5 of this Board's function. This is not a Board that
6 gives advice. We can make recommendations to Rule
7 issues, but it's not to give advice on disputed
8 matters.

9 CHAIR ADELSON: I just didn't want to disregard
10 his question. I wanted to make sure that this wasn't
11 the forum and where he should direct the question.

12 MS. TURIN: He needs to discuss it with his
13 attorney.

14 MS. BLEAU: I want to thank everybody for their
15 time and attention.

16 CHAIR ADELSON: Thank you all, as well.

17 MR. MILLER: Yes, thank you all. As I said
18 before, we do appreciate the effort that everybody put
19 in.

20 MR. MADDEN: One more comment. I appreciate
21 everybody involved in this process and I'll, obviously
22 I'll talk to Denise. But I do appreciate your time and
23 your efforts, and I'll move forward.

24 CHAIR ADELSON: Thank you.

25 MS. GIALLUCA: Thank you.

1 MR. BALDWIN: And I want to thank everybody.
2 Covid has really complicated all of this and I
3 appreciate everybody's hard work.

4 MS. GIALLUCA: Yes, thank you, Bob, and good
5 luck.

6 MR. POST: And let me add my thanks to
7 everybody for your patience and all your hard work
8 through this. I understand how difficult it's been,
9 but add mine to it. Thank you.

10 MS. GIALLUCA: Thank you.

11 CHAIR ADELSON: Everyone have a good weekend.

12 MS. TURIN: Thank you all for working through
13 this.

14 MR. BALDWIN: And Kerry, you're a saint.

15 MS. TURIN: To the Chair, as to the Agenda, is
16 there a further item because there are some
17 housekeeping items that the Board will need to discuss
18 going forward. I believe the City was looking at
19 regular dates for scheduling in the future. Can we get
20 a status on that, perhaps, or whatever other items may
21 be on the Agenda.

22 MR. MILLER: Before you do that, may we be
23 excused?

24 CHAIR ADELSON: Yes.

25 MR. MILLER: Thank you very much. I appreciate

1 it.

2 CHAIR ADELSON: Have a good weekend.

3 MS. TURIN: Thank you.

4 MS. GIALLUCA: And I have a question also, real
5 quick. All these materials, the documents and binders,
6 what is the appropriate way to dispose of them?

7 CHAIR ADELSON: There are a lot of them.

8 MS. GIALLUCA: Yeah.

9 CHAIR ADELSON: I don't have a big enough
10 scanner to scan all of them to dispose of them.

11 MS. TURIN: Can we get them back to the City?
12 I don't have an exhibit book, I never received one.
13 But if the Board Members could return them to the City
14 as the official custodian of these records, they are
15 public records. I don't know that there's a time limit
16 on when the City will be reopening. Or, if they can
17 just use a mailer.

18 MS. GIALLUCA: Oh, my gosh, they're like three
19 feet tall!

20 CHAIR ADELSON: Yeah, they're plural.

21 MS. ARTHURS: We're technically open to the
22 public, so you are free to come to the building and
23 drop them off. I'll be more than happy to receive
24 them.

25 MS. GIALLUCA: I mean, do you want them

1 shredded? I mean, they do have notes and stuff in
2 them, and I'm sure you have an official copy of all of
3 them. Or do you need all the notes?

4 MS. TURIN: Whatever you've got should come to
5 the City. The City will make a determination under
6 their -- well, for the time being, they do need to come
7 back to the City. The City will make a determination
8 as to whether the records can be disposed of, in
9 accordance with their archival schedule for public
10 records. So the best thing to do is to return them to
11 the City.

12 It doesn't have to be this week, though. We
13 don't have any deadline, so maybe once everybody gets
14 their vaccine -- not extra copies, but your notes
15 should be turned in and they can determine what happens
16 to those.

17 MS. ARTHURS: Thank you, Mimi, because I'm
18 going to have to get with City Clerk's office, when it
19 comes to records retention.

20 CHAIR ADELSON: We lost Baldwin.

21 MS. TURIN: Yeah, we lost Mr. Baldwin. We have
22 a quorum.

23 MR. POST: If I could, just at this point, I
24 would recommend that you just hold onto them, set them
25 aside. Let Kerry get with the City Clerk's office, and

1 we will be in contact with you about how we can obtain
2 them, because they are considered Public Records. They
3 should not be destroyed.

4 MS. GIALLUCA: Okay, that's all I needed to
5 know.

6 CHAIR ADELSON: Jerome, you want all our notes,
7 too?

8 MR. POST: Yes, ma'am.

9 CHAIR ADELSON: I'm gathering them for you.
10 All right, so calendaring -- obviously, Shelley, your
11 term is running out. I'm on until they decide to find
12 a replacement for me. As long as we don't have another
13 one of these hearings, I'll stay on for a little while
14 longer.

15 MS. GIALLUCA: Yeah, I think this is my last
16 one, too.

17 MR. POST: If I could give you an update,
18 Shelley, on yours, we did have an election for the
19 Employee Representative to replace you. The vote is
20 going to be counted next week. Kerry, I think it's
21 what, Tuesday?

22 MS. GIALLUCA: I thought it was counted last
23 week at a meeting.

24 MR. POST: We had a count. At the very end of
25 the count, it was discovered that there were 23 ballots

1 that were not distributed. They were sent out. Kerry
2 did her job, she sent them out to the Departments. One
3 of the Departments neglected to distribute them to the
4 employees. So, by the City Attorney's recommendation,
5 we re-held the vote. We have collected them. The
6 ballots have all been completed and collected. The
7 vote will actually occur next week. And once we've
8 determined that there's been a legitimate ballot or
9 voting, then we'll certify that election and the winner
10 will go to the City Commission for appointment to the
11 Board.

12 MS. GIALLUCA: Okay.

13 MS. ARTHURS: The meeting is going to be next
14 week, Thursday.

15 MR. POST: Next week, Thursday.

16 MS. GIALLUCA: My other question would be, do
17 you foresee any other appeals occurring in the near
18 future?

19 MR. POST: Not that you'll need to be concerned
20 with. We do have another issue that is not
21 disciplinary-related. It's a policy issue. But, quite
22 honestly, we need to replace Mr. Baldwin. And
23 technically, Ms. Adelson, her term is expired. If she
24 is replaced by -- Ms. Adelson, were you the Mayor's
25 appointment or the City Manager's appointment?

1 CHAIR ADELSON: Mayor.

2 MS. ARTHURS: Excuse me, correction. The City
3 Manager.

4 CHAIR ADELSON: That's right, City Manager,
5 sorry.

6 MR. POST: Okay. The City Manager has been
7 made aware that he needs to replace you. I do not know
8 what the status is of that. But I'll remind him at the
9 earliest possibility. I do know that there was an
10 application to the Board in the City Clerk's office
11 that he can consider. I don't know the person. I
12 don't know if he knows the person. But, there is at
13 least one candidate available to him. But that's all I
14 know at this point.

15 MS. GIALLUCA: Okay. Thank you.

16 MR. POST: That's up to the Mayor.

17 MS. ARTHURS: The City Clerk's Office is well
18 aware of the need to fill the Board positions and they
19 are actually communicating with the Mayor and also with
20 the City Manager regarding that, too.

21 MR. POST: So this all led up to the discussion
22 about the scheduling issue. Ms. Adelson, I would
23 assume that it's up to you if you want to suggest or
24 submit days once a month, I would guess. If you are
25 going to stay on until a reappointment, I just don't

1 know how long it will take to replace you.

2 CHAIR ADELSON: I'll stay on until
3 reappointment. Subject to not getting involved in an
4 18-month --

5 MR. POST: You and me both.

6 CHAIR ADELSON: -- appeal. Okay, so we want to
7 go with a once-a-month meeting date. And how long do
8 we anticipate meeting?

9 MS. ARTHURS: I have a suggestion, just based
10 on my conversation with one of the staff in the City
11 Clerk's Office. Whether we're in person or -- we're
12 very booked from Monday to Friday, when we have a lot
13 of bookings for the other boards. Fridays are usually
14 pretty free, that's why they always accompany us on a
15 Friday. Mauricio should chime in. He knows when
16 there's other boards.

17 MAURICIO: I do, yes. As long as we don't have
18 three meetings running at the same time. There's
19 certain occasions where -- give me one second -- there
20 we go. As long as we don't have three meetings that
21 are running at the same time, we should be good.
22 Fridays are usually the days that we have free. So
23 it's the easiest ones to book.

24 Mondays are also pretty good, too, as you can
25 see, there's really only one meeting going on. But

1 during the day, 9:00 a.m. to roughly around 3:00, of
2 any other day, it should be all right, with the
3 exception of the middle of the month. So every
4 Wednesday in the middle of the month, it's pretty busy.

5 CHAIR ADELSON: Then how many hours do we
6 anticipate meeting for these meetings?

7 MAURICIO: I'm sorry, say that again?

8 CHAIR ADELSON: How many hours do we anticipate
9 meeting for these meetings?

10 MR. POST: Given the nature of what I know,
11 just sitting in front of the Board at this point, I
12 would suggest you just do a four-hour or just a one-
13 morning, once a month. And if you use all four hours,
14 fine. If you don't, you got free time. I don't
15 anticipate that this next issue is going to take up a
16 whole lot of time.

17 MAURICIO: There are no limits or requirements
18 of how long your meetings can be. That's a very good
19 question. I should probably talk to someone about
20 that. To find staffing to sit in a 14-hour meeting,
21 that could become insane. But I don't actually expect
22 at some point to occur.

23 CHAIR ADELSON: All right. So why don't we
24 pick -- I'd like to start at 8:00 a.m. if we're going
25 to be doing them in the mornings so that I don't really

1 disrupt that day. 8:30?

2 MS. TURIN: 8:30 would allow for childcare to
3 be taken care of.

4 CHAIR ADELSON: Excellent.

5 MS. TURIN: 8:30 would be acceptable.

6 CHAIR ADELSON: Fridays are always best for me.
7 But I could do a Monday morning.

8 MS. ARTHURS: Another thing to take into
9 consideration is, if we move to an in-person platform,
10 then we'll either be in a hybrid setting or we won't be
11 virtual anymore.

12 MR. POST: Keep in mind, folks, this is all
13 tentative. We have Ms. Adelson's schedule, but with
14 two new Board Members coming on, we'll need to
15 determine whether or not they can make either a Friday
16 or Monday morning. I agree with Ms. Adelson, I would
17 appreciate either a Monday or a Friday morning, and
18 then whether we take the time or not, depends on what's
19 in front of the Board.

20 CHAIR ADELSON: Okay, so I think that -- why
21 don't we put that out there, that it will either be a
22 Monday or Friday morning dependent upon the new
23 candidates' availability. I propose that. And then
24 we'll go from there.

25 MR. POST: Okay.

1 CHAIR ADELSON: Kerry, do you want us to have
2 it on the calendar for April? Is that what I'm
3 hearing?

4 MS. ARTHURS: As quickly as you tell me is as
5 quickly as I get it to the Clerk's Office and they make
6 it official that that's what -- because they actually
7 put it out there on their website that the Board meets
8 on a certain day, every month. I still have to do the
9 scheduling as normal. I handle the scheduling.

10 CHAIR ADELSON: Understood. So we met this
11 month. March is over. So what don't we try for maybe
12 the second -- I wouldn't mind the second full week of
13 whatever month it is on a Monday or a Friday. So that
14 would be the week of the 12th for April, or the 16th, and
15 then again, 10th or the 14th. So I think for April
16 let's pick one, so we have it on the calendar that
17 works for all of us that are presently talking.

18 MS. ARTHURS: I'm sorry, the 12th is not going
19 to work for myself --

20 MR. POST: Every other Monday is we have the
21 Agenda briefing for the City Commission.

22 CHAIR ADELSON: The 19th?

23 MS. TURIN: Is that the third Monday of the
24 month?

25 CHAIR ADELSON: That's the third Monday, it's

1 fine. As long as it's consistently on there.

2 MAURICIO: The 12th is fine because you said
3 that you wanted it in the mornings at 8:30. So that's
4 perfectly fine. It won't conflict with any of these.

5 MS. TURIN: The only thing is if the other
6 incoming Board Members can't do 8:30.

7 MR. POST: We'll have to wait and see.

8 CHAIR ADELSON: So why don't we get it on the
9 calendar, let's confirm with them, so we at least have
10 it calendared. And then if it doesn't work, it's
11 easier to take it off, I think, than it is to get it on
12 with the City's schedule.

13 MS. ARTHURS: So I have it for April 19th?

14 CHAIR ADELSON: That works for me, too.

15 MS. ARTHURS: Okay. And then every third
16 Monday going forward?

17 CHAIR ADELSON: That's doable, yes.

18 MS. ARTHURS: Okay, thank you.

19 CHAIR ADELSON: Obviously, subject to the new
20 Board Members.

21 MS. GIALLUCA: Okay, are we done?

22 MS. TURIN: Hold on. Kerry, you said that
23 there was a policy issue coming up. Is there another
24 disciplinary case coming up?

25 MS. ARTHURS: Yes, there are two.

1 MS. TURIN: Those will be for the new Board.

2 CHAIR ADELSON: And hopefully by then, you'll
3 have me replaced.

4 MS. TURIN: And a policy review?

5 MS. ARTHURS: Give me one second. One has to
6 do with his vacation -- holiday pay compensation; and
7 then the other one is he was suspended for a day.

8 MS. TURIN: All right, so suspension and a
9 holiday pay. And there is a rule revision as well?

10 MS. ARTHURS: Rule revision I'm not aware of.
11 Jerome?

12 MR. POST: I don't recall it.

13 MS. TURIN: Oh, okay. So it is just the policy
14 on the pay and the one day suspension.

15 MS. ARTHURS: Yes, those are the two that are
16 waiting.

17 MS. TURIN: Okay.

18 MS. ARTHURS: I can resend the paperwork to you
19 so you are aware.

20 MS. TURIN: Okay. All right. I will get the
21 final order prepared on Mr. Madden and get it to you,
22 Kerry. If you could get it to Lori to sign off on, and
23 we can get that finalized.

24 MS. ARTHURS: Okay, thank you.

25 MS. TURIN: If I don't get it today, you will

1 definitely have it by Monday, okay?

2 MS. ARTHURS: Okay.

3 CHAIR ADELSON: Okay! Well, congratulations,
4 everyone. We got through this.

5 MS. GIALLUCA: We did, thank you.

6 MS. ARTHURS: Yes, congratulations.

7 CHAIR ADELSON: Not easy.

8 MS. GIALLUCA: Not at all.

9 MS. TURIN: I really appreciate everybody's
10 hard work on this one. I know it was an effort for
11 everybody.

12 MS. ARTHURS: And I appreciate everyone working
13 with me to make this happen.

14 MS. GIALLUCA: And thank everyone, too. And
15 Kerry, you did an awesome job. Awesome.

16 MS. ARTHURS: Thank you.

17 CHAIR ADELSON: All right, so have a wonderful
18 weekend. We will meet in April, absent anything out of
19 the ordinary.

20 [MEETING ADJOURNED AT 4:47 P.M.]

21

22

23

24

25

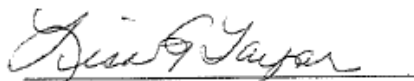
CERTIFICATE

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.

Narrative unable to be transcribed is indicated as [inaudible] or [unintelligible].

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 3rd day of March, 2021.


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, Notary Public
State of Florida

Notarial Seal:

