

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS HEARD BEFORE
THE HONOURABLE HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Thursday, July 14, 2022, at 9:31 a.m.

VOLUME 44

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1 Arbitration Place Virtual

2 --- Upon resuming on Thursday, July 14, 2022,
3 at 9:31 a.m.

4 MS. LAWRENCE: Good morning.

5 Mr. Mater, good morning to you. You haven't been
6 sworn in yet. I'm going to ask the court reporter
7 to swear you in.

8 JOHN MATER; AFFIRMED

9 EXAMINATION BY MS. LAWRENCE:

10 1 Q. Good morning.

11 A. Good morning.

12 2 Q. Just before we get
13 started, I understand that you have your laptop
14 set up or your screen set up so that you're able
15 to view documents as well as be able to see me and
16 the Commissioner?

17 A. Yes.

18 3 Q. Today we are going to be
19 taking a break at 11:30, so we're going to go two
20 hours and then take a 15-minute break, but if you
21 require additional breaks throughout the day,
22 please let us know. Okay?

23 A. Thank you.

24 4 Q. So, I'm going to start
25 with some questions about your professional

1 background. I understand that you're currently
2 retired?

3 A. Yes, that's true.

4 5 Q. And you retired as of
5 December 31, 2018?

6 A. Yes, that's correct.

7 6 Q. What are your
8 professional qualifications?

9 A. In terms of education, I
10 was a graduate of Mohawk College's transportation
11 planning program back in 1979. I've taken a
12 number of different courses at work, you know,
13 during the course of my career in various fields,
14 some of it waste management, some of it those
15 types of things when I started with the City. But
16 that's my formal education, is with Mohawk.

17 7 Q. Thank you.

18 A. Sorry. As we're going
19 through this, I know one of the things in my
20 statement of evidence right off the top says I
21 started in the role of senior director of
22 corporate assets and strategic planning in 2016.
23 That's actually 2013, I think.

24 8 Q. Okay. We're going to get
25 there. I'm actually going to start a little bit

1 earlier in time.

2 A. Okay.

3 9 Q. And walk through your

4 history with the City.

5 A. Okay.

6 10 Q. So, I understand that

7 first you worked with Stoney Creek from June 1988.

8 Is that right?

9 A. Yes. And I started

10 working in 1980 with the City of Edmonton. I then

11 worked with the City of Cambridge and then I came

12 to Stoney Creek in June of 1988.

13 11 Q. And you joined the City

14 of Hamilton in 2001 with the amalgamation?

15 A. That's correct.

16 12 Q. And from 2001, actually I

17 think back to 1980, you were in the role of

18 traffic technician. Is that right?

19 A. More or less, mostly

20 those times, but yes. Traffic technology was my

21 work, main work.

22 13 Q. We've heard from other

23 witnesses in the inquiry about the community

24 traffic services group. Was that the kind of work

25 that you were doing?

1 A. In Stoney Creek, we were
2 a lower-tier municipality, so our work there in
3 terms of traffic would have related to concerns on
4 our local streets. Arterials and those larger
5 streets were the purview, if you will, of the
6 region, so we would have worked on local speeding
7 issues, local stop signs, local parking issues,
8 things like that, local safety issues on City of
9 Stoney Creek streets.

10 14 Q. I understand you were
11 promoted to manager of waste disposal in 2001. Is
12 that correct?

13 A. That's correct.

14 15 Q. And then you took another
15 position, director of fleet and facilities, in
16 2006?

17 A. 2003, actually.

18 16 Q. 2003, okay. That was the
19 error? Thank you.

20 A. Yeah, 2003. I went
21 through and made sure of my dates here, so if you
22 ask me, I'll update.

23 17 Q. Thank you. What was your
24 portfolio as director of fleet and facilities from
25 2003?

1 A. In 2003 I became director
2 of fleet and facilities and that looked after the
3 City's corporate facilities from an operations and
4 capital perspective and our corporate fleet from
5 an operations and capital perspective. It did not
6 include HSR or police or fire, but the rest of the
7 fleet.

8 18 Q. Okay. And then in 2007,
9 you took on the position of director energy, fleet
10 and facilities?

11 A. Yes. So, it was the same
12 responsibilities with respect to fleet and
13 facilities and additionally we created a position
14 of an energy management group and that was also
15 part of my responsibilities there.

16 19 Q. Okay. And in that group,
17 was Geoff Lupton your direct report on that?

18 A. That's correct. He was
19 the first manager of energy.

20 20 Q. Okay. And then in 2009,
21 you became senior director, transportation, energy
22 and facilities. Is that right?

23 A. That's correct.

24 21 Q. And in that role, was
25 that the first time that you had transportation,

1 that is traffic, engineering and operations under
2 your portfolio?

3 A. No. I think the title is
4 still a bit confusing. I was senior director of
5 transportation, energy and facilities, and within
6 that portfolio it included the HSR, Hamilton
7 Street Railway, and fleet were the, for lack of a
8 better term at the time, transportation component
9 of that. So, fleet and HSR were the
10 transportation, and then energy and facilities
11 were the other two components of that.

12 22 Q. Okay. And in that role,
13 who were your direct reports?

14 A. At the time, it would
15 have been Don Hall would have been a direct report
16 to me. He was a -- yeah, I was a senior director
17 then, and he was the director of transit. Geoff
18 would have been the director of energy. And
19 facilities, I believe, was Rome D'Angelo at the
20 time. And fleet was also, I believe, part of --
21 I'm trying to remember now. I think fleet was
22 with Geoff as well at that time.

23 23 Q. Okay.

24 A. I could be corrected, but
25 I think that's when it was.

1 24 Q. I won't take you into the
2 corporate records, but I think that that's
3 correct.

4 A. Okay.

5 25 Q. In 2013 your title
6 changed to senior director, corporate asset and
7 strategic planning. Is that right?

8 A. That's correct.

9 26 Q. Did your portfolio at
10 that time still include traffic engineering and
11 operations?

12 A. Well, it didn't still
13 include. It was the first time it was included as
14 part of my portfolio, and that was traffic
15 engineering and the operations end of it as well,
16 I believe. Rome D'Angelo was facilities. I
17 then -- Hamilton Street Railway was no longer part
18 of my responsibility and I had still, as part of
19 traffic, it was traffic engineering and fleet, I
20 believe, was Geoff Lupton's. Rome D'Angelo was
21 facilities and Rob Norman was parks design and
22 ultimately waterfront redevelopment group, a
23 little bit down the line there, I think 2014,
24 something like that, but three directors there
25 reporting to me. And that's the first time that

1 the traffic engineering group became part of my
2 area of responsibility.

3 27 Q. Okay. And am I right
4 that the line of -- that the hierarchy within
5 traffic operations engineering was Martin White to
6 Geoff Lupton to you?

7 A. That's correct.

8 28 Q. I understand you were
9 also acting general manager from April of 2016 to
10 sometime in 2017?

11 A. No. That's almost
12 correct.

13 29 Q. Okay.

14 A. Acting GM for a period of
15 time when we were -- the City was recruiting for a
16 new general manager, and that was -- I think it
17 was April, like you say, February to April.
18 Somewhere in that timeframe Gerry Davis retired
19 and the City was recruiting and I think
20 Dan McKinnon started in September of that year,
21 same year. So, what's that? About a six-month
22 period roughly?

23 30 Q. Okay. And it was in an
24 acting role really just --

25 A. Yeah, really just

1 temporary covering while we were recruiting.

2 31 Q. Okay. And then I
3 understand that in January of 2018, you took on a
4 new role, associate general manager and --

5 A. Yes, so after --

6 32 Q. I think I've skipped one.

7 A. You skipped one. After
8 the director of -- sorry. After the acting
9 general manager role, there was a bit of, I would
10 say, flux in that timeframe in terms of trying to
11 determine where we were going as PW, but I took on
12 the role then just specifically of director of
13 transportation, which I think included at the time
14 traffic and then the transportation planning group
15 as well. I spent a good portion of 2017 trying
16 to, I would say, disentangle that as we move
17 forward. In 2018, as you said, I became the, sort
18 of, associate general manager of Public Works.
19 And in 2018, then all of my operational
20 responsibilities had been shifted and moved around
21 to other parts of the Public Works group.

22 33 Q. Okay. And when you say
23 you spent part of 2017 trying to disentangle, what
24 do you mean by that?

25 A. Well, at the time traffic

1 engineering and traffic operations and
2 transportation planning group were all part of my
3 area of responsibility, and going forward we had,
4 in talking with the general managers and
5 anticipating my retirement, we wanted to make sure
6 those things were in the right spot, and so that
7 was a question of, kind of, determining who and
8 when we would move staff from the transportation
9 planning area over to planning department, where
10 they are now, and the traffic engineering and
11 operations group became part of roads and traffic,
12 so it was just making that split.

13 34 Q. Sure. And under roads
14 and traffic, am I right that Betty Matthews-Malone
15 took over the role of director of roads and
16 traffic?

17 A. That's right.

18 35 Q. Did you have oversight of
19 Ms. Matthews-Malone in your role as associate
20 general manager?

21 A. My role as associate
22 general manager was more of an assistant to Dan
23 when he needed things and I spent much of my time
24 as associate general manager in that year working
25 on waterfront, evaluation of the teams for the

1 waterfront redevelopment and things like that, so
2 no, I had no day-to-day oversight over those
3 directors really.

4 36 Q. Okay. Just jumping
5 ahead, we'll get to this at the end of my
6 examination, but in your role as associate general
7 manager, did you engage with any of the issues
8 around the Red Hill that came up in 2018?

9 A. No, I did not.

10 37 Q. Okay. We've just gone
11 through a bit of a winding path on your various
12 roles. From your perspective, going back to 2013,
13 when you were in the role of senior director,
14 corporate asset and strategic planning, I
15 believe --

16 A. Yes.

17 38 Q. -- how did you find the
18 effectiveness of the Public Works organizational
19 structure?

20 A. I mean, I found it worked
21 well. We had three senior directors, which then
22 had responsibilities under them. There was a
23 senior director of CASP and two others. Sorry, I
24 can't remember. But the responsibilities were
25 split up in such a way that it provided some

1 backup for the general manager and some additional
2 resources for directors and more time to do the
3 work they need to do. I thought it was -- I
4 personally thought it was a good arrangement.

5 39 Q. Okay. And did that
6 perception that you had that it was a good
7 arrangement, was that -- did you continue to have
8 that perception as you moved through your various
9 roles and the various reorganizations that
10 happened in Public Works?

11 A. I mean, that's a
12 complicated question. I liked the arrangement, I
13 liked the way it was organized, but others within
14 the -- specifically some members of council, I
15 believe, and others thought there was other ways
16 to do it. And so, we had had -- I wouldn't guess
17 the number of, sort of, reorgs, both major and
18 minor, we had in Public Works between 2001 and
19 2018. There was a lot.

20 40 Q. So, it does seem like it
21 was a lot.

22 A. Yeah.

23 41 Q. I understand that there
24 were departmental management team meetings that
25 occurred over time and you attended those

1 meetings. Is that right?

2 A. That's correct.

3 42 Q. Who else was invited to
4 attend those meetings?

5 A. It would have been
6 dependent on when. I'm testing my memory here.
7 Initially when we did not have the senior director
8 roles, it would have been the directors of all the
9 other divisions within PW and general manager,
10 usually our communications person, finance people,
11 person, manager. When we were in a senior
12 directors group, I believe it was just the senior
13 directors with the general manager and the
14 communications and finance people. And other
15 people -- in all these cases some people would be
16 invited in depending on the topic. But yeah,
17 that's generally how it went. There was some
18 variations on that depending on who was in those
19 roles, I think, but always senior directors and
20 directors is the gist of it.

21 43 Q. I'm going to ask you some
22 questions throughout where I might raise
23 departmental management team meetings, so at the
24 time I'll ask you, you know, who were the normal
25 attendees as we go through time.

1 A. Yes.

2 44 Q. So, turning now to the
3 Red Hill and in particular in 2013, do you recall
4 receiving any expressions of concern about the
5 safety of the Red Hill from anybody?

6 A. Do I recall? Not
7 specifically. I mean, in general, staff and I had
8 talked about ongoing things at the top of the
9 freeway, and so that was part of why we engaged
10 CIMA. I don't have any specific recollection of a
11 conversation or anything like that.

12 45 Q. Were you aware of
13 complaints from the public being submitted to
14 community traffic services or anybody else within
15 the City?

16 A. Not specifically, no.

17 46 Q. Okay. And did you
18 personally receive complaints from city
19 councillors about anything to do with the Red
20 Hill?

21 A. Personally, I don't
22 recall that, no.

23 47 Q. Okay. So, I'm going to
24 take you now into some of the documents that the
25 inquiry has prepared and has collected.

1 Registrar, can you bring up
2 overview document 6, page 8, paragraph 11, please.
3 Thank you.

4 So, just stopping here to make
5 sure that our tech is working, Mr. Mater, can you
6 read that entire page?

7 A. Yes, I can.

8 48 Q. Okay. Registrar, can you
9 also bring up the next page so that it's two pages
10 side by side. Great.

11 Do you have any issues with
12 seeing both of those pages?

13 A. No. I can see them both.

14 49 Q. Great. Registrar, you
15 can take down number 9 and just leave up number 8,
16 please.

17 So, you'll see in
18 paragraph 11 -- and, Registrar, if you can call
19 out paragraph 11, please.

20 A. Yes.

21 50 Q. There we go, so it's a
22 little bit bigger. In January of 2013, the Public
23 Works Committee passed a motion in respect of Red
24 Hill Valley Parkway improvements and, in
25 particular, that staff were directed to

1 investigate upgrading the lighting on the Red Hill
2 in the vicinity of Mud/Stone Church Road
3 interchanges?

4 A. Yes.

5 51 Q. Directed to investigate
6 better reflective signage, lane markings and other
7 initiatives, and then a full costing with all
8 options will in turn be presented.

9 Do you recall in advance of
10 this motion being passed if you had heard from
11 anyone that there were concerns about the
12 illumination of that vicinity around Mud/Stone
13 Church Road interchange?

14 A. I don't remember specific
15 conversations or anyone in particular. I do --
16 it's hard now, having reviewed all of this, it's I
17 just, kind of, recalling when I knew or when I saw
18 something. Obviously I remember that there was
19 conversations within the organization about that
20 area of the Red Hill that is identified here. I
21 don't remember specifically if it was lighting or
22 other things --

23 52 Q. Okay. At the time that
24 the motion was passed, did you have any knowledge
25 about why the Red Hill was not fully illuminated

1 in this area?

2 A. I don't know if I knew at
3 that time. Lighting was not part of my area of
4 responsibility.

5 53 Q. Okay. And given this
6 motion, did you understand that one of the options
7 that the Public Works Committee wanted staff to
8 investigate was the feasibility and the cost of
9 upgrading illumination in this vicinity?

10 A. Yeah. I can see that's
11 what they asked for.

12 54 Q. At the time that the
13 motion was passed, did you understand there to be
14 any sensitivities about the prospect of increasing
15 illumination on the Red Hill?

16 A. I don't know if it was at
17 the time when this resolution was passed, but at
18 some point I became aware of some information that
19 said that as part of the original approval of the
20 Red Hill, that lighting was limited to the areas
21 around the interchanges where it is, as I think it
22 stands today.

23 55 Q. But you're not sure when
24 you came --

25 A. You know, when that

1 information came to me, it could have been after
2 this. I don't know.

3 56 Q. Okay. And do you
4 remember the source of that information?

5 A. No, I don't.

6 57 Q. Okay. Registrar, can you
7 close this down and go to page 10, please, and if
8 you could call out paragraph 17, please.

9 So, this is a couple of weeks
10 after the motion is passed and Ms. Cameron, who is
11 Gary Moore's assistant, advised Mr. Field, Mike
12 Field, who was in lighting at the time -- do you
13 remember Mr. Field?

14 A. You know what? Sorry, I
15 don't.

16 58 Q. Okay.

17 A. I guess I knew Mike. I
18 just don't recall him. Sorry.

19 59 Q. Okay.

20 A. The rest of the group, I
21 do, yes.

22 60 Q. Okay. And do you
23 remember that in putting together the project team
24 for responding to this motion, that there was a
25 lighting expert, an in-house lighting expert, on

1 that team?

2 A. I was aware that lighting
3 was part of the area of responsibility with Gary's
4 engineering group, but again, I really don't know
5 Mr. Field's qualifications as an expert.

6 61 Q. Okay. Do you recall how
7 it came to be that your group would take lead on
8 this motion?

9 A. Yes. I mean, in general,
10 I would say one thing it was kind of part of my
11 DNA, if you will, at the time as director there to
12 try and take a lead where I could. In this
13 particular instance, I would have, I believe,
14 quite naturally have understood that, you know, if
15 we're doing something with respect to a roadway,
16 there will likely be traffic engineering or
17 traffic safety or traffic operations issues that
18 come up during that review, and as well as there
19 was potentially lighting or council had actually
20 specifically asked for lighting.

21 So, I guess what I'm trying to
22 say is I knew there would be a range of things
23 that would be looked at and my role in taking or
24 our role in taking on the leadership of that was
25 really to facilitate the engaging of the

1 consultant to help us do the work and to gather
2 the information and help put pen to paper and
3 putting the report back to council. It was not a
4 role where I would ultimately be held responsible
5 for all the recommendations within that report.

6 62 Q. Okay. Mr. Field, who was
7 on the project team and was working within
8 engineering services at the time, he's testified
9 before the inquiry that he described himself as a
10 stakeholder in this process. How would you view
11 the allocation of responsibility as between
12 engineering services and your team on this
13 project?

14 A. Initially when we started
15 the work, when we were -- I suppose if you're
16 asking about the engagement of the consultant, we
17 had no pre -- I had no presupposed disposition on
18 what the answers might be. That was the purpose
19 of engaging CIMA. Ultimately they came with a set
20 of recommendations that crossed over divisional,
21 I'll say divisional, lines within our Public Works
22 group, but I had no sort of preconceived notion of
23 how that might turn out.

24 63 Q. Okay. But the motion did
25 call specifically to upgrade lighting?

1 A. Certainly. Sorry, it
2 called for us to investigate the upgrading of
3 lighting.

4 64 Q. Right.

5 A. I'm not a lighting
6 expert, but upgrading, to me at the time I
7 wouldn't have had a clear understanding of what
8 that meant by upgrading. That would have been
9 what Mike or Gary's group would have had that,
10 sort of, conversation with the consultant.

11 65 Q. Yes, so that's what my
12 question was directed at. Did you see the
13 lighting group as being a stakeholder to your
14 group or did you see them in some other more
15 expansive role on this project?

16 A. I don't know what
17 stakeholder means. You would have to define that.
18 I would say everybody who worked within our
19 engineering services group or our Public Works
20 traffic engineering group or even our maintenance
21 group, depending on wherever the consultant felt
22 they needed information is where they would go.
23 We were all stakeholders in that process, not
24 specifically Mike.

25 66 Q. Were you're personally

1 involved in setting the scope of the project for
2 CIMA?

3 A. No.

4 67 Q. Did you attend any of the
5 meetings between CIMA and city staff in connection
6 with the 2013 report?

7 A. Not that I recall.

8 68 Q. Were you involved in the
9 day-to-day work of the city staff in engaging
10 CIMA?

11 A. No.

12 69 Q. Did someone keep you
13 informed as to the progress of the work that CIMA
14 was doing?

15 A. Casually I would have
16 conversations at times, I suppose, with Geoff
17 Lupton, sometimes Martin, but it was not a formal
18 process for keeping me informed that I believe,
19 that I recall.

20 70 Q. Okay. While CIMA was
21 doing its work on the project and before they
22 finalized their report, did anyone raise with you
23 any challenges around the issue of illumination?

24 A. Raise with me any
25 challenges around illumination? I don't recall

1 specifically, unless you have something that I
2 can't remember that you can point me to, but I
3 don't recall it.

4 71 Q. Okay. Is that to say you
5 can't remember either way or you --

6 A. I can't remember either
7 way, no.

8 72 Q. So, just to orient you to
9 time, this project is going forward really between
10 January and November of 2013. You said earlier
11 that at some point you became aware of some of the
12 issues around illumination or at least the initial
13 design on illumination?

14 A. Yes.

15 73 Q. Did your understanding of
16 the factors that were at play in respect of
17 illumination, did your understanding change over
18 time between January and November 2013?

19 A. I don't think it did. I
20 mean, I understood that the consultant would look
21 at the question of illumination as council put
22 forward and would come up with some direction,
23 operation, on that, but that was really Gary's
24 area of expertise within his group. I didn't
25 concern myself specifically with lighting.

1 74 Q. Okay. Do you recall
2 having any conversations with Mr. Moore about the
3 topic of illumination on the Red Hill in 2013,
4 before the report went back to the Public Works
5 Committee?

6 A. No, I don't recall.

7 75 Q. In 2013, had you seen any
8 documents, like environmental assessment reports
9 or design reports, that explained the limits
10 around lighting on the Red Hill?

11 A. No, I had not.

12 76 Q. Did Mr. Moore ever
13 explicitly tell you that the environmental
14 assessment process had prohibited the installation
15 of lighting on the mainline?

16 A. I will say this. I have
17 a recollection of him saying something like that.
18 I don't know when that was, though.

19 77 Q. Okay. I'm going to take
20 you through some documents, so if anything
21 triggers your memory about when you learned that,
22 let me know.

23 During the course of CIMA's
24 work, again, January to November 2013, did any of
25 your staff discuss with you whether CIMA should

1 consider friction testing on the Red Hill?

2 A. Not that I recall.

3 78 Q. What about the
4 application of high-friction pavement overlays?

5 A. They never discussed it
6 with me. I get -- paving and friction testing,
7 pavement conditions, pavement types, that's way
8 out of my area of knowledge and responsibility, so
9 questions regarding that would have been with the
10 engineering services group and I don't recall any
11 of my staff raising it with me there, no.

12 79 Q. Okay. And just on, sort
13 of, a more general level, moving away from this
14 report, when you say paving, pavement condition
15 and pavement types are out of your area and within
16 engineering services --

17 A. Yes.

18 80 Q. -- which division of
19 engineering services in particular?

20 A. I don't know. Maybe I
21 should just say they're under Gary's group. I
22 don't even recall that there was different groups
23 within engineering services. I guess there was
24 now that you say that, but I don't know which one
25 it would have been.

1 81 Q. Okay. And are there
2 individuals in particular who come to mind as
3 having that kind of expertise or, pardon me, that
4 kind of knowledge that you don't have?

5 A. Beyond Gary, I couldn't
6 say who within that group had that knowledge.

7 82 Q. Okay. Registrar, can you
8 close this out and go to page 21, paragraph 44, of
9 this document, please. Thank you.

10 So, in April of 2013, the City
11 of Hamilton, through Gary Moore, retained Golder,
12 an engineering firm, to evaluate the pavement
13 condition on the Red Hill five years after it
14 opened. It's called the five-year condition
15 evaluation. But were you familiar with Golder?

16 A. I mean, no. I had heard
17 of Golder, but I had no -- I've never worked with
18 them.

19 83 Q. Okay. And what about
20 Ludomir Uzarowski? He's a principal there.

21 A. Sorry, I apologize. I
22 had never heard of him until this inquiry.

23 84 Q. Okay. Did anyone tell
24 you in 2013 that the City of Hamilton had retained
25 Golder on this project?

1 A. No.

2 85 Q. Were there any policies
3 in place that encouraged city staff to advise one
4 another if there was a consultant retained on an
5 area of shared responsibility?

6 A. No policies in place that
7 I recall.

8 86 Q. Were there any policies
9 in place that required city staff, to your
10 knowledge, to share consultant reports on areas of
11 shared responsibility?

12 A. No policies that I'm
13 aware of.

14 87 Q. How would this type of
15 information here, the fact of Golder's retainer,
16 be shared within Public Works? In what format or
17 where?

18 A. I don't believe we had a
19 process for sharing that kind of information. I
20 don't want to guess. We didn't have a process
21 that I recall.

22 88 Q. Okay. And no repository
23 of reports that would be relevant to particular
24 assets, like the Red Hill?

25 A. No, not that I'm aware

1 of.

2 89 Q. Okay. Registrar, can you
3 close this down and go to page 48, paragraph 114
4 to 116, please.

5 So, Mr. Mater, I've jumped
6 forward a bit in time. We're now at
7 September 2013 and CIMA has produced a draft
8 report and provided it to David Ferguson, who has
9 recently joined the City under Martin White, just
10 in terms of orienting you to time?

11 A. Yes.

12 90 Q. And you'll see at
13 paragraph 114 that Mr. Ferguson forwarded a copy
14 of the current draft of the CIMA report, which had
15 not yet been finalized, to Councillor Collins and
16 he sent it, he said he invited Councillor Collins
17 to sit down with Mr. Ferguson and Mr. Cooper and
18 asked if he wanted a meeting. And then he
19 proceeded to schedule a meeting with three
20 councillors, Collins, Clark and Jackson, to
21 discuss the draft report.

22 Did you know before
23 Mr. Ferguson forwarded the draft report to
24 Councillor Collins that he intended to do so?

25 A. I don't know if I knew

1 that or not.

2 91 Q. Is this the kind of thing
3 you would expect someone to seek your approval on
4 before doing?

5 A. No. I expected staff
6 to -- I had encouraged them -- sorry. When I came
7 on in 2013, and I think Dave was new then, too, I
8 encouraged staff to try and work collaboratively
9 with both other staff members and with the public
10 and other members of -- and members of council.

11 So, yes, this particular, in
12 looking at this document here now that, you know,
13 the CIMA report touched on or the area of this
14 CIMA report that was concerned with within the
15 wards of those three councillors, so it didn't
16 strike me as out of the norm that they would do
17 this.

18 92 Q. Okay. Did you have any
19 concerns with staff sharing draft consultant
20 reports with councillors?

21 A. No. Again, in the spirit
22 of cooperation, at the end of the process of
23 trying to bring the best report and best solutions
24 we can forward to council for approval, so no, I
25 didn't really have any concerns.

1 93 Q. Okay. Did you have any
2 concerns with staff providing the draft report to
3 certain councillors but not all councillors or not
4 all members of Public Works?

5 A. No. I certainly didn't
6 at the time, no.

7 94 Q. Do you now?

8 A. No. I mean, looking at
9 the reasoning for this, as I said, with that being
10 the wards where that touched through, the logic is
11 consistent with what I would have expected at the
12 time and I still don't have any concerns with the
13 way this was done, no.

14 95 Q. Okay. Just jumping
15 forward, this report, once it was finalized, was
16 not appended to the staff report that eventually
17 went to the Public Works Committee. Given that
18 context, did you have any concerns about providing
19 the draft staff report to certain councillors?

20 A. No. It never raised any
21 concerns in my mind.

22 96 Q. Why not?

23 A. Why not? It just didn't.
24 I mean, this was the normal way we were trying to
25 do business. When I came on board, the traffic

1 engineering group was not always, in my opinion,
2 open to different solutions or new solutions at
3 the time. It was a little bit closed off and I
4 was trying to change the culture a bit where they
5 would work with people to find solutions, whether
6 that be members of council, the public, it could
7 be anyone, anyone who -- any, I'll use the word
8 stakeholder again, who had an interest in this,
9 and so no, I had no concerns with the way they did
10 it nor with the way it was reported to council.

11 The reports, while not
12 forwarded directly as part of this staff report,
13 were always available to all members of council if
14 they wanted to see them.

15 97 Q. Okay. Registrar, can you
16 close this call out and go to page 51, please, and
17 can you call out paragraph 126, please.

18 So, we're in September of
19 2013. The draft CIMA report has been circulated
20 amongst the project team and Mr. Cooper, who is on
21 the project team, wrote to Mr. Ferguson and to
22 Mr. White saying that he was speaking to Mike
23 Field and he said that Gary Moore saw the report
24 and was not pleased with the recommendations
25 provided by CIMA:

1 "Have either of you
2 spoken to him? Do you
3 know of anything in
4 particular that he does
5 not like or agree with?"

6 This eventually gets flipped
7 to you, but I'm just stopping here. Prior to
8 receiving word that Mr. Moore was not pleased with
9 the recommendations provided by CIMA, had you had
10 any discussion with Mr. Moore or learned in any
11 way that he was displeased?

12 A. Not that I recall.

13 98 Q. Can you close this out,
14 Registrar, and go to the next paragraph and call
15 it out, please.

16 So, Mr. White forwards the
17 message to Mr. Lupton and copies in Mr. Ferguson
18 and he says to Geoff:

19 "Gary has had a vested
20 interest in this from the
21 beginning and has
22 influenced it somewhat
23 already. Off the record,
24 I think he even spoke to
25 CIMA."

1 And this gets flipped to you.

2 Did you ever discuss Mr. White's statements in
3 this e-mail with him?

4 A. Not that I recall. We
5 may have had a conversation afterwards, but I
6 don't recall it specifically, no.

7 99 Q. Do you recall it
8 generally?

9 A. No. I just -- I was
10 shown this particular e-mail chain in our work
11 here in preparation for the inquiry, but I don't
12 recall if I -- I didn't put any, what's the word,
13 extra concern into this than I did in many other
14 instances. No, I had no recollection of having a
15 conversation about this with Martin.

16 100 Q. Okay. Did you believe at
17 the time that Gary had a vested interest in the
18 CIMA report?

19 A. Yes. Gary certainly
20 should have had an interest in the CIMA report in
21 as much that lighting and roadway design and
22 pavement conditions and all that were his areas of
23 responsibility. So, if CIMA had provided
24 recommendations within those areas, I would have
25 expected him to deal with those recommendations.

1 101 Q. Okay. Mr. White also
2 says:

3 "He -- "

4 Referencing Mr. Moore:

5 " -- was on the original
6 team that built the
7 roadway."

8 Did you perceive that
9 Mr. Moore had a vested interest given his
10 connection to the original design of the roadway?

11 A. Well, I don't know what
12 you mean by vested interest. Gary certainly had
13 an interest in the freeway because, yes, he was
14 part of the original person or team that did the
15 design, and he should have had an interest in
16 CIMA's report because if they were going to
17 provide recommendations with respect to areas
18 under his responsibility. So, when I say he had a
19 vested interest, I say yes, but I mean that in a
20 positive way.

21 102 Q. Okay. Mr. White says:

22 "Off the record, I think
23 he even spoke to CIMA."

24 Did you have any concerns that
25 Mr. Moore had contacted CIMA, the consultant

1 retained to deal with the 2013 motion?

2 A. No, not at all.

3 103 Q. Why not?

4 A. Because, as I said, if
5 CIMA -- apparently at this point Gary has seen the
6 draft report and there are areas in there that are
7 under his area of jurisdiction. So, just like if
8 I had concerns with my area of traffic engineering
9 or operations and I took the onus as a director to
10 go and talk to CIMA, I would have the right to
11 do -- likewise Gary. They were his areas of
12 responsibility that ultimately he was going to be
13 responsible for in terms of delivering either the
14 solution or the information to council.

15 I want to re-emphasize. My
16 role in this was as a coordinator of the report,
17 not the owner of all the solutions. And so, if
18 Gary went to speak to CIMA on this, I had no issue
19 whatsoever with that.

20 104 Q. Okay. Put in a different
21 way, would you agree that there's no ownership in
22 a consultant retained by the City, that if it's a
23 City consultant, it's a City consultant, not one
24 division's consultant?

25 A. Well, yeah. That's

1 correct. I mean, somebody within the division or,
2 sorry, somebody within the organization, be it one
3 division or one section of a division, engaged a
4 consultant with an initial scope of work. That
5 consultant would be expected to see, A, if there
6 are any problems, and B, then to recommend
7 solutions around them. And those solutions could
8 cross divisional or departmental lines, and so
9 those results get spread out amongst that. I
10 don't know if that means no ownership, but...

11 105 Q. What I mean to say is
12 there's no possessiveness around an expert?

13 A. No, not in my --

14 106 Q. In best practice, is what
15 I mean?

16 A. Best practice, no.

17 107 Q. Mr. White says that he
18 deems this extremely sensitive, as I don't need
19 any nonsense related to our actions on Councillor
20 Collins' motion, so that's the motion to
21 investigate upgrading lighting.

22 Did you view the response to
23 this motion to be extremely sensitive?

24 A. No. At the time I know
25 that I didn't think that this, the topic itself,

1 was becoming sensitive, the Red Hill. You would
2 have to ask Martin what he means by this. I don't
3 really understand what he's saying.

4 108 Q. Okay. Well, my question,
5 really, I'm just using the words that he's used
6 but I'm asking you about your perception.

7 A. No, I didn't see this as
8 an extremely sensitive issue at the time.

9 109 Q. So, it wasn't politically
10 sensitive in your view?

11 A. It was getting that way
12 ultimately, but not -- it's hard to remember. I
13 don't know if it was, you know, 2013 that it
14 was -- this is the first study in the first area.
15 I don't remember it being extremely sensitive.
16 No, sorry, I don't.

17 110 Q. Okay. Can you close this
18 out, Registrar, and if you can go to the next
19 page, 52, and if you can pull out paragraph 129,
20 please.

21 So, this is when the chain
22 gets forwarded to you and you respond that they,
23 that's your staff, should talk to Gary and bring
24 in CIMA if needed, and Mr. Lupton responded that
25 he would do so.

1 What did you think talking to
2 Gary would accomplish?

3 A. I would have hoped it
4 would bring around a solution or resolution of
5 whatever concerns he had.

6 111 Q. Were you looking to build
7 consensus among the different divisions within
8 Public Works?

9 A. I mean, my approach to
10 this and all types of work where it crossed
11 divisional lines was act like professionals. You
12 can't get a solution if you just hide in your
13 office, so get together, talk, bring in the
14 consultant if you need to and let's find a
15 solution.

16 112 Q. How would bringing in the
17 consultant assist? What was that aspect of --

18 A. Well, the consultant was
19 the team that was providing the recommendations,
20 whatever they may be, so certainly they had to be
21 part of that conversation to bring understanding.
22 Could be to bring understanding to Gary, to bring
23 understanding to my group and vice versa with
24 them.

25 113 Q. When you say vice versa,

1 do you also mean that Mr. Moore could provide his
2 views to CIMA with a view of CIMA changing their
3 views?

4 A. No. He could provide his
5 views to CIMA. CIMA could then decide how to use
6 that information. Ultimately, the report is
7 theirs.

8 114 Q. Okay. Did you talk to
9 Mr. Moore yourself at this point?

10 A. Not that I recall.

11 115 Q. Did you expect Mr. Lupton
12 to follow up with you once he had spoken to
13 Mr. Moore?

14 A. No, not in particular.
15 What I wanted was the report, you know, to go
16 forward, but I didn't expect specifically that
17 Geoff would report back to me on this issue, no.

18 116 Q. Okay. Would you expect
19 that if the conversation didn't go well that he
20 would report back to you? Is that the kind of
21 thing you would want to know from your --

22 A. I'm saying that Geoff
23 would have likely shared with me if it didn't go
24 well. He may have shared with me if it did go
25 well. I'm just saying I don't recall having any

1 kind of conversation like that ever.

2 117 Q. Okay. Registrar, can you
3 close this down and go to the next page 52,
4 paragraph 131, please, right at the bottom. Thank
5 you, Mr. Registrar.

6 Okay. So, on September 2013,
7 Hamilton experienced heavy rainfall and there was
8 a back and forth about the accidents that occurred
9 during that rainfall. Do you remember that
10 rainfall?

11 A. Do I remember the
12 rainfall? No.

13 118 Q. No? You'll see that this
14 discussion that's been called out is amongst
15 people within operations --

16 A. That's correct.

17 119 Q. -- about the road being
18 very slippery, there was quite a few accidents
19 with cars slipping, and in this e-mail, which is
20 from a district supervisor:

21 "I feel it's a pavement
22 problem and speed
23 problem."

24 This eventually gets forwarded
25 to you as part of a chain. Do you remember the

1 e-mail discussions that this e-mail kicked off?

2 A. No, I don't. I remember
3 seeing this when we went through the review for
4 this inquiry again, but I don't remember if we had
5 any particular discussions about it, other than --
6 I don't remember the timing of this, is whether
7 we -- before we had engaged CIMA or after. This
8 is a different part of the freeway, so --

9 120 Q. Yes. So, this is
10 September 2013 and it's just very close in time to
11 the back and forth that you were having with
12 Mr. Moore being not pleased with the report, the
13 draft report. This is just within days of that.

14 A. Okay.

15 121 Q. You can close that out,
16 Registrar, and if you can call out -- actually, if
17 you can go to the next page and if you can call up
18 first paragraph 134.

19 So, Mr. White responds to a
20 request from the road operations staff to put up
21 slippery when wet signs across the mainline and
22 Mr. White says:

23 "This is an extraordinary
24 request. It should be
25 substantiated by a

1 collisions history."

2 Do you agree with that
3 position that Mr. White took, go get some
4 evidence?

5 A. Yes, I do.

6 122 Q. Do you want to close that
7 down, Registrar, and then if you can pull up 136.

8 So, by this point, Mr. Moore
9 has been looped in and you have also been looped
10 in, and Mr. Moore responds to an e-mail from one
11 of the road operations people about the pavement,
12 the type of pavement, which I'm not going to take
13 you to, but this is Mr. Moore's response. And he
14 says -- Registrar, if you can highlight the sixth
15 line:

16 "The surface course mix
17 is called SMA."

18 Before this point, were you
19 aware that the surface course on the Red Hill was
20 a particular kind of pavement called stone mastic
21 asphalt?

22 A. No.

23 123 Q. Thank you, Registrar.

24 You don't have to highlight further, but if you
25 can skip down to not the next sentence, but the

1 sentence after:

2 "There is no pavement
3 that provides grip..."

4 So, Mr. Moore says:

5 "There is no pavement
6 that provides grip when
7 the road is covered with
8 water and the speeds are
9 excessive."

10 And then you have some
11 parenthesis, hydroplaning. Given your background
12 from Mohawk College and with Stoney Creek and
13 other municipalities, you had some understanding
14 of the phenomena of hydroplaning. Is that right?

15 A. I understand what
16 hydroplaning is. I don't know if it had anything
17 to do with my background or not. Just from
18 driving, yeah, I know what it is.

19 124 Q. Okay. And did you have a
20 basic understanding of the physics of skid
21 resistance?

22 A. I would say yes and no.
23 I mean, the rougher the surface, likely
24 potentially the -- you know what? I'm going to
25 change that. No, I don't. I mean, I think that

1 that's the way it works, but I don't know
2 specifically. I don't have an engineering degree.
3 I don't know the, you know, engineering behind it.

4 125 Q. Okay. I think you were
5 saying the rougher the surface, and I think you
6 were going to say the more grippy it will be?

7 A. I was going to say that
8 and then I thought, well, I'm not sure because you
9 can have a rough surface like a gravel road, which
10 is very rough but I don't think has the same skid
11 resistance as a paved road. So, that's when I, in
12 midsentence, changed my thought to I don't
13 actually know.

14 126 Q. Okay. You understood at
15 the time that low friction or low skid resistance
16 could contribute to collisions?

17 A. Not specifically. I
18 mean, in any given collision, there are probably
19 literally hundreds of potential reasons for that
20 collision. You know, you could start with
21 pavement condition, I suppose, but you also have,
22 you know, condition of the car, condition of the
23 driver, condition of the brakes, condition of the
24 tires, the amount of rain we had within a given
25 period of time. I mean, there's just so many

1 variables, I guess, that no, I didn't have any
2 other sort of idea about pavement being more
3 important than one other thing.

4 127 Q. My question wasn't
5 whether it was more important, but in terms of the
6 number of factors that can be at play, you knew at
7 the time that low friction could be one of the
8 factors that could contribute to collisions?

9 A. Well, what I knew was
10 that when it's slippery or when it's wet, things
11 are slipperier and yes, those could be factors,
12 but I don't have any idea whether that had
13 anything to do with the pavement or not.

14 128 Q. Okay. Registrar, you can
15 take this down.

16 So, to orient you in time,
17 we're still in September. You just had the back
18 and forth with Mr. Lupton about Mr. Moore being
19 displeased about the CIMA sort. At this point,
20 had you reviewed a draft of the CIMA report?

21 A. I couldn't say for sure.
22 I may or may not have. I don't remember.

23 129 Q. Okay. Had anyone amongst
24 your staff told you that the draft CIMA report
25 included a recommendation for friction testing?

1 A. Not specifically. I
2 guess if it was included in the draft report, I
3 would have seen that, but not specifically.

4 130 Q. Okay.

5 A. Again, it's not that I
6 wasn't paying attention to it, but friction
7 testing was not part of my area of responsibility
8 either at any point in time and if something
9 needed to happen with respect to friction testing,
10 I trusted and had good faith in what Gary and
11 Gary's group was doing, that they would be taking
12 care of that.

13 131 Q. Okay. So, turning to
14 something that was part of your group's
15 responsibility, did you ask Mr. Lupton or
16 Mr. White or Mr. Ferguson about CIMA's findings as
17 they related to wet weather conditions, given the
18 September rain storms?

19 A. No, I didn't specifically
20 ask them, that I recall.

21 132 Q. Okay. Do you recall
22 seeing a collision history review, the one that
23 Mr. White suggested would be appropriate in
24 response to the suggestion to install slippery
25 when wet signs?

1 A. I don't recall seeing it.
2 I want to put that in some context, too, if I
3 could. I mean, I had the three other divisions as
4 part of my areas of responsibility, so my time on
5 any given project was minimal and more an
6 oversight role than looking at details. I just
7 was not -- the structure was not arranged in such
8 a way that I could afford to spend time looking at
9 details of consultant reports. Most of my time,
10 you know, would be spent in review of reports to
11 council and things like that.

12 133 Q. Okay. Registrar, can you
13 call up page 58 of OD 6, please, and if you can
14 call out Mr. White's e-mail at paragraph 147.
15 Just the e-mail, please.

16 So, five lines up from the
17 bottom, Mr. White says:

18 "Also installing the
19 signs throughout the
20 entire system -- "

21 Sorry, just stopping there,
22 this is the potential of installing slippery when
23 wet signs:

24 " -- may perhaps be
25 construed as an admission

1 that the roadway surface
2 is systemically
3 unacceptable. Road staff
4 have been commenting that
5 erecting the signs will
6 reduce our liability.
7 I'm not certain that's
8 actually true and wonder
9 if we actually have
10 claims relevant to road
11 conditions."

12 And copies in John McLennan
13 from risk, stopping there, you know John McLennan?

14 A. Yes.

15 134 Q. In fact, in your role,
16 you had to deal with risk management issues?

17 A. Occasionally.

18 135 Q. And you interacted with
19 John in dealing with litigation that involved your
20 group?

21 A. I had very little
22 interaction with John in a professional way
23 regarding litigation. I honestly can't remember
24 any specific instance where I did.

25 136 Q. Okay.

1 A. Not to say I didn't, but
2 I just don't recall it.

3 137 Q. Okay. Turning to the
4 e-mail or, pardon me, the highlighted section here
5 where Mr. White says:

6 "Installing signs could
7 be construed as an
8 admission."

9 If a collision review or a
10 claims history review had demonstrated there was a
11 collision pattern, what's your view about how your
12 staff should approach installing countermeasures
13 to address that collision history or claims
14 history?

15 A. My position would be
16 if -- so, first of all, I really don't understand
17 what Martin is saying here. You would have to ask
18 him. But in terms of if there was a problem on a
19 roadway that was identified and there was a
20 technical solution for it that we had, I would
21 expect us to go ahead and do that.

22 138 Q. You would expect that
23 your staff wouldn't shy away from taking safety
24 improvements because of a potential concern about
25 liability?

1 A. Let me say in my
2 experience as a traffic guy between, you know,
3 1988 and 2000, that thought never crossed my mind.
4 If we had a situation that required signing, I
5 mean, that's what warning signs are. The manual,
6 when I was a traffic guy, provided guidelines and
7 recommendations as to when and where you should
8 put those signs, so you will see slippery when wet
9 signs and curve warning signs and dead end signs
10 and all of the curve warning signs all over the
11 roadways. None of that, in my view, is an
12 admission of an inferior roadway.

13 139 Q. No. I mean, it might be
14 an admission that the road is slippery when wet.
15 Is that fair to say? That's what the sign is
16 trying to indicate?

17 A. That's what it's trying
18 to say, but again, all roads are slippery when
19 wet.

20 140 Q. Right.

21 A. It could be the manual
22 has criteria as to when and where those signs
23 should go.

24 141 Q. Okay. And you would
25 expect that before installing signs, that there

1 are would be some evidentiary basis for the
2 installation, either from the manual or from a
3 collision history or from a claims history?

4 A. There would be some basis
5 for installing whatever signages we put in, yes.

6 142 Q. Okay. So, eventually
7 Mr. McLennan reports to the group that there is no
8 significant claims history on the Red Hill and
9 Mr. White has already said he's going to do a
10 collision history review.

11 Registrar, if you can take
12 this down and bring up page 60 and call out 151,
13 please.

14 So, at the end of all this
15 back and forth about the slippery when wet signs,
16 doing a collision history, that there's no claims
17 history, Mr. Moore responds to Mr. McLennan,
18 Mr. White, Mr. Shynal, Mr. Lupton, and you and
19 says:

20 "As part of the ongoing
21 pavement monitoring for
22 asset management
23 purposes, we will have
24 skid resistance testing
25 completed on both the

1 LINC and Red Hill. There
2 is a standard by which we
3 can report on the
4 relative level of
5 resistance and by when we
6 can gauge the performance
7 of each mix and road
8 surface. This should be
9 sufficient for any due
10 diligence required
11 eliminating the 'ought to
12 have knowns.'

13 And Mr. McLennan has said:

14 "Lawyers love to say you
15 ought to have known."

16 Do you recall receiving this
17 notice that Mr. Moore's group was going to do skid
18 resistance testing?

19 A. I don't recall receiving
20 it at the time, no.

21 143 Q. If you had received it,
22 would you have paid it any mind?

23 A. I don't think so. Again,
24 I don't know where Martin is getting this
25 information, so I don't want to assume. But

1 clearly he had to have been talking to Gary or
2 somebody --

3 144 Q. Sorry to interrupt you.

4 This is Mr. Moore writing to all of you.

5 A. This is Mr. Moore?

6 145 Q. Yeah.

7 A. Sorry. No, I don't --
8 so, ask me the question again. I forgot my train
9 of thought. Sorry.

10 146 Q. That's fine. I
11 interrupted you. My question was: When you did
12 receive this, would you have paid this notice?
13 That Mr. Moore's group was going to do skid
14 resistance testing, would you have paid it any
15 mind?

16 A. No. Nothing out of the
17 ordinary. I mean, again, this was Gary's area of
18 work. I trusted he was doing -- I trusted Gary,
19 let's put it that way, and that he would have been
20 doing what he needed to do. And particularly in
21 this message, he says we're taking care of it, so
22 no, I wouldn't have had any issues. I wouldn't
23 have --

24 147 Q. Okay. Would you have
25 expected Mr. Moore to provide an update once the

1 skid resistance testing had been completed?

2 A. An update to me?

3 148 Q. Yes.

4 A. No.

5 149 Q. Why not?

6 A. It wasn't my area of

7 responsibility. I couldn't -- even if he showed

8 me the skid testing results, I wouldn't understand

9 them. So, no, I had no expectation that this

10 would be shared with me.

11 150 Q. Okay. So, Mr. White is

12 going to get a collision history review done

13 because road operations has said they're concerned

14 and they want slippery when wet signs up.

15 In your view, would it have

16 been helpful to have confirmation about whether

17 skid resistance was a factor that your group

18 should look at?

19 A. We would depend on Gary's

20 group to provide us that information. If it was

21 pertinent or not, it would be their decision.

22 151 Q. Right. My question is:

23 Don't you think it would be pertinent to know that

24 information?

25 A. Again, it depends. I'm

1 depending on the expertise of Gary and his group
2 and I trusted them, and if they said there's
3 nothing to worry about, I wouldn't. I mean, he
4 designed every other road in the City and I
5 just -- it didn't raise its head as being out of
6 the norm for me, no.

7 152 Q. Okay. So, my question
8 was not about whether it raised your concern or
9 whether it was out of the norm. It was really --
10 I'm going to use your words. If Gary said nothing
11 to worry about in response to this e-mail, we've
12 done skid resistance testing and there's nothing
13 to worry about, do you think that information
14 would be helpful to your team?

15 A. Yes. Whatever the
16 information was would be helpful. There's no
17 question about that. But I would leave it to
18 Gary's discretion to provide that.

19 153 Q. Why would you leave it to
20 Gary's discretion to provide that if you agreed it
21 would be helpful to your team?

22 A. That's his area of
23 responsibility.

24 154 Q. Which would have an
25 educational value for your team?

1 A. I said yes. Yes.

2 155 Q. Okay. Turning now to the
3 report that eventually goes to the Public Works
4 Committee meeting in November of 2013, the staff
5 report that is in response to Councillor Collins'
6 motion.

7 A. Yeah.

8 156 Q. Registrar, can you bring
9 up RHV668, please.

10 So, this is an information
11 report and it is prepared by Stephen Cooper and
12 David Ferguson and it's submitted by Gerry Davis.
13 So, starting with the title at the top, we're
14 going to come to some examples of recommendation
15 reports later. In your view, what are the
16 differences between an information report and a
17 recommendation report?

18 A. So, a recommendation
19 report would have the highest priority, I guess,
20 in terms of what council deals with. We would
21 take a recommendation report if we needed council
22 direction or funding. We had to have council take
23 some action to allow us to do the work, we would
24 take a recommendation report.

25 An information report would be

1 just exactly what that says, just providing
2 information to council. We didn't need them to
3 take any action or do any -- give us any further
4 guidance. We were just providing them with
5 information.

6 157 Q. Okay. Registrar, can you
7 go to the third image of this document.

8 So, this staff report pulls
9 from the recommendations from the CIMA report, and
10 I'm showing you this in particular just because
11 it's the same colour format as the CIMA report.
12 Did you review the CIMA report as the staff report
13 was being drafted?

14 A. No. I would have likely
15 confined myself to the staff report. I may have
16 skimmed through, but to say I reviewed it in
17 detail, no.

18 158 Q. Okay. Because you have
19 Mr. Ferguson, Mr. Cooper, Mr. White and
20 Mr. Lupton --

21 A. There's four people ahead
22 of me who should be reviewing the details of this,
23 at least.

24 159 Q. So, here, what I'm
25 showing you now is the recommendations that CIMA

1 made about the study area as a whole?

2 A. Yes.

3 160 Q. And there's a bunch of
4 costs here?

5 A. Yeah.

6 161 Q. And so, where there's
7 costing, how does that relate to whether you're
8 going to be seeking an information report or a
9 recommendation report, if it does?

10 A. It just would depend on
11 whether or not we had budget to do this.

12 162 Q. Okay. I understand --

13 A. A lot of this is signage,
14 lane markings, that kind of thing. I don't recall
15 what PRPM is.

16 163 Q. Cat's eyes.

17 A. Oh, cat's eyes, yes.

18 Most of this, as I look at this list, would have
19 been within the purview of our division to do,
20 with the exception of the friction testing. That
21 would have been Gary's and I assume he would have
22 had \$10,000 somewhere. He wouldn't go to council
23 and ask for that. So, that's why all of these
24 things could go forward as part of an information
25 report. We didn't need council's approval to do

1 things that frankly we were already charged with
2 doing as staff. That's what the traffic
3 operations and engineering group's role is, in
4 large part, is to, you know, review any given
5 piece of roadway and, if it needs signs, markings,
6 whatever that is, do it. We have already the
7 authority to do that.

8 And, as well, as a practice, I
9 would never, as much as possible, ever take a
10 recommendation report to council if we already had
11 authority and responsibility for doing it.

12 164 Q. Okay.

13 A. Because it could cause
14 conflict. If for whatever crazy reason they said
15 no, don't, I already have authority to do and they
16 say don't, you don't want to end up in that
17 position. So, it was very clear to me if we had
18 authority already, we didn't need to take a
19 recommendation report.

20 165 Q. Okay. Also on the flip
21 side of what you just said, an information report
22 means that the staff retain discretion about what
23 they're going to do and what they're not going to
24 do. Right?

25 A. It could, yes. That's

1 true.

2 166 Q. Whereas a recommendation
3 report, then council is directing your team to do
4 something?

5 A. A recommendation report,
6 you have specific direction from council to do a
7 specific thing or things.

8 167 Q. Okay. Registrar, can you
9 go up to image 2.

10 Mr. Mater, this is relatively
11 short. I hope you had a chance to review it
12 recently. If you would like me to scroll up or
13 down, just let me know. So, this is a report, and
14 I took you to that first page, that Gerry Davis
15 signed off on. You would have reviewed this
16 before it went to Mr. Davis. Is that right?

17 A. I believe so, yes, unless
18 for some reason I wasn't around, but yes.
19 Generally that's the process.

20 168 Q. Okay. And you would
21 expect that the report, once it came to you
22 through the four other people who looked at it,
23 that it would be an accurate reflection of a
24 consultant report?

25 A. Yes. Not word for word,

1 but, I mean, staff has the, I think, the
2 responsibility to look at the consultant report
3 and put it in the context of what we can do, when
4 we can do it, in context of other projects that
5 might be going on, input we had from other parties
6 on this same subject. It may have been members of
7 the public, you know, and their own general
8 knowledge. You end up with a report that goes to
9 council.

10 Yes, generally speaking, I'm
11 not quite sure what you're getting at in terms of
12 accurate. It's not verbatim, but it is accurate,
13 is my --

14 169 Q. Sure. It needs to
15 reflect what the consultant's recommendations were
16 in their report?

17 A. In most instances, yes.
18 I suppose there could be a situation where staff
19 just did not agree with what a consultant put
20 forward, and they would put that in front of
21 council, I would say. But I don't know that's the
22 case. I don't think that's the case here.

23 170 Q. Sure. So, maybe my term
24 accurate --

25 A. It's one of those "it

1 depends" kind of answers. And I know that sounds
2 weasly, but that's the truth. It depends.

3 171 Q. Well, why don't we just
4 break out what I mean by accurate. Certainly you
5 agree with me that staff can't misrepresent what a
6 consultant said? If a consultant says
7 recommendation A, staff can't say in the staff
8 report not A? Sorry, that --

9 A. They can, not A and
10 here's why.

11 172 Q. No, I mean to say --

12 A. If the consultant said
13 the grass is blue and then staff go, well, no, the
14 consultant said the grass is red --

15 173 Q. Right.

16 A. Yes. No, you can't do
17 that kind of thing.

18 174 Q. Okay. So, that's one
19 aspect of accuracy?

20 A. Yes.

21 175 Q. Another aspect of
22 accuracy, I'm going to suggest, is being
23 comprehensive, that staff should include all of
24 the recommendations that the consultant made?

25 A. That's another -- to me,

1 that's another it depends. If the consultant is
2 providing -- because, again, our staff have their
3 own knowledge, knowledge of budget, knowledge of
4 other projects that are going on, knowledge about
5 timing, whether or not certain aspects of the
6 project could be done more quickly than others,
7 things like that. So, it depends on those things,
8 in my opinion.

9 176 Q. Okay. I'm going to
10 suggest to you that staff need to include all of
11 the recommendations from the consultant, but that
12 they also need to include their analysis of the
13 things that you just mentioned, cost, other works,
14 feasibility, and that that's the value that the
15 staff bring to a staff report. Would you agree
16 with that?

17 A. Yes.

18 177 Q. In this case, the CIMA
19 report was not appended. We talked about that a
20 little earlier. In that case, do you agree that
21 the staff report needs to be both accurate, in
22 terms of not false, and also comprehensive, in
23 terms of what the consultant recommendations were?

24 A. Well, I believe that any
25 report, like you said, should be accurate and not

1 false and should be overall reflective of what the
2 consultant or provide information to council at
3 least as to what the consultant said, yes.

4 178 Q. Okay. And do staff have
5 discretion about whether or not to append a
6 consultant report?

7 A. In 2013, to the best of
8 my knowledge, there was no policy in place about
9 whether or not to append a staff report or, sorry,
10 a consultant report, and I believe that's the same
11 still. On a practical level, it's an untenable
12 situation to provide all consultants' reports to
13 members of council and, quite frankly, I think
14 we're not doing our job if we do that. I mean,
15 there are so many consultant reports from so many
16 different sources that if we just flipped them
17 over to council and said, read it, the value of
18 staff wouldn't be very much, so I think it's part
19 of our job to make that and have that discretion
20 and I don't believe that there was any policy in
21 place in 2013.

22 179 Q. Okay. And given that
23 staff discretion, who particular within staff gets
24 to exercise that discretion? Is it the project
25 management staff or is it someone more at your

1 level?

2 A. I would think that anyone
3 along the way could make the recommendation one
4 way or the other. Ultimately it's the decision of
5 the general manager, but anyone along the way can
6 make a recommendation for or against that.

7 180 Q. Okay.

8 A. You know, within my
9 division, it would have been me.

10 181 Q. Okay. Registrar, can you
11 close this and go back to OD 6, paragraph 62,
12 pardon me, page 62, paragraph 159, please. Thank
13 you.

14 Mr. Mater, can you read at
15 this font size paragraph 159 or do you want us to
16 call it out?

17 A. Just give me a second,
18 please.

19 182 Q. Sure.

20 A. Can you possibly take
21 page 63 and just make it big? I've read the
22 other --

23 183 Q. Sure. Great, let's blow
24 that out. Thank you. You don't have to review
25 all of it. I just wanted to make sure that you

1 could, but I'm actually going to ask you a
2 question about this.

3 So, you'll see at the top this
4 is Dave Ferguson in this e-mail exchange and he
5 says the report is going to propose a phased
6 approach, easy items first, and then by which to
7 be completed after one year. Did you understand
8 that there was going to be a phased approach in
9 respect of CIMA's recommendations?

10 A. I don't know if I
11 understood it or not at the time, but there had to
12 be a phased approach. We couldn't do everything
13 all at once.

14 184 Q. Okay. In particular, the
15 phased approach was going to be to hold off with
16 one of the recommendations about illumination on a
17 ramp for a year. Do you remember that?

18 A. No, I don't. Again, I
19 would not have -- I don't want to keep beating a
20 dead horse, but when it came to issues with
21 respect to illumination and pavement markings, I
22 would not have -- I would have left that to Gary's
23 group, the group that's responsible for it, to
24 make decisions around that and their decision
25 would end up in our report. They had to

1 substantiate it, they would have to live with it,
2 they would have to explain that to council, not
3 our traffic engineering guys. We are, again,
4 caretakers of this report, but in terms of whether
5 or not lighting went in, that was not something
6 that the traffic engineering group would venture
7 into.

8 185 Q. Okay. Registrar, can you
9 close this down and go back to 159, please.

10 So, you'll recall early this
11 morning there was -- you told Mr. Lupton to bring
12 Gary in and talk to Gary and bring CIMA in as
13 needed?

14 A. Yes.

15 186 Q. We're in October now and
16 Geoff Lupton is asking for confirmation from his
17 team about the actions and he says:

18 "I would like to get a
19 sense of this before we
20 arm wrestle Gary."

21 So, in October 2013, were you
22 aware what items Mr. Moore had took issue with in
23 the CIMA report?

24 A. No, I was not.

25 187 Q. Okay.

1 A. I don't think I was.

2 188 Q. Were you aware that
3 Mr. Lupton was going to go arm wrestle Mr. Moore
4 metaphorically?

5 A. I don't know, unless
6 there are some other e-mails in and around this
7 where I was copied, which I'm not seeing. You
8 know, I'm not sure what Geoff means by that. You
9 would have to ask him. I'm guessing that Geoff or
10 Mr. Lupton, Mr. White and Mr. Ferguson knew at
11 least what the recommendations from CIMA would be
12 and there must have been something in there that
13 they thought they needed to talk with Gary about,
14 but I don't know what that was.

15 189 Q. Okay. Mr. Moore was not
16 a member of the project team, neither was
17 Mr. White or Mr. Ferguson. What did you
18 understand Mr. Moore's role in the 2013 CIMA
19 project to be?

20 A. I don't know. I don't
21 believe there was a -- you can correct me if you
22 have other information, but I don't believe there
23 was a specific project team. We were leading this
24 in terms of, like I've said, getting pen to paper,
25 but we would accept anybody who had pertinent

1 information or responsibility as part of that
2 team. So, yes, I would expect Gary is to be part
3 of that and looking at -- whatever recommendations
4 came that were under his area of responsibility, I
5 would expect him to support or not support, not
6 the traffic engineering group.

7 There seems to be a theme here
8 that somehow I should have held Gary accountable
9 for those particular things, pavements. I had
10 nothing to do with it. I never did. Gary never
11 worked for me, other than that short period when I
12 was associate general manager. He never worked
13 for me, I never worked for him. I was slightly
14 higher in hierarchy than him as a senior director.
15 He was a director. But we did not travel in the
16 same circles, I guess, when it comes to that. He
17 had his areas of responsibility and so did I. It
18 was a big organization with lots to do, so I
19 didn't step over in there and say, Gary, why
20 didn't you do this? Because that's not my role.

21 190 Q. So, my question was
22 specifically: What did you understand his areas
23 of responsibility to be? And I mean Mr. Moore
24 personally.

25 A. His area of

1 responsibility was to deal with things on this
2 particular report that were under his area of
3 control, specifically as we're talking about this,
4 lighting and pavement, guide rail, things like
5 that. Those were engineering things.

6 191 Q. Okay. Registrar, can you
7 close this down and go to page 63, please, and if
8 you can go to 160.

9 So, the initial draft of the
10 report that eventually went to council in November
11 was -- the initial draft was ten pages long and it
12 eventually got shortened down to two or three
13 pages. Did you review the ten-page draft before
14 it got reduced in size?

15 A. Sorry, I'm not sure I did
16 or I didn't. I think this is the report, and I
17 don't know if you have it somewhere you can show
18 me the draft, but I think this is the report where
19 Dave initially drafted it saying things like,
20 traffic engineering group will do this, and there
21 was a bunch of things, engineering services group
22 will do this, and there was a bunch of things --

23 192 Q. Yeah.

24 A. -- and traffic
25 maintenance group will do this.

1 193 Q. That's later. That is
2 2015. This is different, but I can show you it
3 just so that you can see it.

4 Registrar, if you can bring up
5 HAM454, please, and if you can put up two pages
6 side by side, the next page.

7 So, you'll see it's at the top
8 page 2 out of 10. It's a ten-page document.

9 A. This is a draft?

10 194 Q. This is a draft that
11 Mr. Cooper and Mr. Ferguson put together.

12 A. I honestly have no
13 recollection of seeing this in draft or the final.
14 I mean, it's here obviously, but what I don't
15 remember the process as to how it got from ten to
16 two.

17 195 Q. Okay.

18 A. Sorry, how many pages did
19 you say it ended up being?

20 196 Q. Ten, it's ten pages.
21 Sorry, it ended up being two pages plus
22 appendices.

23 A. Okay.

24 197 Q. Can you go back,
25 Registrar, to page 63, paragraph 161. Sorry, I

1 misspoke. 162, please.

2 So, the reason that I'm asking
3 whether you reviewed it is because Mr. White
4 advised his staff that there was a rush revision
5 from John and Geoff for us to make today and the
6 approach was changing it to an info report, not a
7 recommendation report. I'm not sure if that
8 assists with refreshing your memory about any
9 suggestions you made at all to the 10 page draft.

10 A. It does not specifically,
11 but, you know, I would have to read the ten-pager
12 and then see what we came to with the two. I
13 don't recall that today sitting here. Again, if
14 we already had -- and I think we did -- authority
15 to do many of these things, if not all of them,
16 then we didn't need a recommendation report with
17 all that particular background information. I
18 wouldn't send the report, again, like I said,
19 where we already had authority to do things.

20 198 Q. Okay. Is ultimately the
21 decision about an information report versus a
22 recommendation report yours to make?

23 A. Ultimately it would be
24 the general manager, but within the division, yes,
25 it would be mine.

1 199 Q. Okay. Registrar, can --

2 A. And that decision would
3 be based on perhaps my own reading of the reports
4 and/or recommendations from Geoff or Martin as
5 directors and managers in the group.

6 200 Q. Okay. Registrar, can you
7 close this out and go to 63 and 64. Pardon me, 64
8 and 65. I think you have -- no, sorry. I'm
9 sorry, I'm confusing you, Registrar. I meant
10 page 64 and 65. Yes, thank you.

11 So, you'll see on page 64 that
12 Mr. Lupton sends some instructions to Mr. White
13 and Mr. Ferguson after he says there's this rush
14 revision coming. And on the bottom of page 64 and
15 the top of page 65, it's two little i's.

16 Registrar, can you call out
17 number 4, here what staff are doing on the bottom
18 of page 64 and then the paragraph at the top of
19 page 65. Yes.

20 So, this is about timing. And
21 then Mr. Lupton says:

22 "Did Gary agree to the
23 frictionless piece? If
24 not, take it out."

25 So, just to orient you, CIMA

1 has recommended friction testing in the study area
2 and Mr. Lupton has confirmed that here he means
3 did Gary agree to the friction testing piece or
4 the friction piece.

5 In your review leading up to
6 the staff report being finalized, were you of the
7 view that Mr. Moore could veto whether or not to
8 conduct friction testing?

9 A. I don't know if I would
10 say he had the right to veto friction testing, but
11 what he did have was the right and the authority,
12 in my opinion, to include or not include
13 information with respect to that in the report.
14 Again, we are the gatherers of the information,
15 but he would have to defend issues with respect to
16 friction testing.

17 201 Q. Okay. So, just so I can
18 understand that better, CIMA has recommended
19 friction testing and then that recommendation is
20 referenced in the staff report?

21 A. Yeah.

22 202 Q. Do you agree that the
23 staff report should reference CIMA's
24 recommendation?

25 A. Well, yes, and I think it

1 does in the listing of projects.

2 203 Q. It does. So, my question
3 here is: If Mr. Moore didn't want to do friction
4 testing, do you think it would have been
5 appropriate, as Mr. Lupton suggests here, if not,
6 take it out? There shouldn't be a reference to
7 friction testing in the staff report if Mr. Moore
8 didn't want that in?

9 A. Honestly, this is a
10 question that I only -- I think Gary's responsible
11 for anything with respect to friction in this
12 report. Should he take it out based on what Geoff
13 is saying? I don't know. I don't understand what
14 Geoff is saying here exactly. I guess -- I don't
15 want to guess what he's saying, but I would say it
16 should be included and at the end of the day it
17 was included. So, whether Gary -- I don't know
18 what mechanics happened in there that Gary agreed
19 or didn't agree to that.

20 204 Q. Okay. So, your view is
21 that --

22 A. He didn't put it in at
23 the end of the day.

24 205 Q. Your view is that if a
25 consultant makes a recommendation, it should be in

1 the staff report even if staff ultimately don't
2 think that it should be done and are recommending
3 it?

4 A. Well, if staff has some
5 valid reason and says we can't do that because
6 it's unsafe, or the consultant is off-base on it,
7 but hopefully during your back and forth with your
8 consultants you revise those kinds of issues, so
9 you may see something the consultant is not aware
10 of. The consultant may recommend something and
11 you say that's an environmentally sensitive area
12 so we can't do it, oh, we didn't know that. I
13 don't know. It's specific and depends on each
14 individual situation, but I agree if they made a
15 recommendation that makes sense and we all
16 ultimately agree that it did, we put it in the
17 report as an action item.

18 206 Q. Okay. Registrar, can you
19 close this out and bring up RHV668, please.

20 We went to this before. This
21 is the information report that ultimately goes to
22 council and this is the entirety of the drafting
23 and then there's appendices.

24 Did Mr. Lupton or Mr. Ferguson
25 raise with you that there was nothing in the CIMA

1 report that was responsive to the suggestion to do
2 full illumination on the Red Hill?

3 A. Not that I recall.

4 207 Q. Okay. Registrar, can you
5 pull out the third from the bottom paragraph on
6 image 2.

7 So, I can direct you to the
8 lighting issues. So, the consultant report did
9 recommend that lighting be installed on the
10 westbound Mud Street ramp?

11 A. Yes.

12 208 Q. And there's a reference
13 to the original report approved by council that
14 roadway lighting was not recommend as a result of
15 environmental concerns?

16 So, by this point, had you had
17 any discussions with Mr. Moore about the initial
18 design of lighting on the Red Hill?

19 A. I don't think I would
20 have had any discussions with him. It's not like
21 I said at some point I became aware of the
22 limitations on lighting as a result of the
23 original approvals and, as I had said to you
24 earlier this morning, I have a recollection of
25 Gary telling me something like that. I just don't

1 know the timing of when he said it. It had to be
2 before this.

3 209 Q. Okay. Can you close
4 that --

5 A. Or we wouldn't have had
6 this information in this report.

7 210 Q. Well, you're staff had
8 the information in the report. I was asking more
9 specifically about you and discussions that you
10 and Mr. Moore had had.

11 A. No. I never really
12 talked -- like I say, Gary, we may have had that
13 conversation at some point. I have a vague
14 recollection of him telling me about the lighting
15 could not go because of what was -- but it never
16 really went beyond that. Lighting was Gary's area
17 of responsibility, so I trusted that he knew what
18 he was doing when it came to that. I mean, I
19 think this paragraph reflects that accurately. I
20 don't understand -- we told council they
21 recommended it. I mean, council can ask for
22 anything. They can ask us, they can ask the
23 consultant, but that doesn't mean that the
24 consultant will necessarily agree or support that
25 ask. I mean, that's part of what we hire

1 consultants for. Right?

2 211 Q. Okay.

3 A. Sorry, I'll stop. I just
4 don't understand the lighting question.

5 212 Q. Okay. Did any of your
6 staff advise you that CIMA had concluded earlier
7 in the work of its project that full illumination
8 was, in fact, warranted for the mainline?

9 A. Not that I recall, no.

10 213 Q. Registrar, can you call
11 out the second to last paragraph, please.

12 So, here, this is that phased
13 approach that Mr. Ferguson mentioned earlier that
14 I took you to. That is:

15 "Countermeasures be
16 implemented and monitored
17 prior to any further
18 consideration of the
19 installation of new
20 roadway lighting."

21 Did Mr. Lupton ever update you
22 about whether he had had discussions with
23 Mr. Moore about the talk to Gary and bring CIMA in
24 if needed, and if so, if it related to lighting?

25 A. No, he did not --

1 214 Q. He didn't update you?

2 A. (Non-verbal response).

3 215 Q. Okay. Can you close that
4 out, Registrar, and if you can pull out the middle
5 paragraph, "The consultant's report also
6 recommended."

7 Mr. Mater, if you look at the
8 last line, it says:

9 "Staff will also review
10 further countermeasures
11 such as friction testing
12 with construction
13 engineering."

14 And so, in this sentence,
15 construction engineering is Gary Moore's group.
16 Is that right?

17 A. That's correct.

18 216 Q. Engineering services?

19 A. Yeah.

20 217 Q. And so, staff, at the
21 beginning of that sentence, that's traffic
22 engineering staff. Is that right?

23 A. Where are we reading
24 here? Yes, I assume it does.

25 218 Q. Do you expect your staff

1 to review the potential countermeasure of friction
2 testing with Mr. Moore after this report was sent
3 to Public Works Committee?

4 A. No. I understand what --
5 I see this sentence. It looks like a bit of a
6 throwaway, but no, I would not have expected my
7 staff to hold Gary's staff accountable with
8 respect to friction testing.

9 219 Q. I wasn't saying holding
10 accountable. I said do you expect your staff
11 would review, just like it's worded here, that
12 countermeasure with construction engineering?

13 A. Not on a formal way, no.

14 220 Q. Did you discuss including
15 an explanation about friction testing in the
16 Public Works report, the staff report, with
17 Mr. Moore?

18 A. In this report with
19 Mr. Moore?

20 221 Q. Yeah. Did you have any
21 discussions before the staff report was filed with
22 Public Works with Mr. Moore?

23 A. I don't recall any, no.

24 222 Q. Okay. Registrar, can you
25 close this out and go to OD 6, page 70,

1 paragraph 177.

2 I think you had said earlier
3 that you didn't recall Mr. Lupton updating you and
4 this is not an e-mail that is sent to you, but
5 it's sent to Mr. White and Mr. Ferguson. He says:

6 "I've reviewed with Gary.
7 He's good but he suggests
8 we manage the final
9 version of the report."

10 Does that refresh your memory
11 about whether Mr. Lupton updated you about any
12 discussions with Mr. Moore?

13 A. Is this in reference to
14 that report we were just looking at?

15 223 Q. Yeah.

16 A. No, this doesn't. No.

17 224 Q. Okay. Mr. Lupton goes on
18 to say that Mr. Moore said it's not uncommon to
19 get an FOI for this type of thing:

20 "I'm not asking you to
21 change opinions, but to
22 soften and stage the
23 report, similar to what
24 we have done with our
25 info report."

1 In your view, what do you
2 think about managing, softening and staging a
3 consultant's report to reflect what staff has said
4 in a staff report?

5 A. I think it's reasonable
6 to go back and forth with the consultant to
7 discuss the report. I don't know about soften it
8 or staging it. I think what Geoff, I'm not going
9 to guess what he says, but what he does say, for
10 example, do this first and measure results, I'm
11 assuming from that that he's looking for the
12 consultant, to talk to the consultant, to try and
13 put the recommendations in an order that's doing.
14 I don't know. I'm just looking at this and saying
15 that's what possibly happens here. I don't see
16 any problem in sitting down with the consultant
17 and discussing what it should look like. At the
18 end of the day, CIMA or any other consultant is
19 responsible for what they put on paper and sign
20 out. So, how they are influenced, whether that be
21 staff or others or information they find on the
22 internet, I don't know, but ultimately they sign
23 that report and, you know, I would expect stand
24 behind it.

25 225 Q. Okay. Mr. Lupton reports

1 that Mr. Moore referenced getting on FOI for this
2 type of thing. Did you have any concern at the
3 time that members of the public could have access
4 to this staff report and see that it didn't fully
5 mirror the staff report?

6 A. Well, I don't know that
7 that's true. But I'll say I had no concerns about
8 members of the public seeing it, no.

9 226 Q. Okay.

10 A. You mean the CIMA report?

11 227 Q. Yeah.

12 A. No.

13 228 Q. That's how I interpret
14 what Mr. Lupton is saying here, is that if there's
15 an FOI, not asking to change opinions, but can we
16 soften and stage the report similar to what we
17 have done so that the CIMA report --

18 A. If the CIMA report said
19 do all these things and do them right now, clearly
20 that's where staff's input comes in and says we
21 can't do them right now. We need to put some
22 order to this. So, what can we do first and
23 measure? I think all they're trying to probably
24 do is to align that, ask CIMA, talk to CIMA in
25 that way and see if changes could or should be

1 made. Again, at the end of it all, though, CIMA
2 is going to print and they must sign off on their
3 report. I guess the short form is I don't have
4 any trouble with staff talking to the consultant
5 to try and convince them of their logic, but
6 ultimately it's the consultant's report that they
7 sign. We're not forcing anybody to sign something
8 they don't want to do.

9 229 Q. Okay. And my question
10 was really about FOIs and whether you had any
11 concern that a consultant's report might not
12 mirror exactly a staff report?

13 A. None. I mean, no, none.

14 230 Q. You can close that down,
15 Registrar. Did you attend the November 18, 2013
16 Public Works Committee meeting?

17 A. I don't recall if I did
18 or not, but it would be a matter of record if I
19 did.

20 231 Q. Is it a matter of record,
21 all of the staff who attend --

22 A. November 13, 2018?

23 232 Q. Yeah.

24 A. Sorry. Not 2018.

25 November 18, 2013.

1 233 Q. That's right.

2 A. Honestly, I have no
3 recollection if I -- I attended mostly all Public
4 Works Committee meetings if I was at work and if I
5 had -- even if I didn't have reports on the
6 agenda, I usually attended, so in all likelihood I
7 did. I just don't remember.

8 234 Q. Okay. Registrar, could
9 you bring up RHV961 and go to the second hour
10 entry minutes and just do a screenshot of that
11 video.

12 Mr. Mater, I'm going to bring
13 up a video taken of that Public Works meeting and
14 it shows where staff sit at the side of the
15 council room.

16 I had a question and I'm not
17 sure I got an answer to it. In your
18 understanding, do the staff who attend Public
19 Works Committee meetings, are those staff recorded
20 somewhere, the list of attendees?

21 A. I don't know, to tell you
22 the truth. I thought it would be part of the
23 clerk's minutes, but I'm not positive of that.

24 235 Q. Okay. So, there you go.
25 A familiar sight for you, I'm sorry.

1 A. Is this the meeting?

2 236 Q. This is the meeting.

3 This is that video, but I'm not going to play it.

4 So, we've identified a number of the people who
5 are sitting in the gallery. Can you take a look
6 for yourself there? I don't think you're there.

7 A. No. I don't see myself.

8 237 Q. Okay. And would you have
9 sat anywhere else if you were there?

10 A. I could have been in that
11 open spot that's between Rob Norman and -- I
12 forget the gentleman's name. He's retired now,
13 too. But if you're looking at it from the left, I
14 see in the front row Gord McGuire, Gerry Davis,
15 Geoff Lupton, Don Hall, I think that's
16 Dan McKinnon, Rob Norman and then the empty space.
17 So, looking at it, all three of my directors are
18 there, so it's likely I wasn't for some reason.

19 238 Q. Okay.

20 A. I could have been in
21 the -- you know --

22 239 Q. Okay. I wasn't sure. I
23 just wanted to double check that I hadn't --

24 A. Unless that guy with the
25 grey hair with his head down is me, but I think

1 it's Dan. He's better looking and thinner than I
2 am, so...

3 240 Q. Can you close this down,
4 Registrar.

5 So, at this meeting, the
6 Public Works Committee accepted the report that we
7 were just looking at and made a motion to keep the
8 issue of lighting on the outstanding business
9 list?

10 A. That's correct.

11 241 Q. Do you remember that?

12 A. I remember seeing --

13 242 Q. The outcome?

14 A. I remember seeing this
15 document about the, you know --

16 243 Q. Okay.

17 A. -- another motion, I
18 guess, if you will.

19 244 Q. All right. Registrar,
20 can you bring up HAM4336 and if you can scroll to
21 image 2, please. Actually, no. That's not
22 necessary.

23 So, this is the flipping of
24 e-mails that start with the OBL list?

25 A. Yes.

1 245 Q. And you'll see there at
2 the bottom Ms. Cameron has sent to Mr. Field,
3 Mr. Locs, Mr. McGuire and Mr. Moore the business
4 list items. Staff are directed to report back
5 respecting the lighting aspects of the outstanding
6 business list for list C, which is a reference to
7 the staff report?

8 A. Yes.

9 246 Q. And, Registrar, can you
10 pull out Mr. Moore's response.

11 So, you'll see this is an
12 e-mail on the same day copied to you?

13 A. Yeah.

14 247 Q. Also to Mr. Lupton and
15 Mr. White?

16 A. Yeah.

17 248 Q. And Mr. Moore says -- and
18 I'm going to do it this way first:

19 "What part of -- "

20 And then he has five points:

21 " -- did the committee
22 not get?"

23 A. Yeah.

24 249 Q. Do you remember receiving
25 this e-mail?

1 A. No, I don't. I have seen
2 it obviously as part of this process. The
3 previous screen where we looked at who was at the
4 meeting is illuminating because it looks like Gary
5 wasn't there, so --

6 250 Q. It does look that way.

7 A. -- if this conversation
8 came up -- and it looks like I wasn't there,
9 either, but if this conversation came up at
10 committee and he was there, he could have and I
11 think would have addressed it at committee. And I
12 don't know what Gord McGuire may or may not have
13 said at committee about it, because, again, I
14 wasn't there either.

15 So, this, to me, you can go
16 ahead and ask the question, I guess, with respect
17 to this.

18 251 Q. Okay.

19 A. I don't know what that
20 is, but...

21 252 Q. So, my first question is:
22 Were you surprised by the tone of this e-mail,
23 and, in particular, the phrasing of what part of
24 1, 2, 3, 4, 5 did the committee not get and the
25 references to the exclamation marks and the

1 multiple question marks?

2 A. No, I was not surprised.

3 253 Q. Why were you not

4 surprised?

5 A. You know, Gary often, in

6 my experience in dealing with Gary, his first

7 response would be kind of, I'll say, bombastic

8 like this, but he always came around, you know.

9 It was normal for me. I had known him and his way

10 of working for a long time, so it was not alarming

11 to me. Let's put it that way.

12 254 Q. Okay. So, he says under

13 number one:

14 "The road was approved

15 environmentally not only

16 without lighting, but

17 specifically not to have

18 it."

19 So, you've said a few times

20 that you learned over time about the original

21 design constraints and I think you said that you

22 knew that before the Public Works Committee

23 meeting. Was this the first time you had heard

24 that from Mr. Moore directly?

25 A. This?

1 255 Q. Yes.

2 A. I can't say. Like I
3 said, at some point I heard it from Gary. I don't
4 know if it was this. I doubt this is the first
5 time. I must have heard it from him I think prior
6 to that report going. It defies logic to say that
7 I didn't. I don't remember it, though.

8 256 Q. Okay. He goes on to
9 speak about some of the constraints and then also,
10 under number 5, "We can't afford it."

11 So, just stopping at that
12 point in terms of affordability, whose decision is
13 it to undertake projects that may be expensive?
14 Is it staff or is it council or is it some
15 combination?

16 A. If you need funding?

17 257 Q. Yeah.

18 A. You go to council.
19 Council sets up priorities for spending based on
20 their broad range of demands on them and I think
21 questions of affordability are questions for
22 council. My advice to my own staff would have
23 been don't worry about whether or not you can
24 afford it. That's council's cost, that's
25 council's decision. If they think it's

1 worthwhile, they will fund.

2 258 Q. Okay. He also says:
3 "That doesn't even begin
4 to address the fact that
5 we shouldn't be talking
6 about potential
7 improvements that will
8 give any claimants more
9 ammunition."

10 I asked you earlier about
11 Mr. White's comments about safety improvements
12 potentially -- I'm going to use the language here,
13 providing ammunition to claimants. You gave your
14 answer about how you told your staff to approach
15 that issue, but what did you think about
16 Mr. Moore's raising the issue around potential
17 improvements?

18 A. I don't think I would
19 have given this any more thought than I am right
20 now and saying this is just Gary blowing off some
21 steam. And, you know, having understood how he
22 works and how the division and department worked
23 over a period of years, we'll get to an answer
24 here. Whether he likes it or anybody likes it or
25 not, if council is asked again to explore the

1 issue of lighting, we'll need to explore the issue
2 of lighting. We get direction and that direction,
3 if you go back to the last document we were
4 looking at here, that's why Diana has sent it to
5 him. Our guys attended the meeting so he's
6 looking and saying, why didn't you guys defend us?
7 It's not my job. It's not my guys' job to defend
8 his lighting problems.

9 259 Q. Okay. So, you said you
10 thought this was Gary blowing off steam?

11 A. Yes.

12 260 Q. Mr. Lupton used that
13 exact phrase when he testified earlier in this
14 process. Did you and Mr. Lupton talk about how to
15 best manage Mr. Moore blowing off steam in 2013?

16 A. I don't think we did, no.
17 I mean, again, in the context of everything else
18 that I had to do, this was just one more e-mail.
19 Like, I got lots of e-mails from people who maybe
20 were blowing off steam or wanted to say something.
21 I mean, part of your role as a director, senior
22 director, was to, you know, listen to people.
23 Right? Whether they're from your own division or
24 others and let them say what they want, but that
25 doesn't mean I have to react in a way that's

1 panicky or immediate or even react at all. I
2 mean, it wasn't my first go around, I guess is
3 what I'm trying to say, so I didn't put any
4 particular --

5 261 Q. Okay.

6 A. -- importance on this at
7 all.

8 262 Q. I think you said this was
9 also something you experienced with Mr. Moore,
10 that he blows off steam --

11 A. Well, in this instance, I
12 think he was.

13 263 Q. Yeah. My question was:
14 Is this the only time or the first time you had
15 seen that or was this something you had
16 experienced with Mr. Moore -- I think you said
17 being bombastic, was your --

18 A. Did I say that?

19 264 Q. I think so.

20 A. That must have been
21 someone else. Gary was passionate about what he
22 does and proud of what he did and I think was
23 confident in his positions. And so, yes, he could
24 come across as loud that way, but again, for
25 myself, having been his equivalent or better in

1 terms of, sort of, rank, I hate using those kind
2 of terms, but I don't know what else to say, I
3 didn't assign any particular issue to Gary's
4 behaviour at all. It never struck me as out of
5 line. Let's put it that way.

6 265 Q. Okay.

7 A. He could be enthusiastic,
8 but I don't think that's bad. His enthusiasm
9 could sometimes travel over into what we see in
10 this e-mail.

11 266 Q. Not limited to 2013, did
12 you ever receive information or complaints from
13 any of your staff that they took a different view,
14 that they actually did find the way he interacted
15 with them around the Red Hill to be upsetting to
16 them?

17 A. Our staff interacted with
18 Gary and his staff on a pretty regular basis in
19 terms of dealing with roadway reconstruction and
20 then part of roadway reconstruction often
21 involved, you know, the traffic signals or other
22 traffic crossings, things like that, to be
23 included as part of the project or not, and so
24 there were times when they had differing views on
25 that and I would hear that from Martin at times,

1 like that. But, again, that was, in my opinion, a
2 normal way of doing business. I expected them --
3 there's always going to be some differing views on
4 projects, not just between traffic and
5 engineering, but within the other groups that I
6 had, too. That was sort of common. Every day
7 there was problems with our customer groups and
8 facilities, for instance, where they didn't agree.
9 But that was -- you know, you work it out. That's
10 part of what you do a professionals and that's
11 where I saw these issues with Gary's group, if you
12 will, being resolved and working that out. Our
13 guys were not that easy to get along with either
14 all the time.

15 267 Q. Okay. Thank you. I note
16 that it's 11:30 and I did say that we would take a
17 break. I'm sure you could use one, Mr. Mater.

18 Mr. Commissioner, is this is a
19 good time to take a break? It's 11:30.

20 JUSTICE WILTON-SIEGEL: Yes.
21 Let's take a 15-minute break and return at 11:45.

22 --- Recess taken at 11:31 a.m.

23 --- Upon resuming at 11:45 a.m.

24 MS. LAWRENCE: Commissioner,
25 may I proceed?

1 JUSTICE WILTON-SIEGEL: Yes,
2 please proceed.

3 BY MS. LAWRENCE:

4 268 Q. Thank you, Mr. Mater.

5 So, coming out of the public --

6 A. Sorry, Ms. Lawrence.

7 Could I just say something before I forget? I
8 wanted to say I appreciate you and the
9 Commissioner allowing me to change my day to today
10 and do this from home. It's been a wild couple of
11 weeks for me, so I appreciate that very much.

12 JUSTICE WILTON-SIEGEL: Yes,
13 I'm sure it has. No problem.

14 BY MS. LAWRENCE:

15 269 Q. Thank you. And, again,
16 in terms of our schedule, we're going to go until
17 1:00 when we take a lunch break for an hour and 15
18 minutes, but, again, if you need any breaks
19 between now and then, we can of course adjust our
20 time, so just let me know that. Okay?

21 A. I'm fine. I just wanted
22 to make sure I said thank you.

23 270 Q. So, we were talking about
24 the Public Works Committee meeting and the
25 outstanding business list that came after. Coming

1 out of the Public Works Committee meeting, there
2 were two recommendations that CIMA had made that
3 were set out in the appendix to that staff report,
4 one dealing with the high-friction pavement
5 application on ramp 6 and another friction
6 testing. Those two recommendations are set out in
7 the report. I'm not going to take you back to
8 them.

9 In your view, whose
10 responsibility was it to ensure that those
11 recommendations were implemented?

12 A. That would be with Gary's
13 group.

14 271 Q. And in terms of the
15 costing or the funding for those, which division
16 was responsible for obtaining any funding that
17 might be necessary to complete those?

18 A. Same answer. It would be
19 Gary's group. Gary's group would be responsible
20 for anything to do with that from obtaining
21 funding to approvals to whatever approvals might
22 be necessary, to doing the work itself.

23 272 Q. Okay.

24 A. Having the work done.
25 They wouldn't go out and do it.

1 273 Q. Right. To your
2 knowledge, did anyone within your group convey
3 those recommendations and the fact that they had
4 been in the CIMA report and the staff report to
5 Gary Moore's group?

6 A. I don't know that they
7 did or didn't.

8 274 Q. Okay. Would you have
9 expected them to have, you know, for example, come
10 up with a chart saying here is all the things that
11 we're doing, here is the things that are on your
12 plate?

13 A. No, I really wouldn't
14 have expected them to do that. I mean, Gary's
15 group was responsible for part of the work, my
16 group was responsible for part of the work. I
17 don't know if it was this report or the next one,
18 but, you know, operations was responsible for part
19 of the work. So, as directors, my expectation was
20 that you would take care of what you're
21 responsible for. You know, it might have been
22 Gerry's expectation, but no chart that I recall
23 was ever done.

24 275 Q. Okay. And no discussion
25 about separating out the division responsibility

1 for the items that were in the staff report?

2 A. Not that I recall.

3 276 Q. Okay. And is that the
4 usual practice, that there's no sort of discussion
5 on when there's a big staff report like this about
6 who is actually taking lead on next steps?

7 A. I mean, at times it
8 depends. There could be. It depends on the
9 report and the complexity of it and there are
10 always issues that, kind of -- not always, but at
11 times there are issues that overlap amongst our
12 divisional lines, if you will, so then yes, there
13 would be conversations around that, if there
14 needed to be, but it's not, you know, as a
15 practice. It depends.

16 277 Q. Okay. I think more my
17 question was is there any practice to ensure that
18 nothing fell through gaps, to make sure that every
19 item was allocated to a particular division?

20 A. Well, we would have
21 ultimately the outstanding business list at
22 council would keep track of what was due to them
23 when it was a recommendation report, but in terms
24 of the information report, I don't know that there
25 was a formal process to track that. As a

1 director, I would track it within my own group,
2 what I was responsible for, and I would expect
3 other directors would do that with the areas that
4 they were responsible for. There was no formal
5 cross-referencing of that, if that's what you're
6 asking me.

7 278 Q. Okay. Thank you.

8 Registrar, could you bring up OD 6, page 125.

9 Mr. Mater, sometimes after we
10 go into our breakout rooms and come back, the Zoom
11 can be a bit different. Can you see that on the
12 screen?

13 A. Yes, it looks the same.

14 279 Q. Great. So, there was a
15 fatal crossover collision on the LINC in late
16 2014. Do you recall that accident?

17 A. On the LINC or the Red
18 Hill?

19 280 Q. On the LINC.

20 A. You know, I recall that
21 there was a collision, a fatal, but I don't recall
22 details of the accident, no.

23 281 Q. Okay. Registrar, can you
24 pull out call out 351, please.

25 So, this is an e-mail from a

1 collision analyst, Linda Juchniewicz, to Mr. White
2 and to Mr. Ferguson after that fatal collision on
3 the LINC. This is October of 2014 at this point
4 and she says:

5 "I have seen the
6 preliminary LINC
7 collision data and we may
8 have a legitimate
9 problem!"

10 And then she goes through:

11 "I'm a bit disturbed as I
12 was told this analysis
13 was -- "

14 Pardon me. I misspoke. It
15 was Mr. White who was replying responding to
16 Mr. Ferguson and copying Mr. Gallo. It wasn't the
17 collision analyst. So, he says.

18 "...we may have a
19 legitimate problem!"

20 And then about seven lines
21 down he says:

22 "Off the record, I'm a
23 bit disturbed as I was
24 told this analysis had
25 been run by Linda before

1 apparently (several years
2 ago) and the results were
3 the same on the old data
4 and yet nothing came of
5 it."

6 So, as I understand it, this
7 is about the LINC and not the Red Hill. And he
8 says:

9 "Let's get a technical
10 evaluation started
11 properly and run to its
12 conclusion. In-house
13 solution or roster
14 assignment..."

15 And he says:

16 "We can charge any/all of
17 this to the RLC..."

18 Is that the red light reserve?

19 A. Red light camera reserve,
20 I believe.

21 282 Q. Okay. You can close that
22 down, Registrar.

23 And then in 351, Mr. Lupton
24 replied saying:

25 "Once the facts are

1 gathered, let's meet to
2 review and discuss next
3 steps. Thank you."

4 Then he forwards this is
5 e-mail to you.

6 A. Mm-hmm.

7 283 Q. Do you recall receiving
8 this back and forth after the LINC collision and
9 noting that Mr. White was suggesting a technical
10 evaluation for the LINC?

11 A. I don't recall receiving
12 it, you know, in 2014. I just recall seeing it
13 from our review here now.

14 284 Q. Okay. Do you recall if,
15 at the time, your team was also considering a
16 similar technical evaluation on the Red Hill?

17 A. I don't recall. No, I
18 don't recall if they were or not.

19 285 Q. Okay. Registrar, can you
20 go to the next page, please.

21 So, to refresh your memory,
22 one of the things that came out of this fatal
23 crossover collision on the LINC was a renewed
24 discussion about barriers and having median
25 barriers. Do you remember the beginning of that

1 discussion?

2 A. I don't remember, but it
3 says I sent an e-mail to Gary Moore, so...

4 286 Q. It does. And this is an
5 e-mail that you sent. It's from a member of the
6 public to a councillor and then it gets flipped
7 and you suggest that you should have a discussion
8 with Mr. Moore to prepare a response. And
9 Mr. Moore responds at paragraph 357.

10 And, Registrar, can you call
11 that out.

12 So, he says that it would
13 require the existing curbs and the existing median
14 to be removed. It would also require the removal
15 and replacement of every overhead sign. And he
16 puts the rough budget at \$25 million to \$30
17 million. He also says:

18 "It would also require
19 special end treatments at
20 every overpass and would
21 have a significant impact
22 on maintenance."

23 He goes on to say:

24 "The current sign met all
25 warrants for the speed

1 limit. The problem is
2 enforcement, not design."

3 Do you remember having any
4 discussions with Mr. Moore about the potential to
5 install median barriers at this time, in 2014?

6 A. I don't know if it was in
7 2014, but at some point I remember talking with
8 Gary about this issue in, kind of, a general way
9 and his comment to me at the time was around
10 having to redesign for drainage and all of that
11 because it was designed in a way, I think like he
12 says here, the current design met all the warrants
13 for the speed limit at the time. I have a
14 recollection of having a consideration. I can't
15 point to exactly when that was.

16 287 Q. Okay.

17 A. But it was more about
18 drainage that he spoke to me rather than in
19 addition to this here.

20 288 Q. Okay. Well, barriers
21 will come up again, so if you, as we go through,
22 if you are reminded about when that conversation
23 occurred, just let me know.

24 Can you close this down,
25 Registrar, and if you can go to the next page.

1 Actually, 127 and 128. And if you can call out
2 paragraph 361.

3 So, now we're in November and
4 you e-mail Mr. Davis with others copied and you
5 say:

6 "As per our conversation,
7 staff has been reviewing
8 the collision history on
9 the Red Hill/LINC."

10 So, Mr. White had mentioned
11 before the legitimate problem he saw on the LINC
12 collision data. Had you had discussions with your
13 staff about Red Hill collision data review?

14 A. I don't remember them
15 specifically, but looking at this I would assume I
16 must have talked about, you know, what's going on.
17 I don't recall -- I recall there was a bunch of
18 media attention publicly and council kind of talk
19 about it, I don't know if necessarily at the
20 council table, but just sort of on ongoing theme
21 about looking at -- and I don't recall in relation
22 to, you know, the comments from operations,
23 whether that was before this or -- it's all kind
24 of jumbled in my head in terms of timing. But
25 yes, I mean, I would have had, by this point, a

1 picture in my mind that we probably should do an
2 overall review.

3 289 Q. Right. In fact, you say:
4 "There's enough of a
5 concern that I believe we
6 need to do a more
7 in-depth review."

8 Do you know at this point
9 whether the review would encompass both the Red
10 Hill and the LINC or just the LINC?

11 A. I'm looking at the title.
12 It says Red Hill and LINC, so I believe the
13 thinking was maybe both at this time, but I don't
14 recall for sure.

15 290 Q. Okay. Can you close this
16 down, Registrar, and go to -- pull up 362 and 363.

17 So, Mr. White e-mails
18 Mr. Ferguson saying:

19 "Did you and JM --."

20 Which I think is you:

21 " -- talk about this
22 today? Are we going to
23 go to the roster for a
24 solution? CIMA and what
25 about the cable idea?"

1 And Mr. Ferguson says it came
2 up. He mentioned that:
3 "Gerry brought it up and
4 told him to do
5 something."

6 And:
7 "His thought -- "
8 And I think this is reference
9 to you:
10 " -- is to have a review
11 completed and a
12 recommendation, not to
13 tie it specifically to
14 HTCs."

15 So, just stopping there, does
16 this refresh your memory about discussions with
17 Mr. Davis about the pressure to do something in
18 response to the LINC crossover collision?

19 A. I kind of remember having
20 a conversation with Gerry probably at my regular
21 meetings with him about this topic and it sounds
22 to me like something I would have -- normally in
23 this case I would say to Gerry something like I
24 think we should do further review, and he would
25 say go ahead and do. But I don't remember it

1 being for political reasons beyond what I, you
2 know, we had been asked by, I think it was
3 Councillor Jackson I read in the last meeting.
4 But, I mean, we get -- I wouldn't want to over
5 emphasize that. We get political questions all
6 the time. It's not that we ignore them, but it's
7 just part of the job, it's part of the business.
8 Yeah, sometimes the requests come from council,
9 sometimes they come from the public, sometimes
10 they come from all directions. Right? And so, I
11 think in this particular instance, given that
12 things seem to be kind of coming from all
13 directions at this time was part of the why we
14 were -- and, quite frankly, based on our own
15 review, we felt it should do something. It's not
16 like we were just waiting around to do, you know,
17 doing nothing. I don't know what HTC is. I think
18 high-tension cable is what he means.

19 291 Q. Just on that point,

20 Mr. White did say:

21 "I'm a little disturbed
22 that Linda did this
23 analysis and nothing came
24 of it."

25 So, just stopping at this

1 point, what was your understanding of the
2 proactive work of the traffic operations
3 department as it related to the Red Hill and the
4 LINC in 2014?

5 A. In 2014, I believe it was
6 as I said. We had done the work 2013, we had done
7 some of the -- I think by that time we were
8 starting some of the countermeasures and it would
9 have depended on seasonality in terms of paint and
10 cat's eyes markings and things like that. I can't
11 recall off the top of my head when they went down,
12 but we had started some of those things in terms
13 of being proactive on safety measures on things
14 like that and I think as time was going on and we
15 had the fatal collision that you just raised, the
16 idea here of having an additional safety review
17 done on the north-south portion and I think the
18 LINC as well was, I'll say, formulating in our
19 heads.

20 292 Q. Sure. So, my question
21 was probably not well worded. To your knowledge,
22 within the department, the traffic operations and
23 engineering, was there some routine monitoring of
24 collision history on the Red Hill and the LINC in
25 2014?

1 A. I don't recall if there
2 was a routine or a regular monitoring of that or
3 whether that was something that was started.
4 Martin's e-mail about work that was done before, I
5 don't know about that. It was before my time, I
6 assume, I believe.

7 293 Q. Were you aware that under
8 Hart Solomon there had been a more regular process
9 to take locations within the City that had a
10 collision history and proactively try to implement
11 countermeasures?

12 A. Only in a general way. I
13 knew that that's part of what they were doing when
14 Hart had it, yes.

15 294 Q. I understand that dropped
16 off as a task when Mr. Solomon retired. Is that
17 your understanding as well?

18 A. I believe so. I mean,
19 when Mr. Solomon retired, the traffic engineering
20 group was part of Gary's group, so I don't know
21 exactly the timing as to when that was
22 discontinued or was not, you know, going forward.

23 295 Q. Okay. By this point, in
24 November of 2014, when you have received
25 information from your staff about these collision

1 history reviews, were you aware if any friction
2 testing had been completed on the Red Hill in that
3 study area?

4 A. No, I wasn't aware.

5 296 Q. Registrar, can you go to
6 page 136 of this document, please.

7 So, I think you said earlier
8 that your team had started to implement some of
9 the countermeasures from the 2013 CIMA report and
10 one of those was reflective markers, the cat's
11 eyes?

12 A. Yes.

13 297 Q. And there was a bit of a
14 back and forth about how big the cuts in the
15 pavement needed to be in order to install those
16 cat's eyes?

17 A. Yes.

18 298 Q. And if you can call out
19 391 and 392, please.

20 So, here, Mr. Ferguson e-mails
21 Mr. Moore and he confirms:

22 "We need to not go below
23 the length of four feet
24 for the cut."

25 And Mr. Moore replies:

1 "Okay, but when the
2 pavement fails
3 prematurely because of
4 the cuts, I'll be asking
5 you to provide an
6 explanation about this
7 need for both the
8 reflectors and the cuts."

9 I'm going to close that down,
10 Registrar, and go to the next page, please.

11 You'll see at the top of that
12 page you say, "Just let it go." And was that
13 your -- why did you say just let it go on that
14 issue?

15 A. Honestly, because we had
16 direction from council to put in pavement -- or
17 not direction from council. That's wrong, I
18 think, because we took an information report. But
19 in my head, taking that information report to
20 council means we did have direction to do -- we
21 told them what we were going to do and we were
22 doing it.

23 299 Q. Okay.

24 A. It was just a little buzz
25 fight. I didn't really assign that and I think

1 that's reflected in my comment. Let it go, just
2 we're going to do it.

3 300 Q. All right. Registrar,
4 can you call out 396, please. Thank you.

5 So, this is Mr. White's
6 response to your e-mail?

7 A. Yeah.

8 301 Q. And he says:

9 "Has anyone told him --."

10 And I think here the reference
11 is to Mr. Moore:

12 " -- that we're doing the
13 LINC crossover study with
14 CIMA? He's going to
15 react when he finds out.
16 Traffic staff shouldn't
17 have to put up with his
18 reaction when he finds
19 out."

20 So, by this point, your team
21 has started the process of retaining CIMA to do a
22 collision crossover study on the LINC in
23 particular. Did you have reason to believe that
24 Mr. Moore would react badly to the idea of doing a
25 safety review on the LINC?

1 A. No. Other than what
2 Martin is telling me here, I did not, no.

3 302 Q. Mr. Martin goes on to
4 say:

5 "Malone, who is a
6 principal at CIMA, even
7 told me he's charging us
8 a bit extra due to Gary."

9 Had anyone on your staff
10 previously told you that CIMA would be charging
11 additional fees because of Mr. Moore's involvement
12 in a project?

13 A. No, he never did.

14 303 Q. Did your staff, up to
15 this time and before this time, did your staff
16 express concerns to you about working with
17 Mr. Moore's section on Red Hill matters or LINC
18 matters?

19 A. Like I said before, not
20 specifically that I recall Red Hill or LINC
21 matters, but just in general when they had --
22 sorry, I'm just reading that, too. Sorry. In
23 general when they had reason to deal with each
24 other, at times they had differing views and
25 differing opinions and sometimes our guys were

1 resistant. Sometimes it could be Gary's,
2 sometimes it could be both. But specifically with
3 respect to the Red Hill, I don't recall there
4 being conflict on that, other than Gary was, like
5 I said, always passionate about defending his
6 areas of responsibility.

7 304 Q. Did you view the Red Hill
8 as a whole part of his areas of responsibility
9 given his past experience with construction of the
10 Red Hill?

11 A. I think I would say it's
12 accurate to say that I would look at the Red Hill
13 and say there are aspects of it that are clearly
14 were part of his responsibility. Pavement design,
15 guide rail design, those kinds of things, that's
16 all part and parcel of the freeway design, but
17 then like any other project, somebody completes it
18 and it's handed over in a sense to the traffic
19 engineering group and it's your job to then sign,
20 put markings and signals if required, you know,
21 whatever overhead signs are required, things like
22 that. Those are the traffic engineering --
23 warning signs -- those are the traffic engineering
24 group's responsibility.

25 And further to that, there's

1 the maintenance aspect of it that is part of the
2 road operations group's responsibility. So, I
3 think I always looked at that corridor and there
4 are certain aspects of it that are, you know,
5 there's aspects of that road that are divided up.
6 It's no one person's complete responsibility. It
7 may be the way we wish it were, but we were not
8 structured that way.

9 305 Q. Okay. So, you said that
10 Gary was always passionate about defending his
11 areas of responsibility. You said he was always
12 that way. Did you notice in particular he was
13 passionate about defending his views on the Red
14 Hill?

15 A. Not in particular. He's
16 just -- I mean, it could be with respect to any
17 piece of work that they were doing. Like I say,
18 he was passionate about it, he was proud of it, he
19 was certainly willing to defend his role or his
20 positions within these projects. You know, Gary
21 had a style and I had a style and Martin has a
22 style and sometimes those things would conflict,
23 but generally I didn't have any -- I had no issue,
24 really, with the way he did it.

25 306 Q. Okay. I'm going to turn

1 now to 2015. Registrar, can you close this
2 document and bring up OD 7, in particular, page 5,
3 please.

4 While that's coming up --
5 thank you, Registrar, for moving so quickly -- in
6 May of 2015, there was a fatal crossover collision
7 on the Red Hill involving two young women?

8 A. Yes.

9 307 Q. Do you remember that
10 collision?

11 A. I certainly remember the
12 media and concern around it, yes.

13 308 Q. Okay. And it prompted
14 Councillor Conley to request that a safety study
15 be conducted on the Red Hill with particular
16 attention to median barriers. Do you remember
17 that?

18 A. I don't remember that
19 specifically, but I think there was lots of --
20 there was -- I think we were thinking -- we're
21 were thinking about it already at the time from
22 the 2014 period, I believe, if we're going back
23 there, but there was a lot of requests, I'll put
24 it that way, to look at what's going on on the Red
25 Hill after that collision. I just don't remember

1 councillors specifically. That's all.

2 309 Q. Sure. And I asked the
3 registrar to bring up this page. I actually meant
4 to bring up page 8, so hopefully that wasn't
5 confusing to you.

6 Registrar, can you bring up
7 page 8 of OD 7, please. Thank you.

8 You'll see at paragraph 19,
9 Councillor Conley e-mailed Mr. Ferguson and said:

10 "Dave, I want a safety
11 study done specifically
12 about barriers."

13 Registrar, can you go to the
14 next page, please. Actually, sorry, can you go
15 back one page. Thank you.

16 Just stopping here,
17 Mr. Ferguson provided Councillor Conley with some
18 draft language for the motion. Was that common
19 for your staff, to help councillors with the
20 language to be used in a motion that they wanted
21 to bring?

22 A. Yes. Yes. I mean,
23 excuse me, we did help them with that kind of
24 thing, if they asked.

25 310 Q. Registrar, can you go to

1 page 10, please.

2 So, just to orient you, the
3 language of the motion that was to be added to the
4 May 21, 2015 agenda is in paragraph 29.

5 And, Registrar, can you call
6 out the paragraph after, "Therefore, be it
7 resolved."

8 So, this motion, unlike the
9 2013 motion, was for the entirety of the Red Hill
10 and also to investigate the LINC:

11 "Investigate additional
12 safety measures,
13 including guide rails,
14 lighting, lane markings
15 and other means to help
16 prevent further
17 fatalities and serious
18 injuries."

19 You can close that down,
20 Registrar, and if you can go to the next page and
21 if you can call out paragraph 32, please.

22 So, here, Mr. Moore responded
23 to the draft of the motion. You had asked him for
24 his views and he focused on the cost and he also
25 said in the last three lines:

1 "Put up a guide rail and
2 you have immediate damage
3 to the car as well as the
4 guide rail as well as the
5 possibility of
6 redirecting the car back
7 into the travel lanes.
8 Not a simple answer,
9 especially when you add
10 the speed profile issue."

11 A. Yeah.

12 311 Q. Do you remember Mr. Moore
13 conveying these views about barriers to you at the
14 time?

15 A. Only after rereading this
16 e-mail.

17 312 Q. Did you agree with --

18 A. At the time, I don't
19 recall.

20 313 Q. Did you agree with
21 Mr. Moore's views at the time about it not being a
22 simple answer?

23 A. Yes, I did. It's not a
24 simple answer. There is a million reasons for any
25 given collision and certainly what you don't want

1 to do is to just jump to some conclusion and
2 either, I don't know, put in barriers or add
3 lights and say, no, I fixed it without doing the
4 appropriate groundwork ahead of it. It would be
5 irresponsible to just go and put up a guide rail
6 that, as Gary said, has a possibility of creating
7 more problems than answers. I mean, you don't
8 know until you do the work, so it's not a simple
9 question.

10 314 Q. And part of doing the
11 work was to retain CIMA to do a comprehensive
12 safety audit?

13 A. Yes.

14 315 Q. Registrar, can you close
15 this down and if you can call out paragraph 33,
16 the paragraph and the excerpt.

17 So, the Hamilton Spectator
18 published an article about -- well, the subject
19 line is about lack of lighting on the upper part
20 of the parkway and the article references past
21 safety reviews and public comments, and then also
22 addresses the public discussion about barriers.

23 Do you want to -- I'll just
24 give you a chance to --

25 A. Yeah. I see it.

1 316 Q. And if you want to just
2 close this down because it actually does go on to
3 the next page. I just want to make sure that
4 you -- if you can call out the top. Sorry, I'm
5 just looking to pull up another document.
6 Registrar, could you pull up RVH 669, please.
7 Sorry, I think I said RVH, I meant RHV.

8 So, this is a Spectator
9 article that is around the same time. It's
10 March 25, whereas the one we were looking at
11 before was March 13 -- pardon me. May 13 and this
12 is May 25. This is a little bit small in terms of
13 the font.

14 Registrar, can you pull out
15 the text of this, just to blow it up for us a
16 little.

17 So, just to orient you, this
18 is going to be after the March 21 meeting where
19 Councillor Conley brings forward the motion that
20 we were just looking at. And so, another thing
21 that he did at that meeting was to raise the issue
22 of enlarging the Red Hill and the LINC to handle
23 growing traffic volumes?

24 A. Mm-hmm.

25 317 Q. And, Registrar, could you

1 highlight about ten lines down, according to City
2 manager Chris Murray.

3 Here, it says:

4 "Widening the sister
5 highways -- "

6 Which is the LINC and the Red
7 Hill:

8 " -- which connect to the
9 QEW and to the 403 across
10 the mountains is part of
11 ongoing review of the
12 City's transportation
13 master plan, which is
14 expected to be finished
15 in the next 12 months."

16 So, just stopping there, was
17 the transportation master plan under your
18 portfolio at this time, in 2015?

19 A. I believe it was, yes.

20 318 Q. Okay. I'm going to ask
21 you a few questions about that now just to, sort
22 of, understand this comment from Mr. Murray.

23 Registrar, you can close this
24 document down.

25 So, prior to the issue of

1 median barriers being raised at that 2015 meeting,
2 was the possibility of widening the Red Hill and
3 the LINC already part of the purview of the
4 transportation master plan review?

5 A. I can't remember
6 specifically if it was at the time, but I do know
7 that over time, as things were occurring along the
8 freeway or the Red Hill and the LINC, that some of
9 those questions were more long term in nature,
10 such as widening or guide rails and things like
11 that. And I think the thought at the time was
12 let's see if we can look at that within the
13 context of the transportation master plan and hook
14 those two things together and get an answer about
15 those issues that way. So, I think that was the
16 thinking at the time.

17 319 Q. Okay. And just to
18 provide a bit of a foundation on this, the
19 transportation master plan, that's an overall
20 transportation master plan for the whole City?

21 A. The transportation master
22 plan is an overall -- basically a policy document
23 that says, you know, lays out the framework of how
24 you would want your City's transportation network
25 to grow over the next period of years. The

1 initial one was done --

2 320 Q. 2007?

3 A. I think it was 2007. It
4 was supposed to be an update in five years. It
5 was, sort of, delayed, I guess, and somehow when
6 it came into my area in that 2015, 2014 timeframe,
7 we moved on to start or further that process.
8 There was a lot of input from the public, so
9 formal, information gathering sessions and a
10 series of revisions to that. And at the time I
11 think Chris expected it to be done in the middle
12 of 2015 or 2016 and when in fact it was delivered
13 to council after I retired, somewhere in the
14 middle of, I think, 2018.

15 As well, the change in
16 leadership on the TMP occurred in 2017, 2018
17 timeframe when we divulged the transportation
18 group and, as I said right at the very start of
19 this, moved planning over to planning, so then
20 they took on the colleagues of that report under,
21 I think, the director over there is Brian
22 Hollingworth. So, it got bounced around is what
23 I'm getting at a little bit, but eventually they
24 completed it in and around, I think it was 2018.

25 321 Q. Okay. Just so that we

1 have the dates -- and I'm going to come back to
2 some of this, but just so that that we're clear on
3 that process, Registrar, can you bring up OD 5,
4 page 20, and if you can call out paragraph 40 and
5 41.

6 So, 2007, you were right, is
7 when it was first approved and that it is the
8 policy to guide the transportation planning needs
9 to 2031. And then there was a monitoring program
10 in 2010.

11 Registrar, if you can close
12 that down and if you can go to page 22, please.
13 And then if you can call out paragraphs 45 to 48,
14 please.

15 So, then in February of
16 2015 -- so, we've just been talking about May of
17 2015, but in February of 2015, Mr. Molloy, who was
18 with transportation, and then a gentleman from
19 Cole Engineering, provided council with a
20 presentation about a five-year review?

21 A. Yes.

22 322 Q. And that presentation was
23 just, hey, we should do a five-year review. Do
24 you recall that?

25 A. I recall Mr. McGill and

1 Mr. Molloy being in council chambers that day and
2 I don't remember the details of their review or
3 what they said, but I remember that, yes.

4 323 Q. Okay. Maybe I'll take it
5 this way. So there's a presentation about the
6 five-year review and update, but I think you just
7 said earlier that the review and update didn't
8 happen until later?

9 A. Yeah, and I think, I
10 guess -- I shouldn't guess, but this is a where we
11 are presentation to council so they know what's
12 going on.

13 324 Q. And then you'll see at
14 paragraph 46, in September of 2017, that you
15 submitted a report entitled Transportation Master
16 Plan Review and Update to council?

17 A. Yes.

18 325 Q. Does that just refresh
19 your memory in terms of your involvement in 2017?

20 A. I think at the time,
21 between Steve Molloy and Al Kirkpatrick, they were
22 kind of the head guys, lead guys, on the
23 transportation master plan and they were providing
24 regular -- I thought there was actually more than
25 one. I thought there was four updates to council.

1 I stand to be corrected, though, but I do remember
2 them submitting, I think under my signature, the
3 updates.

4 326 Q. Okay. Registrar, can you
5 bring out RHV695, please.

6 And this is really just to
7 refresh your memory. This is what was attached to
8 that September 2017 master plan report. And I
9 won't go through all of it. Sometimes just seeing
10 the cover page is helpful, but do you remember
11 this is document that was being filed under your
12 signature?

13 A. Yes.

14 327 Q. You close that down. So,
15 we'll come back to that when we get to the 2017
16 time period, but just going back to 2015, the
17 widening of the LINC and the Red Hill, I think
18 you've said, was in part from the public
19 suggesting the inclusion of median barriers?

20 A. I think so. When I say
21 the public, I mean through the media, through --

22 328 Q. Yeah.

23 A. I don't exactly recall.
24 I just think any of us here can recall the kind
25 of -- there was a lot of information through the

1 media and members of the public at that time after
2 that we were hearing.

3 329 Q. Okay. And was the
4 widening of the LINC and the Red Hill also being
5 looked at or at least discussed to be investigated
6 to alleviate congestion through the City?

7 A. I don't believe it was at
8 a staff level.

9 330 Q. Okay. That wasn't
10 something, the alleviation of congestion, was not
11 something that the transportation master plan was
12 looking at?

13 A. The transportation master
14 plan would ultimately look at potential need, I
15 think, for widening and need for -- and to how
16 that might connect to other transportation
17 infrastructure in the region of the 403 and the
18 QEW. But in terms of -- so, in terms of reduced
19 congestion, I mean, I guess that's part of what I
20 would look at as to whether or not there was even
21 a need for it, you know, so -- I don't follow what
22 the transportation master plans ended up being. I
23 just don't.

24 331 Q. Okay. You just mentioned
25 the connection to the QEW, I believe?

1 A. Yeah.

2 332 Q. The connection to the QEW
3 and the 403, those are on one side and the other
4 of the LINC and the Red Hill. Right?

5 A. That's correct.

6 333 Q. And is it fair to say
7 that any expansion of the LINC or the Red Hill in
8 terms of the number of lanes would affect the
9 interchange on to those two provincial highways?

10 A. Yeah, that's fair. But
11 I'm saying that just as you or I would as a
12 layman. I would have no idea as to how that
13 occurs, you know, technically from a design
14 perspective.

15 334 Q. Sure. I'm not interested
16 in that. I'm just saying that was part of --

17 A. That makes sense.

18 335 Q. Was that part of the one
19 of the things that the transportation master plan
20 was looking at over time?

21 A. I think that would have
22 been part of the consideration. Like I said, I
23 don't recall how far that got within the TMP
24 review, but...

25 336 Q. Okay. We'll come back to

1 that again when we get to 2017. I just wanted a
2 bit of a foundation.

3 Turning back to May of 2015,
4 which is where the crossover collision on the Red
5 Hill occurred and Councillor Conley's motion, did
6 you know at that point whether or not friction
7 testing had ever been carried out on the Red Hill?

8 A. No, I didn't know.

9 337 Q. Were you aware that at
10 the May 21, 2015 meeting, that Mr. Moore advised
11 the Public Works Committee that wholesale
12 resurfacing was going to happen on the Red Hill in
13 2021?

14 A. If I was at the meeting,
15 I would have heard it, but I don't recall it
16 specifically, no.

17 338 Q. Would you have been
18 tracking when Red Hill resurfacing was going to be
19 up?

20 A. No. I never -- you know,
21 pavement reconditioning or pavement replacement
22 was part of Gerry's capital budget -- not Gerry's.
23 Gary's capital budget program and I had my own
24 capital budgets to concern myself with, so no, I
25 never really paid direct attention to any of the

1 repaving issues or projects.

2 339 Q. Okay. Is it fair to say
3 that to the extent that you were paying attention
4 to resurfacing, it would have been to coordinate
5 work of your group with resurfacing?

6 A. Yes, and that would have
7 been well after the fact probably in terms of --
8 or, you know, close to the time of when the
9 projects would be let for construction. Right?
10 Where you would add, if it was markings or signals
11 or whatever. It depends on the extent of the
12 reconstruction as to what our involvement would
13 be.

14 340 Q. Okay. Registrar, can you
15 bring up OD 7, please, and you can go to page 12.

16 Mr. Mater, were you involved
17 in the City's decision to retain CIMA?

18 A. For this?

19 341 Q. Yeah, for the Red Hill --

20 A. I probably had to sign
21 off on the PO, but I didn't have direct
22 involvement that I recall in terms of hiring them.
23 No, I didn't.

24 342 Q. Okay. Did you direct
25 your staff in terms of what the scope of CIMA's

1 review would be?

2 A. No. I would not have
3 directed them specifically to that.

4 343 Q. Okay. You would expect
5 that they would have a scope that would be
6 responsive to Councillor Conley's motion?

7 A. Yes. I mean, if you
8 recall, I had, sort of, a broad range of
9 responsibility. I did not get involved in the
10 details of scoping out how they did this
11 particular project. I would expect them to have
12 listened to the information and direction they got
13 from council and from whatever conversations they
14 had been having and just set the scope of work to
15 be appropriate for. I wouldn't do it.

16 344 Q. Registrar, can you call
17 out paragraph 35, please.

18 So, this is an e-mail between
19 Mr. Malone at CIMA and some of his colleagues
20 summarizing a discussion that he had had with
21 Mr. Ferguson. And he says in the last sentence:

22 "The review would be for
23 the RHVP and would
24 include the areas towards
25 the escarpment where the

1 lighting is absent,
2 essentially the repeat of
3 the previous work, with a
4 recognition that the
5 answer regarding lighting
6 is not simply no as it
7 was previously."

8 So, you understood at this
9 point that Mr. Moore had concerns about the Public
10 Works committee's requests around illumination on
11 the Red Hill. Right?

12 A. Yeah. Based on that
13 e-mail we looked at, yes.

14 345 Q. Did you have any
15 discussions with your staff about the scope of
16 illumination for the CIMA 2015 project?

17 A. No.

18 346 Q. Did you consider whether
19 scoping out illumination for CIMA's review might
20 upset Gary Moore?

21 A. No.

22 347 Q. You just weren't
23 concerned about that or you just didn't turn your
24 mind to it?

25 A. Neither. I was not

1 concerned about it. I mean, council told us to do
2 it. It's pretty clear to me what I have to do.

3 348 Q. You can close that. Were
4 you involved in the day-to-day work in connection
5 with the 2015 CIMA report?

6 A. No, I was not.

7 349 Q. All right. On
8 September 22, there's an e-mail exchange that
9 you're not copied on.

10 Registrar, can you go to
11 page 44, please and can you pull up paragraph 132.

12 So, I think that you mentioned
13 this before, Mr. Mater. Mr. Ferguson e-mailed
14 Mr. Moore -- and, sorry, just to orient you in
15 terms of time, CIMA has done its preliminary
16 analysis, they're in the process of preparing the
17 report, they provided a draft report and this is
18 leading towards the December Public Works
19 Committee meeting --

20 A. Yes.

21 350 Q. -- when a motion, they
22 required by that date to come back.

23 So, CIMA has included in its
24 recommendations a high-tension steel cable median
25 barrier, sheet rock cuts, friction testing again,

1 shoulder rumble strips and end-to-end
2 illumination?

3 A. Mm-hmm.

4 351 Q. And Mr. Ferguson sends
5 Mr. Moore an e-mail that identifies engineering
6 services to be directed to either investigate or
7 identify items that relate to those
8 recommendations?

9 A. Right.

10 352 Q. In the usual course when
11 a staff report goes to Public Works, do you expect
12 to see the allocation of responsibility at the
13 division level?

14 A. No.

15 353 Q. Okay. Is it common as --

16 A. In fact, I would say
17 never.

18 354 Q. Never? Did you have any
19 discussions with Mr. Ferguson about why he was
20 drafting the recommendations in this way?

21 A. I don't recall having any
22 discussions with him and I kind of find it hard to
23 believe it would get to my desk in this format,
24 but maybe it did and I would have said, we don't
25 do that like that in Public Works. Our format was

1 to say that the general manager of Public Works be
2 authorized and directed to do A, B, C, D. And it
3 would list perhaps the action items in here, but
4 it would never say engineering services do this,
5 you know, traffic engineering do this, maintenance
6 do that. We just didn't do reports like that. I
7 can't think of an instance in my career in
8 Hamilton where we did a report and split it out by
9 division. I just don't recall that ever. This
10 was Dave's, I think, initial attempt at a draft
11 report.

12 355 Q. And can you see that it
13 might be helpful at least in his dealings with
14 Mr. Moore to identify the items that he believed
15 would be on engineering services' plate and not
16 his own group's plate?

17 A. I can see how that might
18 be the case, but not in the report.

19 356 Q. Right. Can you close
20 that out, Registrar, and go to the next page,
21 please, and call out 134.

22 So, this is Mr. Moore's
23 response and he copies you. He also copies
24 Jennifer DiDomenico. Did you know Ms. DiDomenico
25 had been part of the Red Hill team?

1 A. Yes.

2 357 Q. And in her role as
3 manager of corporate service delivery review,
4 financial planning and policy, corporate services,
5 would she have had any involvement in the items
6 that were going to be in the staff report?

7 A. I don't think so. She
8 had knowledge of the project because she was
9 involved in it when it was built, but I don't
10 know -- I can't guess here as to what Gary's
11 thinking was in copying her. I don't know.

12 358 Q. Okay. So, Mr. Moore
13 says:

14 "I need to see it -- "
15 Which I think is a reference
16 to either the staff report or the CIMA report:
17 " -- and it needs to be
18 discussed at DMT or at
19 least with John, Gerry
20 and myself before it
21 goes, but here are my
22 comments."

23 So, just stopping there, do
24 you recall having discussions at DMT about the
25 recommendations to be put in the staff report?

1 A. No, I don't, and that was
2 not something we regularly discussed at DMT, so
3 no, I don't.

4 359 Q. Okay. I'll come back to
5 this, but just for now because we're here, do you
6 recall having a meeting with yourself and
7 Mr. Davis and Mr. Moore about engineering
8 services's work coming out of the 2015 CIMA
9 report?

10 A. No, I don't recall that.

11 360 Q. Okay. Is that to say
12 you're quite confident that didn't happen or --

13 A. I'm just saying I don't
14 remember it. It could have happened. I don't
15 remember it. We had dozens of meetings. It
16 doesn't stand out to me.

17 361 Q. Okay. Now, just looking
18 at his comments, he says:

19 "You can take engineering
20 services off every line.
21 We don't do
22 investigations. We do do
23 programming, design,
24 tender and construction
25 supervision."

1 In fact, Registrar, could you
2 call up on one side the call out that we were just
3 looking at. It's the page before. You can call
4 out just the text in 132 and then the text in 134,
5 just so that we can see, so we can follow along.

6 So, Mr. Mater, did you agree
7 with Mr. Moore's view that engineering services
8 was not responsible for steel cable median barrier
9 installation investigation?

10 A. I don't think I agreed or
11 disagreed at this point, but in my understanding
12 that that was part of their area of
13 responsibility.

14 362 Q. Okay. And in terms of
15 identifying a funding source to complete pavement
16 friction testing, did you agree with Mr. Moore
17 that engineering services was not responsible for
18 that item?

19 A. I'm not sure where he
20 said that.

21 363 Q. Sorry. So, looking on
22 the left-hand side under item C:

23 "Engineering services be
24 directed to identify a
25 funding source."

1 A. Yeah.

2 364 Q. And if you look on the
3 right-hand side under number 1, he says:

4 "You can take engineering
5 services off every line.
6 We don't do
7 investigations. We do
8 permitting, design,
9 tender and construction."

10 A. Well, the way I
11 interpreted that, I would interpret that first
12 line, I would agree with Gary in that you can take
13 engineering services off every line, but not for
14 the reasons we're kind of talking about here. It
15 comes off every line because that's just not the
16 way we write reports. The decision about who does
17 what is not done at this stage of the process.
18 It's after council approves a report and it says
19 the general manager shall, those conversations,
20 they would take place then.

21 And like we spoke before where
22 I said it depends on the complexity, if there was
23 some issue about any of these that we couldn't
24 agree to at a staff level, then yes, we would have
25 that conversation, but it would be well after

1 this. So, when I say I agree with Gary, I agree
2 that engineering services should come off every
3 line at this point in the process.

4 365 Q. So, from a drafting
5 perspective, you think engineering services, that
6 phrase shouldn't be there?

7 A. It should not, no.

8 366 Q. Okay.

9 A. I think he had -- I won't
10 ask you to find the whole thing, but I think there
11 was another part of this that said roads
12 maintenance should do this and traffic engineering
13 should do this and engineering services should do
14 this. Those particular directions to the
15 divisional names should come out of every one of
16 those and it says the general manager of Public
17 Works and then list your action items.

18 367 Q. Sure. So --

19 A. Those decisions about who
20 does what and funding fall out of that, not at
21 this stage. So, when I'm looking at this now and
22 when I would have looked at this at this point in
23 time, I wouldn't have concerned myself with any of
24 it in terms of Gary's comments in terms of all of
25 this. Okay, thanks for your comments, we're going

1 to go ahead and write the report and go to
2 council.

3 368 Q. Okay. So, just stopping
4 there, I get the drafting issue. But in terms of
5 the actual allocation of responsibility, so this
6 has not gone yet to the Public Works Committee?

7 A. No.

8 369 Q. I think you said earlier
9 you would want input from any division that will
10 eventually have responsibility to make sure they
11 understand what that responsibility will be?

12 A. You see, when I read
13 this, I don't look at it and read that Gary that
14 him or his group is not responsible for it. I'm
15 just not reading that into this. I think our
16 conversation about who is responsible for what
17 will take off after council approves this report.
18 But it's very clear in my mind that -- sorry.
19 It's very clear in my mind that medians, pavement,
20 friction testing, all of that is part of -- and
21 illumination is part of the work that Gary's group
22 is responsible for.

23 370 Q. Okay. So, turning to
24 number 2 on here, what is friction testing going
25 to tell you, did you read that as Mr. Moore

1 telling Mr. Ferguson that his group was not going
2 to do friction testing?

3 A. No, I didn't really read
4 that. And my understanding from previous
5 information that we've looked at here was that
6 they said they were going to do it, so --

7 371 Q. Okay. Let's look at
8 number 4. He says:

9 "We have said over and
10 over illumination on the
11 Red Hill and the LINC is
12 never going to happen, so
13 stop asking."

14 A. Well, he can say that.
15 He's welcome to stand in front of committee and
16 council and say it. It was not my call or my
17 decision to make. Lighting is clearly part of his
18 area of responsibility. And I'm not saying that
19 to say he should do this and I'm just putting up a
20 wall so that I'm not responsible. We had a ton of
21 work to do, our own group, my own staff, my own
22 areas of responsibility with respect to traffic
23 facilities, parks design, our corporate, our
24 Public Works strategic planning, the new work
25 that's going on down at the waterfront. I had a

1 whole whack of things on my plate, and so when it
2 came to these issues about illumination and
3 particularly at this kind of stage of the game, I
4 would not concern myself with this kind of an
5 e-mail. That's him talking. We know at the end
6 of the day as an organization we knew who is
7 responsible for what. You look in your budgets
8 and you see where is the line for lighting? Not
9 mine. You looked in your budget and you see where
10 it the line for friction testing and pavement
11 design? Not mine. So, I mean, it's pretty clear
12 as an organization we could wish it was
13 differently but that's the way it was. I did not
14 have direct or even indirect responsibility for
15 lighting or pavement friction testing.

16 372 Q. Okay. So, it is at this
17 point your group is going to be submitting a
18 report to, one, finalizing the CIMA report, and
19 two submitting the staff report to Public Works?

20 A. Yes. And again, I go
21 back to the very start. It was our job, my job,
22 the job we took on was to draft this report and
23 put pen to paper so that the report got to
24 council, but that didn't mean we automatically
25 took responsibility or even as the authors of the

1 report for ensuring that everything was done
2 within that report.

3 373 Q. I haven't even asked a
4 question yet on that.

5 A. I know.

6 374 Q. If you can just let me
7 ask my question.

8 A. Okay.

9 375 Q. So, here, you have
10 Mr. Ferguson, I think you would agree, smartly
11 going to Mr. Moore and saying, here is what the
12 recommendations are going to be in the report,
13 here is the things that I think engineering
14 services is going to have to do if Public Works
15 Committee approves this report. And Mr. Moore is
16 coming back and saying, on illumination, stop
17 asking.

18 So, I recognize that your view
19 is that it wasn't your responsibility over
20 illumination, but aren't you in a bit of an
21 inflection point here that a director in another
22 division has what appears to be some concern about
23 the staff report that your team is drafting?

24 A. No, I didn't have a
25 concern.

1 376 Q. You didn't have a concern
2 about Mr. Moore -- about going to council when
3 Mr. Moore has expressed concerns about the
4 illumination recommendation?

5 A. No, I did not have a
6 concern because we're going to review the
7 illumination as we were directed by council
8 through CIMA and come up with some recommendation,
9 which here it says investigate the possibility and
10 report back. No, I didn't have -- we've been told
11 to do it, so I didn't have a concern.

12 377 Q. Maybe I'll put this
13 differently. Didn't you see you were going to
14 have some work to do in order to go to Public
15 Works Committee and actually get this staff report
16 done? Can you see that this e-mail might have
17 twigged you that you were going to then have to do
18 some mediation, some conciliation, some consensus
19 building?

20 A. No, it didn't.

21 378 Q. Okay. Can you close
22 this --

23 A. This was, kind of, a
24 normal -- I don't know if Dave was really thinking
25 this was the way to put this in front Gary as to

1 what kind of work he expected they were going to
2 have to carry out or not or whether he just
3 thought it was crystal clear, as I do, and he just
4 put it to him, you know. Gary's reaction to it is
5 something that Gary can only speak to. I'm saying
6 that my reaction to this was, yeah, okay, but at
7 this point in the process I'm not worried about
8 it. I think we have to remember this is, what,
9 September or something, and ultimately the report
10 gets to council, I think, in December, but I don't
11 recall having to do any mediation work on this in
12 the meantime.

13 379 Q. Okay. Can you close this
14 down, Registrar, and call up paragraph -- sorry,
15 the next page, please, and call out paragraph 136.

16 So, just right after that in
17 response, you say to Mr. Ferguson:

18 "We should sit down and
19 review this, find some
20 time for Dave, Martin,
21 Geoff and I to review."

22 So, I'm going to put to you
23 that you did note this, that e-mail we were just
24 looking at, and recognizing you need to actually
25 get involved?

1 A. Yes, and I think -- I
2 will agree with that, but the reason I got
3 involved was because of the way the report was
4 being formatted in terms of directing each
5 individual division to do it. At that point, I
6 would not have been concerned about Gary's
7 response or somebody else's response. We got to
8 get the report in the proper form that says what
9 we needed to say before I'm ever going to really
10 start worrying about what their comments are.
11 We're going ahead, we're doing that report. If it
12 needs to include a lighting component, I'm putting
13 it in. I mean, I was not -- I had a -- I knew
14 what I was paid to do and hired to do and we were
15 doing it. I know you can get comments from
16 anywhere, but that never necessarily meant that,
17 you know, I had to react to it. Right?

18 380 Q. Okay. So, your plan at
19 this point was that your group was going to file
20 this report, including the illumination
21 recommendation, even over the objections of
22 Mr. Moore, whose division would eventually be
23 responsible?

24 A. Absolutely.

25 381 Q. Okay. Registrar, can you

1 close that down and call up 139.

2 So, on October 20, which is
3 about a month after -- thank you. You actually
4 can just call up that bit right there. Thank you.

5 About three weeks after you
6 just had the back and forth saying, can we talk
7 about this, Mr. Moore attends a meeting with
8 Mr. White, Mr. Ferguson and folks at CIMA to
9 discuss the CIMA report. Mr. Moore had not been
10 involved in any of the previous meetings with
11 CIMA.

12 Were you aware that Mr. Moore
13 was going to have a discussion with CIMA and with
14 your staff?

15 A. I don't think I was, no.

16 382 Q. So, it was not your
17 direction or your plan to try to bring Mr. Moore
18 into the fold on what the project was by --

19 A. I don't recall that it
20 was -- I had no way to direct Mr. Moore to do
21 anything, I mean, unless I --

22 383 Q. I meant direction to your
23 staff to invite him to attend a meeting to try
24 to --

25 A. I don't recall that. I

1 don't recall doing that.

2 384 Q. Okay. Can you close that
3 down, Registrar, and can you call out the top of
4 page 47.

5 In the second bullet, this is
6 the minutes from that meeting, Mr. Moore is
7 recorded as stating that friction testing had been
8 conducted recently following standards and results
9 satisfactory. Was that reported to you?

10 A. Not that I recall.

11 385 Q. You can close that down.
12 Actually, sorry. Can you go into that document,
13 which is CIM9287, and if you can go to the next
14 image, please, and if you can call out the section
15 under the dotted line.

16 So, this is, again, the actual
17 document of the minutes of that meeting.

18 Mr. Moore says he preferred potential solutions
19 instead of recommendations; that is, that CIMA's
20 report should say potential solutions rather than
21 CIMA's recommendations.

22 Do you agree that the average
23 reader might see the phrase "potential solutions"
24 as less directive than "recommendations"?

25 A. Again, I don't want to

1 guess what the average reader would say. I don't
2 know.

3 386 Q. All right. Well, what
4 about council, because you have experience in
5 drafting staff reports for council?

6 A. Ultimately within the
7 body of the report, I guess if you call them
8 potential solutions, that's plain English to me,
9 but within the council reports, we have to put
10 recommendations in front of them. So, you know,
11 the report has to say it is recommended that. If
12 you worded it recommended that these potential
13 solutions be implemented, I don't really see
14 the -- it's kind of a softening of the language, I
15 will grant you that, but I don't really see it
16 changing the intent.

17 387 Q. Okay. Can you close this
18 document down, Registrar, and go back to OD 7,
19 page 47, please, and if you can call out
20 paragraph 141.

21 So, on October 20, after that
22 meeting with CIMA and Mr. Moore and some of your
23 staff, CIMA flipped a revised version of the 2015
24 CIMA report and then Mr. White forwarded it,
25 including the attachments to that e-mail, to you

1 and Mr. Lupton and Mr. Moore.

2 Do you recall receiving and
3 reviewing a draft of the 2015 CIMA report before
4 October 20?

5 A. No, I don't.

6 388 Q. When you received it on
7 October 20, would you have reviewed it promptly?

8 A. I likely would have taken
9 a look at it because I knew we were trying to hit
10 a deadline for getting this report to council. I
11 think the deadline was in December sometime.

12 389 Q. It was. So, this is --

13 A. It was a pretty
14 significant lead time to get a report to council,
15 so we would have been running up against it in
16 October, I guess --

17 390 Q. Yes. So, this is the
18 consultant report rather than the staff report?

19 A. Yes.

20 391 Q. Would you have reviewed
21 the consultant report in this case?

22 A. Not in detail, no. I
23 would have probably looked at the executive
24 summary, went through -- looked at
25 recommendations, but I don't think -- or the work.

1 I don't think I -- I wouldn't have done it in
2 detail. I just wouldn't have had time.

3 392 Q. Can you close this out,
4 Registrar, and go to page 56 and 168, please.
5 Sorry, if you can call out 168. Thank you.

6 So, this is the following week
7 and this is an e-mail from Mr. Ferguson to
8 Mr. Murray and it's in response to a public
9 complaint but related to the Red Hill, and he
10 says:

11 "I'll discuss with our
12 senior team. We had a
13 meeting last week with
14 John Mater and Gary
15 Moore."

16 And then he goes on to talk
17 about the timing of the report. Do you remember a
18 meeting the week before October 30 with Mr. Mater
19 and Mr. Moore and Mr. Ferguson?

20 A. Senior team. No, I
21 don't.

22 393 Q. Do you remember having
23 any meetings with Mr. Moore about the 2015 CIMA
24 report?

25 A. I don't remember having

1 any meetings with him myself.

2 394 Q. Do you remember
3 receiving -- sorry, maybe I should just clarify.
4 When you say you don't remember having any
5 meetings, is that that you have some confidence
6 that you didn't have meetings or that you just
7 can't remember either way?

8 A. I just can't remember. I
9 mean, Dave is saying here we had a meeting, so I
10 assume we did, but I don't remember it.

11 395 Q. Okay.

12 A. To be clear.

13 396 Q. Do you remember as the
14 CIMA report is being finalized any concerns that
15 Mr. Moore had about the recommendations in the
16 report?

17 A. No, I don't. I know I
18 wanted to hit that December deadline, I know that
19 myself, but I don't remember concerns about Gary,
20 no.

21 397 Q. Okay.

22 I see it's just a couple of
23 minutes after 1:00, which is our usual lunch
24 break. Commissioner, is this a good time to break
25 for the lunch?

1 JUSTICE WILTON-SIEGEL: Yes,
2 it will be. So, let's stand adjourned until 2:15.

3 --- Luncheon recess taken at 1:03 p.m.

4 --- Upon resuming at 2:15 p.m.

5 MS. LAWRENCE: Good afternoon,
6 Commissioner. May I proceed?

7 JUSTICE WILTON-SIEGEL: Yes,
8 please. Let's go.

9 MS. LAWRENCE: Thank you.

10 BY MS. LAWRENCE:

11 398 Q. Registrar, can you bring
12 up OD 7, page 55, please, and if you can call out
13 165.

14 Mr. Mater, in late
15 October 2015, Mr. Moore made comments in a PDF
16 version of the 2015 CIMA report. Do you recall --
17 and you'll see in this call out right here --
18 Mr. Ferguson forwarded you Mr. Moore's comments?

19 A. I don't recall it, no.

20 399 Q. Do you recall reviewing
21 the comments that Mr. Moore applied to the 2015
22 CIMA report?

23 A. No, I don't.

24 400 Q. Okay. Registrar, can you
25 close that call out and can you go on to HAM690.

1 Actually, you know what, I'm going to close this
2 call out. If you can -- sorry, not close the call
3 out. Thank you.

4 So, Mr. Mater, you don't
5 remember reviewing Mr. Moore's comments on a CIMA
6 report?

7 A. I don't remember that,
8 no.

9 401 Q. Okay. Rather than
10 spending the time going through comments that you
11 don't recall reviewing, I'm going to take you to
12 OD 7, page 56, please. Registrar, actually, can
13 you put up the next page as well, and it's the
14 bottom of 171 and on to the next page. Thank you.

15 So, this is the day after
16 Mr. Ferguson sends you Gary Moore's comments and
17 there's some back and forth about finalizing the
18 staff report and Mr. White forwards your last
19 e-mail to Mr. Ferguson and Mr. Lupton, and this
20 is, again, just in trying to finalize the
21 materials, and Mr. White, in the middle paragraph
22 there, says:

23 "After that, I'm not sure
24 what to say."

25 And it says:

1 "It recs -- "
2 Which is the CIMA report
3 recommends:
4 " -- the guide rail, the
5 lighting review and the
6 asphalt testing, all
7 things Gary argues
8 against. Despite this, I
9 believe it would be
10 prudent and required."

11 I'm just trying to orient you
12 to how you reviewed Gary's comments, but do you
13 recall or does this assist you, that is the
14 reference to the guide rail, the lighting review
15 and the asphalt testing, about any concerns you
16 understood Mr. Moore had during this period of
17 time.

18 A. I don't. I'm sorry, I
19 don't recall this or having concerns specifically
20 about this, no.

21 402 Q. Okay. Can you close this
22 out, Registrar, and can you go to page 51. So,
23 I'm just going to give you an example. I'm not
24 actually going to go into the native version of
25 the document. This is from the OD. So, one of

1 the Mr. Moore's comments was to strikethrough the
2 entire section on perform pavement friction.

3 Registrar, can you call out
4 157, just so it's a little easier for us to read.

5 Does that refresh your memory
6 as to whether you reviewed Mr. Moore's comments on
7 the 2015 CIMA report?

8 A. I'm sorry, it doesn't.

9 403 Q. Okay. You said earlier
10 in respect of lighting that you were going to take
11 a report to Public Works even if Mr. Moore
12 objected, again, in respect of lighting. Did you
13 view Mr. Moore suggesting to delete a large
14 section of a page of this report as him blowing
15 off steam?

16 A. I don't recall this. I
17 don't recall what my reaction to this would have
18 been, blowing off steam or not. I'm sorry.

19 404 Q. Okay. Do you recall
20 whether you intended to move past Mr. Moore's
21 comments despite his indication that this section,
22 perform friction testing, should be deleted from
23 the report?

24 A. I don't recall, no.

25 405 Q. Mr. Moore also had

1 comments on slippery when wet signs. Does that,
2 as a topic, refresh your memory about reviewing --

3 A. I've seen the e-mail
4 exchanges about the slippery when wet signs from
5 Gary to, I think it was Martin. I've seen them in
6 our review here.

7 406 Q. Okay. Registrar, can you
8 put up page 54 of overview document 7.

9 I'm not sure the if this is
10 what you're referring to.

11 If you can call out the top of
12 this page, Registrar.

13 So, Mr. Moore makes a number
14 of comments on CIMA's recommendation to include
15 slippery when wet signs if there was a need for
16 it, and he says:

17 "So does every other road
18 in Ontario."

19 In terms of a roadway having
20 significantly reduced wet weather skid resistance.

21 And he says at the bottom:

22 "We know the reason.
23 Excessive speed."

24 Does that assist your memory
25 in whether you reviewed these comments?

1 A. No, it doesn't, although
2 I would look at this comment now and say that was,
3 you know, thanks, but that was our decision to
4 make. Slippery when wet signs would fall under
5 traffic engineering's purview. I mean, he could
6 provide these comments, but, you know, that's our
7 decision.

8 407 Q. Okay. And how would you
9 contrast that, if at all, with his suggestion to
10 remove friction testing from the report?

11 A. The difference is that's
12 his area of expertise. I had neither the
13 education or the experience to question him when
14 it comes to skid testing and pavement design. I
15 wouldn't know what to do with it if I got it. So,
16 this is our area of -- when I say our, I mean
17 traffic engineering's -- area of authority with
18 these slippery when wet signs, any kind of signing
19 frankly. Skid testing, pavement testing, that's
20 his.

21 408 Q. Okay. So, I think you've
22 heard you say with respect to slippery when wet
23 signs you would say thanks for the information and
24 you would just proceed with adopting CIMA's
25 recommendation. Right?

1 A. Yes. I think, as it says
2 there, the City should consider installing
3 slippery when wet in accordance with OTM books and
4 guidelines. That's what we would do.

5 409 Q. And you said earlier that
6 with illumination, you were going to proceed and
7 bring a report to council about illumination?

8 A. So, let me be clear
9 there. What I said was, you know, council has
10 asked us to bring forward something on
11 illumination. So, whether Gary's answer was, yes,
12 we'll go right ahead and do it, or, no, we're
13 never going to consider it because of the
14 restrictions on it as part of the freeway
15 approvals, that's what I mean when I say we'll
16 take that forward. We would take that forward,
17 Gary's group's response, whatever that is.

18 410 Q. Okay. So, in contrast,
19 in respect of the friction testing recommendation
20 that CIMA has in its report, did you understand
21 that Mr. Moore was declining to implement that?

22 A. I don't know if I did.

23 411 Q. Okay.

24 A. Honestly.

25 412 Q. So, he deleted the whole

1 section, the one that we just went to. Were you
2 willing to go back to CIMA or direct your staff to
3 go back to CIMA and ask them to delete that part
4 of their report?

5 A. I would not have wanted
6 to do that or have my staff do that. If that
7 particular part of the report as it relates to
8 friction testing, I would rely on Gary's expertise
9 to include or not include.

10 413 Q. Sorry, just to be clear,
11 include or not include in what?

12 A. In the staff report. I'm
13 trying to -- I feel like I'm playing a little from
14 behind here. I can't remember what was in the
15 CIMA report. I can't remember if ultimately we
16 did include information on friction testing or
17 not, so I don't know.

18 414 Q. So, ultimately CIMA's
19 report on friction testing did not change?

20 A. Yes, no.

21 415 Q. And, Registrar, can you
22 close this call out.

23 So, what I'm trying to
24 understand is how you and your team viewed
25 Mr. Moore's comments on the CIMA report and

1 whether you were willing to go back to CIMA and to
2 direct them to remove a recommendation if
3 Mr. Moore didn't want that recommendation in the
4 report?

5 A. I'll answer that, too. I
6 don't remember how we reacted to it, but I would
7 not tell my staff or direct them to go back to
8 CIMA and take something out of a report, and I
9 don't think CIMA would do it. I mean, it's their
10 report.

11 416 Q. So, if that's the case,
12 is it then fair to say that you treated his
13 comments on friction testing in the same way that
14 you did with the slippery when wet, thanks for
15 your information, but we're going to ensure that
16 CIMA includes that in their report?

17 A. Whatever CIMA thinks is
18 important to be included in their report, include
19 it. I mean, I would not try to manage, other
20 than, like, we've had conversation before earlier
21 today, just back and forth with consultants when
22 it comes to content and, sort of, how it's laid
23 out and maybe how it's presented and making sure
24 everybody has a full understanding of what each
25 other is saying, but when it comes to at the end

1 of it and CIMA has presented a report that
2 includes things and stamps that report final,
3 we're not changing that.

4 417 Q. Okay. Registrar, can you
5 go to page 58 of OD 7, please.

6 So, you'll see at
7 paragraph 176, on November 4, Mr. White and
8 Mr. Ferguson e-mail and Mr. White asked:

9 "Did Gerry, John and Gary
10 approve the last draft of
11 the report?"

12 And Mr. Ferguson says:

13 "Yes and no. Let's say I
14 have some work to do
15 tonight."

16 Do you recall meeting with
17 Mr. Davis and Mr. Moore in early November to
18 discuss either the CIMA report or the staff
19 report?

20 A. No, I don't.

21 418 Q. Do you remember ever
22 having a meeting with Mr. Moore and Mr. Davis
23 about anything to do with the Red Hill?

24 A. No, I don't.

25 419 Q. I know I've asked you

1 this before, but when you say no, you don't, are
2 you --

3 A. I'm not saying it didn't
4 occur. I'm just saying I don't recall it.

5 420 Q. Okay. Mr. Ferguson
6 testified that he recalled a meeting within this
7 window of time with Mr. Moore, Mr. Malone from
8 CIMA, Mr. Lupton, Mr. White, you and Mr. Ferguson
9 at the civic centre. Does that ring any bells for
10 you?

11 A. At where?

12 421 Q. The civic centre.

13 A. It doesn't, honestly, no.
14 With Brian Malone from CIMA?

15 422 Q. Yeah.

16 A. It's not -- I'm sorry,
17 I'm not remembering that, no.

18 423 Q. Okay. Do you remember
19 meeting at all with Mr. Malone during the 2015
20 CIMA report project?

21 A. No.

22 424 Q. Okay. Registrar, can you
23 go to HAM24700 and can you bring up the next page
24 as well.

25 So, this is a staff report,

1 the December 7, 2015 report, that deals both with
2 the LINC and the report that CIMA had done on the
3 LINC, which we haven't really focused on today,
4 and the Red Hill 2015 CIMA report. Do you
5 remember reviewing the staff report before it went
6 out?

7 A. I would have to have
8 reviewed it. I don't recall it specifically, but
9 I would have to had reviewed this before it got
10 to -- before it went out to council. Yes.

11 425 Q. Okay. And it's a fairly
12 lengthy report. It's eight pages. It also has a
13 couple appendices.

14 Registrar, can you call out
15 the Recommendations section on the first page,
16 please.

17 So, after all that back and
18 forth with the engineering services being part of
19 the recommendations, where the report lands is the
20 first recommendation is that general manager is
21 directed to implement short-term safety options
22 set out in Appendix A, funded by the red light
23 camera reserve, and that the design with request
24 to the medium and long-term items in Appendix B be
25 deferred pending the outcome of the transportation

1 master plan update. And then there's a reference
2 to police and police enforcement and then a copy
3 be provided to the Joint Stewardship Board?

4 A. Mm-hmm.

5 426 Q. Registrar, can you bring
6 up -- you can close out the call out and if you
7 can bring up on the second page, so keep up the
8 first page, second page, HAM24702.

9 So, this is the medium and
10 long-term safety options. It's Appendix B, which
11 is referenced in recommendation B. And you'll see
12 the medium-term options are set for two to five
13 years. And the first is conduct pavement friction
14 testing, so that is from the CIMA report
15 recommendations, the shield rock cuts between
16 upper James and upper Wellington, also set out in
17 the CIMA report.

18 And then the long-term options
19 are six plus years and they're the rumble strips,
20 median barrier on the LINC, median barrier on the
21 Red Hill and end-to-end illumination, and all of
22 those are set out as potential recommendations in
23 the 2015 CIMA report.

24 So, do you remember those --

25 A. They're tied with

1 recommendation to the completion of the TMP.

2 427 Q. That's right, so that's
3 actually the question that I have for you. So,
4 both the medium and the long-term options are --
5 the design with request to the medium and
6 long-term options are being deferred pending the
7 outcome of the transportation master plan?

8 A. Mm-hmm.

9 428 Q. I think you said earlier
10 that that was in progress and we looked at it and
11 a report, an update, went in 2017 to council. Do
12 you remember that?

13 A. Yes.

14 429 Q. So, do I understand
15 correctly that the barrier system and the
16 end-to-end illumination were both going to be put
17 off because they would be appropriate to address
18 during widening, if that happened?

19 A. That's how I would
20 interpret this, without reading the whole report.
21 Again, I think that's what part of the logic was
22 for deferring these items to the completion of the
23 TMP. So, if the TMP -- excuse me -- recommended a
24 widening or something, that it would be done in
25 conjunction with that.

1 430 Q. Okay. Recommendation B
2 also defers the medium-term options, as I read it.
3 Is there anything, to your knowledge, about
4 friction testing that was connected to the outcome
5 of the transportation master plan?

6 A. Not to my knowledge. I
7 don't know.

8 431 Q. Okay. And am I
9 interpreting this correctly that the consequence
10 of deferring the medium and long-term options,
11 which included friction testing as a medium-term
12 option, was that what was going to be deferred to
13 some later date?

14 A. Yes, some later date tied
15 to the TMP completion.

16 432 Q. Okay. And sitting here
17 today, do you have any understanding about how it
18 came to be that friction testing was included in
19 one of the options that would be deferred pending
20 the outcome of the TMP?

21 A. Standing here today, no,
22 I don't.

23 433 Q. Okay. Thinking back in
24 your mind, is it possible that you and Mr. Moore
25 and Mr. Davis had a meeting where this was

1 discussed?

2 A. No, it was not.

3 434 Q. Did you get any input
4 from Mr. Moore that the barrier median, barrier
5 system or the end-to-end illumination should be
6 deferred until the outcome of the transportation
7 master plan?

8 A. No, I don't think I
9 got -- no. You know, I saw the staff report and
10 looked at the staff report, but did I get any
11 direct communication from Gary about the
12 illumination? None that I recall at all.
13 However, it makes sense to me that you would talk
14 about illumination and delay that until you
15 understand what the -- I don't want to put poles
16 in the middle of the road in 2017 and in 2018 come
17 to council with a report that says move the lanes
18 back.

19 435 Q. Okay.

20 A. You know? It's a
21 coordination thing.

22 436 Q. Sure. At this point, so
23 this is December 2015, did you personally think
24 that widening of the LINC and the Red Hill was
25 actually going to happen in any sort of way that

1 was --

2 A. I have no way of knowing
3 that. It was a technical review. It would have
4 to occur based on a whole whack of factors that
5 are well beyond just traffic, for sure, these
6 days. And so, I have no way of knowing.

7 437 Q. Okay. Did you understand
8 in 2015 that it was going to require input from
9 the provincial government?

10 A. Certainly, it would have.

11 438 Q. And did you understand
12 that there might be need to be environmental
13 assessments and --

14 A. We would have had to deal
15 with the Joint Stewardship Board as well as part
16 of that. There was a whole range of -- that's
17 what I mean. It's not just, you know, we need
18 more capacity anymore. That was a 19, sort of,
19 '50s solution to it. But there was a range of
20 legitimate interest that influenced the decision,
21 so I couldn't say whether that was imminent or
22 not.

23 439 Q. Okay. But if you had
24 been a betting person, would you agree that it
25 might be years, even decades, before widening was

1 going to happen, if it happened?

2 A. I'll just say that in any
3 big project like that and given the history of the
4 Red Hill Valley from its inception to when it was
5 finally constructed, it would not be unreasonable
6 to expect that that might take some time.

7 440 Q. Okay. Do you have any
8 knowledge or information about how friction
9 testing came to be characterized as a medium-term
10 option in the staff report?

11 A. I don't, no.

12 441 Q. Did anyone tell you that
13 CIMA had characterized conduct friction testing as
14 a short-term measure in their report?

15 A. No, I don't. I don't
16 know that for sure.

17 442 Q. And I'm just talking
18 about the characterization, not the number of
19 years or anything like that, just in terms of
20 characterization. No one told you that?

21 A. No.

22 443 Q. Would you have concerns
23 if there was different characterizations of that
24 item in the CIMA report compared to the staff
25 report?

1 A. Not initially. No. I
2 would say, you know, whether you call it
3 short-term or medium-term, zero to five years is a
4 relatively close timeline to move things along
5 within municipal government, so that wouldn't have
6 raised a flag with me.

7 444 Q. Sure, except it's being
8 deferred, so it's actually not -- it doesn't have
9 to happen within two to five years. It's going to
10 happen pending the outcome of the transportation
11 master plan. Right?

12 A. You know, and at the time
13 we expected the transportation master plan would
14 have been, I think, done by -- more quickly than
15 it was.

16 445 Q. Okay. And so, the
17 expectation would then have been that friction
18 testing would have happened after the outcome of
19 the transportation master plan?

20 A. Well, I think my
21 understanding at this point in time was that some
22 friction testing had already been done, you know,
23 based on the information we reviewed, and --
24 sorry, I lost track of my thought there.

25 You know, when the TMP was

1 finished, they would do the friction testing.

2 When I say "they," you know, I mean the

3 engineering services group would manage that

4 however they saw fit.

5 446 Q. Okay. And did you get

6 buy-in from Mr. Moore about that approach that you

7 said you would have anticipated?

8 A. I don't recall if we did

9 or not. I mean, ultimately we did the report

10 prepared by my staff which I signed off on, so I

11 don't know whether he supported that at this level

12 or not. I can't recall.

13 447 Q. Okay. Registrar, can you

14 close that down and go to page 71, please. Sorry,

15 page 71 of OD 7. And can you bring up 72 as well,

16 please.

17 So, Mr. Mater, you can look at

18 those two pages starting from paragraph 221, but

19 basically there's a bit of a back and forth

20 between Mr. Lupton, Mr. Ferguson, Ms. Leduc at the

21 legislative coordinators, the city clerk,

22 Mr. White and you, and it seems like the

23 discussion is about whether to attach the CIMA

24 reports for Red Hill and the LINC --

25 A. Yeah.

1 448 Q. -- to the staff report.

2 And at the top of page 72, you say:

3 "Dave, I had another
4 thought on this today.
5 Sorry I didn't get back
6 to you. Lauri, can we
7 please hold off until I
8 reconnect with Dave."

9 And then going down to 226,

10 Mr. Ferguson says:

11 "In talking with John, we
12 decided to hold off on
13 issuing to committee.
14 Instead, we will offer
15 the consultant report to
16 those councillors who are
17 interested at the meeting
18 on Monday."

19 And then Ms. Leduc says no,
20 that it was indicated that the copy was available,
21 so I'm going to send it to the councillors.

22 Why did you, on December 1 to
23 December 3, sometime in there, why did you and
24 Mr. Ferguson decide to hold off sending the CIMA
25 report to the committee?

1 A. So, this was my, kind of,
2 double clutch on this issue and it had entirely to
3 deal with how we -- our relationship with members
4 of council and how the media might, I was
5 concerned, might distribute this ahead of our
6 council meeting. Councillors did not like and do
7 not like to be surprised and I was trying to
8 manage that message, I think, with the media.
9 Misguided as it may have been, I wanted to make
10 sure that initially that council saw the report
11 before it got into the papers and then they read
12 it in the papers. And then I knew if that were to
13 be the case that, come Monday when we're at
14 committee, that it would likely not be pretty.
15 They would be upset by that and we would be
16 talking about that instead of the report. So, I
17 was trying to, kind of, manage that situation.

18 But in terms of the content of
19 the CIMA report, that had nothing to do with my
20 thinking. That report was coming Monday at least
21 and then in the fullness of time Lauri was able to
22 point out that we had already said we were sending
23 it out. So, in the end, I was fine with that. I
24 was just trying to manage that media message so
25 staff and myself didn't upset council members

1 unnecessarily. As it turned out, it was fine
2 anyway.

3 449 Q. Okay. So, just so I
4 understand, you were worried about councillors
5 leaking the report to the media --

6 A. I don't want to
7 characterize it as councillors leaking the report.
8 I mean, if we put the report out on Friday, it's
9 public. It's part of the, you know, public
10 domain. They don't have to leak it. The press
11 can just pick it up. So, no, I'm not saying --

12 450 Q. That was my question.

13 A. I didn't say they're
14 leaking it. I just said they like to see the
15 information upfront and I was just trying to
16 manage that. But it wasn't -- as I say, I want to
17 emphasize it wasn't related to the content of the
18 CIMA report.

19 451 Q. Okay. Did you attend the
20 Public Works Committee meeting on December 7?

21 A. Again, I can't recall. I
22 think I probably must have, but I don't know for
23 sure.

24 452 Q. Okay. Registrar, can you
25 go to page 74, please.

1 At that meeting, Mr. Moore
2 made a number of statements in response to
3 Councillor Merulla, including that the City had
4 used SMA and that MTO had performed the initial
5 friction testing and received results and/or above
6 what the MTO typically expected from high grade
7 friction mixes, and that they had performed
8 subsequent testing five years after finding that
9 the road was holding up exceptionally well.

10 Do you remember Mr. Moore
11 making those statements --

12 A. Seeing this now, I would
13 say to your question about me being at the
14 meeting, I guess, I think I was at this meeting
15 because I have a memory of this exchange with
16 Councillor Merulla and Mr. Moore.

17 453 Q. Okay. Did you discuss
18 this exchange with any of your colleagues in your
19 division?

20 A. Not that I recall. I
21 mean, again, this was Gary, Mr. Moore, Gary,
22 talking about his things or providing responses to
23 council or Councillor Merulla, so no, I didn't see
24 it as my role to discuss that in any detail with
25 my staff.

1 454 Q. Okay. Registrar, can you
2 go to page 77, please. Pardon me, 77, that was
3 right. Thank you.

4 So, on December 9, which is
5 just in advance of the councillor ratification of
6 the MPWC decisions, the Lakewood Beach Community
7 Council wrote to the mayor and members of council
8 suggesting that friction testing be moved from a
9 medium-term characterization to a short-term
10 characterization.

11 And, actually, Registrar, can
12 you show 78 as well. That's at the bottom of 77
13 and the top of 78.

14 This is on the short-term list
15 and we think that the cost benefit of conducting
16 this test would be money well spent, and they
17 reference some of the issues in the safety study
18 and that's their ask. Do you remember becoming
19 aware that the Lakewood Beach Community Council
20 had made this request to council?

21 A. I don't remember it from
22 the time. I've seen it during our review here a
23 number of times, though.

24 455 Q. Registrar, you can close
25 that down and can you go to page 111, please.

1 Just while that's coming up,
2 councillor says, you know what, let's defer that
3 back to Public Works Committee meeting rather than
4 to council, which makes good sense. Right?

5 A. Yeah. I think items
6 raised at Public Works Committee would be dealt
7 with at Public Works Committee.

8 456 Q. Yeah.

9 A. Yeah.

10 457 Q. So, in advance of the
11 next Public Works Committee meeting -- if you can
12 pull out, Registrar, 350 and 351 -- Mr. Ferguson
13 writes to the Lakewood Beach Community Council and
14 says:

15 "I am pleased to inform
16 you that this
17 testing -- "

18 That is in respect of the
19 friction testing:

20 " -- will be completed by
21 engineering services in
22 2016."

23 And then Mr. Moore is copied
24 on that and Mr. Moore replies, "Perfect."

25 So, a couple of questions on

1 this. One, were you aware at the time that
2 Mr. Ferguson was making commitments to the LBCC in
3 respect of friction testing?

4 A. Not until I saw this, but
5 I think he's saying it was -- I don't know where
6 he got that. You would have to ask Dave.

7 458 Q. All right. And he's
8 copied Mr. Moore?

9 A. Yeah.

10 459 Q. Who says, "Perfect"?

11 A. Yeah.

12 460 Q. Is it unusual for your
13 staff to make commitments on behalf of other
14 divisions?

15 A. Yeah. To be honest, this
16 would stand out for me as, like, as I'm reading it
17 now, like, why would Dave be involved in making
18 that answer? Other than I think that's where the
19 original request came through, was with Dave. And
20 he's just that kind of person. I mean, he would
21 take it on.

22 461 Q. Can you close this down,
23 Registrar, and go to the next page, please, and if
24 you can call out 354 and 355, please.

25 So, there's a delegation for

1 the LBCC to the next PWC meeting and Mr. Lupton
2 says:

3 "Guys, let's make sure we
4 attend. We have some
5 history."

6 And then you're copied on
7 that. And then Mr. White responds and says:

8 "Without looking at it,
9 it's RHVP safety stuff.
10 Dave provided this group
11 and council with an
12 update last week at
13 Councillor Jackson's
14 request."

15 That's an update in respect of
16 the countermeasures:

17 "The issue is mostly the
18 asphalt friction test
19 which Gary says is done.
20 We have asked for a copy
21 of the results but
22 haven't seen it yet. We
23 will be in attendance."

24 So, we're now in February of
25 2016. Did you understand, you personally

1 understand, in February of 2016 that friction
2 testing had been done on the Red Hill?

3 A. Given that I've seen
4 these e-mails were copied to me, I would have to
5 say yes based on what I'm reading here.

6 462 Q. Did you take note that
7 Mr. White said we've asked for a copy of the
8 results, but haven't seen it yet?

9 A. Not specifically, no.

10 463 Q. By this point, had anyone
11 on your team told you that they had sought and not
12 received these results before you received this
13 e-mail?

14 A. No.

15 464 Q. Did you understand your
16 staff to have any concern or frustration about
17 having not received the results?

18 A. No. In fact, you would
19 have to ask Martin. I don't know why he would
20 want the results.

21 465 Q. Okay. And if Mr. White
22 wanted the results and Mr. Moore did not provide
23 them, what would you expect Mr. White to do?

24 A. If he really wanted them
25 for some reason, I guess he could ask again, but I

1 wouldn't -- I'm not -- I have no idea why Martin
2 would ask for the friction test results on this
3 issue. Friction testing was the purview of Gary's
4 group and whatever those results were, like I have
5 said before, he was a professional. I trusted
6 Gary to make the decisions on that. Our guys
7 would not have been making decisions about
8 pavement.

9 466 Q. Okay. Registrar, you can
10 close this down and can you go to the next page,
11 please. Pardon me, I was wrong actually. Can you
12 go back a page and call out the last paragraph.

13 So, Mr. Moore does respond,
14 this is from an earlier e-mail exchange, and he
15 says:

16 "Some roughness and skid
17 resistance (friction
18 testing) has been done.
19 I'm trying to get an
20 analysis for it and put
21 it into context."

22 This is to Mr. Ferguson and
23 Mr. Lupton. Did anyone tell you about this e-mail
24 from Mr. Moore?

25 A. Not until I saw this as

1 part of this process. I don't believe I saw it.

2 467 Q. Okay. Registrar, can you
3 close that out and go to page 125, please.

4 So, in May of 2016, your group
5 provides an update to PWC about the status and
6 timing of a number of countermeasures from the
7 2015 CIMA report and they flip a draft to
8 Mr. Moore for his review, and Mr. Moore responds
9 on paragraph 397.

10 Registrar, can you can call
11 that out.

12 And you'll see he says:

13 "We're possibly looking
14 at having pavement rehab
15 done on the Red Hill in
16 2017."

17 You can close that out. Did
18 Mr. White tell you about the possibility of
19 pavement rehab work when he received this e-mail
20 in May of 2016?

21 A. I don't recall if he did
22 or didn't.

23 468 Q. Okay. Do you recall when
24 you first became aware that pavement rehab work
25 might be planned on the Red Hill for 2017?

1 A. No, I don't.

2 469 Q. Okay. Go to page 156,
3 please. So, now we're in February 2017 --

4 A. I'm sorry, can I say
5 something else, too? It's normally -- when I said
6 no, I don't, that was normal for me. I didn't
7 follow or make it a habit of following the
8 pavement replacement plan that was part of Gary's
9 budget. I just didn't follow that. So, it's not
10 that I didn't pay attention to this. I didn't
11 follow the pavement reconstruction program in any
12 way, other than when it was done, when it was
13 finalized, then we had to think about markings and
14 signs.

15 470 Q. Okay. I'm going to take
16 you to some documents in February of 2017 where
17 your team wants particular aspects to be part of
18 the scope of the rehab, so I suggest to you that
19 that's actually one of the circumstances in which
20 you would be paying attention, is to ensure
21 that --

22 A. Like I said, the markings
23 and things like that, yes.

24 471 Q. Okay. The markings and
25 other things, yeah. So, we've jumped forward to

1 2017 and you'll see in paragraph 469 Mr. Ferguson
2 responds to an e-mail from Mr. Andoga in asset
3 management asking if there's any things that
4 traffic wants as part of the scope for the rehab,
5 and Mr. Ferguson includes the installation of
6 cat's eyes?

7 A. Yeah.

8 472 Q. Pavement markings?

9 A. Yeah.

10 473 Q. Shoulder rumble strips,
11 which was, you'll recall, a medium-term option,
12 modification of an on-ramp, modification of
13 alignment, and then he says:

14 "We've conducted a
15 five-year collision
16 history review on both
17 roadways --"

18 That's the LINC and the Red
19 Hill:

20 "-- and based on this
21 evaluation, we have
22 identified two segments
23 of concern that barriers
24 would be installed."

25 So, do you recall in February

1 of 2017 that in addition to a number of aspects
2 that came out of the 2015 CIMA report,
3 Mr. Ferguson was suggesting as a matter of scope
4 to install barriers in particular locations on the
5 Red Hill and the LINC?

6 A. I didn't recall that from
7 the time. I've seen this e-mail a few times now,
8 but --

9 474 Q. Okay. Registrar, can you
10 go to the next page, please.

11 A. I think Dave may have
12 forgotten that council gave us direction to
13 consider those things with the conclusion of the
14 TMP, because there's a two-year time gap in here
15 between the 2015 report to council and this 2017
16 e-mail, so I'm not sure what Dave -- you would
17 have to ask him, but --

18 475 Q. Okay. And he wasn't
19 asking for end-to-end barriers. He's asking for
20 them in particular locations?

21 A. Yeah.

22 476 Q. And Mr. Andoga responds,
23 and if you see under item 6 in paragraph 470,
24 being:

25 "The installation of

1 attendees in the invitation were to be
2 Mr. McKinnon, Mr. Moore, Ms. Matthews-Malone, Al
3 Kirkpatrick, Jason Worrone and David Ferguson.

4 A. Okay.

5 482 Q. You attached an agenda,
6 which is here and I think it actually goes on to
7 the next page, and the author of this agenda is
8 M. Clark. Is that your assistant?

9 A. No, that would have been
10 Gerry's assistant.

11 483 Q. Gerry is not here at this
12 point.

13 A. Well, the GM's, whoever
14 the GM was at that -- what date is this?

15 484 Q. The meeting was May 1,
16 2017.

17 A. Yeah, it would have
18 been -- I think Dan was GM by then, yeah.

19 485 Q. Okay. Did you have any
20 input into the agenda for this meeting?

21 A. I don't know. I must
22 have. It says it's circulated a calendar
23 invitation from me.

24 486 Q. Yeah.

25 A. So, I'm a little at a

1 loss as to how it came out of Nancy's office.

2 487 Q. The agenda, the metadata
3 of the Word document, is her -- she's listed as
4 author, but you're the one who attached it to the
5 appointment.

6 A. It's not that I don't
7 believe you. I just don't understand the
8 mechanics of that. Would I have had some input
9 into setting this agenda? Most likely yes. I
10 don't recall this meeting in specifics. This is
11 not the same meeting you were referring to a
12 few -- you said that there was a meeting with
13 myself, Mr. Moore and Gerry, yeah, so that was
14 Gerry, I think.

15 488 Q. Yeah. That was in
16 November of 2015.

17 A. Okay. Yes, no. So, this
18 meeting here, yes, I likely had some input into
19 the --

20 489 Q. Okay.

21 A. Looking at the agenda, I
22 can imagine I did.

23 490 Q. Okay. And do you
24 remember what the purpose of this meeting was?

25 A. Likely this was -- it was

1 my practice to try and bring folks together to --
2 whether it was -- where I thought it was
3 appropriate to just bring people into the room to
4 bring, I think at this point, bring Dan up to
5 date, up to speed.

6 491 Q. So, Dan --

7 A. As to where we were with
8 the Red Hill. Certainly by this time it was, you
9 know, a big topic of conversation, both in the
10 public and within our PW group. It crossed a lot
11 of boundaries or divisions, as you can see from
12 the folks that we invited to the meeting, were
13 from across the department. I think to bring Dan
14 up to speed is the best I can say is what this
15 would have been about.

16 492 Q. Okay. And when you say a
17 topic of conversation both within the public and
18 within the Public Works group, is that to say
19 that -- is a topic of conversation because there
20 had been a number of short-term recommendations,
21 many, many motions brought by Public Works
22 councillors and many items still on the
23 outstanding business list?

24 A. Yes. I mean, there was a
25 lot of moving parts to this project. Over the

1 past, where are we now? 2017. Over the past
2 three or four years. Dan being new, I think my
3 goal here would have been to bring these people in
4 the room and say, okay, here is where we are on
5 what has become a fairly significant Public Works
6 item on our agenda and bring him up to speed on
7 that.

8 493 Q. Who put friction testing
9 results on the agenda?

10 A. I probably did. If I
11 wrote this agenda, it would have come out of -- if
12 this came out of my office, like it says it did, I
13 would have been the author of the agenda, too.

14 494 Q. Okay. And do you recall
15 why you put friction testing results on the
16 agenda?

17 A. Only in as much as
18 friction testing is part of the Red Hill Valley
19 story, if you will, at this point, as well as all
20 the other medium and long-term improvements that
21 they were doing, the reports, the outstanding
22 business list, what was left. All of that was
23 part of the mix, including friction testing, so I
24 put it on.

25 495 Q. Okay.

1 A. There wasn't a lot of
2 deep thought put into that. These were items that
3 came to mind as regards to the Red Hill and I put
4 them into the agenda.

5 496 Q. Okay. And when you say
6 this is something that came to mind, is that
7 because some of your staff, including Mr. White,
8 had said we've asked for results and we haven't
9 received them?

10 A. I don't know if that's
11 why I would have said that. I just know that
12 friction testing results would have been part of
13 what, you know -- you tell me. It's, sort of, on
14 the short-term agenda, then the medium-term and
15 then these reports said it's completed. I think
16 it was just looking for clarity.

17 497 Q. Okay. Registrar, you can
18 close that down and can you open up HAM25976.

19 Do you recall asking
20 Mr. Worrone to prepare a presentation for this
21 meeting?

22 A. No, I don't recall asking
23 him specifically to do that.

24 498 Q. Okay. Him or perhaps
25 Mr. Ferguson?

1 A. I don't know. I
2 probably -- like, the way the organization worked,
3 I might have talked to Martin about it.

4 499 Q. Sure.

5 A. It's conceivable I could
6 have talked to Ferg about it, too, but I don't
7 even know for certain that this -- I would have
8 said we need an update at the meeting. How you do
9 it is not what I would get into.

10 500 Q. Okay. Registrar, can you
11 pull up the next page of that presentation as
12 well.

13 I think Mr. Worrton's evidence
14 was that you did direct him to do this.

15 A. It may have been.

16 501 Q. Do you recall either way?
17 Okay.

18 A. It may have been.

19 502 Q. Registrar, can you go to
20 the next image of this, image 3. Actually,
21 image 3 and 4, please.

22 Does this refresh your memory
23 about you actually seeing this presentation? I
24 know it's very small, but it's basically a
25 timeline of all the external things, the motions

1 that came, the responses to the motions, really
2 over the period of 13 years.

3 A. Yeah. No, not really. I
4 mean, no. To be honest, I don't remember it.

5 503 Q. Okay. Do you remember
6 Mr. Worrton presenting this slide deck at the
7 meeting on May 1?

8 A. No, I don't.

9 504 Q. Okay. Can you,
10 Registrar, go to slide 9, please. Actually, we
11 can put up slide 9 on one side and image 17 on the
12 other.

13 So, here is two examples of
14 the 2013 CIMA report and the 2015 CIMA report,
15 well, the staff reports that relate to them, and
16 you'll see in both friction testing is set as
17 complete and then there's aspects that are
18 incomplete.

19 Do you recall if you directed
20 Mr. Worrton or any of your staff to particularly
21 highlight what was still outstanding and hadn't
22 been completed and what had been completed?

23 A. No. I would never get
24 into that kind of detail.

25 505 Q. Okay. Registrar, can you

1 close this and go to image 31, please.

2 So, this is the outstanding
3 business list as of that date that was pulled
4 together. Does this feel like a fairly long list
5 of items related to the Red Hill and the LINC for
6 the out business list?

7 A. Sorry, you're saying does
8 it feel like a long list?

9 506 Q. Did it at the time feel
10 like to you that it was quite a long list?

11 A. Yes.

12 507 Q. And at the time, did it
13 seem like there had been a number of motions
14 brought by councillors and a number of things that
15 were still outstanding?

16 A. Yeah. These things
17 continuously came to committee and came to staff
18 through some -- you can see there was various
19 reports associated with each one of these things
20 and were part of an outstanding business list to
21 council --

22 508 Q. In fact, we're at slide
23 31 and each slide is a different topic. Sometimes
24 it's two slides per topic, but there's quite a
25 history by this point?

1 A. There's a long history on
2 the Red Hill and in looking at this now, that's
3 part of the reasoning why I would have wanted to
4 bring Dan up to speed.

5 509 Q. Okay. So, this meeting
6 is you and Dan McKinnon and Betty Matthews-Malone,
7 who is a director at this point, Mr. Moore, who is
8 a director at this point, and Mr. Ferguson and
9 Mr. Worrone, who were underneath you, so mostly at
10 the director level.

11 Were you hoping that some key
12 decisions would be made during this meeting?

13 A. I don't think I was, no.
14 I just --

15 510 Q. Okay. What do you
16 recall --

17 A. I don't recall about the
18 meeting. That's the problem. As I look at this
19 and look at the agenda, I would have -- it was
20 just my practice, I would say, to try and bring
21 the group together if I thought there was a need
22 to review that. We would do that and other
23 portions of my portfolios, be it corporate
24 security or -- you know, Dan was new, relatively
25 new, on the job. This was a big -- you know,

1 there's no doubt in my mind that this was a big
2 issue, so we had a number of outstanding business
3 items to do on this list, plus what we had already
4 done. I wanted to make sure, I think, that he had
5 all the information, but I wasn't looking for --
6 there was no recommendation that I recall coming
7 out of this meeting that you go and do something
8 else, you know.

9 511 Q. Okay. What do you recall
10 about the tone of this meeting?

11 A. Well, I don't. That's
12 the problem. I don't recall the meeting.

13 512 Q. Okay. So, you don't
14 recall a meeting with these attendees that was
15 confrontational or tense?

16 A. No, because we met all
17 the time. That's why it doesn't stick out. Like,
18 we met with the same people as part of our DMT and
19 that was usually a weekly thing and it doesn't
20 stick out to me in terms of its tone or its length
21 or who was attending. We had, you know, many,
22 many meetings and this just does not feel or I
23 don't remember it being unique.

24 513 Q. Okay. Do you remember --

25 A. I'm relying on what

1 you're showing me in terms of the agenda and this
2 presentation to make these comments.

3 514 Q. Okay. And just for
4 completeness, do you remember any discussion at
5 this meeting about friction test results?

6 A. No, I don't.

7 515 Q. Okay. Registrar, can you
8 close this out and go to OD 7, page 180,
9 paragraphs 520 to 522.

10 So, the next day, you write
11 to -- pardon me. Mr. McKinnon writes to you and
12 says:

13 "Thanks for that
14 meeting."

15 And you write and say:

16 "Thanks for attending. I
17 really wanted you to hear
18 the conversation. I've
19 asked Martin and his team
20 to lead on the
21 preparation of a report.
22 I'll consider all of the
23 motions and likely adjust
24 our approach given the
25 news on repaving and

1 such. We can discuss
2 more thorough at our QT."

3 And Mr. McKinnon responds:

4 "I'm concerned about the
5 optics with paving.
6 Nowhere in the forecast
7 is it suddenly getting
8 done right away. Anyhow,
9 let's chat some more."

10 Were you similarly concerned
11 about the optics of all of these things over time
12 and then repaving that had come, quoting
13 Mr. McKinnon, nowhere in the forecast and suddenly
14 getting done right away?

15 A. I would agree with Dan.
16 I was concerned about the optics of that, but I
17 had no way to judge whether or not the paving was
18 moved up or in the right spot or anything. I just
19 had no knowledge of that. But I can agree that if
20 we make sudden changes, and that's where I'm
21 agreeing with Dan about the optics of it, okay, I
22 get that, you know, but am I concerned about the
23 paving, is that what your question? Like no.

24 516 Q. The optics of it, but I
25 think you've answered my question.

1 A. Not really.

2 517 Q. Did you connect the
3 friction testing results that your staff had asked
4 for with the paving that had not been forecasted
5 and suddenly was getting done right away?

6 A. No, I didn't.

7 518 Q. Okay. Registrar, can you
8 go to page 182, please. Can you call out --
9 actually, no. Can you go to 185, please.

10 Mr. Mater, I'm not going to go
11 through all of it, but do you recall reviewing an
12 e-mail exchange that Mr. White forwarded you where
13 Councillor Conley was asking Mr. Moore and others
14 within engineering services for a copy of friction
15 testing results?

16 A. I've seen those e-mails,
17 yes.

18 519 Q. So, this is about a month
19 after the May 1 meeting. At this point, was it
20 known amongst your staff that Gary was not going
21 to provide them with friction testing results?

22 A. I don't think that was
23 known. I don't know.

24 520 Q. Okay. And did you
25 understand that Mr. Moore had conducted testing in

1 response to the Lakewood Beach Community Council
2 request?

3 A. I don't know that he did
4 the testing in response to the Lakewood Beach, but
5 I saw in, you know, a number of these updates that
6 it had been completed.

7 521 Q. Okay. But you didn't
8 know when?

9 A. I didn't know when or
10 why.

11 522 Q. Okay.

12 A. And, again, nothing was
13 ever raised to me. The issue of friction testing
14 never came to me in a point or to the point where
15 I thought, geez, what's going on here? I mean, it
16 was always just a regular part of the conversation
17 that I was confident was being dealt with by the
18 engineering group. Nobody ever came to me and
19 said, oh, my god, John, you need to do something
20 about friction testing. I just -- it never was
21 raised as an issue outside of there's a million
22 other issues, also a whole bunch of other reasons
23 and why a collision could occur, other safety
24 issues we were trying to deal with on the freeway
25 and quite frankly friction testing was never

1 raised to me to do level where I thought, oh, my
2 god, I need to do something and it was never my
3 area of expertise to begin with. So, I just never
4 saw the need to do that. Had I saw that, I would
5 have escalated the issue, but it just never came
6 to that, even up to this point.

7 523 Q. Okay. Would you agree,
8 and focusing on paragraph 539, that Mr. White,
9 when he e-mails you, let's see what answer he
10 gets, exclamation mark, exclamation mark, at some
11 point Mr. White became quite curious about where
12 these the friction testing results were?

13 A. Yes.

14 524 Q. And he conveyed that
15 curiosity to you?

16 A. In this sentence here, I
17 think, yes.

18 525 Q. Okay. Registrar, can you
19 close this down and go to page 158, please.

20 In June of 2017, so after the
21 initial discussion about barriers and the meeting
22 that was set for March 20, it goes dormant for a
23 little while. It comes back up in June of 2017,
24 and Mr. Worrone, you'll see at 475 writes to
25 Mr. Vala in engineering services about the scope

1 that traffic is looking for for the resurfacing.

2 Registrar, can you also bring
3 up 159, please.

4 So, you'll see Mr. Worrone is
5 again putting a scope together, much like
6 Mr. Ferguson had done before, and it also
7 references on page 5 at the top of the 159:

8 "In addition to the
9 median barrier system, we
10 recommend the following
11 items."

12 So, I think it might be
13 number 3, but in any event, just to move things
14 along, Mr. Worrone continues, like Mr. Ferguson had
15 before, to suggest that the median barrier system
16 might be appropriate as part of the scope for the
17 resurfacing.

18 And if you go down to 146,
19 Mr. Moore forwards this e-mail to you and he says:

20 "Why are we getting this?
21 I thought you and I and
22 the GM were going to
23 decide what to do. Where
24 are your people getting
25 this from? Do they think

1 we're going to spend
2 \$10 million?"

3 And you respond:

4 "They're providing the
5 scope they believe is
6 required."

7 Do you remember that back and
8 forth?

9 A. No, I don't, but looking
10 at this now, I kind of remember writing that
11 e-mail back.

12 526 Q. Okay. So, after some
13 back and forth between Mr. Vala, Mr. Andoga,
14 Mr. Ferguson and Mr. Worrton at the, sort of,
15 detail level, Mr. White seeks your guidance about
16 next steps.

17 If you can go, Registrar, to
18 page 161. And, actually, can you bring up 162 as
19 well and can you call out paragraph 481 and 482
20 and 483. Registrar, I think you omitted the first
21 part of the top of -- yeah, thank you.

22 So, Mr. Mater just to provide
23 you with some context, Mr. Andoga, at some point,
24 says:

25 "We're going to proceed

1 with your scope, but we
2 assume that you don't
3 want barriers anymore."

4 And Mr. Ferguson and Mr. White
5 have a bit of a back and forth about that, and
6 they understand that asset management doesn't want
7 to include them in the scope. And Mr. White sends
8 you an e-mail at the very bottom there:

9 "Do you wish us to pursue
10 the barriers as Dave
11 suggests or do you wish
12 us to forego the barriers
13 or go it alone? I'll
14 need your support if
15 we're going to make any
16 progress with engineering
17 services on this matter
18 as they have unilaterally
19 decided not to include
20 them in the project. The
21 overhead lighting will
22 not happen when Gary
23 controls the asset, I
24 suspect. How would you
25 like to proceed?"

1 conversation about barriers and lighting ended,
2 but I don't recall specifically having that
3 conversation.

4 527 Q. Okay. Registrar, you can
5 close this down and if you can bring up HAM52704,
6 please.

7 This is a different topic.
8 This is an article by Nicole O'Reilly from the
9 Spectator in July of 2017.

10 Registrar, can you bring up
11 image 2 and image 3 of this.

12 I know it's a little bit small
13 and hard to read. Do you remember reviewing this
14 article, it was quite a lengthy article, in the
15 Spectator, "Why are there so many crashes on the
16 Red Hill"?

17 A. Do you know when this
18 was?

19 528 Q. Yeah. It's July 2017.

20 A. I mean, I have to say
21 that by this point, if there was an article in the
22 paper about the Red Hill, I read it. I don't
23 recall reading this, though.

24 529 Q. Okay.

25 A. I must have.

1 530 Q. I'll take you just to a
2 few points to try to refresh your memory and also
3 because I have some questions.

4 In image 1 on the left-hand
5 side, Registrar, can you pull out the fifth
6 paragraph, "The City has done limited friction
7 testing." And then if you want to -- Registrar,
8 it's a little cut off at the bottom. Do you see
9 that there's -- there we go. Sorry about that.

10 So, there's a reference to
11 limited friction testing and then the second to
12 last paragraph on image 2, can you pull that out:

13 "There is no official
14 report, Moore said, only
15 an informal chart sent in
16 an e-mail in December
17 2015. Friction testing
18 was not fulsome and the
19 results were
20 inconclusive."

21 So, those are attributed to
22 Mr. Moore. By July of 2017, what did you
23 understand had happened with friction testing on
24 the Red Hill, had it been done or had it not been
25 done?

1 A. By July of 2017, given
2 what we've all looked at here today and what I
3 have been reminded about, I would assume -- I
4 believe I would have thought that friction testing
5 was done. But, to be honest, I didn't give it any
6 thought.

7 531 Q. Okay. And what do you
8 recall understanding about the results of that
9 friction testing? One, did you have any
10 information, and two, did you understand the
11 results to be good or bad or inconclusive?

12 A. At some point I believe I
13 heard this wording that they were inconclusive,
14 probably from Gary, I just don't remember exactly
15 when.

16 532 Q. Okay. At some point
17 Mr. White said he met with you and Gary and
18 Mr. Ferguson where Mr. Moore did express that the
19 results were inconclusive. Do you remember having
20 a meeting with Mr. White and Mr. Ferguson and
21 Mr. Moore?

22 A. No, I don't, but that's
23 what's I was just saying. I do have a
24 recollection of, I think, hearing Gary say those
25 words, you know, sort of, live to me. Whether

1 that was at that meeting or not, I can't say for
2 sure.

3 533 Q. Okay. And do you
4 remember anything else about that meeting in terms
5 of if he had any explanation about why the results
6 were inconclusive?

7 A. No.

8 534 Q. Okay. Registrar, can you
9 close this down and go to HAM35785.

10 So, this is an e-mail much
11 further in time from Mr. White to Mr. Soldo where
12 he says:

13 "I did ask for the report
14 in respect of the
15 Tradewind report several
16 times. Gary did admit it
17 was done at one point,
18 but he discounted the
19 results and minimized the
20 value of the tests.

21 Mr. McKinnon was there as
22 well. I recollect him
23 saying something about it
24 being an English test or
25 a standard or something

1 similar and then he
2 declined to share the
3 results with Dan and John
4 Mater."

5 Does that assist you in
6 recollecting a meeting with Mr. Moore and others
7 about the content of the friction results that he
8 had?

9 A. No. I don't remember
10 Gary specifically saying no to Dan and I or to
11 myself.

12 535 Q. Okay. Do you remember
13 anything --

14 A. -- from reading this.
15 Like I say, the only thing I really remember is at
16 some point in time hearing that the results were
17 inconclusive, that they were done over a period of
18 time, I'm hearing that over a bunch of reports,
19 where that seems to kind of go back and forth
20 where they're done, they're not done. Ultimately
21 in 2015, it says the friction testing is completed
22 and Gary says it's inconclusive.

23 536 Q. Okay.

24 A. I don't recall beyond
25 that having any more detailed --

1 537 Q. No reference to it being
2 an English test?

3 A. Not that I recall. I do
4 know I've heard that in general, that there's a --

5 538 Q. In the context of the
6 inquiry --

7 A. That there's not a
8 standard, I don't believe, for friction testing in
9 Ontario, but there is some English standard. I
10 don't know where I read that. I might have read
11 it in the paper for all I can remember now.

12 539 Q. So, you're not sure that
13 you knew that at the time before the Tradewind
14 report was public?

15 A. I didn't and I really
16 didn't concern myself with that because I had said
17 it never had never risen to the level for me of
18 being something that I needed to explore further
19 or raise the issue up farther. My information the
20 best as I had was that friction testing was done
21 and it was inconclusive, and I got that from the
22 engineer who I trusted and believed.

23 540 Q. Thank you. Turning to a
24 different point now, and I recognize it's 3:30. I
25 have just a few more questions, so before we take

1 a break, I'll try to wrap up.

2 Registrar, can you bring up
3 HAM45707. So, this is an information update in
4 September of 2017. The subject is "Transportation
5 Master Plan Review and Update" and you'll see in
6 the third paragraph it says:

7 "Briefings were held with
8 council members."

9 And then it has a summary of
10 the comments?

11 A. Yes.

12 541 Q. Registrar, can you bring
13 up the next image, please.

14 And you'll see in that bottom
15 third of image 2 there's a reference to the Red
16 Hill Valley Parkway, general agreement regarding
17 the sustainability of any future expansion on the
18 parkways and that these are closely linked to the
19 interchanges of Highway 403 and QEW. That's not
20 any different than discussions we've been having
21 about the widening throughout the course of today.
22 Right?

23 A. That's correct.

24 542 Q. And, in and about 2017,
25 there was also some discussion with the mayor and

1 the provincial government about this very same
2 issue. Do you remember that?

3 A. No, I don't.

4 543 Q. Okay. Registrar, can you
5 bring up HAM26492.

6 This is a letter from the
7 Ministry of Transportation to the mayor in March
8 of 2017, and the Minister says there's a
9 recommendation to include the possibility of
10 widening in their upcoming highways program and to
11 do environmental assessments. Does that ring a
12 bell?

13 A. I believe I saw a copy of
14 this at the time.

15 544 Q. And so, just to close the
16 loop on the TMP, I think you said earlier in the
17 day that the final report wasn't actually sent to
18 council until after you retired?

19 A. I'm not going to say I
20 was retired. I think it might have been the
21 middle of 2018 when I was no longer involved with
22 it and we had moved the planning group -- sorry,
23 we had moved the transportation planning group
24 over to planning and Brian Hollingworth brought it
25 to its conclusion. It's a matter of record, but

1 it was either middle of 2018 or middle of 2019. I
2 just can't remember.

3 545 Q. But you weren't involved
4 in any event?

5 A. No, I wasn't involved as
6 it was close to finished off.

7 546 Q. Okay. So, up to
8 January 1, 2018, when you're still actively
9 involved in traffic events, to your knowledge, had
10 the event, the outcome of the transportation
11 master plan that was referenced in the 2015 report
12 as the thing that would trigger the reassessment
13 of barriers and of lighting, had that actually
14 occurred?

15 A. No, I don't think so. I
16 don't think so. I don't recall, but I don't
17 believe any of that work would have likely
18 occurred or started to occur until after the
19 results or the TMP was presented to committee and
20 council.

21 547 Q. Okay. Registrar, can you
22 bring up HAM26544, please. Pardon me, 26545,
23 please.

24 Do you recall being involved
25 in the preparation of this, I'm going to call it

1 an omnibus report, about all things Red Hill and
2 LINC up to this point?

3 A. No, I don't have a
4 specific -- sorry, I don't recall being involved
5 in this, but I would have reviewed this before I
6 signed it. I just don't recall it.

7 548 Q. And just going back to
8 May of 2017, do you recall that back and forth you
9 had with Mr. McKinnon where you said Martin and
10 his team will take on drafting a report that will,
11 sort of, compile everything, consolidate
12 everything, into one?

13 A. Yes, I remember us
14 reviewing and I think this report is the result of
15 that.

16 549 Q. Okay. And, again, here
17 on recommendation:

18 "The median barriers to
19 be installed on the LINC
20 and the Red Hill will be
21 in coordination with any
22 future widening of the
23 facilities."

24 So, by late 2017, what do you
25 understand -- has there been any change in terms

1 of how quickly widening might happen on the Red
2 Hill and the LINC.

3 A. No. And my understanding
4 of this would still have been that's dependent on
5 the outcome of what the TMP says. So, if the TMP
6 says do a widening, that doesn't mean that the TMP
7 will say the timing. It might give a range. I
8 don't remember or recall if it did. But, you
9 know, the TMP is generally not that prescriptive
10 when it comes to the items within it. It's
11 usually things would occur within a timeframe, not
12 by a particular date.

13 550 Q. Okay. Do you recall
14 being involved in meetings to inform and advise
15 Mr. McKinnon about the content of this report
16 before it went to council in January of 2018?

17 A. The content of this? No,
18 I --

19 551 Q. Yeah.

20 A. -- don't.

21 552 Q. Okay. Do you recall that
22 there was some discussion -- this is as you're
23 sort of leaving traffic -- about getting a new
24 collision memo or getting some more information
25 about the collision stats on the Red Hill?

1 A. I remember staff was
2 working on updating their collision information,
3 but I don't remember if it was specific to the Red
4 Hill or not.

5 553 Q. Okay. And from that
6 point when you switched -- and I think you said
7 this at the very beginning of the day -- into the
8 associate general manager role, did you have any
9 further substantive involvement in the Red Hill?

10 A. No.

11 554 Q. And do you recall signing
12 off on some retainers for CIMA to do additional
13 work because Ms. Matthews-Malone had a personal
14 conflict and so she didn't want to sign off? Do
15 you recall that?

16 A. I may have. That doesn't
17 sound unusual.

18 555 Q. Okay. Registrar, can you
19 bring up RHV890, please.

20 In March of 2018, the City
21 auditor was sent an anonymous letter?

22 A. Yeah.

23 556 Q. Have you seen this letter
24 before?

25 A. I just saw it about a

1 month ago, I would say.

2 557 Q. Okay. Are you the author
3 of this letter?

4 A. No.

5 558 Q. Do you know who the
6 author is?

7 A. No, I don't.

8 559 Q. You are referenced in
9 this letter.

10 Registrar, can you pull out
11 the third bullet point down.

12 As a matter of fairness, I do
13 want to put the assertions from this anonymous
14 letter to you.

15 A. That's the wrong John.

16 560 Q. Did you know that
17 Mr. Moore had hired a consultant to do an
18 investigation on asphalt quality and that
19 Mr. Moore told you not to pursue the matter any
20 further as there were other important, more
21 important, projects to spend capital funds on?

22 A. Sorry, this is John
23 Murray, not me.

24 MS. TALEBI: I'm sorry to
25 interrupt, but I didn't know if you wanted to

1 bring him to Mr. Mater's portion.

2 MS. LAWRENCE: I'm sorry. I
3 guess it has been a long day. I'm trying to get
4 through this. This is my last topic for you. I'm
5 sorry I misspoke. Registrar, can you pull out
6 Mr. Mater's. Wrong John.

7 BY MS. LAWRENCE:

8 561 Q. My apologies, Mr. Mater.
9 The content is in fact very close to the same that
10 we were just looking at, that you absolutely knew
11 that Mr. Moore had hired a consultant to do an
12 investigation on asphalt quality and that you left
13 the matter to Mr. Moore to pursue and resolve so
14 that the transportation staff could do their work
15 related to the matter?

16 A. It's not true.

17 562 Q. It's not true?

18 A. I've no idea that
19 Mr. Moore hired a -- Mr. Moore hires consultants
20 by the, you know, dozen in that role. I had no
21 idea that he hired it, so the first part of it is
22 absolutely untrue, which makes the second part to
23 me irrelevant.

24 563 Q. Okay. And on the second
25 part, to the extent that you left any issue of

1 investigation into asphalt quality to Mr. Moore to
2 pursue, I think you've said throughout the day in
3 fact you would have left any investigation to
4 asphalt quality to --

5 A. Absolutely, because I had
6 no expertise. If I had asked for asphalt results
7 and then done something with them without being
8 qualified and without having knowledge of it, you
9 would be asking me different questions right now.
10 You know, I stuck to my lane in terms of what I
11 know and Gary would tell you the same thing, I
12 think.

13 564 Q. Thank you. Again,
14 apologies on referencing the wrong John M.

15 A. That's all right.

16 565 Q. I'm just going to take a
17 moment to look at my notes.

18 Commissioner, if I could just
19 have one second.

20 Nope. Those are my questions.
21 Thank you, Mr. Mater, so much. And I suggest if
22 not just for you, but for me, perhaps this would
23 be an appropriate time to take, I would say, a
24 ten-minute break.

25 A. Thank you very much.

1 JUSTICE WILTON-SIEGEL: Let's
2 take a ten-minute break. We'll return at ten to
3 4:00.

4 --- Recess taken at 3:41 p.m.

5 --- Upon resuming at 3:55 p.m.

6 MS. LAWRENCE: Ms. Talebi and
7 Commissioner, I actually have one further question
8 before I wrap up my questions. May I proceed?

9 JUSTICE WILTON-SIEGEL: Yes,
10 please proceed.

11 MS. LAWRENCE: Thank you.

12 BY MS. LAWRENCE:

13 566 Q. Registrar, can you go to
14 OD 7, page 178, please. Actually, if you could
15 pull up 177 and 178 together. Thank you.

16 Mr. Mater, I took you to the
17 chart at the top of the 178 earlier today and I
18 asked you questions about conduct pavement testing
19 and that it was complete and asked you about what
20 your staff did, what the policy was, for them to
21 confirm that?

22 A. Yes.

23 567 Q. I inadvertently did not
24 ask you about the long-term options that are set
25 out in this information report. And you'll see

1 here it says that the shoulder rumble strips were
2 to be completed during resurfacing, and then the
3 median barrier on the LINC and the Red Hill to be
4 reviewed and considered during resurfacing?

5 A. Yes.

6 568 Q. And then end-to-end
7 illumination to be reviewed by engineering
8 services?

9 A. Mm-hmm.

10 569 Q. Did you have any
11 discussion with your staff about including the
12 assessment or the consideration of median
13 barriers, that that was going to be considered
14 during resurfacing?

15 A. No, I did not.

16 570 Q. And this is 2017, so the
17 TMP has not yet been included --

18 A. Not yet done.

19 571 Q. Did you understand that
20 the median barrier system would be assessed during
21 and considered during resurfacing?

22 A. I don't think I did,
23 unless the resurfacing happened after the
24 completion of the TMP.

25 572 Q. Okay. And just to orient

1 you in terms of time, after this is put into --
2 submitted to PWC, you then have a discussion with
3 Mr. White and Mr. Ferguson about median barriers
4 in which you remind them that it was supposed to
5 be related in conjunction with widening, so just
6 in terms of time we're before that period of time.

7 A. Yes.

8 573 Q. And so, do you have any
9 information to explain why your staff would have
10 put in median barrier system was going to be
11 considered during the resurfacing or do you think
12 were just being optimistic?

13 A. I think that's what it
14 amounts to.

15 574 Q. Okay. Thank you.

16 A. I have no other
17 information on that.

18 575 Q. Thank you. Those are my
19 questions.

20 Commissioner, I understand
21 that counsel for Dufferin, Golder and the MTO have
22 no questions.

23 JUSTICE WILTON-SIEGEL: Okay.

24 MS. LAWRENCE: I'm just giving
25 a moment for them to pop up in case they change

1 their mind. No. So, I suggest I turn it over to
2 the counsel for the City, who has some brief
3 questions.

4 JUSTICE WILTON-SIEGEL: Okay.

5 MS. TALEBI: Thank you,
6 Ms. Lawrence. Commissioner, may I proceed,
7 please?

8 JUSTICE WILTON-SIEGEL: Yes,
9 please proceed, Ms. Talebi.

10 MS. TALEBI: Thank you.

11 EXAMINATION BY MS. TALEBI:

12 576 Q. Good afternoon,
13 Mr. Mater. I just have very few questions for you
14 following up on some of the testimony that you
15 gave earlier today.

16 A. Okay.

17 577 Q. You mentioned in your
18 evidence that in dealing with consultant reports,
19 staff often apply their own judgment depending on
20 the circumstances. Would you expect city staff
21 specifically to use their judgment or discretion
22 in applying the advice that's contained in a
23 consultant's report when preparing a staff report?

24 A. Yes, I would.

25 578 Q. And how would you expect

1 staff to do that?

2 A. They would apply their
3 own knowledge, their own knowledge of the
4 situation, their institutional knowledge that they
5 have of the City, budget, what other
6 considerations or input we may have received from
7 the public or other interested groups, things like
8 that that would be all part of, you know, forming
9 a conclusion.

10 579 Q. Okay. Thank you. And
11 so, I take it, then, that when staff is reporting
12 back to council, what council is looking for is
13 staff's recommendation, then, which takes into
14 account consultant's advice that may be contained
15 in a report. Is that correct?

16 A. Yes.

17 580 Q. Okay. And further to
18 your discussion earlier about consultant reports
19 where you mentioned that there was no policy in
20 place dealing specifically with when to provide a
21 copy of a consultant report to city council, I
22 just wanted to ask you: In the absence of any
23 such policy, how would staff determine whether a
24 copy of a given report needs to be provided to
25 council?

1 A. I think that would
2 probably be through a discussion. At the time, it
3 would have been through discussion with the
4 authors of the report and their managers or
5 directors and to try to determine, based on, you
6 know, it depends, based on the situation or based
7 on the content of the report as to whether or not
8 they could or would supply it. They would always
9 be available, but it would be unusual back in
10 those times at least to provide it to them as part
11 of the reports. There are so many -- you know, by
12 the time you get to the report, you've boiled down
13 pages and pages of information and what other
14 information you may have from, like I said, other
15 interested parties and things. So, it's just,
16 sort of, an untenable situation if you were to
17 provide them with every report. And they've never
18 asked for that, so we didn't.

19 581 Q. And if a staff report
20 references a consultant report, can city council
21 request a copy of that report if they want to?

22 A. Absolutely.

23 582 Q. And would members of the
24 public be able to make a request for copies of
25 consultant reports?

1 A. Yes, they can.

2 583 Q. And how would they do
3 that?

4 A. My best understanding is
5 that you would go through the clerk's office under
6 normal circumstances to request it.

7 584 Q. Okay. And could they ask
8 their councillors for a copy of the report?

9 A. Certainly, they can.

10 585 Q. Okay. And so, commission
11 counsel asked you about Mr. Moore's comments with
12 respect to the 2013 and the 2015 CIMA report and
13 your evidence was that there was a back and forth
14 involved in that process between staff and CIMA in
15 those cases. And that's just me, sort of,
16 summarizing your evidence.

17 But in your experience, was it
18 common for senior staff and directors to provide
19 feedback and comments on consultant reports?

20 A. It depends on the
21 situation, but some directors would be -- it
22 wasn't common for me as a senior director, but as
23 a director dependent on the complexity of the
24 report or the political profile it may have had,
25 they may have at times provided input, yes.

1 586 Q. Okay. And commission
2 counsel took you to a meeting invite for a meeting
3 that was scheduled for May 1, 2017 and you
4 indicated that the purpose of the meeting was to
5 bring everyone together and to, sort of, bring
6 folks up to speed. Do you recall what meeting I'm
7 referring to?

8 A. I recall us talking about
9 it, yeah.

10 587 Q. Yeah. And so, my
11 question for you is: Why did you think it was
12 important to bring everyone up to speed at that
13 time?

14 A. Well, on that particular
15 topic, it was very public. Dan was relatively
16 new. I wanted to make sure that everybody in the
17 room had, you know, kind of a baseline of
18 information, I guess is what I think from reading
19 the agenda and seeing who was invited. That's
20 likely what my thoughts were at the time, just to
21 bring senior management within Public Works
22 department so we all have a sort of common
23 understanding of where we are with the Red Hill,
24 because it was getting to be and still is a pretty
25 complex project.

1 588 Q. Okay. Thank you for your
2 time, Mr. Mater. Those are all my questions for
3 you.

4 A. Thank you.

5 JUSTICE WILTON-SIEGEL: Okay.
6 Ms. Lawrence?

7 MS. LAWRENCE: No.

8 JUSTICE WILTON-SIEGEL: Okay.
9 Well, Mr. Mater, I know you've had what you have
10 described as a wild couple of weeks and I can
11 understand and sympathize with you. I simply
12 wanted to thank you for making yourself available
13 to the inquiry.

14 THE WITNESS: Thanks very
15 much. I appreciate the opportunity.

16 JUSTICE WILTON-SIEGEL: We
17 appreciate your evidence and I can say now that
18 you're excused if you want to depart.

19 And for the rest of us, we'll
20 stand adjourned now until 9:30 tomorrow morning.
21 Thank you. Good evening, all.

22 --- Whereupon the proceedings adjourned at
23 4:05 p.m. until Friday, July 15, 2022,
24 at 9:30 a.m.

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