

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Tuesday, June 7, 2022 at 9:30 a.m.

VOLUME 25

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1 Arbitration Place Virtual

2 --- Upon resuming on Tuesday, June 7, 2022

3 at 9:30 a.m.

4 MS. LAWRENCE: Good morning,
5 Commissioner.

6 JUSTICE WILTON-SIEGEL: Good
7 morning.

8 MS. LAWRENCE: Commissioner,
9 I have an update about the witness David Ferguson
10 who was scheduled to continue his testimony today.
11 I was advised this morning that Mr. Ferguson has
12 had some unanticipated circumstances that have
13 resulted in an unavoidable delay in his continued
14 testimony. As a result, he will not be here this
15 morning or for the rest of the day.

16 Working with counsel, we have
17 been able to accelerate our schedule, and
18 Mr. Lupton, who is the witness scheduled for
19 tomorrow, will be able to attend and begin his
20 evidence at 1:00 p.m. today.

21 So all counsel I believe agree
22 that that is a good use of our time. So I propose
23 that we stand down now until 1:00 p.m., start the
24 evidence of Mr. Lupton, and then return to
25 Mr. Ferguson's evidence when we're able to do so.

1 JUSTICE WILTON-SIEGEL: That
2 will be fine. Unless there is anything else that
3 we have to do this morning, we'll stand adjourned
4 until 1 o'clock this afternoon.

5 --- Recess taken at 9:32 a.m.

6 --- Upon resuming at 1:00 p.m.

7 MS. LAWRENCE: Good afternoon,
8 Commissioner, Counsel, Mr. Lupton.

9 We are starting this afternoon
10 with Mr. Lupton's examination. Given the slightly
11 different timing for today, I propose that we
12 start with Mr. Lupton, take a break at about 2:45
13 till 3:00 and then come back at 3:00 and go for
14 the rest of the day. Does that make sense to you,
15 Commissioner?

16 JUSTICE WILTON-SIEGEL: That
17 would be fine.

18 MS. LAWRENCE: Great. I don't
19 believe that Mr. Lupton has been sworn yet.

20 GEOFF LUPTON; AFFIRMED

21 EXAMINATION BY MS. LAWRENCE:

22 Q. Good afternoon,
23 Mr. Lupton. Thank you very much for making
24 yourself available today.

25 A. Good afternoon.

1 Q. We haven't met before.

2 My name is Emily Lawrence, and I'm co-lead
3 commission counsel in this inquiry.

4 I'm going to start with some
5 questions about your background. I understand you
6 worked at the City of Hamilton from 2006 to 2017?

7 A. Correct.

8 Q. And from 2006 to 2009 you
9 were manager, energy initiatives in Public Works?

10 A. Correct.

11 Q. And from 2009 to 2012 you
12 were the director, energy, fleet facilities and
13 traffic; is that right?

14 A. Correct. And just to
15 clarify, that it was traffic operations --

16 Q. Okay. Thank you.

17 A. -- and corporate
18 facilities.

19 Q. Thank you. And from 2012
20 to 2017 you were director, energy, fleet and
21 traffic?

22 A. Correct.

23 Q. The registrar is going to
24 be bringing up documents on our screens so that
25 you can look all them.

1 Registrar, can you bring up
2 HAM56560, please. Thank you.

3 Mr. Lupton, can you see the
4 document on your screen? I just want to make sure
5 your screen is oriented well.

6 A. Yes, I can.

7 Q. Great. So this is a
8 Public Works document that sets out some of the
9 organizational -- the organizational charts for
10 Public Works.

11 A. Hm-hmm.

12 Q. Commissioner, this is not
13 yet an exhibit.

14 JUSTICE WILTON-SIEGEL: Okay.

15 BY MS. LAWRENCE:

16 Q. Mr. Lupton, can you
17 identify this document? Have you seen in before?

18 A. Yes, I have.

19 Q. Okay.

20 A. I'm not sure what year it
21 was because they --

22 Q. I believe --

23 A. -- changed it

24 (indiscernible).

25 Q. -- it was 2017.

1 A. Okay.

2 MS. LAWRENCE: Commissioner,
3 this would be the next exhibit, Exhibit 65 by my
4 count?

5 JUSTICE WILTON-SIEGEL: Okay.

6 EXHIBIT NO. 65: Document
7 titled "Hamilton Public Works - Who Does What",
8 HAM56560.

9 MS. LAWRENCE: Registrar, can
10 you go to image 4, please. And the next image.

11 BY MS. LAWRENCE:

12 Q. So am I correct,
13 Mr. Lupton, that you reported to John Mater,
14 director of corporate assets and strategic
15 planning?

16 A. Correct.

17 Q. Registrar, can you go to
18 image 2, please. I've got my image numbers wrong.
19 Image 3, please. Can you rotate that one.

20 And in turn Mr. Mater reported
21 to Gerry Davis the general manager of Public
22 Works.

23 A. Correct.

24 Q. Right.

25 And, Registrar, if you can go

1 to image 7, please.

2 And then within the corporate
3 assets and strategic planning, energy, fleet and
4 traffic you're listed at the top, and you had
5 several people reporting to you, including on the
6 right-hand side, Martin White, manager, energy --
7 pardon me, traffic engineering and operations; is
8 that right?

9 A. Correct.

10 Q. Great.

11 Registrar, you can take that
12 down, please.

13 And am I also correct that
14 under Mr. White, at least for a period of your
15 tenure, it was Dave Ferguson as a superintendent.

16 A. Yes, for traffic
17 engineering.

18 Q. And Stephen Cooper and
19 Jason Worrone underneath Mr. Ferguson as project
20 managers?

21 A. Yes.

22 Q. Thank you. Did you
23 personally have a technical background in traffic
24 or road safety?

25 A. No, I do not.

1 Q. What's your background
2 and subject matter expertise?

3 A. My background is really
4 in the energy markets. So energy efficiency,
5 sustainability, commodities.

6 Q. Thank you. And am I
7 right that those below you, David Ferguson,
8 Mr. White and Mr. Cooper and Mr. Worrton, for
9 example, all had experience and expertise in
10 traffic and road safety?

11 A. Yes.

12 Q. And above you Mr. Mater
13 had as well?

14 A. Yes.

15 Q. Okay. I'm going to ask
16 you some questions about the Public Works
17 department more generally. Going back to 2013,
18 how effective was the City's organizational
19 structure within Public Works in your view?

20 A. I think it was -- in
21 context of overall?

22 Q. Yeah.

23 A. I think it was working
24 fine.

25 Q. The Commissioner has

1 heard some evidence about the transportation
2 coordination committee or the TCC?

3 A. Yes.

4 Q. Do you remember that
5 committee?

6 A. Yes.

7 Q. Who attended that
8 committee?

9 A. So that was established
10 to have all the managers that had any involvement
11 to do with traffic or traffic safety or
12 transportation involved. So that would have
13 involved people from my group as in terms of
14 Martin White who typically chaired. It would have
15 been people from engineering. It would have been
16 Hamilton Police Services. It would have been
17 public health. Variety of people, anybody that
18 touched traffic, I guess, organizationally.

19 Q. And did you regularly
20 attend that committee meeting?

21 A. No.

22 Q. Meetings of that
23 committee, I meant.

24 A. No, I did not.

25 Q. Was this -- this

1 committee the TCC, was it formed at least in part
2 to encourage discussion amongst the groups that
3 you just mentioned?

4 A. Yes. It was also formed
5 so that people would have a better opportunity for
6 understanding of who was doing what within the
7 organization, and if there was any projects that
8 may cross over, that there was an opportunity to
9 have discussion.

10 Q. Discussion and
11 coordination?

12 A. Yes.

13 Q. Thank you. Turning to
14 another acronym that we've heard, the department
15 management team, the DMT?

16 A. Yes.

17 Q. What was that?

18 A. So that was -- if you
19 look at the organizational chart that showed all
20 the directors that reported to Gerry Davis, so
21 that was Gerry Davis and those directors. The
22 directors that reported to another director like
23 myself, (indiscernible) and Rob Norman, we would
24 come into DMT typically once a month.

25 Q. Okay. And did DMT meet

1 once a month for the entire time that you were in
2 Public Works?

3 A. Probably more than that.

4 Q. More often than that?

5 A. Yeah, I think the core
6 DMT met more often.

7 Q. Okay.

8 A. It's just the outlying
9 directors that came in on occasion.

10 Q. Okay. And in contrast,
11 the TCC that we were just talking about, do you
12 know how long it was in existence and was meeting
13 regularly?

14 A. I don't recall specific
15 dates, but I think it was somewhere around 2012
16 where we put it together. I was tasked with
17 putting that group together and part of it was
18 going through and identifying who did what within
19 the City in terms of traffic and what crossovers
20 were and who had lead.

21 Q. And did that committee
22 continue to meet at least until you left in 2017?

23 A. Yes.

24 Q. Okay. I'm going to turn
25 now to some questions about the Red Hill back in

1 2013. In 2013 do you recall having received
2 expressions of concern about safety on the Red
3 Hill?

4 A. There was -- it was
5 brought up by a couple of councillors where there
6 was concern for a specific area of the Red Hill in
7 terms of visibility. And of course visibility had
8 to do with, I guess, lack of lighting in that
9 particular area.

10 Q. Was that in the Dartnall
11 area?

12 A. Yes. It's the area that
13 was identified in the 2013 report.

14 Q. Thank you.

15 Registrar can you bring up
16 HAM23138, please. And can you bring up image 1
17 and image 2.

18 Mr. Lupton, I'm just going to
19 do another tech test. Can you see both these
20 images and then our video tiles on one side or the
21 other?

22 A. Yeah. The video tiles
23 are on the right.

24 Q. Okay.

25 A. It covers part of the --

1 Q. They're not covering the
2 image?

3 A. -- covers part of the
4 second image.

5 Q. Okay. So if you go up to
6 the top of your Zoom, you can do a side-by-side
7 and that should allow you to see both images and
8 the tiles with nothing covering anything else.

9 A. There we go.

10 Q. Better?

11 A. Yes. Thank you.

12 Q. Great. So this is an
13 e-mail exchange from Chad Collins on the -- on
14 image 2 about complaints and that gets eventually
15 circulated up to you, you see on image 1.

16 Registrar, can you call out on
17 image 1 the e-mail from Councillor Collins, the
18 second e-mail down. There we go.

19 So that's when you get
20 involved. And Councillor Collins sends it to you.

21 Registrar, you can close that
22 out, and then if you can call out Mr. Lupton's
23 response at the top, please. Thank you.

24 So we're in January of 2013.
25 Do you recall that Councillor Collins wanted to

1 bring a motion in respect of the complaints he had
2 heard, in particular about lighting?

3 A. Yes.

4 Q. You say:

5 "Listening to you explain your
6 motion today helped too.

7 We'll get it done. I'm going
8 to get someone with a fresh
9 perspective to give us some
10 advice on this." (As read).

11 Do you recall why you wanted
12 someone with a fresh perspective?

13 A. I think what I meant is
14 we're going to have an outside party have a look
15 at it and give us recommendations as opposed to
16 just doing it internally?

17 Q. Okay. And do you recall
18 why you thought that was a good idea?

19 A. I think because of the
20 concerns that were raised it was probably good to
21 have an outside view of that particular area and
22 to work with the staff to kind of come to some
23 kind of conclusions in terms of what needed to be
24 done.

25 Q. Okay.

1 Registrar, can you close this
2 out and open up OD6, page 8, paragraph 11. Thank
3 you.

4 Mr. Lupton, we're now in the
5 overview document, one of them, of the Inquiry.
6 You've had a chance to review some of these
7 overview documents; is that right?

8 A. Correct.

9 Q. Great. So this is an
10 excerpt that has the motion that members of Public
11 Works committee moved in January of 2013, and it
12 is a motion that staff are directed to investigate
13 upgrading the lighting in the vicinity of the
14 Mud/Stone Church Road interchanges, investigate
15 better signage and lane markings, and that a full
16 costing of all options and alternatives be
17 presented to committee for their consideration.

18 So at this point did you
19 understand that councillors wanted an assessment
20 of the lighting of the main line of the parkway in
21 the vicinity that's mentioned here?

22 A. For this specific area,
23 yes, along with any other alternatives that were
24 there.

25 Q. Registrar, you can close

1 that out and go to same document page 10,
2 paragraph 17, please.

3 So Ms. Cameron, who is Gary
4 Moore's assistant, advised Mike Field, Gord
5 McGuire and Mr. Moore that John Mater and his
6 group would be taking lead on the motion and would
7 report back in November of 2013. Do you recall
8 how -- I'm going to call it for this purpose --
9 John Mater's group came to take lead on this
10 motion?

11 A. Not specifically, no.

12 Q. Okay. I didn't mean to
13 interrupt. Were you finished?

14 A. Yes.

15 Q. Okay. We've received
16 evidence in the overview documents that Stephen
17 Cooper, Ron Gallo, Mike Field and Gary Kirchknopf
18 were the project team from the City in the project
19 that was to be reported back to Public Works
20 committee. Is that your understanding as well?

21 A. Yes.

22 Q. Do you know why Mike
23 Field was included in the project team?

24 A. Because street lighting
25 fell under the leadership of engineering under

1 Gary Moore, and Mike Field worked for Gary. He
2 was the City's street lighting expert.

3 Q. Okay. And Gary
4 Kirchknopf, is he also in engineering services?

5 A. Yes.

6 Q. Thank you, Registrar.
7 You can take down this call out.

8 The City retained the
9 consultant CIMA. Did you have any involvement in
10 their retainer of CIMA?

11 A. Not directly, no.

12 Q. Did you attend any
13 meetings with CIMA and city staff in connection
14 with the 2013 report while CIMA was doing its work
15 to prepare the report?

16 A. I don't think that I did.

17 Q. Were you otherwise
18 involved in the day-to-day work of CIMA in 2013 on
19 the preparation of the report?

20 A. No, I would have left
21 that to the staff.

22 Q. Did any of your staff
23 keep you informed about the progress of the work?

24 A. Yes.

25 Q. At a detailed level or a

1 high level or somewhere in between?

2 A. Somewhere in between I
3 would say.

4 Q. And who -- which city
5 staff did that?

6 A. That would have been
7 Martin White and Dave Ferguson.

8 Q. And what did you
9 understand about the factors that were at play
10 regarding increasing illumination on the Red Hill?

11 A. So the report in my view
12 was intended to improve visibility in the area,
13 and visibility could involve a number of things.
14 Of course the street lighting was one option, but
15 it also pointed to things that we actually did
16 implement, like additional signage, especially on
17 the ramps where it would indicate, you know, the
18 degree of the turn, and eventually we went to
19 tiger's eyes to help highlight or better highlight
20 the direction of the roadway and -- especially at
21 the nighttime where people's headlights would
22 catch those reflectors, so we could provide them
23 with better view in terms of -- or visibility in
24 terms of dealing with that particular area.

25 Q. Thank you. In terms of

1 illumination in particular, rather than those
2 other factors, did you understand what
3 considerations were going to go into CIMA's
4 assessment of whether and how to illuminate the
5 parkway?

6 A. In that particular area?

7 Q. Yeah.

8 A. I think so. I'm not
9 quite sure I understand your question.

10 Q. I can rephrase the
11 question. In fact, maybe I'll come at it from a
12 different way.

13 Did you ever speak to
14 Mr. Moore directly about the illumination of the
15 Red Hill? And the time period I'm asking about
16 now is as CIMA is preparing its report.

17 A. Yes, I did.

18 Q. And what did he tell you?

19 A. So this is where we
20 discovered that as part of the original
21 development of the Red Hill Parkway and the
22 agreements with key players that there was some
23 environmental concerns with street lighting in
24 areas of the Red Hill Valley Parkway, and I guess
25 it was part of the original environmental

1 assessment. So that was kind of -- that was new
2 to us in that particular case. So I think that's
3 when we discovered the history behind it and the
4 reasons why street lighting wasn't in that
5 particular area.

6 Q. And did you have a direct
7 conversation with Gary Moore about this?

8 A. Yeah.

9 Q. Did he show you any
10 documents in respect of this history?

11 A. No, he did not.

12 Q. In 2013 had you seen any
13 documents, including any environmental
14 assessments, that explained the limits, if any, on
15 lighting on the Red Hill?

16 A. No, I did not.

17 Q. Did you discuss with
18 Mr. Moore whether CIMA should be looking into
19 illumination of the Red Hill in its -- as part of
20 its project?

21 A. I don't know in terms
22 specifically what we talked about. I was aware of
23 the whole -- you know, as mentioned earlier the
24 concern with the environmental impacts, and I know
25 as well that council through the motion also had

1 an interest of understanding about lighting
2 options in that particular area in addition to the
3 signage and the tiger's eyes.

4 So it was something that I
5 felt we had to review, and I think what we
6 included in the report was some background
7 materials in terms of, you know, why or what the
8 concerns were with improving illumination in that
9 area.

10 Q. Okay. So you said that
11 you knew that council had an interest in
12 understanding lighting options.

13 A. Yes, absolutely.

14 Q. Did you understand that
15 part of CIMA's -- the scope of CIMA's project was
16 to assess whether the main line of the Red Hill in
17 the study area could be illuminated and how much
18 it would cost?

19 A. So in my view CIMA's role
20 was to provide a number of options to improve
21 visibility in that area, whatever they may be, and
22 if it included lighting so be it.

23 Q. And so they had to
24 actually do that work to be able to provide
25 options back to staff?

1 A. Yes. So I think that --
2 I don't recall specifically, but that was probably
3 some of what was laid out for them in terms of the
4 requirements. It's been a long time.

5 Q. Fair enough.

6 A. I think that was also the
7 time that we all discovered about the history --

8 Q. All right.

9 A. -- of the lighting on the
10 Red Hill.

11 Q. Do you remember the
12 specific circumstance in which Mr. Moore conveyed
13 his view of the history of the lighting of the Red
14 Hill or the lack of lighting of the Red Hill to
15 you? Was it in a meeting? Was it in a one-on-one
16 conversation? How did that happen?

17 A. I think initially it was
18 a one-on-one conversation between Gary and I, and
19 then I think later some of that information came
20 out. I just don't recall what the specific timing
21 of what was sent who and when.

22 Q. Okay.

23 A. But it was certainly
24 conveyed through to my team, Gary's concerns and
25 what some of the history was with the Red Hill.

1 Q. Okay.

2 A. Red Hill lighting.

3 Q. Okay. Did you become
4 aware during the course of CIMA's work on the 2013
5 project that it was not assessing illumination of
6 the main line of the parkway in the study area?

7 A. I don't recall that.

8 Q. Just so we use precise
9 language, when you say "you don't recall that,"
10 are you saying that didn't happen or you're saying
11 you just can't recall either way?

12 A. I just don't remember.
13 As I -- as we discussed earlier, I wasn't involved
14 in the day-to-day discussions with CIMA, so I
15 don't know what Martin or Dave or Ron might have
16 conveyed through to them --

17 Q. Okay.

18 A. -- at the time.

19 Q. Did anyone discuss with
20 you, again during the time that CIMA was doing its
21 work on this project, whether or not CIMA should
22 consider friction treatments on the Red Hill main
23 line?

24 A. That was a new one for
25 me.

1 Q. So it did come up?

2 A. It didn't really. The
3 focus of the report, again, had to deal with
4 visual aids for that particular area, so I believe
5 the issue of friction testing was recommended as
6 an option that the City could look at. So it
7 wasn't the primary purpose of the report in terms
8 of what we were trying to do. And for me
9 personally that was the first time that I had even
10 really heard there was such a thing.

11 Q. Okay.

12 A. So it wouldn't have been
13 high on my radar.

14 Q. So when you say "that was
15 the first time," you mean when you reviewed the
16 eventual drafts of the 2013 CIMA report, that was
17 the first time that you had heard of such a thing?

18 A. Yes.

19 Q. Okay. So no one -- in
20 advance of reviewing the 2013 CIMA report drafts,
21 you hadn't had conversations with anyone about
22 that topic?

23 A. No.

24 Q. Okay.

25 A. Not on the roadway

1 itself.

2 Q. Okay.

3 Registrar, can you go to

4 page 21, paragraph 44 of OD6. Thank you.

5 The City of Hamilton has a
6 purchase order for Golder to do a project called
7 the "Five-Year Condition Evaluation." Were you
8 aware that Golder was retained on this five-year
9 condition evaluation program?

10 A. No, I was not, not at
11 that time.

12 Q. In 2013 were you familiar
13 with Golder Associates?

14 A. I had certainly heard of
15 them, yes.

16 Q. And did you know Ludomir
17 Uzarowski?

18 A. No.

19 Q. Uzarowski, pardon me.

20 A. No.

21 Q. To your knowledge was
22 anyone in energy, fleet and traffic, that is your
23 division, included in this Golder project?

24 A. Not that I'm aware of. I
25 don't believe so, no.

1 Q. Did anyone tell you about
2 this retainer?

3 A. No.

4 Q. Would you have paid any
5 attention to it if someone had told you about it?

6 A. I probably would have --
7 no, I probably wouldn't have paid a lot of
8 attention to it because it really didn't fall
9 under our area of responsibility. I would have
10 assumed that it was something that was part of
11 engineering's review --

12 Q. Thank you.

13 A. -- of the Red Hill. So
14 it wouldn't have -- I wouldn't have paid a lot of
15 attention to it, no.

16 Q. Okay. Were there any
17 policies in place that directed city staff to
18 advise each other if they were retaining
19 consultants in areas of shared responsibility?

20 A. Not that I'm aware of.

21 Q. Apart from the traffic --
22 no, pardon me, the transportation coordination
23 committee, was there any forum in which various
24 departments within Public Works might discuss
25 these kind of projects to see if there was any

1 overlap?

2 A. In terms of road
3 construction and traffic, no, outside of the
4 capital budget process where if there was
5 knowledge of a large capital project coming
6 forward, which should have been discussed at TCC
7 as well -- TTC or TCC?

8 Q. TCC. I'm going to
9 keep --

10 A. Thank you.

11 Q. -- calling it TCC, but we
12 both know what we're talking about.

13 A. Yes, thank you. You
14 know, ideally, you know, if there was a project
15 where there was a crossover we would have had a
16 discussion. In the grand scheme of things this is
17 pretty small potatoes that, you know, the millions
18 of dollars of projects that we had underway,
19 so....

20 Q. Okay. I'm going to turn
21 now to the drafting of the 2013 CIMA report.

22 Registrar, if you could bring
23 up OD6 page 48, paragraph 114 to 116. Thanks.

24 So City staff, in particular
25 Mr. Ferguson, received a draft of the 2013 CIMA

1 report prepared by CIMA, and forwarded a copy with
2 some markups to Councillor Collins, and then
3 expanded that distribution list to include
4 Councillors Clark and Jackson, and he offered to
5 meet with them, and he did in fact meet with
6 Councillor Collins and Jackson.

7 Did you know Mr. Ferguson was
8 going to share the draft CIMA report with these
9 councillors before he did so?

10 A. No, I did not.

11 Q. Did you have any concerns
12 with him sharing the draft CIMA report with these
13 councillors?

14 A. As a general rule, my
15 preference would be not to share draft reports
16 until they are finalized, and, you know, we've had
17 the opportunity to vet them internally and ensure
18 that they have met all the needs that we were
19 trying to have covered off. But I did not have
20 any issue with Dave going to meet with the
21 councillors to discuss it. It's a common
22 practice, and we encourage staff to do that.

23 Part of the reason we hired
24 Dave was his excellent ability to communicate.
25 And so discussions with Councillor Collins,

1 Jackson and Clark, who all had, you know, keen
2 interest in the report coming forward, it would
3 have been wise to meet with them and discuss in
4 general in terms of what we were finding and also
5 to get some feedback from them whether they had
6 any additional concerns or questions before we
7 finalized things and went to committee with the
8 report.

9 Q. Okay. You said that you
10 generally don't want to share drafts of consultant
11 reports before they were finalized.

12 A. Yes.

13 Q. Did you have any concern
14 with sharing final versions of consultant reports
15 with councillors before they were presented to --

16 A. No. Not if they had a
17 keen interest in it. Generally most them didn't
18 really didn't want to see consultant's reports
19 because usually they were -- depending on the
20 topic, they can be fairly long and complicated.
21 What they preferred to do often is have a
22 discussion face to face or over the phone for
23 those who are interested in a particular topic so
24 that they can understand, you know, the gist of
25 what the staff is going to be reporting on, and

1 particularly in areas where staff is looking for
2 council or committee approval in a certain area.
3 So when it comes back to committee, they are
4 prepared because they had the primary interest in
5 it and asked the appropriate questions that they
6 felt were important.

7 Q. Okay. So leaving aside
8 the issue of a draft versus a final consultant
9 report, did you have any concerns about a subset
10 of councillors having access to different
11 information --

12 A. No.

13 Q. -- than other
14 councillors?

15 A. No.

16 Q. Okay.

17 A. At the end everybody
18 would have access to that information when it came
19 to committee. But, again, if a councillor or a
20 group of councillors had a specific interest in a
21 topic and wanted to have a better understanding of
22 what we were doing or why we were doing it or
23 results or any issues that may have come up, they
24 often appreciated staff doing that, whether it,
25 you know, be in this case David or myself or John

1 or Gerry. So, you know, it helped prepare them
2 for the upcoming meeting and ensure they were
3 prepared.

4 Q. Okay.

5 Registrar, can you bring up
6 page 50, paragraph 125. Thank you.

7 So this is a back and forth
8 between you and Mr. White and Mr. Ferguson. And
9 at this point just a few days before Mr. Ferguson
10 had forwarded you a revised version of the CIMA
11 report. And you say in this second excerpted
12 paragraph, "the report is an interesting read and
13 a long one."

14 Was this the first time that
15 you had read a draft of the report?

16 A. So --

17 Q. You know, actually I can
18 put the question differently. In your usual
19 practice would you have your staff do the
20 revisions with consultants and really come to you
21 only when they thought they were satisfied with
22 the draft?

23 A. It depended on the topic
24 at hand.

25 Q. Okay.

1 A. It was very common
2 especially in traffic to have, you know, a phone
3 call or a drop-by conversation about things. In
4 our case David worked on the same floor as John
5 and I, and Martin was just a phone call away
6 often, and so, you know, we would quite often ask
7 about, you know, how things were coming along,
8 what were the issues, what were your finding, any
9 concerns. John and I communicated on these kinds
10 of things on a regular basis because I valued his
11 expertise in traffic, and it was kind of a good
12 sounding board.

13 So in this particular case I'm
14 not sure if I'm referring to the CIMA report or
15 the staff report that was put together.

16 Q. Okay.

17 A. I guess it says I
18 generally don't like sending councillors big thick
19 technical reports.

20 Q. It does, and then
21 Mr. Ferguson says at the bottom the report to
22 council will be exactly what you are commenting
23 on.

24 So I'm, just in terms of the
25 timing, pretty sure you're talking about the CIMA

1 report with the staff report to come.

2 Do you recall at this in point
3 September of 2013 finding any parts of the report
4 particularly noteworthy? You said it was an
5 interesting read.

6 A. Not off the top of my
7 head. You know, it -- no. I don't recollect any
8 red flags or warning signs. You know, there were
9 certainly a number of recommendations that were
10 made to step -- you know, in terms of improving
11 some of the visibility of the area, and I'm
12 assuming by this time we knew a little bit more
13 about the environmental issues. I'm not clear on
14 the timing of what was when, but, you know, the --
15 my primary just would be, you know, did we answer
16 or respond to council's direction for staff in
17 terms of what they were expecting in terms of a
18 report.

19 Q. Okay. And did you note
20 that CIMA had not included any analysis about the
21 lighting of the main line of the Red Hill? They'd
22 only included reference to lighting of the
23 interchanges. Do you remember that?

24 A. No. Most of the concern
25 for this particular area was with the

1 interchanges, you know, the on and off ramps.
2 Now, when you say "main line" I'm not sure how far
3 you mean at this particular area.

4 Q. Fair enough. It's at the
5 L of -- the backwards L of the study area is down
6 and then as it turns.

7 A. Okay.

8 Q. That's not going to be
9 helpful. Never mind, I could bring up a picture,
10 but....

11 A. It's okay. The bottom
12 line, the whole gist of the report was to make
13 things easier for drivers, especially on the on
14 and off ramps in that particular area, nighttime
15 of course.

16 Q. Okay. All right.
17 Registrar, can you bring up
18 page 51, paragraph 126, please.

19 You're not copied on this
20 e-mail.

21 A. No.

22 Q. This is from Mr. Cooper
23 to Mr. Ferguson and Mr. White, and he says he had
24 been "speaking to Mike Field," and he said:

25 "Gary Moore saw the report and

1 was not pleased with the
2 recommendations provided by
3 CIMA." (As read)

4 Did you learn around this
5 time, being September of 2013, that Mr. Moore
6 had -- was not pleased with the recommendations
7 provide by CIMA?

8 A. Probably somewhere around
9 this timeframe, but my recollection -- not knowing
10 exactly when, but my recollection would have been
11 -- I think that Gary had concerns about anything
12 being recommended for new street lighting in the
13 particular area because of the environmental
14 aspect in the original negotiations of the Red
15 Hill.

16 Q. Okay. Do you know if he
17 had any other concerns about the recommendations
18 in this e-mail report apart from illumination?

19 A. Not that I recall. As I
20 said earlier, the street lighting fell under his
21 area of responsibility, hence Mike's involvement.
22 The things like the tiger's eyes and signage and
23 stuff fell under my group. So Gary probably would
24 have been more interested in -- I think Gary had
25 an issue at some point with installing tiger's

1 eyes on the roadway and what it might do to the
2 pavement. I'm just not sure exactly -- you know,
3 whether it was this timeframe or few months later,
4 but we did it anyways.

5 Q. We can go back to that.

6 A. Okay.

7 Q. Registrar, can you bring
8 up HAM4307, please. And if you can bring up both
9 images, please. Can you call out the e-mail from
10 Martin White at the bottom of image 1. Thanks.

11 So this is a forward to you of
12 the e-mail that we were just looking at from
13 Mr. Cooper. And Mr. Martin says "in confidence,
14 see below," and he says to you:

15 "Gary has a vested interest in
16 this from the beginning has
17 influenced it somewhat
18 already."

19 And then he goes to say, "off
20 the record I think he even spoke to CIMA." I'm
21 just going to stop there.

22 What did you understand, if
23 anything, about what Mr. White meant about Gary
24 having a vested interest?

25 A. So it's kind of funny how

1 he put that. I would look at it in terms of Gary
2 was a key individual involved in the whole design
3 construction of the Red Hill. So Gary, with a
4 couple other individuals, would know the history
5 in terms of not only the technical aspects but
6 also the contractual negotiations that took place.
7 You know, Chris Murray of course led that team.
8 And so Gary's interest probably would have been in
9 terms of knowing that particular history, and I go
10 back to the environmental concerns with lighting
11 as an example. So he knew the history of that and
12 the reasons why they hadn't put that in place.

13 So in terms of vested interest
14 I would have probably rephrased it to say, Gary
15 had, you know, some history in terms of what was
16 going on and why certain things were not done as
17 part of the original design and construction of
18 the Red Hill. You know, at this time the Red Hill
19 was only about six, seven years old. It was still
20 a fairly new highway, and, you know, it was -- so
21 that's how I would have taken that.

22 Q. Okay. Mr. White also
23 says "off the record I think he even spoke to
24 CIMA." If Mr. Moore had contacted CIMA, would
25 that have concerned you?

1 A. No. No. At the end of
2 the day if things fall under his responsibility
3 and his team's responsibility for delivery, if he
4 had questions or wanted to discuss something or
5 make sure, you know, that, you know, some of the
6 historical aspects of the Red Hill were conveyed
7 to the consultant so that they knew, I wouldn't
8 have had a problem with that.

9 Q. Okay. Would you agree
10 that if he did that best practice would be to then
11 communicate that back to the City team who was
12 working just so that everyone was on the same
13 page?

14 A. Yes, that would have been
15 preferred.

16 Q. Okay. Mr. White also
17 says he deemed:
18 "...this extremely sensitive
19 because I don't want any
20 nonsense related to our
21 actions on Councillor Collins'
22 motion." (As read)

23 Did you deem getting this
24 report to council in a non-controversial way as
25 something that was extremely sensitive?

1 A. No. No. In this
2 particular case, there was -- you know, there was
3 some concern from various citizens about the
4 visibility of this particular area at nighttime.
5 That was conveyed to the local councillors
6 involved, in this particular case Councillor
7 Collins. I also spoke to Councillor Clark about
8 it in previous years where we added some
9 additional signage as well, and Jackson. So it
10 was an area that -- you know, because of the
11 public concern raised to them, they in turn wanted
12 to have that investigated by staff, and our job is
13 really to go back and look at the direction from
14 council, in this case the motion, and provide
15 them, you know, with an intelligent, thorough
16 response in terms of what the options would be for
17 visibility and also flag for them any particular
18 challenges or issues that may be involved in these
19 things.

20 Q. Okay.

21 A. I used to have a general
22 rule for my guys. You know, can we do it, yes or
23 no. What are the options. You know, it's
24 important to understand what options are out
25 there, and what's the cost to do these options,

1 and what's the timing if we're to actually do
2 these things. And the same kind of rationale
3 applies to this kind of thing. And I think in the
4 end with the report we recommended a step
5 report -- approach to doing some of that stuff.

6 Q. Okay. Thank you.

7 Registrar, can you close that
8 call out, please. So you flipped this up to
9 Mr. Mater.

10 Registrar, can you call out
11 Mr. Mater's e-mail, the second e-mail in the
12 chain. I just say -- I'd say just talked to Gary.
13 That one, yeah. So Mr. Mater says:

14 "I'd say just talk to Gary and
15 bring in CIMA if needed." (As
16 read)

17 So is that a -- did you read
18 that as a -- and then you say, "I will." Is that
19 a direction to you to talk to Gary and bring in
20 CIMA, or is that a direction to you to tell your
21 staff?

22 A. No, I would have taken
23 that as a direction to me.

24 Q. Okay. Did you talk to
25 Mr. Moore about this?

1 A. I would have suspected I
2 probably did.

3 Q. Do you have any memory of
4 doing so sitting here today?

5 A. I know I talked to Gary
6 about this. It's just a matter when that
7 discussion took place, and I probably had a phone
8 call or two as well. You know -- and, again, his
9 primary concern was the history of the Red Hill
10 and the environmental aspects so....

11 Q. Okay. When Mr. Mater
12 directed you to do something, would you generally
13 do it?

14 A. Pardon me.

15 Q. If Mr. Mater directed you
16 to do something, would you generally do it?

17 A. Oh, absolutely.

18 Q. So you're pretty
19 confident that you did speak to Gary, you're just
20 not sure when.

21 A. Yeah, and we probably
22 would have had a chat about it later.

23 Q. Okay.

24 Registrar, you can close this
25 and close this document, and if you could go back

1 to OD chapter 6 -- or pardon me, OD6, page 52,
2 paragraph 131, please. And if you could bring up
3 the next image as well, and if you can call out
4 the top of page 53. Thank you.

5 So in September of 2013, this
6 is while CIMA is still preparing its report in
7 between motion in January and going back to
8 committee in December, there were heavy rain
9 storms and quite a few accidents on the Red Hill.
10 Do you remember that?

11 A. Yes.

12 Q. And you were copied into
13 an e-mail chain by Bryan Shynal, who is in the
14 operations side of Public Works?

15 A. Yes.

16 Q. And he forwards on an
17 e-mail from one of his staff that is called out
18 here, and you'll see the second paragraph:

19 "We checked the ramps and the
20 road, and it was very slippery
21 there. Not much we can do.
22 Every time it rains heavily
23 it's an ongoing issue. I feel
24 it's a pavement problem and a
25 speed problem." (As read).

1 So this eventually gets --
2 this is from operations staff on the road, gets
3 forwarded up to Mr. Shynal and then over to you.

4 A. Who else received it?

5 Q. You know, why don't we
6 actually go into it as a document. I think it
7 might be easier to read that way.

8 Registrar, it's GOL2641, and
9 you can start with image 4.

10 So we were just looking at the
11 excerpt that's there at the bottom. That's
12 from -- it says, "Hi Terry," and then Tammy
13 Blackburn -- so we're still in ops -- responds.

14 A. Right.

15 Q. And then the next one up,
16 Brian Shynal says, "please note staff's
17 commentary," and you'll see that you're copied
18 there along with Gary Moore, John Mater and Martin
19 White.

20 A. Hm-hmm.

21 Q. And, Registrar, if you
22 can bring up image 1 and 2, please. I have a
23 black screen on -- for image 2.

24 A. So on the other e-mail
25 that you had up previously, Gary had a response to

1 the Tammy's note. Isn't that correct?

2 Q. That's right. So he
3 referenced the -- and I don't think it's actually
4 in this same chain, but he -- oh, no, it is.
5 There we go. He does have a response about the
6 nature of the pavement. He pushes back that it's
7 a pavement problem. Do you recall that?

8 A. Yes.

9 Q. And Mr. White suggests
10 getting a collision review done and checking a
11 claims history. Do you recall that?

12 A. Yes.

13 Q. And when you received
14 this e-mail, it's about a week after you've looked
15 at the CIMA report and said it was an interesting
16 read, did you make a connection between these rain
17 storms and the accidents and the discussion here
18 and the findings in CIMA's report about
19 collisions?

20 A. I don't recall
21 specifically. I think we had discussions from
22 this about getting some history in terms of, you
23 know, what accidents were actually taking place
24 and what claims were against the City. And I
25 think the e-mail that you pulled up after this

1 was -- oh, there's John.

2 Q. Yeah.

3 A. Where we'd asked John
4 McLennan about what he knew, and of course he was
5 manager of risk at the time, about collisions in
6 that area. So -- and I don't think -- I think at
7 that time from John's response that we didn't
8 really have a lot as the City in terms of claims.
9 I think there was one.

10 Q. That's right. He said,
11 off the top of my head I would not think there
12 were significant claims history for slippery
13 conditions on the Red Hill.

14 A. Yes.

15 Q. From that first e-mail --
16 and then he later follows up that yes, there is no
17 significant claims history.

18 A. If I recall, it was quite
19 a mother of a rainstorm.

20 Q. Yes.

21 A. You know, something out
22 of the ordinary, and --

23 Q. Yes.

24 A. -- you know, it wouldn't
25 be surprising to me, you know, on any roadway

1 where there was, you know -- especially water in
2 the roadway that -- you know, this is where driver
3 performance comes into play, driving for the
4 proper road conditions. And so that -- I probably
5 would have been thinking about that.

6 Q. Okay. Do you know
7 whether or not a collision history was done by
8 your team as a result of this rainstorm?

9 A. A collision history, and
10 I think at a later date or as part of, you know --
11 as the interest grew in the Red Hill and the like
12 that we would put more and more into understanding
13 what the results were with collisions in these
14 particular areas. There was certainly interest,
15 you know, from the public and council on it, and
16 so we wanted to make sure we understood what was
17 actually going on. So that involved our group,
18 that would have involved risk, and it would have
19 involved some discussion with Hamilton police.
20 And I think the results of a lot of those
21 discussions included, for the most part, driver
22 driving habits and speed which was a big issue on
23 the -- especially the Red Hill. I think the LINC
24 as well. And --

25 Q. I didn't mean to

1 interrupt you.

2 A. Oh, that's okay.

3 Q. Okay.

4 A. I was just going to
5 ramble on.

6 Q. I'm going to ask the
7 Registrar now to call out the top of image 2 here.
8 Mr. Moore's e-mail.

9 So that's part of this back
10 and forth, and Mr. Moore chimes in and says:
11 "As part of the ongoing
12 pavement monitoring for asset
13 management purposes, we will
14 have skid resistance testing
15 completed on both the LINC and
16 the Red Hill. There is a
17 standard by which we can
18 report on the relative level
19 of resistance and by which we
20 can gauge the performance of
21 each mix and road surface.
22 This should be sufficient for
23 any due diligence required,
24 eliminating the 'ought to have
25 knows' as well dealing with

1 the 'we think it was slippery'
2 issues." (As read)

3 Did you advise Mr. Moore at
4 this point that the draft CIMA report that you had
5 just read recommended friction testing?

6 A. For that particular small
7 area? I don't think it represented, it said the
8 City could.

9 Q. Okay. But it mentions?

10 A. It mentions it, and it
11 was fairly -- as I say, that was new to us at that
12 particular time. It's not that we have expertise
13 in that. Our focus would've been more so at the
14 time in terms of addressing, you know, council's
15 request and improving the visibility of that area.

16 Q. Sure. My question --

17 A. In particular for us it
18 would be, you know, focusing on the areas that my
19 staff took care of. I would assume that Gary
20 would capture something like that when he read the
21 report, or Mike might have, I don't know.

22 Q. Okay.

23 A. I can't say what Gary
24 picked up or not.

25 Q. My question was, did you

1 advise Mr. Moore that the report had, and I'll
2 say, referenced friction testing?

3 A. No.

4 Q. Okay. And do you know if
5 anyone in your group mentioned that to him?

6 A. No, and I don't know if
7 anybody with Gary Kirchknopf and Mike and Bob -- I
8 don't know what discussions took place between,
9 say, Martin and Dave and, you know, Mr. Cooper.

10 Q. Okay.

11 A. So I wasn't a part of
12 those discussions.

13 Q. Did you advise CIMA or
14 did you tell your staff to advise CIMA that
15 Mr. Moore would be arranging for friction testing?

16 A. I don't recall.

17 Q. In 2013 or -- 2013, 2014,
18 we're in September of 2013, did you know who or
19 which company Mr. Moore retained to conduct the
20 friction testing that he mentions here?

21 A. Not at that time.

22 Q. Did you later come to
23 learn that it was Golder? And when I say "later,"
24 I mean during your tenure at the City?

25 A. Yes.

1 Q. Okay. I will come back
2 to that. Did you ever receive the test results of
3 the skid resistance testing that Mr. Moore
4 mentions here?

5 A. I don't think I ever did.

6 Q. Did you ever receive any
7 friction test results from Mr. Moore?

8 A. I don't think so.

9 Q. Did you ever see a
10 consultant's report interpreting friction test
11 results?

12 A. No.

13 Q. Did you ever see the
14 Tradewind report?

15 A. No.

16 Q. Did ever see the draft
17 Golder report that included the Tradewind report
18 as an appendix?

19 A. No.

20 Q. Okay.

21 You can take that callout
22 down. You can take this document down. And we're
23 going to go to RHV668. Okay.

24 So this is the information
25 report that was provided to the Public Works

1 committee for the committee meeting on
2 November 18, 2013. I'm going to ask you some
3 general questions first about preparations of
4 reports like these and how they were prepared
5 particularly in 2013.

6 This is an information report.
7 I understand there's also recommendation reports.
8 Can you tell me a little bit about the difference
9 between two.

10 A. And there's also
11 information updates.

12 Q. Okay. Now you can tell
13 the difference between the three?

14 A. Yeah. So I'll start with
15 the easy one.

16 Information updates is
17 basically when director or above sends council
18 just an update in terms of something that may have
19 happened. It could be anything to do with changes
20 in the market; could be, you know, pricing; it
21 could be things that are just kind of a heads up
22 in terms of what's going on or how we're
23 progressing in a particular project if there had
24 been some interest.

25 When you get into information

1 reports and recommendation reports, the
2 recommendation reports are primarily in place for
3 getting council approval to take certain actions
4 where staff did not already have that approval or
5 that ability to take action on a particular area.
6 And so under the recommendation report that would
7 be requesting council for approval from anything
8 from dollar limits to entering into contracts, a
9 variety things. Whatever staff did not have the
10 authority to do without that specific council
11 approval, so that would be a recommendation
12 report.

13 In an information report it
14 would be a -- could be a response to, in this
15 case, a motion from council where they wanted
16 information on a particular topic. And in this
17 particular case we had authority under traffic to
18 do the initial works for improving visibility in
19 this small area of the Red Hill and so -- because
20 we had already received approval from council to
21 use the funding from the red light camera reserve
22 to do traffic safety improvements in the City, and
23 that could have been anything from speed bumps to,
24 you know, ladder crossings. In this particular
25 case it was apparently signage and tiger's eyes.

1 So because we already had the authority to do it,
2 we provided council some information on what the
3 results were of the CIMA report, what the findings
4 were, also what our recommendations were for the
5 short-term improvements, and also in terms of what
6 -- well, in this particular case information in
7 terms of what the environmental issue was with
8 illumination, street lighting on this particular
9 area of the Red Hill.

10 Q. Thank you.

11 A. Does that help?

12 Q. It does.

13 A. Okay.

14 Q. For -- you said, for this
15 circumstance, you, and I think you meant your
16 group, traffic engineering, had approval to use
17 the red light camera fund?

18 A. Yes.

19 Q. That would have covered
20 safety initiatives out of your department, right?

21 A. Yes. I can't remember
22 the date of the report that went to council. At
23 some point in my tenure we did a report that -- a
24 traffic safety program report that outlined all
25 the different measures that we could do to

1 enhance, you know, public safety, whether it be
2 vehicles or bicycles or pedestrians, and basically
3 provided council of a list of the types of things
4 that we could do or -- and/or similar things, and
5 that we would fund these things from the red light
6 camera reserve.

7 So if it was anything above
8 and beyond what we had authority to or if it was a
9 very big project, we'd tend to go and get their
10 approval for it, because it was just good practice
11 to do that. In the grand scheme of things the
12 dollar value of this initial piece of the Red Hill
13 was not overly large. We had a cash account and
14 red light camera reserve of about 10 million.

15 Q. Okay. And so to the
16 extent that there were aspects of the
17 recommendations that CIMA made that were not
18 covered by the topics in the red light camera
19 fund, like, for example, friction testing or
20 rumble strips or things that would really be under
21 engineering services, would they would have to go
22 and get their own funding separately?

23 A. Yeah. If it wasn't
24 outlined as part of previous council approval what
25 we could use for funding, I think you'll find in

1 the 2015 report that was done on both the LINC and
2 the Red Hill we made a special request for funding
3 for Hamilton Police Services on annual basis for
4 them to add additional enforcement for those
5 particular areas of the City, really to deal with
6 the speeding issue. So if it was above and beyond
7 the norm, we would ask for specific approval for
8 those things.

9 Q. Okay. Or if it was
10 something that another department was going to be
11 responsible for, they would have to go seek
12 approval and funding?

13 A. If it wasn't in the
14 original list of the approval report, yes, I think
15 some things might have been okay, but it's been a
16 while. I don't remember specifics on that.

17 Q. Okay. This information
18 report is submitted by Gerry Davis. Am I right at
19 the time the practice was that the general manager
20 would be the person who submitted all the reports
21 to the Public Works committee?

22 A. It may have been in this
23 timeframe. As a general rule, where there was
24 more than one group within Public Works that was
25 involved in something typically it would come from

1 the GM.

2 Q. Okay. And otherwise it
3 would come from --

4 A. Just my stuff --

5 Q. -- the director?

6 A. If it was just my staff,
7 it probably would have been John, and then
8 eventually they lowered it down to where I could
9 have done that kind of thing. But I don't recall
10 exactly timeframe of when that kind of policy
11 changed within the City.

12 Q. Okay. Where the general
13 manager Public Works was signing off rather than a
14 director or you, or even a manager like Martin
15 White, would you expect Mr. Davis to do a
16 substantive review of the contents of reports?

17 A. No, no. So there is a
18 process in place, and I don't know if this has
19 been outlined to you previously, but are you aware
20 of the approval process for reports?

21 Q. Perhaps just to -- for
22 efficiency, is it that staff prepare it, managers
23 review, directors review, in your case you have
24 two directors, you and Mr. Mater, and then it
25 eventually goes to Mr. Davis for final signoff?

1 A. Yeah, but we all sign off
2 on it on the cover page, and where there's a
3 financial implication involved, where we're using
4 money from, say, a reserve or a budget, there was
5 also a space for the building -- business
6 administrator to sign off and also for the manager
7 of finance within Public Works to sign off. So
8 then when the general manager receives it, he
9 knows that everybody has covered all the bases off
10 in terms of what needed to be done before it got
11 to him.

12 Q. Okay. And so you said in
13 some cases where there was multiple departments
14 within Public Works involved in the content of a
15 report, that Mr. Davis might be the one to submit
16 it. In those -- in those cases would there be
17 consultation amongst the different groups as
18 well --

19 A. Oh, absolutely.

20 Q. -- at the initial stages?

21 A. Yeah, absolutely.

22 Q. And in all circumstances
23 and for all kinds of staff reports that we've just
24 been talking about, is it important that in
25 drafting a staff report staff summarize any

1 consultant reports that are being referenced
2 accurately and completely?

3 A. Yes. It comes down
4 what's the best case -- best way to communicate in
5 response to council's request. And usually, you
6 know, communicating things in plain language and
7 to the point and in terms of what's being proposed
8 is the best way to tackle that.

9 Q. Okay. And I presume
10 there's some art between how much detail to
11 include but also have it be plain language and
12 relatively --

13 A. Yes, yes.

14 Q. Registrar, can you close
15 this and can you go to OD6, page 62, paragraph
16 159, please. So this is back where we were.

17 And if, Registrar, you can
18 call out the top of page 63. Oh, actually, sorry,
19 can you call that out, but can you also call out
20 the bottom of page 62. Just where it says "GL."
21 Yeah, thank you.

22 So we're back in this same
23 period of time. We're in October of 2013, and you
24 ask Martin White and Dave Ferguson to summarize
25 the actions from the CIMA report, I think for the

1 purposes of the staff report. And you say:

2 "I'd like to get a sense of
3 this before we arm wrestle
4 Gary."

5 What issues did you anticipate
6 arm wrestling Gary about?

7 A. At the end of day it's
8 about preparation. So if I'm going to go into a
9 meeting, in this particular case with Gary, I want
10 to know, you know, what are the highlights of the
11 report, what are the actions that were recommended
12 in that report, and, you know, how we would like
13 to proceed with those ones. So I just want to --
14 would want to be prepared before I sat down with,
15 you know, another director in terms of what was
16 moving forward.

17 Q. Okay. Just stopping you
18 there.

19 A. Yeah.

20 Q. Arm wrestle is a very
21 particular term. That doesn't sound just like
22 meeting a different -- another director to have a
23 discussion. It sounds like you're expecting, I'm
24 going to put to you, that there is going to be
25 some, you know, significant discussions and that

1 you need to be prepared for those. So my question
2 was really directed on what concerns did you have,
3 what things did you think that Gary was going to
4 object to or push back on?

5 A. In this particular case I
6 would probably imagine that it would have to do
7 with, you know, the whole aspect of the history of
8 the Red Hill and the illumination. You know, we
9 would need report on it and be clear in terms of
10 the reasons why we weren't recommending at that
11 particular case, and probably Gary had, you know,
12 barked about it or raised concern about doing
13 lighting in that particular area because of the
14 history. And so I would just want to be prepared
15 before I went in there, and, you know, if he
16 wanted to argue that particular piece, sit down
17 and have a prepared discussion about it.

18 Q. Okay. You said I --
19 probably Gary had raised concern about it. Do you
20 remember that Gary had raised concern about it as
21 the CIMA report was being prepared?

22 A. Yes, I do. I do. And I
23 don't think his concern was unjustified. The
24 question I would typically ask was something like
25 this. If at some point we were going to do the

1 lighting, you know, or Gary's group was going to
2 do the lighting because that was his thing to
3 figure out, you know, what steps would we need to
4 take place as the City to do that and what would
5 be involved with that. Would that involve going
6 back and doing some additional negotiations with
7 the original parties involved; would it be a
8 contractual issue; would it be, you know, another
9 environmental assessment.

10 So those are the things that I
11 would want to understand about that particular
12 case if council came back and said, hey, you know,
13 we want to do it anyways.

14 Q. Right.

15 A. So, you know, you want to
16 inform them properly.

17 Q. Okay. Martin White in
18 this e-mail chain says, and this is at the bottom
19 where it says "MW." It says Geoff -- he's
20 responding to Mr. Ferguson who says:

21 "Councillor Collins wants a
22 safety study on the entire
23 LINC and a safety study on the
24 remaining portions of the Red
25 Hill." (As read)

1 The ones that CIMA hadn't yet
2 examined. And he says at the bottom:

3 "Geoff, basically there are
4 statistically significant
5 number of collisions in wet
6 weather identified that tells
7 me we may need to do
8 something."

9 And you say:

10 "Agreed. We act now or act
11 after it hits the Spec, I
12 prefer to lead than follow."

13 What were you talking about in
14 terms of we act now or we act when it hits the
15 Spec? What were you trying to convey back to
16 Mr. Martin about what he should be doing?

17 A. So part of what we were
18 trying to convey in traffic, it used to be known
19 in the City as the "department of no." We hired
20 people like David Ferguson and Chris Jacobson
21 because of their expertise, but also to improve
22 communication within council and the public. And
23 so we added additional staff with expertise in
24 terms of, you know, dealing with the public safety
25 issues.

1 So this would have been me
2 saying Dave and Martin, you know, let's be
3 proactive. You know, let's not wait till, you
4 know, there's something that comes up in the
5 Spectator and creates a public outcry, you know,
6 because there may have been an accident or
7 something like that in a particular area. You
8 know, if we know that there's things that need to
9 be done in a particular area or we think there
10 does, you know, let's not ignore it. Let's go
11 through and be proactive and start to move that
12 chain forward.

13 Q. So is that -- then are
14 you saying that being proactive means you were
15 directing them to, yes, do start to consider a
16 LINC safety review and broader Red Hill safety
17 review? Were you being that specific, or were you
18 just saying more generally be proactive?

19 A. Probably at this point
20 more generally.

21 Q. Okay.

22 A. You know, we were early
23 in the stages of -- is this after the report?

24 Q. No, this is October --

25 A. Okay. So --

1 Q. -- of 2013 for the
2 November Public Works committee meeting.

3 A. Yeah. So we would have
4 been dealing with the issue at hand first, and I
5 think over time or the next year or -- so it
6 became a bigger and bigger issue in terms of
7 interest within the City, in particular at
8 council, and I think that's how it morphed into
9 eventually doing that detailed review of both the
10 LINC and the Red Hill.

11 You know, again, at this time
12 in 2013 the Red Hill wasn't that old. It was
13 highly decorated project that was -- won awards
14 from all over the place for its design and its
15 innovation. So I wouldn't have anticipated that
16 there would be major issues with that in the early
17 years, but I think as time went on, you know, it
18 was recognized that we wanted to be able to at
19 least respond and understand what was a true issue
20 and what wasn't. Just because an issue is raised
21 doesn't mean it's actually true. Sometimes you
22 need to do a detailed investigation to understand
23 and explain why.

24 Q. You said the Red Hill was
25 a highly decorated project that won lots of awards

1 for its innovation. Were you aware that it had
2 a -- that it used a pavement that was innovative
3 at the time?

4 A. Yes, from over the last
5 few days reading some information on that.

6 Q. Okay. But back in 2013
7 were you aware of that?

8 A. I don't recall. I
9 probably wouldn't have cared then.

10 Q. Okay.

11 A. I just would have assumed
12 that if somebody said it was highly innovative
13 pavement and was supposed to do all kinds of
14 wonderful things, that, you know, the work had
15 been done to investigate that.

16 Q. Okay. But you wouldn't
17 have had any knowledge or really any interest in
18 understanding the specifics of how it was
19 innovative?

20 A. No.

21 Q. Okay.

22 Registrar, can you bring up
23 paragraph 63 -- pardon me, page 63, paragraph 160,
24 please. And if you can call out the entirety of
25 160, please.

1 Mr. Lupton, down at the bottom
2 of this -- this is an e-mail between you and
3 Mr. White -- he says, Mr. White says:

4 "P.S. Dave, I don't want to
5 send the CIMA report at all
6 just our report --" sorry, my
7 camera is in the way "-- just
8 our report as highlights. We
9 can say CIMA was contracted to
10 review the safety, et cetera,
11 et cetera." (As read)

12 Whose decision was it at the
13 end of the day about whether to append this e-mail
14 report to the staff report?

15 A. Can you say that again.

16 Q. Sure. Whose decision was
17 it ultimately as to whether staff would append the
18 CIMA report to the staff report?

19 A. So basically attach the
20 whole entire CIMA report?

21 Q. Attach it, yeah.

22 A. Okay.

23 Q. Include it as part of the
24 staff report as an appendix or as an attachment
25 or -- I'm not sure of the phrasing that the City

1 uses.

2 A. That probably would have
3 been a discussion between John and I.

4 Q. It appears that
5 Mr. White's suggestion, where he says:

6 "I don't want to send the CIMA
7 report at all just our report
8 as highlights."

9 That was ultimately followed.
10 The 2013 CIMA report was not provided along with a
11 staff report.

12 A. Right. I think we also
13 said that anybody that wanted it, it was
14 available.

15 Q. That was my question.
16 Was that a practice that was regularly used when
17 there was consultant reports being --

18 A. In our case typically.
19 If there was specifics in the report that dealt
20 with the matter at hand, sometimes we would
21 basically take -- pull that out of the
22 consultant's report and put it into the staff
23 report. Unless there was something confidential
24 or a legal issue in a particular report, we
25 wouldn't have had a big issue in terms of, you

1 know, providing it to council, nor should we.

2 Q. Okay. So it would be the
3 offer -- invitation to councillors or to, in this
4 case, Public Works committee members, to ask for a
5 copy of the consultant report, and you would have
6 been willingly provided it?

7 A. Absolutely. You know,
8 common practice or knowledge is council and
9 committee members are very busy. They have a huge
10 load of reports and things to look at and digest.
11 So trying to provide them, you know, response to
12 what they were looking for and explain it in
13 detail and, you know, what some of the, you know,
14 results of those actions may be positive or
15 negative was very important.

16 I never really found that most
17 councilors wanted to go through and dig through a
18 detailed technical report. One, it wasn't kind of
19 their area of expertise. In some cases it might
20 be an area of interest. But I think for the most
21 part, unless they were looking for something
22 specific, they would tend to take the staff report
23 for what it was. And that's why, if we thought
24 there was something important in the consultant
25 report, we would highlight that typically in our

1 own report.

2 Q. In fact, that would be
3 really your -- your expectation of your staff
4 would be that if you're not including the
5 consultant report, that the staff report needs to
6 be a complete and accurate summary of the
7 consultant report.

8 A. Yeah, it needs to respond
9 to council's request.

10 Q. That wasn't -- my
11 question was, it needs to be a complete and
12 accurate summary of the consultant report. Is
13 that right?

14 A. For the most part, yes.

15 Q. For the most part?

16 A. Well, I think if there
17 was stuff in a report that wasn't relative or
18 relevant to what council was asking for, we'd pay
19 less attention to it or not worry about it.
20 Unless it was something that we felt raised red
21 flag somewhere.

22 Q. Right. I see. If a
23 consultant's report is not attached to a staff
24 report, that consultant report is not easily
25 accessible by members of the public; is that

1 right?

2 A. It could -- if they're
3 aware of it and they had interest and requested
4 it, you know, they certainly could have access to
5 it that way.

6 And in the next level of that
7 in terms of requesting any information out of the
8 City would be through a Freedom of Information
9 Act, you know. And if we went to the FOI route,
10 there would have to be a pretty darn good reason
11 why we were doing that.

12 Q. Why you weren't releasing
13 it?

14 A. Yeah.

15 Q. Okay.

16 A. So it would have had to
17 have been, you know, a -- you know, categorized as
18 a confidential report for some reason, but a
19 general report, no, we wouldn't have had a problem
20 with it.

21 Q. Okay. But if it was
22 attached, it would be posted on the City's website
23 along with the staff report --

24 A. Yes.

25 Q. -- is that right?

1 A. Yes.

2 Q. Registrar, can you close
3 this and open up paragraph 162, please.

4 So on the 23rd Mr. Ferguson
5 sent you to a copy of the report. At this point
6 it is a 10-page report. Do you remember receiving
7 a 10-page report?

8 A. Yeah.

9 Q. And you were receiving it
10 fairly late in the day in terms of the timeline to
11 get committee; is that right?

12 A. Yes. They were late with
13 the report.

14 Q. You respond the following
15 day. Actually, no, just staying in 162.

16 You'll see Mr. White advised
17 Mr. Ferguson and you and Mr. Cooper and your
18 assistant Ms. Harbin that there would be a rush
19 revision from John and Geoff. Did you talk to Mr.
20 Mater about the 10-page report?

21 A. Yes, I would have.

22 Q. You in 163 provide some,
23 I'm going to call them, high level comments, so
24 not track changes or revisions to the report but
25 rather a number of suggestions.

1 A. Yeah.

2 Q. Did you talk to Mr. Mater
3 about those suggestions before you made them?

4 A. I probably would have.

5 Q. But you can't remember
6 either way?

7 A. I can't remember. John
8 and I had an open dialogue. He was just down the
9 hall.

10 Q. All right. So you say
11 you want to change this to an information report.
12 Is that for the reasons you said before?

13 A. Yes.

14 Q. That there was no -- you
15 had the red light camera approval?

16 A. Yes.

17 Q. Okay. And you say you
18 want to shorten it to two to three pages at most.
19 Why did you want to shorten it so much?

20 A. I don't think the number
21 of pages was the issue. You know, the number of
22 pages would be the number pages. What I was
23 trying to do with this particular case, we were
24 late; I think this is one of the first reports
25 that Dave ever wrote. I was trying to get them

1 focused and narrowed in terms of here's the flow
2 of how the report should work. So, you know, what
3 was the direction from council. You know,
4 typically you'd reiterate that in a report.

5 What do we do as a result of
6 that? Well, we hired CIMA to do X, Y and Z work,
7 and then as a result of the report and the
8 direction given by council here are our responses.

9 Q. Okay. So you're trying
10 to give them the framework for the report
11 drafting?

12 A. Yeah, yeah.

13 Q. Registrar, can you bring
14 up the next image, please. And can you call
15 out -- it's 4(iiii), so it's at the very, very
16 bottom of image 1. If you go down to the image 1.
17 If you can call out all of -- anything that is
18 under 4. Thank you. And then if you can also
19 call out the top of page 65, the rest of that
20 second paragraph of 4. Yeah, exactly. Perfectly.
21 Thank you, Registrar. There we go.

22 So under your fourth point
23 little -- fourth point number (ii):

24 "Given the timing, weather
25 permitting, we need to be

1 actionable." (As read).

2 So you're trying to give them
3 a sense that they need to tell council when they
4 are going to do the countermeasures that had been
5 recommended.

6 A. Yes.

7 Q. And then you say:

8 "Waiting will not be
9 acceptable to these three
10 councillors in an election
11 year. Did Gary agree to the
12 frictionless piece?" (As
13 read)

14 Now, is it -- do you agree
15 that it's likely that you meant agree to the
16 friction test piece?

17 A. Probably.

18 Q. Okay. Had you spoken to
19 Gary about CIMA's recommendation for friction
20 testing at this point? This is late October
21 of 2013.

22 A. I don't think I did.

23 Q. But you knew having read
24 the report that that would be something that would
25 fall under engineering services and not traffic

1 engineering?

2 A. Yes, and Gary's team
3 would have also had a copy of the report.

4 Q. Okay. And did you know
5 if Gary Moore had any objection to doing friction
6 testing as referenced in CIMA's report?

7 A. Not at this time. Again,
8 the CIMA report suggested as the City could do it,
9 didn't say they should do it. So it was early
10 stages for -- well, it was the first time I recall
11 even the topic coming up.

12 Q. Okay. So you're telling
13 your staff to be consultative, to go consult with
14 Mr. Moore?

15 A. Or his team.

16 Q. Okay.

17 A. With any kind of reports
18 where there is another group involved where they
19 have an area of responsibility, I can't go in and
20 tell them what to do, you know, because they don't
21 report to me. Gary could tell them that, or we
22 can have a discussion. But if there's -- if, you
23 know, they have to comment on their particular
24 piece and have some comfort in terms of what the
25 actions are moving forward, if there was questions

1 that came up on a particular piece of the report
2 that fell under, say, another director, the
3 expectation would be that they or your staff would
4 respond to that.

5 Q. So you weren't trying to
6 foreshadow some concern from Mr. Moore or his team
7 about doing friction testing?

8 A. No.

9 Q. Okay.

10 Registrar, you can close this,
11 and if you can open up paragraph 164 -- sorry,
12 page 65, paragraph 164, please. Here we go.

13 So just to orient you to time,
14 we're October 23rd, 2013, and this is the time
15 when Mr. Ferguson quite late at night sends you a
16 revised report, and it's now been revised from 10
17 pages down to three pages with some tables.

18 A. Hm-hmm.

19 Q. Registrar, can you close
20 that, and can you open up or go to page 68,
21 paragraph 173. And can you -- actually can you
22 call out 172, please. Thank you. And, Registrar,
23 I hope you can do this as well. Can you on the
24 second image can you bring up HAM464, please.
25 Great. Okay.

1 So, Mr. Lupton, we're doing a
2 side-by-side of an excerpt from the overview
3 document on the left-hand side which is the
4 revised draft, and then we're looking at on the
5 right-hand side the draft before it was revised.

6 Pardon me, it was --

7 A. This is the --

8 Q. -- prior to the last
9 revision?

10 A. So this isn't the final?

11 Q. The one on the right-hand
12 side isn't the final.

13 A. Okay.

14 Q. Registrar, can you go to
15 the next image, please. Oh, no. All of that and
16 I think I misspoke on which document bring up.
17 Apologies. Sorry, I just want to make sure before
18 I take you through this that we're actually
19 looking at the right documents. Sorry, it's
20 HAM454. Thank you. And if you can go to image 4,
21 please. And if you could go to the paragraph that
22 starts "the report was to include" and all the way
23 down to -- all the way down to those three
24 paragraphs. Thank you.

25 So you'll see this -- at least

1 I've tried to come up with some side-by-side
2 comparison. If I had one more screen, I would do
3 it differently and I would bring you up another
4 version.

5 But you see here that in -- on
6 the left-hand side this is the revisions, and it
7 includes a fairly significant three bullets of why
8 lighting hasn't been included. Do you see that?

9 A. Was the stuff on the left
10 the final report?

11 Q. Yes.

12 A. Okay.

13 Q. Actually I believe it's
14 the second-to-last report, but this language is
15 what's in the last report?

16 A. Okay.

17 Q. Do you see that, those
18 three bullet points where -- my question is, were
19 you trying to ensure that the councillors
20 understood the rationale for not recommending
21 lighting at this time?

22 A. Yes.

23 Q. Why did you think that
24 was important to include that rationale?

25 A. Well, they need to

1 know -- well, they need to know what we found out
2 about, you know, the original Red Hill design and
3 the agreements in place with the environmental
4 assessment. I don't think they were aware of that
5 previous to this report, and that would be
6 important for them to understand in terms of that
7 particular piece and what might be involved, but
8 it would also be important for them to be able to
9 respond to their constituents if there was
10 questions about it as well. So I think we tried
11 to structure the report so that it would do
12 certain measures initially and evaluate how they
13 performed before we got to the next piece of the
14 lighting.

15 Q. Okay. I'm sorry. I
16 didn't mean to interrupt. Are you done?

17 A. That's okay.

18 Q. Okay.

19 Registrar, you can close the
20 right-hand side, and if you can bring up on the
21 right-hand side RHV668.

22 A. It's like magic.

23 Q. It is. When it works, it
24 is like magic.

25 If you can scroll down,

1 Registrar, to the next image, please, and to the
2 next image, please. Sorry, I misspoke. The next
3 image, please. Okay.

4 This may be a bit hard to
5 read. No, that's not much better. Can you close
6 that call out, Registrar. I don't think that's
7 going to work for my questions. Can you go to the
8 next image. Thank you. And can you -- I'll try
9 to be more specific. Can you call out where it
10 says "Mud and IT," so the second half of this
11 page. Yeah. Yeah, perfect. There we go.

12 All right. So this is the
13 final version, and you'll see here it says on ramp
14 6 it says:

15 "TAC illumination warrant
16 justified. Install lighting
17 on ramp."

18 It also on this ramp has:

19 "Install high friction
20 pavement approaching in
21 through the curve." (As read)

22 So I just wanted to show you
23 that, but now I'm going to have to close this just
24 because there's not enough screens for all of
25 this.

1 A. Yeah.

2 Q. So just keep this in your
3 mind.

4 A. Yes.

5 Q. Registrar, can you close
6 that and can you open up on the left-hand side
7 paragraph 137 -- sorry, 173, please. The next
8 image. There we go. Perfect. Thank you. Okay.

9 So this is a back and forth
10 with you and Mr. Ferguson as you were coming to
11 finalize the draft which is on -- right now on the
12 right-hand side. And you say:

13 "Why do we have the TAC
14 illumination warrant justified
15 in the appendix. I thought we
16 weren't doing lighting. Is
17 this one of those solar
18 things?" (As read)

19 And Mr. Ferguson says:

20 "It's a recommendation in the
21 report. There's no way around
22 it." (As read)

23 And you say so I -- sorry, I
24 don't mean to skip:

25 "What we are saying is we do

1 not recommend lighting at this
2 time until other
3 countermeasures are
4 implemented and evaluated."
5 And you say, "So I can remove
6 it, right?"
7 And he says, "That's your
8 call."
9 And then he says:
10 "My concern is if we remove
11 it, Collins will eat us alive
12 as the motion speaks
13 specifically to lighting."
14 (As read)
15 And you say:
16 "I'm taking it out because we
17 reference it in the report."
18 (As read)
19 Now, in fact, I think actually
20 in the final report there is that reference to TAC
21 illumination warrant justified.
22 A. Right.
23 Q. Why were you interested
24 in removing references to the illumination warrant
25 being justified?

1 A. I don't know.

2 Q. Were you trying to
3 minimize the references to illumination in their
4 report?

5 A. No, I don't think so.
6 When we go through this process before we get to
7 the final draft, there's always a bit of give and
8 take and understanding. And, you know, we
9 probably would have had conversations about this,
10 you know, along the way, so at some point we
11 decided to keep it back in.

12 Q. Okay. But you're not
13 sure why you were even considering taking it out?

14 A. Not at -- no.

15 Q. Not sitting here today?
16 Okay.

17 A. No, it's been a long
18 time.

19 Q. Registrar, you can close
20 down the left-hand side, please.

21 A. But I think the key point
22 is, it ended up in the report.

23 Q. It did. You said you
24 were going to take it out, but it did end up in --

25 A. They didn't, so there was

1 a change of heart somewhere along there.

2 Q. Okay.

3 Registrar, can you close down
4 the left-hand side and can you keep that up and
5 can you have the first two pages -- first two
6 images of this document up, please.

7 So I'm happy to give you some
8 time to read this to answer this question. The
9 information report doesn't state that CIMA found
10 there to be a high proportion wet surface
11 conditions or single motor vehicle conditions in
12 the body of this text, does it?

13 A. I don't think so, no.

14 Q. There is some reference
15 and those very small tables that are -- we had
16 trouble reading even blown up?

17 A. From the CIMA report
18 itself.

19 Q. And this information
20 report doesn't explain the connection that CIMA
21 made in its report between the high proportion of
22 wet weather and single motor vehicle collisions
23 and why it had suggested that the City could do
24 friction testing, does it?

25 A. Staff will review further

1 countermeasures such as -- so we said we would
2 review it with engineering.

3 Q. Yeah. Why don't we
4 bring -- actually if we can call that out,
5 Registrar. It's in the third full paragraph of
6 image 2.

7 A. So at that point
8 typically one of the things you'd do with what
9 involves road construction is you look to see
10 what's happening in the upcoming capital plan, so
11 what is scheduled. Are we going to go through and
12 as a city, repave that entire section of the Red
13 Hill and in terms of what year and what budget is
14 approved for that kind of thing. So I think this
15 is, again, early days in terms of we were
16 addressing the issue at hand that council had
17 asked us to look at.

18 And I think one of the things
19 we noticed the other day too, just to share with
20 you, in this particular report, in the CIMA report
21 and as we move forward, that the definition of
22 short-term measures and medium-term measures are
23 different.

24 So CIMA's short-term measure
25 timeframe was zero to five years. We wanted to be

1 proactive and show action-oriented approach to
2 things and a stepped approach, and so we changed
3 our short-term measures to zero to two years so
4 that council could see some activity in terms of
5 moving forward. So where it said medium term on
6 it for our purposes, it might have still been in
7 the short-term piece for the CIMA report.

8 Q. Okay.

9 A. So in this particular
10 case, you know, at the time Gary would have had to
11 probably look at his schedule and understand what
12 was coming up. And, you know, we looked at this
13 and -- eventually in terms of permanent pavement
14 markings. We didn't want to put markings in and
15 six months later have them, you know, ripped out
16 because we were doing a repaving project.

17 So those are the kinds of
18 things that you look at. If it was going to be a
19 few years, yeah, we would put them in and, you
20 know, move forward with it.

21 Q. Okay. Thank you for
22 that. I do have some follow-up questions on what
23 you've just said. Before I get to those follow-up
24 questions, my initial question was that
25 information report doesn't connect the friction

1 testing to CIMA's findings about a high proportion
2 wet surface conditions or single motor collisions,
3 and in the CIMA report those two things are
4 connected. They are not connected here in the
5 information report.

6 A. Right.

7 Q. Do you agree?

8 A. Yes.

9 Q. Okay.

10 A. Outside of the
11 identifying that in the appendices.

12 Q. Outside of identifying
13 the wet weather conditions and the single motor
14 vehicle --

15 A. So when you say "wet
16 weather conditions" too, you know, vehicle
17 collisions in wet weather can be a result of a
18 number of factors too, right. So it's not just
19 the friction of the pavement. It could be, you
20 know, speed. It could be the condition of the
21 tires on the car. Are people really driving for
22 weather conditions. So you can't necessarily jump
23 to this-is-it conclusion, and I think that's why
24 CIMA was recommending as part of figuring that
25 stuff out, you know, you could do some additional

1 friction testing to try and understand that
2 better.

3 Q. Sure. So my question is,
4 the information report doesn't say why friction
5 testing is something that staff will review with
6 construction engineering. The rationale for that
7 is missing, right?

8 A. Yeah, I think so.

9 Q. Okay. So I have some
10 follow-up questions for the answer that you gave
11 before which was very helpful. It says:

12 "Staff will also review
13 further countermeasures such
14 as friction testing with
15 construction engineering."

16 And I think I heard you say
17 you want to have a discussion because there might
18 be some budgeting that needs to be done.

19 (Speaker overlap)

20 A. Well, not just the
21 budgeting. It's more so the schedule, the
22 capital --

23 Q. Sure.

24 A. -- budget schedule. So
25 if there was -- you know, Gary may have raised

1 that concern. I don't know. But if there was
2 going to be significant work done in a particular
3 area within a year or two, you know, you'd want to
4 know that.

5 Q. Sure. And members of the
6 public always complain if it seems like there's
7 been, you know, one big project and then the roads
8 get ripped up for another big project. You want
9 to be able to coordinate things that can be
10 coordinated, right?

11 A. Absolutely.

12 Q. Okay. So here where it
13 says:

14 "Staff will also review
15 further countermeasures such
16 as friction testing with
17 construction engineering."

18 From this point forward, which
19 staff are to have reviewed the further
20 countermeasures? Can you identify who by name is
21 being suggested there in that word "staff"?

22 A. So it would start with
23 Gary, and, you know, whether he assigned it to
24 somebody else on his team to do, that would be his
25 decision.

1 Q. I don't think that can be
2 right because isn't construction engineering
3 Gary's group?

4 A. Yeah.

5 Q. Okay. So where it says:
6 "Staff will also review
7 further countermeasures such
8 as friction testing with
9 construction engineering."

10 A. So --

11 Q. Who is staff there? Is
12 that traffic engineering staff?

13 A. It sounds like it.

14 Q. And who particularly did
15 you assign to do that further review of
16 countermeasures with construction engineering?

17 A. I don't know that we did
18 at the time.

19 Q. Are you -- is it your
20 evidence today that no one was -- no particular
21 person was assigned to do that further review with
22 construction engineering?

23 A. Yeah. I wouldn't have
24 assigned that. If it was assigned, it would have
25 been Martin that assigned it to one of his team.

1 Q. Okay.

2 A. That's a little into the
3 weeds for me.

4 Q. Okay. To your knowledge
5 what review was done between traffic engineering
6 and construction engineering on the particular
7 countermeasure of friction testing?

8 A. I don't know. I know
9 that as time went by as we got closer to 2015, it
10 became more and more of an interest, but I don't
11 know -- I can't recall what happened where and
12 when between two reports.

13 Q. Okay.

14 Registrar, can you close this
15 down and open up page 70 of OD6, paragraph 176,
16 please. Actually it might be easier, Registrar,
17 if you can close that and open up 76 and 77
18 together. Thanks.

19 So we are still in the same
20 timeframe where you're finalizing the 2013 report,
21 and it looks like there's initially an appointment
22 with -- that you sent to Mr. White, Mr. Moore and
23 Mr. Ferguson for October 28 with the subject
24 line -- at least what the Inquiry has is
25 "Cancelled, Red Hill Valley Parkway Safety Review

1 Internal Discussions." And then there is an
2 e-mail from you to Mr. White and Mr. Ferguson
3 that -- where you say "I've reviewed with Gary."

4 A. Okay.

5 Q. Do you recall having a
6 meeting with Gary at some point between the
7 October 25 and 28 to discuss the Red Hill Valley
8 Parkway safety review?

9 A. Likely we probably would
10 have had a phone conversation.

11 Q. Okay. So a meeting by
12 phone or a meeting in person, one of the two?

13 A. Probably.

14 Q. Do you remember?

15 A. I don't remember the
16 specifics, but if I said that I had an update from
17 Gerry, my assumption would be that I would have
18 met him or had some sort of discussion.

19 Q. And you say, "I've
20 reviewed with Gary. He's good."

21 A. About the final version
22 of the report. Okay.

23 Q. And he suggests we manage
24 the report to reflect what we're saying. And just
25 stopping there, do you recall, did you give him a

1 copy of the staff report, the final CIMA report or
2 some combination of those two things?

3 A. He would have seen both.

4 Q. But you can't remember if
5 you gave them to him at this time?

6 A. It probably would have
7 been forwarded through the administrators, so, you
8 know, Charlene, John's admin, probably would have
9 sent it through to Diane, and Diane probably would
10 have sent it through to Gary, that kind of thing.

11 Q. Okay. So he says:

12 "We manage the final version
13 of the report to reflect what
14 we are saying."

15 So the final version of the
16 report -- and you can read the whole thing to
17 maybe help you with your answer -- are you
18 referencing there the final version of the CIMA
19 report? I ask because you go on to say:

20 "I'm not asking to change
21 opinions, but to soften and
22 stage the report similar to
23 what we have done in our info
24 report, e.g., do this first
25 and measure results, et

1 cetera." (As read)

2 A. I'm not 100 percent sure.

3 Q. Okay. Well, take a
4 moment, I'm going to -- just to review, and I'll
5 try to ask my question in a more clear way. You
6 have a reference here to what we have done in our
7 info report. Info report there, I'm going to
8 suggest, is your information report, the one we've
9 been looking at, the draft report to PWC.

10 A. Right.

11 Q. And then here it says:

12 "We manage the final version
13 of the report to reflect what
14 we are saying."

15 So I'm going to suggest to you
16 that what we are saying is what you are saying in
17 the information report, and you want to manage the
18 final version of that report, that is, the CIMA
19 report. And you say, "please sit down with CIMA
20 and make this happen."

21 So all that to say, my
22 question is, are you speaking about going back to
23 CIMA to have them soften and stage their report to
24 reflect the same staging that you have in your
25 information report?

1 A. So we wouldn't go back
2 and tell a consultant to change its
3 recommendations in a report, but we may have a
4 discussion, and it's common to have discussions as
5 you're going through in a project when dealing
6 with a consultant and making sure both you and the
7 consultant understand, you know, key pieces of
8 what's going on.

9 And in our particular case I'm
10 assuming this probably would have had to do
11 with -- that in our report we were going to
12 propose a staged report, you know, doing the
13 initial countermeasures and then testing it
14 probably because we knew there was an issue with
15 the lighting with the environmental aspects. And
16 so that, you know, would take time for the City to
17 kind of understand that and decide what they were
18 going to do with that. And maybe the
19 countermeasures would have been enough to improve
20 visibility in that area so that it was less of an
21 issue for the future and that street lighting
22 wasn't needed. I don't know.

23 Q. Okay.

24 A. That's the best guess I
25 can give you.

1 Q. Okay. When you say,
2 "soften and stage," do you mean to reflect doing
3 the countermeasures that -- except for lighting
4 first, and then doing -- and then assessing
5 whether lighting needs to be done second?

6 A. I know that's what we
7 said in the report. I'm not sure how this was
8 reflected in the CIMA report. I know in our
9 information report we kind of laid that path out,
10 but also provided information in terms of why
11 lighting wasn't being recommended initially. And
12 I think that's how lighting ended up on the
13 outstanding business list eventually to --

14 Q. Okay.

15 A. -- be dealt with at a
16 later date.

17 Q. So do you agree here that
18 you're directing Mr. White and Mr. Ferguson to go
19 back to CIMA to have that same staging in the CIMA
20 report that you have in the info report?

21 A. I can't remember. It
22 sounds like it --

23 Q. Okay.

24 A. -- but I don't remember
25 the specifics of it.

1 Q. Okay. Going back to the
2 phone conversation or the in-person conversation
3 that you reference here with Mr. Moore. Can you
4 describe that conversation with Mr. Moore in as
5 much detail as you can recall?

6 A. I don't really recall any
7 detail from it. You know, it was probably just a
8 conversation. If you, you know, read what we
9 sent, is -- any concerns. You know, are you okay
10 with what we put together. You know, you don't
11 want to put a report out dealing with somebody
12 else's area of responsibility without them, you
13 know, being okay with it and knowing it.

14 Q. Okay. And do you
15 remember whether he was okay with it? I mean, he
16 says, "I've reviewed with Gary. He's good." But
17 other than that --

18 A. Well, he must have been.

19 Q. Okay. Do you recall if
20 you had any discussions about the friction testing
21 recommendations in the CIMA report?

22 A. I think that was probably
23 highly unlikely.

24 Q. Okay.

25 A. It wasn't the gist of the

1 report.

2 Q. Do you recall, you've
3 mentioned here, "he said it's not uncommon to get
4 an FOI." Do you recall what Mr. Moore was trying
5 to convey and what you were trying to convey to
6 Mr. White and Mr. Ferguson in reference to the
7 statement about getting an FOI?

8 A. No.

9 Q. Okay. I'm going to
10 suggest to you that, as I read it, there -- the
11 City wants to have some consistency between
12 consultant report and information report just in
13 case someone reviews the two documents which they
14 could do if they obtained the report through an
15 FOI.

16 A. I wouldn't jump to that
17 conclusion.

18 Q. Okay. Do you have
19 another conclusion?

20 A. It's not our -- we don't
21 go through and tell a consultant what they should
22 say and how they should say it. You know, we hire
23 consultants to make recommendations on certain
24 things. At the same time we update the consultant
25 about things we've learned about with the City.

1 In this case it would have been the environmental
2 piece with the lighting, and how we're planning on
3 moving forward and staging it. You know, at the
4 end we also changed the short-term versus the
5 medium-term in terms of what we were doing.

6 So I don't recall what that
7 particular issue was. If it was 2015, it probably
8 would have been -- you know, I probably would have
9 said something about Gary's concern for liability,
10 but back in 2013 I don't think that was on the
11 radar as being an issue. It was more so let's
12 figure out how we're going to improve the
13 visibility of this area as a general overall
14 approach to safety.

15 Q. Okay.

16 MS. LAWRENCE: Commissioner, I
17 see the time. It is 2:52. I'm happy to continue.
18 I have more questions on this general topic, but
19 this also might be an appropriate time for a
20 break.

21 JUSTICE WILTON-SIEGEL: Okay.
22 Well, I think we should take our break. Let's
23 return at, say, 10 past 3:00.

24 MS. LAWRENCE: Yes. Thank
25 you.

1 --- Recess taken at 2:53 p.m.

2 --- Upon resuming at 3:10 p.m.

3 BY MS. LAWRENCE:

4 Q. Mr. Lupton, I'm going to
5 continue with the questions I have.

6 We are in the fall of 2013 and
7 I have some questions about the Public Works
8 committee meeting itself in which your team
9 presented the report that we have been talking
10 about.

11 So I'm going to have the
12 Registrar bring up part of the video of this
13 meeting. This is the first time that we've tried
14 to show a video, so I hope it works. It is
15 RHV961. Mr. Registrar, if you can go to the two
16 hour and three minute mark, and 20 seconds. So
17 quite close to the end of the video.

18 THE REGISTRAR: It doesn't
19 seem to be showing me the time. So I'm just
20 playing through it too, if I could. You said two,
21 oh, three?

22 MS. LAWRENCE: Thank you,
23 Registrar, for your patience in trying to get to
24 the right place. In fact, I think that that is
25 probably fine, and you don't need to press play.

1 BY MS. LAWRENCE:

2 Q. Mr. Lupton, this is the
3 City council chamber at city hall; is that right?

4 A. Yes.

5 Q. Okay. And this I can
6 identify for you is the November 13th, 2013 Public
7 Works committee meeting. And am I correct that
8 the individuals in the seats closest us, those are
9 members of the Public Works committee?

10 A. Yes.

11 Q. The councillors?

12 A. Yes.

13 Q. And then up in the
14 stands, the gray chairs, those are staff members.
15 Is that where staff members sit who are
16 presenting?

17 A. Yes.

18 Q. And am I right that you
19 are in the first row, the third from the left?

20 A. The handsome fellow.

21 Q. The one with the hand on
22 your chin?

23 A. Yeah, that's me.

24 Q. And I wanted to bring
25 this up just so that -- and you may or may not be

1 able to do this, but do you remember attending
2 this meeting?

3 A. I must've.

4 Q. Okay. The person who is
5 directly behind you in the light blue shirt, can
6 you identify that person?

7 A. Is there any way to
8 enhance?

9 Q. I don't think so.
10 Registrar?

11 A. It's probably David.

12 Q. Dave Ferguson?

13 A. Probably.

14 Q. Okay. And the person who
15 is in the very far left in the first row, can you
16 identify that person? And we can play it for a
17 little bit just so that you can see if you can
18 better identify it. This still might not be the
19 best.

20 A. In the same row as I am?

21 Q. Yes.

22 A. That would be Gord
23 McGuire.

24 Q. And the individual who is
25 three rows up in the black shirt?

1 A. That would be -- oh,
2 what's his name?

3 Q. It's not a memory test.
4 Is that someone who is in Public Works?

5 A. Yes. I don't recall his
6 name, but he did a lot with the bike lanes and
7 things like that.

8 Q. Okay. So it's not
9 someone whose name we've talked about today?

10 A. No.

11 Q. Okay, great. All right.
12 So rather than using this
13 video I'm going to take us to a transcript of
14 this. I just really wanted you to identify who
15 was there. In fact, before we go, is there
16 anybody else that you can identify who is someone
17 that we've already talked about today? Mr. Field?
18 Mr. Kirchknopf? Mr. Cooper? Mr. White?

19 A. So yeah, Mr. Field is
20 there right beside the stairs behind Gord McGuire.
21 Chris Jacobson is behind Gerry Davis, and then
22 behind the person identified as David Ferguson is
23 Stephen Cooper.

24 Q. Okay. And Mr. Davis is
25 in between you and Mr. McGuire?

1 A. Correct.

2 Q. Great. Thank you. And
3 Mr. Moore, Gary Moore is not at this meeting?

4 A. No.

5 Q. At least in what you can
6 see here.

7 A. Not during this time of
8 the meeting at least.

9 Q. Okay. And --

10 A. So Gord was probably
11 there responding on Terry's behalf.

12 Q. Okay. And to your
13 recollection was Mr. Moore in the council room
14 during the discussion of the Public Works
15 information report?

16 A. I do not recall.

17 Q. Okay. Okay.

18 Registrar, you can close this
19 down, and if you could bring up RHV986.

20 This is an uncertified
21 transcript that commission counsel have put
22 together of the relevant parts of this meeting.
23 If you have any concerns about the accuracy, we
24 can of course go into the video itself.

25 So first, this starts at the

1 your evidence today that the lighting was left on
2 the OLB?

3 A. Yes.

4 Q. In the documents I think
5 you suggest that. Do you recall in this Public
6 Works committee meeting that Councillor Collins
7 specifically wanted to accept the information
8 report as it was submitted but also didn't want to
9 abandon the concept of a light or two in strategic
10 locations if that's required in the future. And
11 I'm really just quoting him there. You see that?

12 A. Yes.

13 Q. Do you recall that?

14 A. Yes.

15 Q. And do you recall
16 specifically that he was focused on the staged
17 nature of your information report suggesting, yes,
18 we can accept these countermeasures, but I don't
19 want it to fall off the Public Works committee's
20 agenda to reassess lighting as that second stage.

21 A. That's how I would say
22 it, yes.

23 Q. Okay.

24 Registrar, if you can close
25 this out, and if you can go to image 1 and 2. And

1 at the bottom of image 1 you'll see you respond to
2 the councillor and say:

3 "Yes, we're recommending doing
4 the things that we've listed,
5 see how they work, the public
6 response to that, and then
7 after about a year of
8 monitoring if it still proves
9 an issue, there's certainly
10 something we could discuss
11 further." (As read)

12 And I think your -- the thing
13 we can discuss further is lighting. And
14 Councillor Collins says "that's great," and then
15 you'll see he suggests keeping it on the
16 outstanding business list, and that comes up a
17 little bit later in the meeting. Does that accord
18 with your recollection of this meeting?

19 A. Yes.

20 Q. Okay.

21 Registrar, you can close that
22 down. Thank you. And if you can go to HAM4336,
23 please, image 2 first.

24 So in the usual course am I
25 correct that after a meeting council followup --

1 sorry, let me take a step back. After a Public
2 Works committee meeting the items approved by
3 Public Works go up to council for ratification; is
4 that right?

5 A. Yes.

6 Q. And then from council
7 once ratified there's a followup that goes to the
8 director -- pardon me, the general manager and
9 then it goes down to the directors?

10 A. Correct.

11 Q. Okay.

12 If you can go to image 1,
13 please.

14 So you see Diana Cameron who
15 is Mr. Moore's assistant pulls out for Mike Field,
16 Peter Locs, Gord McGuire and Gary Moore the
17 reference to the outstanding business list:

18 "Staff are directed to report
19 back in respect of the
20 lighting aspects." (As read)

21 And then if you can call out,
22 Registrar, the e-mail at the top this page which
23 is from Gary Moore to Mr. Lupton, Mr. White and
24 Mr. Mater. So Mr. Moore forwards you the
25 outstanding business list that references the

1 lighting aspects with this e-mail. Were you
2 surprised by Mr. Moore's reaction?

3 A. Probably not.

4 Q. Why not?

5 A. I think it goes back to
6 his first point that he probably -- I'm
7 speculating, which you're not supposed to do.
8 But, you know, I think he probably felt that
9 because it was part of the requirements of the
10 road, the no lighting aspect, that that probably
11 would have put the issue to bed. But, you know,
12 council decided that they didn't agree with that
13 and that they didn't want to lose sight of that
14 particular issue.

15 Q. Okay. And in your
16 opinion who actually is the decision maker on
17 whether to assess illumination of the Red Hill?

18 A. Who's the -- well,
19 ultimately it's council.

20 Q. Not Mr. Moore?

21 A. No. If council tells him
22 to do it, he has to do it.

23 Q. Is this -- the tone of
24 this reaction from Mr. Moore, is this typical in
25 the way that he addressed the topic of

1 illumination on the Red Hill?

2 A. Probably.

3 Q. In what way?

4 A. In terms of he doesn't,
5 you know -- he has a history, he was involved in
6 the construction of it, and he probably felt that,
7 you know, the issue should have been dealt with
8 then, put to bed. But, you know, clearly it
9 wasn't.

10 Q. In your dealings with him
11 did he express frustration that this issue was
12 being raised by councillors?

13 A. Yeah, I don't think he
14 was happy about it, you know, for the reasons he
15 gave.

16 Q. So he says:
17 "What part of the road was
18 improved, road geometrics,
19 there were constraints, it's
20 not recommended, didn't the
21 committee get?" (As read)
22 Is that typical of the way
23 that he speaks about council and council
24 directions?

25 A. Probably when he's

1 perturbed.

2 Q. And does he express his
3 perturbance, if that's a word.

4 A. We'll go with it.

5 Q. Does he express that
6 regularly?

7 A. Yes.

8 Q. And vocally?

9 A. Yes.

10 Q. He goes on to say:

11 " That doesn't even begin to

12 address the fact that we

13 shouldn't be talking about

14 potential improvements that

15 will give any claimants more

16 ammunition." (As read)

17 What did you understand

18 Mr. Moore's statement about potential improvements

19 that give any claimants more ammunition? What did

20 you understand him to mean by that?

21 A. Probably at this point of

22 his e-mail I probably started to not pay

23 attention, but, you know, at the end of the day it

24 something that we had to do, and council directed

25 it on the OBL so you had to do it, and we had to

1 me. You know, we put together the traffic and
2 safety program in there to really respond to the
3 public's desire to, you know, have ongoing
4 improvement and safety for, you know, all people
5 that use the roadways. And my take on it would
6 have been if we know there's an issue or we
7 discover there's an issue, we need to elevate it
8 and we need to deal with that particular issue and
9 look for solutions of improvement. So that's
10 typically how I would deal with it. You can't
11 ignore those things.

12 Q. Thank you. And did you
13 find with your dealings with Mr. Moore during this
14 period of time that he shared that approach?

15 A. Yeah, I don't think -- I
16 think he was -- you know, from my view he was a
17 competent engineer and took safety measures to
18 heart. I didn't see any evidence to suggest
19 otherwise.

20 Q. Mr. Moore says in the
21 last sentence:

22 "Did we get CIMA to finalize
23 the report to our liking?"

24 A. Yeah. I don't know what
25 he's asking there because he would've seen the

1 final report anyways, unless he just didn't read
2 it.

3 Q. I'm going to suggest to
4 you that this relates to that e-mail that you sent
5 to Mr. Martin and Mr. Ferguson to get CIMA to
6 soften and stage the CIMA report. Does that
7 assist you with what --

8 A. Not really.

9 Q. Do you agree with that?

10 A. Not really. You know, I
11 think in the write-up of the report itself we
12 identified the issues that were raised with doing
13 additional street lighting, at least in the
14 interim. You know, that would've been a thing
15 that we would have had to not just evaluate in
16 terms of what lighting went where, but, you know,
17 whoever -- well, Gerry's group would've -- maybe
18 legal too would've had to figure out what would
19 have been involved if the City did choose to do
20 additional lighting, so who else would they have
21 had to deal with, you know, would've meant another
22 environmental assessment, would've have meant some
23 kind of negotiation. I don't know. I never
24 really knew the answer to that.

25 Q. Okay. But I am going to

1 suggest to you that his reference here, "did we
2 get CIMA to finalize the report to our liking"
3 relates back to the conversation that you had with
4 him in October which you reported to Mr. White and
5 Mr. Ferguson that Mr. Moore was good but that he
6 -- and then you directed them to soften and stage
7 the report with CIMA. Do you disagree with that?

8 A. I don't know the answer
9 to that. I just don't know.

10 Q. Can you think of anything
11 else that Mr. Moore might be referring to here
12 when he says "did we get CIMA to finalize the
13 report to our liking?"

14 A. No, no. You know, I
15 think it comes back to the stage approach and
16 making sure that we identify, you know, the issues
17 that were surrounding doing additional lighting in
18 this specific area.

19 Q. Okay.

20 A. Beyond that I can't think
21 of anything.

22 Q. He says, "before they ask
23 for a copy." What did you understand he meant by
24 "before they ask for a copy"?

25 A. I would assume that he

1 meant before council asked for a copy.

2 Q. Had you had discussions
3 with him about not providing a copy of the CIMA
4 report to Public Works committee or to council?

5 A. Not that I recall. I
6 don't think I did. That would have been a
7 discussion between John and I.

8 Q. Okay. Registrar, if you
9 can take this document down and bring up HAM4337.

10 So you respond to Mr. Moore --
11 this is in a different -- it's the same e-mail
12 chain but a different document we're looking at.

13 And, Registrar, if you can
14 call out the top of -- yeah, perfect. In fact,
15 could you, Registrar, make that call out a bit
16 smaller so that we can -- can you do two callouts
17 for me, please. Can you call that out, and can
18 you also call out Mr. Moore's e-mail below.

19 That's fine. Thank you.

20 So you say, "yes to items 1
21 through 5 or all of it."

22 A. Meaning -- from what I
23 gather from that, meaning that, you know, we
24 conveyed all that information through to council
25 in the report as best we could.

1 Q. Mr. Moore says what part
2 of 1, 2, 3, 4, 5 didn't the committee get.

3 Were you agreeing that the
4 committee didn't get any of the points that
5 Mr. Moore had raised in his e-mail?

6 A. I wouldn't say that they
7 didn't get it. I would say that they chose to
8 still, you know, want to deal with the lighting
9 issue. So I think it would be unfair to say not
10 get it. I suppose they chose to do something
11 other which is totally their prerogative.

12 Q. Okay. You say, "did you
13 see or in inform report?"

14 A. Yeah, did he read it.

15 Q. Did he read it. He had
16 been provided with a copy, right, because --

17 A. Yeah.

18 Q. -- he's on the
19 distribution list for Public Works?

20 A. Yes.

21 Q. And you say, "we did our
22 best to discourage it at committee."

23 Recognizing that's what you
24 said, did you feel in the moment that you had done
25 your best to discourage the reference to bringing

1 OLB lighting back to committee?

2 A. I was just trying to
3 appease Gary and get him off my back. In this
4 particular case I wouldn't have really cared
5 whether it was discouraged or not. You know, at
6 the end of the day we reported some solutions, you
7 know, the staged approach. We reported to them
8 the issues that surrounded doing additional
9 lighting on the Red Hill. If council chose to
10 take a next step and continue to look at it or
11 evaluate it, that's their prerogative. Then it
12 would've been staff's role to come back to them
13 and report on further what their findings were in
14 terms of what would need to be done, what would be
15 the cost, you know, what would be involved in
16 having to go back in and put lighting in where it
17 was agreed to that it couldn't be. And the
18 process for that piece, I don't know.

19 Q. Okay. Thank you. And
20 that was why it was going to come back in a year.
21 That would've been something that was dealt with
22 in a year.

23 A. Yes. Now, in reports
24 that sometimes staff can request in
25 (indiscernible) OBL further out, but they need to

1 provide a good reason for it.

2 Q. Okay. And am I right
3 that staff can push off responses to OBLs at least
4 for some period of time?

5 A. For some period of time
6 as long as council is okay with it.

7 Q. Okay.

8 A. You can't just do it
9 willy-nilly.

10 Q. So I think I heard you
11 say "I was trying to appease Gary and get him off
12 my back." That's what you said.

13 A. Probably. Probably being
14 a grumpy pants.

15 Q. Was this the first time
16 that you had had to appease Gary and get him off
17 your back?

18 A. Gary likes to bark, and,
19 you know, typically you'd let him bark and then he
20 would calm down and you would deal with the matter
21 at hand. So quite often you just kind of have to
22 ignore it and get down to business. You know,
23 he's had a lot of knowledge, very strong opinions
24 on things, and he would work with you. But
25 sometimes you just had to kind of listen to him

1 rant a little bit and then settle down and move
2 forward.

3 Q. Okay. You said he was "a
4 bit of a grumpy pants." Was that the same thing
5 that you're saying?

6 A. Yeah.

7 Q. Okay.

8 MR. LEDERMAN: So,
9 Mr. Commissioner, I do want to express a point of
10 caution with the questions that Ms. Lawrence was
11 just asking and had previously asked, that while I
12 can understand asking this witness to comment on
13 his interactions with Mr. Moore, it's quite
14 another to ask him to express an opinion about
15 Mr. Moore's character at large. And that seems to
16 be the kind of evidence that's being elicited
17 here. And so I'm just raising a concern about
18 that because I don't think that's helpful to this
19 inquiry.

20 JUSTICE WILTON-SIEGEL: Well,
21 thank you, Mr. Lederman. I have not to this point
22 heard questions that I thought raised anything
23 more than his character or his manner of dealing
24 with his colleagues in respect of matters
25 involving the City. I think you're right, but so

1 long as the questions proceed in the manner that
2 they have done to this point, I see no basis for
3 an objection.

4 MR. LEDERMAN: So the
5 questions that I'm concerned about are questions
6 asking whether the tone in which Mr. Moore was
7 communicating is typical. Obviously Mr. Lupton
8 can speak to his impression in his communications
9 with Mr. Moore, but what he should not be doing is
10 opining generally about any other individual's
11 character, and that's the point I'm making,
12 Mr. Commissioner.

13 JUSTICE WILTON-SIEGEL: Okay.
14 Well, your point is noted, and I, for your
15 benefit, take the answers that Mr. Lupton has
16 given to be in the very context in which you say
17 questions are permissible.

18 MR. LEDERMAN: Very well.
19 Thank you.

20 JUSTICE WILTON-SIEGEL: Okay.
21 Please proceed, Ms. Lawrence.

22 MS. LAWRENCE: Thank you.

23 BY MS. LAWRENCE:

24 Q. You said sometimes with
25 Mr. Moore you would have to let him rant and then

1 get down to business. Did you experience him
2 ranting and then getting down business with other
3 colleagues? Pardon me, observe, did you observe
4 him?

5 MR. LEDERMAN: So, again,
6 Mr. Commissioner, this is the type of question
7 that I have trouble with.

8 JUSTICE WILTON-SIEGEL: Well,
9 I don't have a problem if the question is not one
10 of opinion but rather fact. Did he observe this
11 in his relationship with other clients -- sorry,
12 other colleagues. If the question is a matter of
13 opinion, I would share your concern.

14 MR. LEDERMAN: Well, no, it's
15 not just a matter of expressing opinion. We're
16 talking about asking the witness to comment on the
17 disposition of another individual at large. Was
18 the person grumpy? Was the person angry? Did the
19 person rant at times? These are the kinds of
20 things, Mr. Commissioner, that I would say are --
21 that relate to one's character, that don't relate
22 specifically to an individual's interactions. If
23 it's about Mr. Lupton's individual interactions
24 with other folks, Mr. Moore or otherwise, that's
25 fair game, but asking at large questions about an

1 individual's demeanor, disposition or character in
2 my view are not permissible.

3 JUSTICE WILTON-SIEGEL: Okay.

4 Well, we will deal with this on a
5 question-by-question basis if that becomes
6 necessary. I have no problem with this particular
7 question as it addresses, in my view, a question
8 of fact.

9 MR. LEDERMAN: Thank you.

10 JUSTICE WILTON-SIEGEL: Please
11 proceed, Ms. Lawrence.

12 BY MS. LAWRENCE:

13 Q. Mr. Lupton, my question
14 was -- and I just want to make sure you answered
15 it before you were interrupted -- was did you
16 observe Mr. Moore ranting and then calming down
17 and getting to work, I think was your phrasing.
18 Did you observe that?

19 A. Yes.

20 Q. Did you observe it with
21 colleagues in respect of matters around the Red
22 Hill?

23 A. I don't think so.

24 Q. Okay.

25 A. The only time that I

1 would have had direct involvement with Gary would
2 have been myself personally or it would have been
3 with John and Betty discussing things. And
4 conversations that he may have had with, you know,
5 people like Martin or Dave or, you know, other
6 staff, no, I wasn't involved in those particular
7 conversations so I really couldn't jump to that
8 kind of conclusion.

9 Q. Okay. Did any of your
10 staff, Mr. Ferguson, Mr. Cooper, Mr. Worrton,
11 Mr. White, advise you that they were having
12 concerns in dealing with Mr. Moore and seeking
13 your advice about that?

14 A. Yes.

15 Q. And were those issues
16 they were having with him that they brought to
17 your attention related to Red Hill matters?

18 A. Yes.

19 Q. What were the topics of
20 the concerns that they had?

21 A. With regard to 2013?

22 Q. At any period of time.
23 We can start in 2013 if you would like.

24 A. The 2013 would have
25 been -- dealt with the lighting issue. Further

1 along it would have dealt with, you know, some of
2 the other options that might have been considered
3 for improvements that would have been outside of
4 traffic's area of expertise and responsibility.

5 Q. When you say dealing with
6 some options that might have been considered
7 improvements, are you talking about the median
8 barriers --

9 A. That would've -- it could
10 have been that, yes.

11 Q. Okay.

12 A. That would be something
13 that would have fallen under Mr. Moore's area of
14 expertise.

15 Q. Going back to the
16 lighting issue. What concerns did your staff
17 raise with you about -- about their interactions
18 with Mr. Moore about the lighting issue?

19 A. Just trying to get the
20 facts. You know, I think he did provide them, you
21 know, in understanding the history in terms of
22 what was involved with the original design and
23 development of the Red Hill. So, you know,
24 eventually we got to where we needed to go with
25 that and reported those facts through to council

1 in that report.

2 Q. Okay. Did any of your
3 staff -- and I'll specify then Mr. Ferguson,
4 Mr. White, Mr. Cooper, Mr. Worrton -- convey to you
5 that Mr. Moore was being confrontational or direct
6 or -- in his tone towards them in respect of
7 lighting?

8 A. In this particular case I
9 don't think Stephen or Jason would have dealt with
10 Gary directly. It likely -- well, it would've
11 been Martin or David. They're higher up the food
12 chain and a little bit more experienced. But,
13 yes, I think it's fair to say that they were a
14 little intimidated by him.

15 Q. Okay. A little
16 intimidated. Did they ask you to assist in
17 dealings with Mr. Moore so that they didn't have
18 to?

19 A. In some cases.

20 Q. Did they describe how
21 they perceived his interactions with them as
22 bullying?

23 A. No, they never used that
24 term. But they certainly conveyed, you know,
25 the -- I guess the way that he would respond to

1 things. You know, it was very direct.

2 Q. Unpleasant?

3 A. Could be.

4 Q. Okay. Thank you.

5 Registrar, you can close this
6 down, and if you can bring up HAM4339. Registrar,
7 if you can call out the first four e-mails in this
8 e-mail chain.

9 So this is following just from
10 the e-mail we were just looking at. This is just
11 a new document following the same chain. This is
12 just you and Mr. Moore on this chain at this
13 point. He says:

14 "They don't want you to report
15 in a year. They just want
16 another report on lighting.

17 Now." (As read)

18 And did you agree that council
19 was interested in having another report on
20 lighting?

21 A. Eventually they wanted
22 it, yes.

23 Q. Okay.

24 A. But they -- I think, you
25 know, as we read in Chad's comments to committee,

1 that he was okay with doing the original measures
2 that were recommended and seeing how they
3 performed, but he didn't want to lose the
4 opportunity consider lighting at a later date, so
5 I think that's kind of how it rolled out.

6 Q. Okay. And you said, "you
7 can lead a horse to water. We tried."

8 A. Hm-hmm.

9 Q. And --

10 A. That's me trying to
11 lighten the mood with Gary.

12 Q. Yeah. And then Mr. Moore
13 responds "I just shoot the horse." And you
14 respond "good plan."

15 A. Yeah, whatever.

16 Q. Did you view Mr. Moore's
17 comment "I just shoot the horse" as directed
18 towards council?

19 A. No.

20 Q. That the horse is
21 council?

22 A. No.

23 Q. No. Just an adage.
24 You're just riffing at this point on --

25 A. Yeah.

1 Q. -- that adage?

2 A. Yeah, that is my belief.

3 Q. Did you view this back
4 and forth, and Mr. Moore's response to you in
5 particular, as appropriate and professional for a
6 director within the --

7 UNIDENTIFIED SPEAKER:

8 (Indiscernible speaking).

9 THE REPORTER: I'm sorry, was
10 that an answer?

11 MS. LAWRENCE: I don't think
12 that was an answer. I'm not sure, though.

13 BY MS. LAWRENCE:

14 Q. Mr. Lupton, was that you
15 speaking?

16 A. No.

17 Q. Okay. Should I ask my
18 question again? My question was: Do you think
19 that the back and forth, and in particular
20 Mr. Moore's response to you, was appropriate and
21 professional for a director within the City of
22 Hamilton?

23 A. I think it's okay to be
24 light and, you know, lower the mood a little bit.
25 You know, these were personal e-mails between Gary

1 and I. It's not like it was sent to a wide range
2 of people and, you know, certainly not for public
3 consumption. It was just more so, let's take it
4 down a notch, and, you know, we'll kid around
5 about it a little bit and just lower the tone.

6 You know, I think it's okay in
7 an organization. You know, you got to be careful
8 who you send these things to. You know, I don't
9 think either one of us ever figured it would be
10 out in a public forum. It was just kind of
11 kidding around.

12 Q. Okay.

13 A. I don't think he would do
14 this in a professional situation, nor would I.

15 Q. You never observed him
16 engage in this kind of banter in a broader group?

17 A. Not with the public or
18 council. No, I never observed him doing that.

19 Q. What about the other
20 staff?

21 A. He might, but I can't
22 give you an example. You know, who is to say,
23 right?

24 Q. Yeah.

25 A. I can tell you what I saw

1 or what we did, but I can't tell you, you know,
2 what his interaction might have been with, you
3 know, people that he knew. And I think there's a
4 difference with these things between, you know,
5 people that you know fairly well and people you
6 don't.

7 Q. Okay.

8 A. So to answer your
9 question, I don't know.

10 Q. Okay.

11 Registrar, you can take this
12 callout, this document down, please.

13 So the 2013 CIMA report
14 recommended that friction testing be conducted on
15 the Red Hill along with a number of other
16 countermeasures. Who was responsible for ensuring
17 that friction testing happened?

18 A. What was the date?

19 Q. The 2013 CIMA report.

20 A. Okay. Well, I would go
21 back to the 2013 CIMA report, said could --

22 Q. Sure.

23 A. -- didn't say should, so
24 it was an option that the City could look at. If
25 the City was to look at that particular option and

1 move forward with it, that would have been a
2 decision that would have come out of engineering
3 services because they would have acknowledge and
4 the understanding of it. I don't think it was a
5 very widely known topic. I don't think CIMA
6 performed that kind of work. I think there was
7 others in the industry that had to do it.

8 Q. Okay. The 2013 CIMA
9 report also recommended and the information report
10 reported that a high friction pavement application
11 should be installed on ramp 6. You may remember
12 we went through that table, that was the blue and
13 White table.

14 A. Yes.

15 Q. Do you know if that
16 recommendation was completed during your tenure at
17 the City?

18 A. I do not know.

19 Q. Who was responsible for
20 ensuring that that recommendation, installing a
21 high friction pavement application, occurred?

22 A. So the group that would
23 have carried that, if it were to move forward,
24 would have been Gary's group. But I think where
25 it gets to be a challenge sometimes is unless it's

1 laid out specifically that council says, thou
2 shalt, you know, investigate this further and
3 report back or thou shalt do this. You know,
4 there wasn't enough information I think to say,
5 you know, I don't recall -- you know, what was the
6 cost of it and what was involved in it. And this
7 is something too that they would have to take back
8 and look at, you know, what other things were
9 coming up in that particular area in terms of
10 capital improvements.

11 So that might have been
12 something that would have been dealt with as a
13 course of normal action, I don't know. It's not
14 an area that I'm familiar with and that I can
15 really give you much more information in. It's
16 just -- I just don't know enough about that topic.

17 Q. Okay. I'm going to
18 suggest to you if it had been put in a
19 recommendation report then it would have been a
20 little bit clearer that council was asking for
21 that to be done. Would you agree with that?

22 A. Well, I wouldn't say that
23 council asked for it to be done.

24 Q. Sorry, the Public Works
25 committee.

1 A. Yeah. So, again, we
2 were -- came back and reported on what we were
3 asked to report on.

4 Q. Hm-mmm.

5 A. And so I think that
6 report covered off those aspects dealing with the
7 whole visibility issue on that. That's something
8 that, you know, would have had to have been
9 considered elsewhere. I don't think we would have
10 reported on doing that, or at least Gary's guys
11 didn't suggest it, and I don't know -- I guess I'm
12 getting beyond really what I know about that area.

13 Q. Okay. My suggestion was
14 I think a little bit more general. If it had been
15 in a recommendation report, then there would have
16 been some more transparency from Public Works
17 committee about approving that as a recommendation
18 to be implemented. Do you remember that?

19 A. If it was put in as a
20 recommendation to implement, yes, probably.

21 Q. Okay.

22 A. What was the wording in
23 the CIMA document? Was it should consider or
24 could consider?

25 Q. Could consider.

1 A. So it's really flagging
2 for staff that's something that you might want to
3 look at, in my opinion. It doesn't say thou shalt
4 or you got a real serious problem here. It's
5 something to think about. That's kind of how I
6 view it.

7 Q. Sure.

8 Let's go now to OD6, page 86,
9 paragraph 226, please, OD6, page 86,
10 paragraph 226, please.

11 THE REGISTRAR: Apologies, I
12 thought I had my screen share up.

13 MS. LAWRENCE: No problem.
14 Can you actually close that callout. There's just
15 some context before we go to the callout.

16 BY MS. LAWRENCE:

17 Q. After the Public Works
18 committee meeting in November and the ratification
19 by council and the OLB list that gets circulated,
20 Mr. Moore e-mailed you and Mr. White and Mr. Locs
21 and Mr. Field, McGuire and Nancy Clark you will
22 see at 224.

23 And in fact, maybe just for
24 our eyes why don't we call that out. And he said:

25 "I talked to Councillor

1 Collins after the Public Works
2 committee meeting --" I'm
3 going to assume "-- on Monday
4 re his expectations. He is
5 not expecting anything until
6 the improvements suggested and
7 approved in your last report
8 have been implemented and he's
9 had -- there's been a
10 reasonable time to be able to
11 comment. He's not looking for
12 anything beyond -- anything in
13 2014." (As read)

14 And that was your
15 understanding of the staged approach, right?

16 A. I think it's fair, yes.

17 Q. And then he says --

18 (indiscernible) the e-mail from Mr. Moore says:

19 "Nancy --" it says Ms. Clark
20 here "-- this is an OBL item
21 that will have to go beyond
22 this term of council and
23 cannot at this time be given
24 date." (As read)

25 Is that way OBL items work,

1 that staff can say that they should not be given a
2 return date?

3 A. No, I've not known that
4 to be that case.

5 Q. Okay.

6 A. You know, it may very
7 well be, but I've never seen it.

8 Q. Okay.

9 A. Certainly Ms. Clark would
10 have -- you know, she's very -- she would know how
11 to deal with these particular issues.

12 Q. Okay.

13 Registrar, you can close that,
14 and if you can now bring up 25 and 26 together,
15 please. Thank you.

16 So you basically concur. You
17 say that you're working on measures for the spring
18 work schedule. And Mr. White then e-mailed this
19 back and forth that we've just gone through to
20 Mr. Ferguson and Mr. Jacobson. You're not
21 included in this e-mail. And Mr. White says:

22 "We need asphalt skid tests to
23 see what they determine also."

24 He's also mentioning slippery
25 when wet signs.

1 Did you take any steps to
2 follow up with Mr. Moore personally? Did you take
3 steps to follow up with Mr. Moore on friction
4 testing after the PWC meeting in November?

5 A. I don't believe so.

6 Q. Do you know if Mr. White
7 ever followed up with Mr. Moore in response to
8 this e-mail?

9 A. I do not know.

10 Q. Did you direct any of
11 your staff to follow up with Mr. Moore about
12 friction testing results after the PWC meeting in
13 2013?

14 A. I wasn't involved in this
15 e-mail you said?

16 Q. No, I mean more
17 generally.

18 A. Can you repeat the
19 question, please.

20 Q. Sure. Did you direct any
21 of your staff to follow up with Mr. Moore in
22 respect of friction testing results after 2013?

23 A. I don't think so. I
24 don't recall. I think we got more into the
25 friction testing discussion as we got in 2015.

1 Q. Registrar, can you bring
2 up HAM24096, please. If you could call out the
3 e-mail that Martin White sends to John Mater.
4 It's the second e-mail down. Okay.

5 This is another e-mail that
6 you are not copied on. Mr. White asks Mr. Mater:

7 "Has anyone told him we're
8 doing the LINC collision
9 crossover study." (As read)

10 So this is -- we're in 2015
11 now, and the timing of it matters in respect of my
12 first question which is, there was a LINC
13 collision crossover study that was initiated in
14 late 2014, early 2015; is that right?

15 A. Yeah, I think in general
16 we were trying to make sure we had a good handle
17 in terms of what were all the types of collisions
18 and what percentages they were on the LINC.

19 Q. Okay. And Martin White
20 says to John, "he's going to react when he finds
21 out" in respect of -- this is in respect of
22 Mr. Moore. I'm happy to take the e-mail down to
23 show you the context, but I'm going to put to you
24 it's "he's going to react," is Mr. Moore is going
25 to react, when he finds out.

1 And did you have any reason to
2 believe that Mr. Moore would have reacted badly if
3 the City retained CIMA for a safety review?

4 A. No.

5 Q. Did you know the folks at
6 CIMA personally?

7 A. I knew them in passing.
8 I think I met Brian Malone maybe a couple times.
9 I did not deal with him directly in these things,
10 you know, that was left to Martin and his team to
11 do that because they --

12 Q. Okay.

13 A. -- you know, they speak
14 the same language.

15 Q. Mr. White says:

16 "Mr. Malone even told me he's
17 charging a bit extra due to
18 Gary." (As read)

19 Had you ever heard that
20 comment, that CIMA was charging extra to have
21 to -- because of some relationship to Mr. Moore to
22 their projects?

23 A. I think it was tongue and
24 cheek.

25 Q. Okay. Just skipping down

1 to the next paragraph:

2 "This is a consistent problem
3 we face routinely with that
4 section and related works.

5 I'm not going to respond, but
6 I -- " and then he goes on.

7 Apart from what you and I have
8 already talked about, did your staff express
9 concerns to you about working with Mr. Moore's
10 section, that is, the engineering services section
11 of Public Works?

12 A. Some of them.

13 Q. And what were the -- can
14 you describe the nature of those concerns?

15 A. With a few of them, not
16 all of them, some of them were excellent. They
17 tended to be rather abrupt, and I would say a
18 little arrogant in how they dealt with things.
19 And going back to the TCC, that's part of the
20 reason we put that together, so that managers
21 would have a forum where they would have to talk
22 and go over some of these things.

23 You know, I think the issue
24 really becomes, you know, my staff can't tell his
25 staff what to do. Same, his staff can't tell my

1 staff what to do. You know, and that would work
2 the same way anywhere else in the City.

3 So if it was an issue
4 somewhere along the line, that's the kind of thing
5 that would need to be elevated for a, you know,
6 discussion either at DMT or between directors or,
7 you know, if it was really bad, having Gerry in
8 the room, you know, telling us to get along. I
9 don't think that happened that often, but, you
10 know, there were certainly times where we, you
11 know, would have to sit down and come to a meeting
12 of minds in terms of a consensus how we were going
13 to approach a particular issue, and especially
14 when it was very complicated and involved, quite a
15 number of groups.

16 So when you get into issues,
17 you know, like you mentioned in traffic before,
18 there's a lot of people that touch it, traffic
19 issues, whether it be the master plan or road
20 construction or road maintenance or, you know,
21 dealing with lane markings and things like that.
22 That's four different groups right there.

23 So that's one of the
24 challenges, and I've always said that within the
25 City, that it would be a wonderful world if we

1 could put it all in one spot, but it's not quite
2 possible to do. That's why you need to find some
3 kind of mechanism for people to kind of work
4 together on this stuff.

5 People were very busy. Not
6 making excuses, but unless it was on their work
7 list or they were told they had to do it by the
8 appropriate authority, you know, they probably
9 wouldn't have -- they'd probably deal with the
10 things that they were probably going to get in
11 trouble for not doing versus the stuff people that
12 somebody else was pushing for that wasn't in their
13 list of things that they had to do that particular
14 day, and I think that's common. You know, it's
15 human nature.

16 Q. Okay. So you said
17 specifically that's part of the reason that the
18 TCC was put together.

19 A. That was.

20 Q. And in particular was
21 part of the reason that the TCC created to address
22 concerns with Mr. Moore's section in particular?

23 A. No, no. I think it was
24 to deal with traffic issues across the board,
25 making sure that, you know, between managers that

1 they knew what was coming down the pipe in terms
2 of capital plans or problems or things that needed
3 to be addressed, especially where others groups
4 would be involved and/or like to make comment or
5 recommendations. So that was the intent of it, to
6 improve communications between the groups.

7 Q. Okay. Did your
8 section -- and I'm just asking this question up to
9 this point in time, up to January 2015, so before
10 the 2015 CIMA report. Did your group express
11 concerns to you about information sharing from
12 Mr. Moore's section?

13 A. Yes, I would say so. I
14 don't think it was specific to that year.

15 Q. Okay. What were the
16 nature of the concerns?

17 A. It goes back to unless
18 somebody tells me I have to do it, you know, I'm
19 busy, and, you know, I don't have time to do it.
20 I think it's more that kind of thing. And, you
21 know, to be fair it would probably be a similar
22 reaction if somebody else was asked in the
23 organization to do stuff. That's where the
24 leadership comes in, and you need to have, you
25 know, sometimes meetings of minds. You know, it's

1 like any relationship. Sometimes you've got to
2 sit down and work things out and hear both sides
3 of the story, which is important, and, you know,
4 find a way forward.

5 Q. Okay. Thank you. I'm
6 going to turn now to the 2015 CIMA study.

7 Actually before we get there.
8 I'm not going to take you to any documents on this
9 but would you agree that in -- after the public
10 works meeting in which those countermeasures were
11 approved, that information report we've been
12 looking at, that your group felt pressure to move
13 forward with the countermeasures that were under
14 your scope of responsibility in as timely a way as
15 possible.

16 A. Yeah. I think they were
17 keen to do it as well. You know, and I think what
18 we looked at earlier for Martin was just him
19 trying to keep things on the radar in terms of
20 let's make sure we do -- and it would be something
21 that I would convey a lot too is -- and John
22 himself. You know, if we made a commitment to do
23 something and we told council that we're going to
24 do it in a certain timeframe, unless there's a
25 darn good reason that something else has come up

1 that, you know, delayed it, we'd better get our
2 work done.

3 Q. Okay.

4 MS. JENENE ROBERTS: Excuse
5 me. Ms. Lawrence, if we're done with this
6 document perhaps we can take the document and
7 callout down then.

8 MS. LAWRENCE: Of course. You
9 can take the call out down, thank you.

10 BY MS. LAWRENCE:

11 Q. And so am I correct that
12 moving forward, weather permitting, your group
13 made strides on doing the countermeasures relating
14 to signage and pavement markings and installation
15 of the cat's eyes or tiger's eyes, at least on a
16 temporary basis?

17 A. Yeah, different things
18 were done at different times for sure. But it was
19 always a process of, you know, moving forward,
20 doing something.

21 Q. All right. Okay. Moving
22 to the 2015 CIMA report in May 2015 there was a
23 fatal crossover collision on the Red Hill
24 involving two young women. Do you remember that?

25 A. Yes, I do.

1 Q. And it was a crossover
2 collision. Is it your recollection that that
3 collision triggered a discussion about the use of
4 median barriers?

5 A. I don't know if that's
6 when it started. I know there was certainly a lot
7 of concern with members of council and publicly.
8 You know, nobody likes to see something like that
9 happen; it's horrible. And, you know, as we moved
10 forward, I guess with the CIMA reports and they
11 started to do their investigation, conversations
12 came up about so what can you do to deal with
13 these kinds of situations.

14 You know, it was not just the
15 Red Hill; it was also the LINC as well. And so,
16 you know, let's, as part of this process, figure
17 out, you know, methods of -- things we might
18 consider and figure out the pros and cons and the
19 cost and, you know, if we were to do it what kind
20 timeframe we looking at.

21 Q. Sure.

22 A. So I think it evolved
23 partially from that.

24 Q. And partially from some
25 collisions on the LINC as well?

1 A. Yeah.

2 Q. Yeah. And so my question
3 probably wasn't as specific as it should have
4 been, but the idea of median barriers is now
5 members of public are talking about it and members
6 of council are talking about it. Is that fair to
7 say?

8 A. I would say so.

9 Q. In 2015 and certainly by
10 the time of -- in response to this accident
11 involving the death these two young women?

12 A. I think it helped carry
13 that conversation.

14 Q. Okay. By May 2015 did
15 you know whether or not any friction testing had
16 been carried out on the Red Hill?

17 A. I don't think so.

18 Q. You don't think you knew?

19 A. It's hard to remember. I
20 knew about it sometime in 2015. I just don't
21 recollect exactly when.

22 Q. Okay.

23 A. I know we had a
24 conversation between Gary, John and Betty and I
25 about friction testing, and that's where Gary kind

1 of, you know, shared with us some of his concerns.

2 You know, it wasn't a common thing in the

3 industry, you know.

4 Q. Possible that that

5 happens much later into the CIMA report

6 drafting --

7 A. Maybe.

8 Q. -- process? Okay.

9 A. That would be my guess.

10 Q. Okay. I'm going to ask

11 you a bunch of questions trying to keep close to

12 the documents, so if anything triggers your memory

13 about the timing of that meeting just let me know.

14 Okay?

15 A. Sure.

16 Q. So in advance of starting

17 the 2015 CIMA report had you directed your staff

18 to ask Mr. Moore about friction testing?

19 A. I don't recall.

20 Q. Okay.

21 A. At some point we got to

22 conversations between directors about it.

23 Q. Okay.

24 A. I just don't recall what

25 part of 2015 that started.

1 Q. Okay. Maybe I'll ask the
2 question --

3 A. I think that became more
4 of a director discussion at some point.

5 Q. Sure. Maybe I'll ask the
6 question differently. If you got to this level
7 where the directors are having a discussion, in
8 advance of that director discussion were you
9 asking your -- or directing your staff to go speak
10 to Gary Moore or his staff about friction testing
11 results?

12 A. I don't know about that
13 specifically. But there would have been a scope
14 of work for CIMA to look at and perform moving
15 forward. And as that process developed -- it
16 started with the LINC, I believe, and ended up
17 with the Red Hill.

18 So as some of those things
19 developed, you know, there would be a need to deal
20 with Gary's team to understand where things were
21 at and what their thoughts were on certain areas
22 and to work with the consultant on those
23 particular pieces.

24 So I don't know if that
25 answers your question the way you want. But, you

1 know, there would have been discussion anyways
2 because that was a report that would have dealt
3 with my group, Gary's group, Betty's group for
4 sure. They would have dealt with things like the
5 vegetation and the rumble strips and things like
6 that, and Betty took over for Brian eventually.

7 Q. Okay. So it sounds like
8 you're just -- you're putting some pieces together
9 that you think might be accurate is that once the
10 staff are having discussions, you think that there
11 was discussions about friction testing. Is that
12 what you're saying?

13 A. Probably. But I don't
14 know. I can't say for sure.

15 Q. Fair enough.

16 A. I don't recall.

17 Q. Coming just from your own
18 knowledge, you don't recall -- and in fact I'll
19 say it different way. You did not ask your staff
20 to go follow up with Mr. Moore or his staff about
21 friction testing before the CIMA project started,
22 the 2015 CIMA project started?

23 A. Not that I remember.

24 Q. Okay.

25 A. As it relates to the 2013

1 report, no, not that I remember.

2 Q. Okay. And by that point
3 you certainly hadn't seen any -- you hadn't
4 personally obtained any friction test results from
5 Mr. Moore or his team?

6 A. Correct.

7 Q. Okay. Were you involved
8 in the day-to-day work in connection with the 2015
9 CIMA report?

10 A. Day-to-day stuff, no. We
11 would have many discussions about it.

12 Q. Sure.

13 A. You know, I would meet
14 with Martin typically weekly, and as I say, you
15 know, it was easy for Dave to drop in or walk down
16 the hall and talk to John. So we would have
17 discussions about what was happening.

18 Q. Okay. Did you give
19 instruction to Mr. Mater, Mr. White or
20 Mr. Ferguson to specifically include lighting of
21 the main line as part of the scope of this
22 project?

23 A. I don't recall. I think
24 lighting was being looked at as an overall as part
25 of the CIMA project, so I wouldn't have gotten in

1 to say this little piece. You know, if you're
2 doing a lighting review of the Red Hill or the
3 LINC, I would assume that you're looking at a
4 holistic approach.

5 Q. Okay.

6 Registrar, can you go to OD7,
7 page 43, please. Thank you.

8 So I'm jumping quite well
9 ahead. We're in September of 2015. And just to
10 give you a sense of what's going on here, CIMA has
11 done a draft, several drafts at this point of its
12 report, within your staff Mr. Ferguson, Mr. White,
13 et cetera, and your staff have also started
14 drafting a draft staff report.

15 And this is the -- at
16 paragraph 130, the draft recommendations for the
17 recommendation report that your staff are
18 drafting.

19 A. Okay.

20 Q. Registrar, can you pull
21 out the excerpted text in paragraph 130, please.
22 Thanks.

23 So you'll see that there are a
24 number of different recommendations, and they have
25 specific departments within Public Works being

1 directed to do specific things. So the first four
2 for engineering, the next two are for forestry,
3 one is for roads, one is for Hamilton Police
4 Service -- obviously not Public Works but
5 specifically identified - and then the last one is
6 traffic and operations to do all of the other
7 identified countermeasures.

8 Is it common to have
9 recommendation reports specify the particular
10 divisions within Public Works that are doing --
11 going to do the work?

12 A. No. Typically you would
13 do an overall report. You know, this would be one
14 that Gerry would sign off on. But, you know,
15 these kinds of things, who has got what as part of
16 this report, would have been dealt with in Public
17 Works through DMT.

18 Q. Okay. So it would be
19 something --

20 A. You're not asking council
21 to give direction on who does what within Public
22 Works. You're giving direction through the GM to
23 direct his team to take care of their pieces or
24 their components.

25 Q. Okay. So in the early

1 drafting stages it's probably helpful to separate
2 this out so you can get appropriate feedback from
3 different departments; is that fair?

4 A. Yeah.

5 Q. Okay. But at the end of
6 the day it should be something that is much more
7 general coming from the general manager?

8 A. Well -- and I think a lot
9 of the recommendations, you know, like we did in
10 the 2013 report. If I recollect correctly, you
11 know, we did the same kind of thing, short term,
12 medium term, and longer term options to move
13 forward.

14 And, again, our short term and
15 medium term really encompassed all of CIMA's short
16 term, because their's was zero to five, and ours
17 was zero to two and two to five. So just -- and
18 moving that forward.

19 But the other piece -- well,
20 we'll probably get it into. I'll end there.

21 Q. Okay.

22 A. I think you're going to
23 end up going to another spot, but go ahead.

24 Q. I think that's right.
25 Okay.

1 So can you close this down,
2 Registrar, and can you bring up page 44,
3 paragraph 132.

4 So you'll see that
5 Mr. Ferguson send Mr. Moore recommendations that
6 impact engineering services.

7 A. It's a good heads up.

8 Q. And that's good practice
9 for Mr. Ferguson to reach on out to Mr. Moore
10 about engineering services, to reach out to the
11 roads operations people for recommendations that
12 would deal with them. You know, having people
13 review and buy into the nature of the
14 recommendations; is that fair?

15 A. Well, not just buy in,
16 but also to get their feedback. There may be
17 things, because it's not our area of expertise,
18 that they know or would phrase a different way or
19 highlight, you know, what may or may not be an
20 issue with it or, you know, some other option that
21 they think they are more comfortable with
22 proposing. So it's a number of things. This is
23 kind of -- you can do it a lot of different ways,
24 but, you know, it's kind a conversation starter.

25 Q. Sure. Okay.

1 So let's leave this up,
2 Registrar, and leave up the callout and bring up
3 in the other side of the image paragraph 134 which
4 is on page 45. Perfect.

5 So you see Mr. Moore does
6 provide some feedback to Mr. Ferguson. He says,
7 first this "needs to be discussed at DMT." I'm
8 going to come back --

9 A. That's fair.

10 Q. I'm going to come back to
11 that. Then he has four points, and I'm just
12 keeping these up so you can go back and forth to
13 where the recommendations are. He says:

14 "You can take engineering
15 services off every line. We
16 don't do investigations. We
17 do programming, design and
18 tender and construction
19 supervision."

20 Looking at the recommendations
21 on the left-hand side, do you agree with Mr. Moore
22 that engineering services is not the appropriate
23 part of Public Works to be responsible for these
24 recommendations?

25 A. No, I don't agree with

1 him, because if you were to investigate program
2 design and tender, you know, major changes on the
3 roadway that dealt with things like high tension
4 steel cable, that would come out of their grip so
5 that would be part of an overall larger project.
6 So at the end of the day, they would end up doing
7 it if it was something council directed us to move
8 forward with, or staff to move forward with.

9 Q. Okay. But did you
10 understand in 2015 that engineering services was
11 the -- that it was the -- that friction testing on
12 the Red Hill would be under the auspices of
13 engineering services to complete? I don't mean
14 related to any report; I mean just generally which
15 department would have responsibility to do that if
16 that was to be done.

17 A. I think you showed an
18 e-mail earlier that, you know -- where Gary
19 outlined they were going to do a five-year review
20 or something like that so....

21 Q. And he said I'm going to
22 do some skid resistance testing, that e-mail?

23 A. Yes.

24 Q. Yeah. In your
25 experience, what sources of funds existed to pay

1 for friction testing?

2 A. It's not a question I
3 could answer for his group. He would have --
4 well, he would have a ton of money because they
5 dealt with a lot of very big capital projects. So
6 what kinds of budgets and what kinds of, you know,
7 slush funds he had to pull money from or not, I
8 don't know. If money was not available, then it
9 would be up to staff to probably sit down with
10 finance, you know, Public Works finance first,
11 then it may be corporate finance, to determine if
12 we were going to fund this project, where would
13 that funding come from. Would it come from the
14 reserve, or would it come from another project.
15 And then identify that through to council in a
16 report to say we would fund this through X, Y and
17 Z, you know, whichever reserve or budget account
18 it came from.

19 Q. But you don't know -- you
20 know, we've talked little bit about the red light
21 camera reserve. I say this not in a derogatory
22 way, but it was a slush fund for traffic
23 engineering, but you don't know about what
24 engineering services had as a similar kind of
25 reserve?

1 A. No. Yeah, I don't know
2 specifically what engineering services would have
3 had. But in terms of the red light camera
4 reserve, you know, if it wasn't identified in the
5 original report of the list of things that we
6 could fund from it, it didn't stop anybody from
7 moving forward to say, you know, we recommend that
8 you fund this from the red light camera reserve.
9 It's not a lot of money in the grand scheme of
10 things. Very similar to what was the eventual
11 recommendation with Hamilton Police Services where
12 we ask council for approval to use \$250,000, I
13 think it was, on an annual basis for more
14 enforcement on the Red Hill and the LINC in terms
15 of dealing with the speed issue.

16 Q. Okay. So just stopping
17 there. No one ever asked you to use the red light
18 camera reserve to fund the -- funding of the cost
19 of friction testing?

20 A. I don't think so.

21 Q. And would you have
22 considered that if someone had asked?

23 A. I think the first
24 question I would ask is, you know, don't you have
25 any room in your budget for this kind of thing,

1 You know, when are you planning to do it. You
2 know, at the end of the day, I'm not the keeper of
3 the cash in the red light camera reserve. If, you
4 know, John or Gary or council decided that they
5 wanted to propose using money in that particular
6 reserve or finance for that matter, then, you
7 know, there's nothing I could really say about it.

8 Q. Okay. The last callout
9 on the right-hand side, number 4. He says:

10 "We said over and over,
11 illumination of the Red Hill
12 or the LINC is never going to
13 happen so stop asking." (As
14 read)

15 You've provided a fair bit of
16 evidence today about your understanding of
17 Mr. Moore's views on lighting. Was that
18 consistent with your understanding of his views on
19 lighting the Red Hill?

20 A. I believe so, yes. I
21 think that's fair. He definitely had concerns
22 about it.

23 Q. The second point:
24 "What is friction testing
25 going to tell you if you don't

1 have anything to compare it
2 to. There's no provincial
3 database or guideline. The
4 MTO will never discuss this
5 with you because it opens up
6 an entire line of liability on
7 every road."

8 Had Mr. Moore expressed any of
9 those comments or those concepts to you personally
10 on or before September of 2015?

11 A. Again, with the dates I'm
12 a little bit fuzzy. I know when we sat down, John
13 and I and Betty and Gary, to talk about this issue
14 specifically. Gary did share with us, you know,
15 his experience in dealing with the whole friction
16 test issue. And it was things like, there's no
17 industry standard, trying to get information out
18 of the MTO is like pulling teeth. The technology
19 is evolving and it's not something that's done in
20 terms of a regular course of action.

21 So what that meant to me is,
22 and probably to others, was, you can do it, but at
23 the end of the day what do you compare it to and
24 how do you know whether it's a good thing or a bad
25 thing.

1 And for me personally it would
2 be where does friction testing line up in terms of
3 road safety along with driver behaviour and
4 driving for weather conditions and the right, you
5 know, equipment on your vehicle in terms of tires
6 for it. So I don't know where that kind of leads
7 in that particular scale.

8 My simplified uneducated view
9 on it would be, how do you do the friction
10 testing? Do you do it just on dry pavement or
11 what conditions do you do it to test things like,
12 you know, water or ice or things like that. I
13 don't know enough about it, but I did certainly
14 understand that, you know, it sounded like there
15 was very little -- legitimate concerns in terms
16 of, you know, what do you compare it to.

17 Q. Okay. Thank you for
18 that. I see it's 4:30. I am going to have some
19 more questions about that. I just want to ask one
20 sort of question to close the loop on your answer
21 there.

22 Was this -- just given the
23 people you've identified, was this a subset from a
24 DMT meeting?

25 A. Yes, as best I recall.

1 That's why it was just the four of us in there.

2 Q. So it was after a DMT
3 meeting, and you stayed and --

4 A. Probably.

5 Q. Okay. And did Mr. Moore
6 say expressly that he had had friction testing
7 done?

8 A. Yes, we knew that he had
9 had some done.

10 Q. Okay. And did anyone ask
11 him for a copy of the results in writing?

12 A. I don't think so.

13 Q. Okay. And what did he
14 tell you about his interpretation --

15 A. I shouldn't say that. I
16 think my staff did ask him for the results on
17 occasion.

18 Q. No, I mean in this
19 meeting that we're talking about.

20 A. Yeah. We would have
21 listened to the discussion and the issues that he
22 felt around it. At the end of the day, it was his
23 area of responsibility and he was the City
24 engineer. You know, beyond that, if somebody gave
25 me the friction testing data, I couldn't tell you

1 what it meant; whether it was good data or bad
2 data. And if you go back to the point where what
3 guidelines or what information is out there to
4 compare it to, you know, I think that's a
5 legitimate question.

6 So if you gave me a bunch of
7 numbers and a spreadsheet, I couldn't tell you if
8 it was good or bad or indifferent. And how does
9 that relate to a roadway, you know, in a similar
10 situation with the same amount of traffic and the
11 same amount of years on it, that kind of thing.
12 And I don't know that that information was
13 available.

14 Q. Okay.

15 A. That's my non-technical
16 answer.

17 Q. Okay. Did Mr. Moore tell
18 you that the results were satisfactory and all the
19 information you just gave to me about the issues
20 with trying to find the right standard? Did he
21 actually, like, say the tests were fine, the tests
22 were good, the tests were acceptable?

23 A. I don't recall that
24 specifically in that meeting. I do know that at a
25 later date, probably whenever we did the report in

1 December, that he was asked about it. Maybe it
2 was an e-mail I saw earlier. I get them confused
3 a bit. I think he said in an e-mail earlier that
4 we looked at.

5 Q. Sure. I'm just asking
6 about this meeting that --

7 A. Yeah, I don't recall
8 that.

9 Q. Okay. So --

10 A. I know it was addressed
11 later.

12 Q. -- we're going to be
13 going through probably in detail tomorrow morning
14 a few of the other periods of time. But just a
15 question just to try to orient when this happened.
16 Was it before the 2015 CIMA project started,
17 before those two young women died?

18 A. No, it was after.

19 Q. It was after. Was it
20 before the 2015 report was provided to Public
21 Works?

22 A. I believe so.

23 Q. Okay. And do you recall
24 if at the time Mr. Moore had seen copies of the
25 CIMA report, the 2015 CIMA report, in which

1 friction testing was again referenced, this time
2 recommended?

3 A. Yeah, I don't know.

4 Q. You don't remember that
5 context about whether he was speaking about that
6 recommendation?

7 A. Yeah, I don't recall.

8 Q. Okay.

9 A. We probably would have
10 talked a lot about things we should and shouldn't
11 do on the -- you know, those -- well, information
12 that we gleaned from, you know, what was provided.
13 So it might have been discussion based on a draft
14 report. I don't know.

15 Q. Okay. All right. We
16 will go through some more meetings, and of course
17 as I said earlier, if there's anything that
18 triggers you to think that we might have landed on
19 the right date for that meeting, certainly let me
20 know.

21 MS. LAWRENCE: In the meantime
22 it is 4:35, and we wrap up at 4:30, so thank you
23 for the indulgence, Commissioner, to go a little
24 over to finish that line of questioning. Those
25 are all of my questions for Mr. Lupton until

1 tomorrow morning.

2 JUSTICE WILTON-SIEGEL: Okay.

3 Two matters. First of all, is there a need for a
4 breakout room among counsel?

5 MS. LAWRENCE: I do believe
6 that there is. There are some scheduling
7 challenges, and I think all counsel should have a
8 discussion about that. And we will of course
9 update you, Commissioner, if there is any changes
10 to the schedule, but Mr. Lupton, I understand, has
11 agreed to come back tomorrow morning and so we'll
12 proceed at 9:30 in any event.

13 JUSTICE WILTON-SIEGEL: Yes,
14 and then I was going to mention that I think
15 tomorrow the start is at 10 o'clock.

16 MS. LAWRENCE: Thank you.
17 Thank you, Mr. Commissioner. I had forgotten.
18 Yes, tomorrow is Wednesday, and I've communicated
19 that to the parties, so we will start 10:00 a.m.
20 start tomorrow.

21 JUSTICE WILTON-SIEGEL: Okay.
22 So we'll stand adjourned until 10 o'clock tomorrow
23 morning. Thank you.

24 --- Whereupon at 4:36 p.m. the proceedings were adjourned
25 until Wednesday, June 8, 2022 at 10:00 a.m.