

Direct Examination - Mr. Schubert

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MR. GROGAN: Your Honor, the government calls Joel Schubert.

THE COURT: Mr. Schubert, if you'll please stand, 4
raise your right hand, my courtroom deputy is going to swear you
5 in.

6 **JOEL SCHUBERT, GOVERNMENT WITNESS, DULY SWORN** 7 THE

COURTROOM DEPUTY: Please state your name and
8 spell your last name for the record.

9 THE WITNESS: Joel Schubert, S-c-h-u-b-e-r-t.

10 THE COURTROOM DEPUTY: Thank you.

11 THE COURT: You may take your seat, sir.

12 Counsel, you may proceed.

13 MR. GROGAN: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. GROGAN:

16 Q. Good afternoon, sir. How are you?

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17 A. Well, thank you.

18 Q. Can you tell the jury what you do for a living?

19 A. I'm the deputy county manager for Bay County.

20 Q. What are your duties and responsibilities as deputy county
21 manager?

A. I'm the -- I'm over all of operations for the county;
public works, parks, all our outward-facing operations.

Q. Are you from the Bay County area?

A. My family moved there, I was a sophomore in high school. I
attended high school in Bay County for about three years, did two
years of community college, and then I moved to Tallahassee. Q. Where
did you go to school?

4 A. The two years I went in Bay County were Gulf Coast. I was
5 on a scholarship there, and I was -- earned a scholarship at 6
Florida A&M here in Tallahassee, and I got my bachelor's degree
7 there and worked full time while I was doing that.

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8 Q. Where did you go to work after you graduated from college?

9 A. I worked private industry for a while. I continued that, 10
and I took a job with the State of Florida Department of Revenue
11 in 1996.

12 Q. What did you do for the Department of Revenue?

13 A. I started at the bottom, but I worked my way to a
14 leadership role. I managed -- for the last several years, I
15 managed over 100 people. I had seven or eight offices
16 throughout the state, and while it was a state agency, we had a
17 lot of interaction with local jurisdictions, whether it be
city 18 or county.

19 Q. When did you -- when abouts did you leave the Department of 20
Revenue?

21 A. I left the Department of Revenue in 2014. While I was with
the State, I earned a master's of applied social science at
Florida A&M as well. It was their public admin program. But in

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2014, I applied and was offered the city manager's job in Lynn Haven.

Q. So you were the city manager of Lynn Haven for a time?

A. Yes.

Q. You began there in April 2014, I think you said?

4 A. Yes.

5 Q. And when did you leave?

6 A. I left around June or July of '17.

7 Q. Were you familiar -- at the time you got the job as city 8
manager of Lynn Haven, were you familiar with contractors and 9
other individuals that had business before the City?

10 A. No, sir. I've been in Tallahassee well over 20 years.

11 Q. Can you describe the process for interviewing and
12 ultimately getting the job as city manager?

13 A. I applied. The master's got my foot in the door to get an
14 interview. There were several candidates. There was a local

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15 candidate that showed up as No. 1 on most of the lists, and
when 16 that gentleman couldn't come to terms and agreement
with salary, 17 I think I was right there at No. 2.

18 Q. Did anyone ask you to meet with city contractors before you
19 went through that process to get hired?

20 A. No.

21 Q. Did anyone ask you if you would be a friend to city
contractors?

A. No.

Q. Who was the mayor when you started working for the City of
Lynn Haven?

A. Walter Kelly.

Q. And who was the city attorney when you were city manager?

A. Robert Jackson.

4 Q. Are you familiar with the City's charter?

5 A. Somewhat, not as much as I was six or seven years ago.

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6 Q. Could you take a look at Government's Exhibit 1, please.
7 Is that a copy of the City's charter?

8 A. It appears to be, yes.

9 Q. Can you explain to the jury how the City government
10 worked in Lynn Haven while you were city manager?

11 A. So it's a manager/commission-type government by charter,
12 which means there's a mayor, but he or she is a figurehead and
13 carries one vote. They certainly do a lot of the -- can't
14 see -- they do a lot of the outward-facing public interaction.
15 They run the meeting, but they are the last vote of the five 16
17 votes that are taken for anything that's put in front of the
18 commission.

18 Q. How does the -- what is the authority of the city manager 19 in
19 relation to the city commission?

20 A. The city manager is charged with making the directives of 21
21 the commission, their policies, the everyday running of the City.

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They are charged with making sure that happens per the commission's directives and policies, procedures.

Q. So does -- do you answer, then, to the city commission or to a commissioner or the mayor individually?

A. In normal times, you would answer to the commission as a whole.

Q. From your experience in local and state governments, do 4
local governments from time to time receive federal money from
5 the State of Florida?

6 A. Yes.

7 Q. How, in your experience, does the state participate in the
8 administration and distribution of federal funds to local
9 governments?

10 A. Usually federal funds are passed through a particular state
11 agency, and both the federal and state agencies make these 12
monies available and local jurisdictions can apply for a grant.

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13 Q. Did you oversee that process as city manager of Lynn Haven?

14 A. Yes. Our staff applied and received, I believe, multiple
15 grants during those approximate three years.

16 Q. When a local government like the City applies for the 17
federal grant money through the State, how does that process 18
work mechanically?

19 A. So staff will typically research, or they may even be
20 approached in some cases by the State or even the federal
21 government, and they're made aware that there are monies
available. And then somebody from staff or either a consultant
would put together a package to submit through the State and
the fed to try to compete to bring some of that money locally.

Q. You mentioned some projects that you were -- or some grants
that you were aware of from your time as city manager,
Mr. Schubert. I'd like to ask you about a couple of those.

While you were there, did the City have a facility that it

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4 used for emergency situations?

5 A. Yes.

6 Q. Can you tell the jury about that, please?

7 A. It was the -- the City called it FD1, Fire Department 1.

8 It's off the main corridor, north/south corridor in Lynn Haven.

9 There are fire apparatus there, and has also, I believe, been 10

reinforced and hardened to serve the City in case of inclement

11 weather.

12 Q. Is that technically an emergency operation center in the

13 sense of the word -- or the term most people would understand?

14 A. Yes. Yes, it is. Technically, there's only one EOC in

15 Bay County, and that's the County's, but most of the cities

have 16 their own facility where they do emergency operations

as well. 17 Q. Do you recall while you were city manager the

City applying

18 for a grant to replace the generator at that facility?

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19 A. Yes.

20 Q. And what do you recall of that?

21 A. So the fire chief and the grants administrator at the time did all the heavy lifting to seek federal funds -- it was a replacement generator. It's not the \$500 generator you get from Lowe's. This is a standalone, probably 15 by 10 generator that would power the whole facility.

The generator that was at Lynn Haven before could only power parts of it. So through FEMA and the hazard mitigation grant program, there were funds available, and the City applied for those funds to replace that generator.

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5 Q. Do you recall about how much money the City received for that reimbursement? 6

7 A. It was 78, 80,000. It was pushing 80,000, I believe. 8

Q. Are you generally familiar with the U.S. Department of
9 Justice's Justice Assistance Grant Program?

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10 A. Generally, I'd say yes.

11 Q. What can you tell the jury about that?

12 A. Akin to the prior grant we just spoke about through FEMA,
13 the Department of Justice makes federal monies available to
14 FDLE, and through FDLE, Florida Department of Law Enforcement,
15 they make -- may pass a portion of those funds through the
local

16 jurisdictions to support them for equipment that would make
17 their operation run more efficiently or better their process.

18 Q. Do you recall the City applying for a grant under that 19
program while you were city manager?

20 A. I think we probably applied -- or the City, I think,
21 probably applied for it multiple occasions. It's something
that I believe they pursued on a yearly basis, if not every two
years.

Q. Sir, do you know the defendant in this case,
Mr. James Finch?

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A. Yes.

Q. Can you tell us how you first met Mr. Finch?

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A. I met him after I took the job or accepted the job in
Lynn Haven.

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Q. Have you ever been to his house before?

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A. I have.

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Q. What for?

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A. There was a fundraiser for a political race. 9 Q. Do --
could you tell the jury what you know about

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Mr. Finch's business with the City of Lynn Haven?

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A. Mr. Finch, I believe, grew up in the city his whole life,
12 and he certainly was very active in the community, and he
13 competed for work with the City of Lynn Haven.

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Q. Do you recall specific projects that Mr. Finch had with the
15 City?

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A. There were several.

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17 Q. Do you know Commissioner Antonius Barnes, former
18 Commissioner Antonius Barnes?

19 A. I do.

20 Q. How do you know Commissioner Barnes?

21 A. Through my city manager job at Lynn Haven.

Q. Do you recall Commissioner Barnes being re-elected in April
of 2015?

A. I do.

Q. And about that same time was there a new mayor elected in
Lynn Haven?

A. Yes.

Q. And who was that?

4 A. Margo Anderson.

5 Q. What do you recall of Mayor Anderson's campaign to
be

6 elected mayor?

7 MR. LEWIS: Objection to relevance.

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8 THE COURT: Response?

9 MR. GROGAN: Your Honor, there will be some context 10
for later witnesses. I can explain more sidebar if
that would
11 be helpful.

12 THE COURT: Let's go briefly sidebar.

13 (Following conference held at sidebar at 3:52 PM.) 14

15 THE COURT: Just quickly so I'll know what -- what's
the answer going to be so I know what topic we're
covering.

16 MR. GROGAN: Judge, you probably recall, the mayor
17 took office in Lynn Haven. She kind of wanted to
fire a lot of

18 people. Mr. Schubert resisted that. Ultimately, Mr.
White's

19 put in place. There's a process where he has to
interview with

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Mr. Finch and some other contractors and the mayor's husband,

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and there's pressure on him throughout to kind of do what the mayor wants.

We think that's important to Mr. White's testimony and the key statement that we're going to bring up later in the case about Commissioner Barnes, because we asked him, Why did you not report? It seems Mr. Finch saying he's bribing

Commissioner Barnes, why did he not do that? Essentially, I was afraid I was going to get fired because of the mayor's

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relationship with Mr. Finch.

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So we want to lay some context for Mr. Finch's

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involvement with the City. We're not planning to put on 7 evidence that he's bribing the mayor.

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8 THE COURT: Yeah, what I want to avoid -- what it 9 seems
to me the problem here is the open-ended nature of 10 question,
which is, What do you know about her campaign? I

11 mean, that could have elicited all manner of stuff.

12 If you want to ask him, When she came on was there any 13
changes in the City? Yes. What sort of changes? -- you can go
14 into that generally. And did you meet with Mr. Finch as part
of

15 that process? Yes -- we can do a limited amount of that. My
16 concern is the open-ended nature of the question that could
have

17 covered the entire waterfront of everybody's views and could 18
have opened the door to all manner of hearsay, some of which

19 would be not admissible --

20 MR. GROGAN: I understand.

21 THE COURT: -- so sustained at this juncture and
narrow it.

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MR. GROGAN: Yes, sir. Thank you.

(Sidebar concluded at 3:54 PM.)

THE COURT: Counsel, you may proceed.

MR. GROGAN: Thank you, Your Honor.

BY MR. GROGAN:

Q. Mr. Schubert, when Mayor Anderson was elected mayor of 4 Lynn
Haven, did things change with respect to your relationship
5 with the mayor?

6 A. Yes.

7 Q. Can you tell the jury what happened?

8 A. I didn't know Mayor Anderson well -- or at all before the
9 election. After the election we had a very cordial and
10 professional relationship, I'd say, throughout, but it became
11 apparent that the main issue that I had as city manager that
she
12 had with me was that I could not carte blanche do all of her 13
directives. Some of what she was directing me to do required a

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vote on the commission floor.

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Q. What exactly did she want to do that you couldn't do

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without the commission's direction?

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MR. LEWIS: Judge, I object again to relevance to this

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case.

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THE COURT: Sustained as phrased.

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You can ask -- if you want to ask him an example and

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then move on to talk about the general context of things.

BY MR. GROGAN:

Q. Can you give an example of something Mayor Anderson wanted you to do that you could not do or you did not want to do?

A. When she ran, there was a flyer that listed ten citizens --

MR. LEWIS: Judge, I'm sorry. I apologize for interrupting.

THE COURT: Certainly. We can go sidebar.

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4 (Following conference held at sidebar at 3:56 PM.)

5 MR. GROGAN: I apologize, Your Honor. I was not
6 attempting to elicit information about the campaign,
7 but I think what he's going to say is there was a
8 flyer of people she wanted fired, and then she told
9 him to fire people.

10 THE COURT: And this is explaining how does he --
11 what

12 are the circumstances under which he leaves as city
13 manager? 14MR. GROGAN: Because of his relationship
15 with her.

16 THE COURT: All right. What I'm going to do is allow
17 you to briefly lead so we understand why he was no
18 longer there.

19 I'm going to allow you to just lead so we can get
20 through this,

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15 and I'm going to permit this to transition to topics
which is 16 why I'm allowing leading.

17 Just straight up ask him: She wanted you to fire

18 people; you didn't think you could do that; you're --
so then

19 after that did your relationship break down? Yes.
What

20 happened? I left.

21 What says the defense?

MR. LEWIS: If he ties it into Barnes somehow, then
I'll probably quit jumping up.

THE COURT: Right.

What's the connection to Barnes, if anything?

MR. GROGAN: So what we want to show, Your Honor, is
that Mr. Finch has -- is not just kind of an absent person from
the City, that he's heavily involved, that the mayor is sort of 4
his ally. We're not going to --

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5 THE COURT: How do we know -- what does Finch have to
6 do with this part, though, and how does he know what
7 Finch had to do with this part?

8 MR. GROGAN: I'm not sure I understand your question.

9 THE COURT: I mean, if you're connecting it to not
10 Barnes but directly to Mr. Finch, what's the
connection to

11 Anderson wanting to get rid of this city manager and
get in

12 White, and how does Mr. Finch know, and how does he
know what

13 Mr. Finch knows, and did Mr. Finch in his presence
say, I want you out and I want my guy in so that I
can get contracts? I'm

15 trying to figure out what's the --

16 MR. GROGAN: No, Your Honor. What we're trying to

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show is that -- we're trying to show is the relationship that 18 they have, that Mr. Finch is involved in the City's business.

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THE COURT: I know, but what is this witness going to

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say about Mr. Finch's relationship with Anderson and these 21 firings? That's the part that I haven't heard.

MR. GROGAN: Well, I don't think he's going to say that Mr. Finch is behind the firings.

THE COURT: Well, then what does it have to do with Mr. Finch and suggesting he's involved in the City?

MR. GROGAN: Well, Mr. -- we're next going to talk about a number of projects, and then when Mr. Schubert goes to leave, Mr. Finch asks him to come over to his office and offers him a raise with the mayor sitting there.

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THE COURT: Well, you can ask about that, but all this

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other filler is we're implying something. I mean, Mr.
-- your 7 co-counsel said, and appropriately so, in
openings he's asking 8 the jury to connect the dots.

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And what I'm asking you sidebar is before I'm going
to

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allow you to get into information, you got to connect
the dots

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for me, and so far I haven't heard any dot connected
between

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Finch and what you're now asking this witness about.

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So I'm going to sustain the objection, but you can
get

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directly into what you want to get into, which is he
met with

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him, okay?

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MR. GROGAN: Yes, Your Honor.

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(Sidebar concluded at 3:59 PM.)

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THE COURT: So sustained in part and overruled in 19
part. Consistent with the Court's guidance, let's
sort of get

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to the nub of the issue.

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MR. GROGAN: Yes, Your Honor.

THE COURT: Okay.

BY MR. GROGAN:

Q. Mr. Schubert, did Mayor Anderson ever pressure you to award
projects to Mr. Finch?

A. No.

Q. Are you familiar with a project related to the ditch next to
the 17th Street in Lynn Haven?

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A. Yes.

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Q. Was there a problem with a safety issue with the ditch?

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A. Yes.

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Q. Can you tell the jury about that?

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8 A. There was a large ditch that paralleled the 17th Street.
9 That road is bifurcated east, west. There's a west side and 10
there's an east side. The east side is about 3300 feet, and it
11 presented an imminent safety issue.

12 There was a lady that had wrecked in it, turned over and
13 drowned in it, and at the time when -- around the
proximity of
14 the time when there was discussion of a fix-it-now
approach, a 15 gentleman and his daughter had turned over
in it but were okay.

16 Q. What was the City doing to remedy the problem?

17 A. Before I got there, incrementally, as the budget allowed, 18
about every year, every other year, they were doing about 150
to 19 250 feet of it at a time.

20 Q. Do you recall Mr. Finch having one of those contracts to 21
fix a portion of the ditch?

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A. My recollection is that Mr. Finch was awarded low bid two of the last three.

Q. Now, you mentioned the "fix it now", the time when things went to the "fix it now".

Can you tell -- or can you tell us, did y'all -- did the City adopt a different course for dealing with the 17th Street ditch?

4 A. Yes.

5 Q. What happened?

6 A. Instead of doing it incrementally, 200 feet at time,
7 Mr. Finch had a proposal to -- he had just won about 200
8 something feet again. He had done a proposal to go ahead and
9 fix the whole thing now. So instead of doing 200 feet of it
10 every other year, every year, finish the 3300 and eliminate the
11 risk; do it with today's time value of money. Contract was
12 already mobilized. And it would take the better -- it would

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13 take a year instead of 35 to 40 years, the way the City was 14
currently addressing it.

15 Q. Can you tell the jury, mechanically what was the process
16 from changing what was a limited small project, I think you 17
mentioned a few hundred thousand dollars, to that larger
project 18 to do the whole ditch?

19 A. So the commission would have to consider what's called a
20 change order. Before the way the process was being done, it
was
21 the engineer -- the city engineer would engineer a section of
it, which in my opinion you can't engineer a section of it.
You have to know where it's going to wind up for the 3300 feet.
But he would -- they would engineer a section of it. It would
be bid, and then it would be awarded to the lowest bidder, that
particular section.

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Q. Did the City bid out this change from doing the project one piece at a time to being one large contract?

4 A. No. Mr. Finch's suggestion or proposal was to -- he's 5
already there; he can get the materials -- to just do it now and
6 not have any more accidents in the ditch.

7 Q. Do you recall Mr. Finch coming to you about buying City 8
property on Hatcher Drive?

9 A. We received -- the City received an unsolicited offer to
10 purchase property on Hatcher Drive.

11 Q. And you tell us about that?

12 A. The City had procured 25 to 30 years prior a section of 13
land, 640 acres of land, on the north side of the county, my 14
understanding was to put a sewer plant out there.

15 That dream had not come to realization. The City had not 16
grown, and there really was no reason to have that land. 17 Q. Did

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you have a philosophy as city manager about whether to 18 keep or
dispose of city property?

19 A. So when I interviewed, we had a strategic plan. In fact,
20 when I interviewed, one of the strategic plans I discussed with
21 the five commissioners was to liquidate nonperforming
assets.

So we received this offer, and this land was a liability
for the City. People would hunt on it. There was limited use
to it. The City had use for a portion of it, but not nearly
640 acres.

Q. Did you consider -- or did you engage in any process to let
anyone else bid for this property?

A. Yes.

4 Q. Can you tell us about that?

5 A. So there's a process -- there's a procurement manual for
6 unsolicited bids. As with everything, I consulted with the city

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7 attorney. The city attorney laid out the procedure to do that.

8 And the City followed those guides, met or exceeded them. 9 Q.

Did the city commission approve selling the property to
10 Mr. Finch?

11 A. Yes.

12 Q. Now, Mr. Schubert, sometime while you were city manager, 13
did you go about purchasing a new home in the Lynn Haven area?

14 A. Yes.

15 Q. And was Mr. Finch involved at all in that --

16 A. Not initially.

17 Q. -- home purchase?

18 Can you tell us how he was involved?

19 A. So we made an offer on a house, my wife and I, my
family

20 did, for 420, low 400s, 420, 430. As a requirement of the
city

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21 manager's job, we had to live in the city. We made an
offer on a house and did not receive anything back, so we
continued to search.

It's very difficult -- ideally, you would find a property
that the seller has no ties to the City. So, you know, even
new construction isn't ideal.

But, anyway, we made an offer on the house, and then
several weeks or a couple months later, Mr. Finch approached me 4
and said, Hey, I heard you made an offer on that house. Are you
5 still interested?

6 Q. Do you know why he would come to you about this house? 7

A. So I learned that he had a second mortgage on it, so I
8 believe he foreclosed on it.

9 Q. Did he make you any sort of offer with regard to the house?

10 A. He offered to sell it to me at market value.

11 Q. Did he offer to finance it for you as well?

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12 A. He did.

13 Q. Now, at some point did you -- you decided to leave your job
14 as city manager of Lynn Haven; correct?

15 A. Yes.

16 Q. And what prompted you to want to leave?

17 A. A better opportunity, as well as -- as well as -- it was
18 with Bay County. I had the utmost respect for the county
19 manager there. I met him through partnerships with the City of
20 Lynn Haven and Bay County. Their commission was a very
21 professional, functional group. I thought I'd be a good fit
there.

And, frankly, there was a lot of static with the mayor and
myself.

Q. Your relationship with the mayor deteriorating, did that
contribute to your desire to leave? A. It certainly factored
in.

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Q. Did you give the City notice of a resignation? 4 A. The contract I had with the City required three months'

5 notice.

6 Q. Did anyone ask you to reconsider that decision?

7 A. I gave notice. The county manager and I spoke, I believe

8 in late January or at least, you know, February. While we

9 didn't have all the details ironed out, I knew I was going over

10 there. I told him I would accept the job early in the year.

11 And he purposely did not vet that with the commissioner or

12 anybody, nor did I. Because, one, he suggested that I do not

13 resign before -- there was an election in April. While I

14 thought it was a slim chance, I didn't want my leaving

15 to have any impact on that election.

16 So, anyway, we did not -- I did not say anything until

17 after the election was over. And I resigned from the dais. I

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18 told all the commissioners first before the meeting, but I
19 resigned from the dais.

20 Several days later, Mr. Finch asked me to come to his 21
office, and I did.

Q. Can you tell us about this meeting at Mr. Finch's office?

A. So Mayor Anderson was there, and they both complimented me
on the job that I'd done while I was there for three years and
suggested I stay.

Q. Did Mr. Finch say anything to you about your compensation if
you were to stay?

A. They both suggested I could -- I should make more.

4 Q. Did you find that odd?

5 MR. LEWIS: Objection.

6 THE COURT: Sustained as phrased.

7 BY MR. GROGAN:

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Direct Examination - Mr. Schubert

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8 Q. Had the mayor taken a position on your salary previously?

9 A. Yes.

10 Q. What was that?

11 A. 14 months prior, per the contract, I was being
evaluated 12 for a raise. And the commission voted
four one for a 6 percent

13 raise. Mayor Anderson was the lone nay.

14 Q. Did Mr. Finch have the authority to give you a
raise?

15 MR. LEWIS: Objection, unless there's a foundation.

16 THE COURT: Overruled.

17 BY MR. GROGAN:

18 Q. Sir, did Mr. Finch have the authority to give you
a raise?

19 A. The five commissioners do.

20 MR. GROGAN: May I have a moment, Your Honor?

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Direct Examination - Mr. Schubert

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21 THE COURT: Certainly.

(Discussion was held.)

BY MR. GROGAN:

Q. Mr. Finch never had a position as an employee or a public official with the City of Lynn Haven while you were there; is

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Cross-Examination - Mr. Schubert

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that right?

A. Correct.

MR. GROGAN: That's all I have, Your Honor.

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Thank you.

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THE COURT: Mr. Lewis, cross-examination at your

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leisure.

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CROSS-EXAMINATION

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BY MR. LEWIS:

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Q. Afternoon, Mr. Schubert.

10

A. Afternoon.

11

Q. We've not had a chance to meet or speak; is that correct?

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A. Yes, sir.

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Q. This is our first time meeting; right?

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A. Yes.

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Q. Thank you for being here.

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Cross-Examination - Mr. Schubert

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16 I believe -- and just to follow up on that last question, 17 he
18 didn't have an elected position, but he was active in city --
19 in the City of Lynn Haven, was he not?

19 A. Yes, certainly.

20 Q. It was clear from you interacting with him that Mr. Finch
21 cared deeply about the town he was born and raised in --

A. Yes.

Q. -- fair to say?

A. Yes.

Q. He donated all kinds of stuff during your tenure to the
City; did he not?

A. Yes.

Q. For example, he bought -- I don't remember -- 40 or \$50,000
4 in trees at one point and lined one of the roads.

5 Do you remember that?

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Cross-Examination - Mr. Schubert

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6 MR. GROGAN: Objection, Your Honor. Relevance, 403 7 and
order in limine.

8 THE COURT: Overruled in light of the government's
9 final question on direct.

10 BY MR. LEWIS:

11 Q. So I just want to talk about --

12 THE COURT: Or final questions. I meant plural, not
13 singular.

14 You can reask the question.

15 Overruled.

16 MR. LEWIS: Thank you.

17 BY MR. LEWIS:

18 Q. So I'm going to back to the point where Mr. Finch
took an

19 interest in and was active in the City of Lynn Haven
and the

20 well-being of the City of Lynn Haven.

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Cross-Examination - Mr. Schubert

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21 Those are the questions I want to ask you; okay?

A. (Nods head up and down.)

Q. So he donated work to the City at times. Do you remember that?

A. Yes. I mean, I don't dispute Mr. Finch loves that city.

When I was there before the -- I mean, there were plaques on the wall; he was citizen of the year.

4 Q. In fact, multiple times for citizen of the year; is that right?

5 A. I believe I saw his name on a plaque that I -- predated me, but yes.

7 Q. He bought equipment for parks -- at various parks of Lynn Haven -- or a couple parks, I believe; correct?

9 A. I don't -- it's been seven years since I've been there. I do believe Mr. Finch has donated. I believe he donated fireworks, money for fireworks. I believe he donated money for

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Cross-Examination - Mr. Schubert

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12 kids to have candy. I remember him once saying that he didn't
13 want the kids to have hard candy, he wanted them to have good
14 candy.

15 Q. So let's talk a little bit about, then, a couple of
things

16 that came up during the direct examination.

17 The city attorney, his name was Robert Jackson; right?

18 A. Yes.

19 Q. A professional, a licensed, barred attorney that you
had

20 confidence in; is that a fair statement?

21 A. Yes.

Q. Honest fella, you'd agree with that; right?

A. Yes.

Q. Robert Jackson?

A. Yes.

Q. And whenever an issue came up in the City, you would go to

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Cross-Examination - Mr. Schubert

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Mr. Jackson, you'd ask his advice; is that fair for me to say?

A. Yes.

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Q. You being the city manager, which is, when you sort of think about it, there's sort of two types of government, where the city manager is the strong, you run the daily, day-to-day government --

8

A. Yes.

9

Q. -- for Lynn Haven?

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A. Yes.

11

Q. And then you have -- some other cities have a strong mayor.

12

But you were Lynn Haven's strong city manager; right?

13

A. Yes. I made the directives in the policies of that

14

commission. It was my duty to see that they were executed.

15

Q. And at one of those last meetings, Mr. Finch was urging you

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to stay because you -- he thought you had done a good job; is

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that fair to say?

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Cross-Examination - Mr. Schubert

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18 A. The meeting that I was questioned about?

19 Q. Yes, sir.

20 A. Yes.

21 Q. In fact, there was a second meeting as well I don't think
you were questioned about, but relates to the same topic.

After Michael White was fired, Mr. Finch urged you to, Come
back and help us. Come back to the City. He did that, didn't
he?

A. I do remember a phone call.

Q. Yes. Actually, it wasn't just Mr. Finch, it was actually
others reaching out for you saying, We need you. We need you
4 back. But you were over at the county by then.

5 A. Yes, sir.

6 Q. Okay. There wasn't anything -- you didn't think there was 7
anything illegal or improper about that, did you?

8 A. No, no. I do not -- I do not think that city was a good

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Cross-Examination - Mr. Schubert

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9 fit for me, not because of Mr. Finch, but because of the 10
commission that was there.

11 Q. Not because of Mr. Finch at all. You and Mr. Finch 12
actually worked together for several years, very well together;
13 is that fair?

14 A. I have no issues with Mr. Finch.

15 Q. Okay. Now, I want to talk to you a little bit about, when
16 you were there, staff. You mentioned staff several times in
17 your testimony on direct. Do you remember that?

18 A. Yes.

19 Q. Staff is basically the professionals that work within the
20 City government infrastructure; is that fair for me to stay?

21 A. Yeah. There are departments and there are divisions. Q. For
example, you have building; correct?

A. Yes.

Q. Building department.

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Cross-Examination - Mr. Schubert

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I guess parks and recreation department, something like that?

A. Yes.

Q. You have water, sewer, and those kind of --

4 A. Correct.

5 Q. It's an infrastructure and you are sort of at the top of
6 it, and then you have boxes underneath; is that right?

7 A. Yes.

8 Q. And they all report up through to you; correct?

9 A. Yes.

10 Q. And then you would make decisions and recommendations.

11 That's fair to say; right?

12 A. Yes, based on their input.

13 Q. And you made them for the good of the city; fair to say?

14 A. Yes.

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Cross-Examination - Mr. Schubert

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15 Q. In fact, if anybody said you didn't, that might not be so 16
true; right?

17 I mean, you had the City of Lynn Haven -- you had their
18 best interests at heart as well, just like Mr. Finch?

19 A. Yes.

20 Q. Uh-huh.

21 A. I would qualify that with I had constant communication
with the five commissioners.

Q. So the commissioners had the ability to vote up or down
certain issues once you made a recommendation or a
presentation; is that fair?

A. Yes.

And as you stated previously, the litmus test for me was if
there was an idea coming through or a proposal, it ran through 4 the
city attorney first. If the city attorney had thumbs down,
5 then it didn't go to the commission floor.

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Cross-Examination - Mr. Schubert

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6 But while I was there certainly everything was vetted
7 through the city attorney and put in front of the
8 commission. Q. And then the commission would have open
hearings; is that

9 right?

10 A. Publicly advertised meetings for workshops and/or to
11 workshop issues. Previously they would workshop all the
12 commission meetings, and then subsequent to that there would be
13 a commission meeting that was publically advertised, and all
14 the community and whoever wanted to be there can be there.

15 Q. The Judge has mentioned we've entered a number of exhibits
16 into evidence. I won't play them for you, but eventually the
17 jury can look at them. They are commission meetings where you
18 have a dais like this -- sort of like this with the 19
commissioners sitting across the front; is that right?

20 A. Yes.

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Cross-Examination - Mr. Schubert

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21 Q. And you would have a podium sort of like this where you or others would come up and speak and interact; correct?

A. Yes.

Q. And the staff about whom we were talking just a minute ago, they were good people, wouldn't you say so, overall?

A. Overall, absolutely, I would say.

Q. Professional; correct?

A. Yes.

4 Q. Hard working; correct?

5 A. Are we talking about 100 percent of them? I'd say --

6 Q. Well, I understand government. I hear you.

7 A. That's why I got into government, because I didn't like the

8 way government was treating - 9 Q. Well, you are a good man.

10 But overall -- you always have somebody, but overall you've

11 got good, professional, hard-working people that also care about

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Cross-Examination - Mr. Schubert

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12 the city; correct?

13 A. Yes.

14 Q. So when you have, for example, a project that's being
bid 15 out 100 -- or, actually, you said 3 or 300 feet at
a time.

16 Let's talk about that. The 17-and-a-half street -- 17th Street 17
ditch -- sorry --

18 MR. LEWIS: I believe we've got a couple of photos of
19 that, if you'll identify them for me, Mr. Forman.

20 BY MR. LEWIS:

21 Q. That was a ditch that ran through Lynn Haven;
correct?

A. Yes.

Q. And it had been really a huge problem for a long, long time;
is that fair to say?

A. Yes.

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Cross-Examination - Mr. Schubert

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Q. You indicated to the jury that at one point it became a real safety issue; right?

A. Yes.

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Q. People would drive their cars in, and one person even had

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died in -- under those circumstances.

6

Do you recall that?

7

A. My recollection is the City settled a lawsuit with a lady 8 that turned over and died.

9

Q. And when you say that it was -- these corrections were

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happening yearly or every couple of years -- I'm showing you 11

what's now on the Exhibit No. 94. This is after the ditch had

12 been repaired by Phoenix Construction.

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But do you recognize that photo? Does that look familiar

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to you?

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It's been admitted, I believe.

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Cross-Examination - Mr. Schubert

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16 THE COURT: It has been admitted.

17 MR. LEWIS: Yes, sir. Thank you.

18 A. It looks like the box culverts that were used. I
will note

19 that there is a guardrail there that -- as you
stated, I relied

20 on my department heads. If it was as simple as
putting a

21 guardrail up, we would have done that. And I asked
them to research that. They could not do that. But
that's the section that obviously could take a
guardrail.

BY MR. LEWIS:

Q. Showing you also No. 94, second photo, 17th Street that
goes down through Lynn Haven; correct?

A. Yes. I don't know whether that's the west side or the east
side, but that certainly looks like the ditch that has been
4 piped.

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Cross-Examination - Mr. Schubert

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5 Q. We'll talk about that in just a minute, the west side 6
versus the east side, because there is a distinction between the
7 two; correct?

8 A. Yes.

9 Q. Some details and some contracts. I want to talk to you 10
about that in a moment.

11 But showing you also this third picture, does that, again,
12 also look like the 17th Street the other way?

13 A. That looks like 17th Street.

14 Q. Another photo up.

15 And it was -- it was -- to call it a ditch really is sort
16 of misleading. I mean, it was 20 feet, I think, wide at
some

17 points?

18 A. Yeah. It was a hazard.

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Cross-Examination - Mr. Schubert

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19 Q. Water would fill up, either during the storms or during
the 20 rain, and then that water would just flow out into
the -- across 21 into the roadways and other places;
correct?

A. Yes. It was both a live safety hazard, and also there were
properties that were not draining properly because it was not
flowing.

Q. And so what had been happening prior to you and Mr. Finch
talking and working through this issue -- and we'll talk about
it -- is the City had been bidding this out in 2 and 300 feet
increments at a time; fair?

4 A. Yes.

5 Q. And that clearly was a short-term solution; right?

6 A. Short term in what respect?

7 To me it wasn't a long-term solution or a short-term
8 solution.

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Cross-Examination - Mr. Schubert

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9 Q. It was bad no matter how you looked at it?

10 A. Yes. It was putting a Band-Aid on an open wound that
was 11 not going to heal.

12 Q. And those sections were bid out in regular bidding -13 through
the bidding process. It's called -- what are the three

14 letters that it's called?

15 A. Invitation to bid.

16 Q. Yes.

17 And that was all done proper, by the book, cross the Ts,
18 dot the Is; right?

19 A. Yes.

20 Q. And those bids, Phoenix would submit them; your staff
would

21 then look at them, and y'all would rank them, correct, the
bidders?

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Cross-Examination - Mr. Schubert

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A. The bids would be ranked, and essentially as long as they are qualified, the low bid gets the job -- an invitation to bid.

Q. And tell -- at least on these last few years we are talking about, tell the jurors who got, at least for three consecutive years, the low bid for those sections.

A. I would have to research it. My recollection is -- I came in '14, and I think '15 was the first year it was bid out. And my recollection is Mr. Finch got two of the last three bids.

Q. Okay.

But you could be wrong on that?

A. Yes, I could. This is 7 --

Q. Did the government show you any of these documents to prepare you for coming in to testify for these people?

A. They did show me several documents.

Q. What did they include?

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Cross-Examination - Mr. Schubert

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13 A. They included -- that would be two -- I don't know what
14 exhibits -- I don't remember the numbers, but they were --
they
15 were the process of the 17th Street ditch, the bidding,
change 16 orders, things like that, I believe.

17 Q. Was everything done by the book from what you recall and 18
both what you saw?

19 A. Everything -- everything was done, but -- I would say
20 everything was done by the book. The decision the commission
21 had to make at the Lynn Haven level was whether or not to wait
a year, a year and a half at least to bid out the 3,300 feet or
to do it by way of a change order. That was the decision that
would be atypical, to not bid it out and to do a large
percentage change order. That was the decision in front of the
commission.

Q. And -- well, let's talk about that.

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Cross-Examination - Mr. Schubert

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So that decision -- first of all, the city attorney was brought in to check it, to check that thought process and that decision; right?

A. Yes.

Q. He agreed that a change order -- it was appropriate to do a change order on the original bid; right?

A. Yes.

Q. And so all the paperwork was prepared and, again, I don't want to be too general, but I's dotted and T's crossed on all the paperwork, fair to say?

A. It was vetted through the city attorney.

Q. And that was based on a proposal that Mr. Finch had come to you and said, Look, let's fix this thing. And y'all sat down, you thought it was a good idea; right?

A. I learned about it -- I was eating lunch with a commissioner, and he came and approached him and talked about

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Cross-Examination - Mr. Schubert

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19 it.

20 Q. Who was that commissioner, please?

21 A. Commissioner Ashbrook.

Q. Okay. And Mr. Finch was advocating the idea?

A. Yes.

Q. And was he trying to do anything you felt was inappropriate,
illegal, anything like that?

A. He was pitching his idea.

Q. And it was the -- the idea was, Hey, let's take care of
this. Let's resolve this once and for all? That was the idea;

4 right?

5 A. Yes.

6 Q. And he had already had the contract for the 330 feet for
7 that year; correct?

8 A. Yes.

9 Q. And he said, If it's appropriate, why not consider a change

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Cross-Examination - Mr. Schubert

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10 order, and let's get this whole thing fixed and cleared up for
11 the people of Lynn Haven. That was basically the idea;
correct?

12 A. Yes, that was the idea.

13 Q. And you called it a -- I believe a "fix it now"?

14 A. Yes.

15 Q. Those -- were those your words or Mr. Finch's terminology?

16 A. I can't recall. I mean, it could be either. I know that
17 the commission was under pressure from the citizenry to do
18 something about that ditch.

19 Q. Okay. So in these commission meetings, the people that are
20 around this area, they come in and they -- they're telling the
21 commissioners, Do something about this. That's the process;
right?

A. Yes. In public feedback it was noted that -- I think well
before I got there, that it was a safety hazard.

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Cross-Examination - Mr. Schubert

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Q. Was the 17th Street ditch on the more affluent side of town by the water and the inlets and that kind of thing, or was it in a more modest area of town?

A. I would say it's more modest. There are some nicer homes there, but generally it's -- I would say it's the midrange to low price point homes.

6 Q. Okay. I want to go through some documents with you, if you 7 don't mind. This is Defendant's Exhibit 51 that's been admitted 8 into evidence, please.

9 MR. LEWIS: If you'll bring that up, Mr. Forman.

10 BY MR. LEWIS:

11 Q. And I want to walk through these documents with you, and my

12 question is when -- was all this done in open, open government,

13 open air in front of the city commission?

14 A. Is that a question? I'm sorry.

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Cross-Examination - Mr. Schubert

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15 Q. Yes, sir.

16 A. Okay. Yes, these appear to be notes that would
have been 17 recorded from a publicly advertised
commission meeting. 18 Q. And what is the nature of
what's going on here? How do we 19 know what's going
on?

20 The date, by the way, is April 28, 2015; is that correct?

21 A. Yes.

Q. And it's got the people that are present at the meeting?

A. Yes.

Q. Okay. And then it lists certain things that are happening;
is that right?

A. Yes. The notes typically mimic the agenda, and they record
how the votes were in commentary by whoever -- the clerk
usually, whoever took the notes.

4 Q. Okay. And so when I referenced a minute ago that there was

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Cross-Examination - Mr. Schubert

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5 a videotape that's in evidence of a lot of these commission
6 meetings, there's also written minutes and reports; right?

7 A. Yes.

8 Q. And your office, and the city manager in particular, you
9 were responsible for both setting the agenda, creating these 10
documents; correct?

11 A. The clerk was responsible for doing the notes. We would
12 put together an agenda. The commissioners have -- specifically
13 the mayor and the commission have the opportunity to -- at the
14 meeting to add or remove agenda items or delay them.

15 Q. So looking up at the top, Mr. Schubert, this would be then 16
the 17th -- on the right side, 17th Street drainage improvement,
17 Phoenix Construction. Do you see that?

18 A. Yes.

19 Q. And then in the middle towards the top it's got the 20
original \$335,132 set for -- contract price for a section;

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Cross-Examination - Mr. Schubert

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21 correct?

A. Yes.

Q. And that's all voted on; right?

A. Yes.

Q. And the people that voted on that were Commissioner Schad, Commissioner Friend, Commissioner Barnes, Commissioner Ashbrook, and then the last one would have been, I guess, Mayor Anderson; correct?

4

A. Yes.

5

Q. So it would have been a 5 to 0 vote?

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A. Yes. This was the -- as I described before, this was the

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design-bid-build, so it looks like Jim Slonina was the engineer.

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He designed it. They put it out to bid. They accept bids, and

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the lowest bid, responsive bid, is accepted or recommended to

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Cross-Examination - Mr. Schubert

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10 the commission for approval.

11 Q. Okay.

12 MR. LEWIS: So let's go to Defendant's Exhibit 51 and
13 the 25th slide, please, Mr. Forman.

14 Thank you.

15 BY MR. LEWIS:

16 Q. After a lot of this business was done, were
letters 17 generated either to Mr. Finch or back and
forth to the City, 18 again, to document everything?

19 A. Typically, there's a -- like a notice to proceed. There's 20 a
contract that would be signed that would have details such as
21 design criteria. Again, this was designed by the city engineer.

The city engineer in a design-bid-build -- which is the
preferred manner to do large construction projects in any
jurisdiction, at least in my opinion -- the city engineer
designs it. The city engineer oversees the work from the

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Cross-Examination - Mr. Schubert

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contractor, and the city engineer does a final inspection, makes sure that the as-builts, what is designed, goes into the ground and they sign off on it, and the City, or whoever the jurisdiction is, would not pay or, you know, see that the

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contract is complete until it was built - 6 Q. So

showing --

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A. -- to plan.

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Q. Tell the jurors what 44 is; please, Defendant's Exhibit 44 9 that's on the screen.

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A. So this looks like notification that Mr. Finch and Phoenix Construction as the low bid was awarded the project.

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Q. And that would be April 29, 2015; correct?

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A. Yes.

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Q. In the middle there?

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A. Thank you.

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Cross-Examination - Mr. Schubert

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16 Q. Down at the bottom was at least typed "Ron Golinowsky, 17
18 president." He was the president for Phoenix Construction;
18 right?

19 A. I don't know that. It appears so.

20 Q. Okay.

21 A. There's a guy named Ted Schoppe that I thought was, but --

MR. LEWIS: Well, let's go to the second and then the
third page for a minute, Mr. Forman.

BY MR. LEWIS:

Q. Second page being, again, the terms of the contract or the
agreement between Phoenix and the City of Lynn Haven; correct?

A. Yes.

Q. And page -- the next page has got some signatures on it,
4 and I see yours; correct?

5 A. Yes.

6 Q. You wouldn't have signed that unless it was in the best
7 interest of the City of Lynn Haven, would you, sir?

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Cross-Examination - Mr. Schubert

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8 A. I didn't sign anything that I wouldn't think is in the best
9 interest of the City of Lynn Haven.

10 Q. And by the question I'm not implying that you
would, but

11 I'm just trying to make a point through the document,
okay.

12 MR. LEWIS: Let's go to 45, please.

13 BY MR. LEWIS:

14 Q. And tell the jurors what 45 is.

15 A. So I'm not sure -- I'm not sure I have seen these
documents

16 in the last several months, but --

17 Q. Did the government show you any of these documents
that 18 we're looking at now?

19 A. I think I looked at -- I can't answer that for sure. I
20 don't remember the exhibits --

21 Q. Do you remember -A. -- specifically.

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Cross-Examination - Mr. Schubert

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Q. I'm sorry. I didn't mean to --

A. The ones I remember that I looked at were the federal grants.

Q. I'm sorry?

A. The federal grants the City received.

Q. Right. But you were asked on direct examination several
4 questions about the 17th Street ditch?

5 A. Yes, we did speak about it.

6 Q. But before you came in the last week or two weeks - 7 A. Yes,
I did. I reviewed some of these. I didn't review all
8 of them.

9 Q. Okay. All right.

10 So going to, then, 46, please, tell the jurors what this
11 is.

12 A. So this is a letter that was sent to propose a change
order

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Cross-Examination - Mr. Schubert

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13 that looks like this would be both sides, the west and the
east

14 side.

15 Q. Explain, please, the difference.

16 A. The difference between the west and the east?

17 Q. Well, no, from your standpoint, why did y'all
differentiate 18 them?

19 A. In my opinion -- and I remember this document. I have
20 reviewed this document, and there's another document that was
21 just the east side for, I think, 3.-something million. In my
opinion -- so this is what Mr. Finch proposed. When I said I
did staff work, I did staff work and evaluated his proposal at
the behest of the commission, and I had three -- what I felt
like were three major issues or changes that needed to be made,
and that's what I presented to the commission.

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Cross-Examination - Mr. Schubert

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Q. And did you make those changes? Did you make Mr. Finch and his team aware of those - 4 A. Yeah, I'm sure we -- 5 Q. -- what you wanted to change?

6 A. We had dialogue, yeah.

7 Q. Were the changes, in fact, made?

8 A. Yes. For example, the start of that paragraph says: *We*
9 *propose a design-build-finance option for the completion of the*
10 *17th Street drainage.* Whether it was one side or both sides, my
11 preference -- and we did -- was to keep, as I described
12 the city attorney working for the City, and they would do the
13 design. Mr. Finch would do the construction, and just like in
14 a design-bid-build, they would look at the construction as
15 it was
going on and before it went into the ground and sign off that
it

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Cross-Examination - Mr. Schubert

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16 was not only their design, but it was built like they designed
17 it.

18 Q. Did Mr. Finch agree to those changes?

19 A. Yes. We -- he agreed. He agreed. We paid the city
20 engineer and he charged us for the construction.

21 Q. Even though he had some engineering talent at Phoenix; is
that fair to say?

A. I don't know that for sure, but I think Mr. Finch indicated
that he had the expertise to design that himself.

Q. Had you gone over to Mr. Finch's -- to the Phoenix -- sort
of the various buildings that exist over at Phoenix? Did you
ever visit his business?

A. I have been there, yes.

4 Q. It's a fairly large facility for Lynn Haven, is it not?

5 A. Yes.

6 Q. He's got multiple buildings; correct?

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Cross-Examination - Mr. Schubert

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7 A. He does.

8 Q. He's got dozens and dozens of large, very large
9 construction equipment out in front of his facilities. Do you
10 remember seeing those?

11 A. Yes.

12 Q. Bulldozers, these huge trucks, I mean, large, massive
13 construction material; is that fair to say?

14 A. Yes.

15 Q. They also do repairs, diesel and large truck repair;
16 correct? Did you see some bays, for example?

17 A. Yes.

18 Q. And then he had a separate building, in fact, several
19 separate buildings for offices; is that correct? Do you
20 remember those?

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21 A. Yes. There's -- I believe there's offices. It's right off
390. His offices are right there, and there's a lot of
construction equipment on-site. Q. Yes, sir.

Do you remember him when he was -- you called it a pitch.
When he's urging you to go with his plan, one of his points was
you don't have to go outside of Lynn Haven. We can do it here,
locally, and the equipment's all here.

4

Do you remember him urging that point on you?

5

A. I'm sure -- I'm sure he did.

6

Q. Yeah. All of his equipment was there local?

7

A. To me, you know, it's purely business. It is -- does it
8 make fiscal sense for the City?

9 Q. And that's -- you have an accounting background, I think I 10
saw; correct?

11

A. No, sir. My degree's in -- a master's with an emphasis in
12 public admin.

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13 Q. Okay.

14 A. But, like I said before, there were three major changes
15 that I did. Sure, we had dialogue in, because Mr. Finch did 16
agree, whether that dialogue was one-on-one or whether it was
on 17 the commission floor that we made.

18 Q. And just to go back to the letter, which is Government's -19
excuse me -- Defendant's No. 46, just let me ask you a few 20 details
about it.

21 This is the -- Mr. Finch is agreeing to finance the construction
for 25 years at an interest rate of 2.55 percent; right?

A. Yes.

Q. Did that attract you in any way?

A. So, like I said, that's one of the three items that I worked
with staff on and made recommendations. The financing -Mr.
Finch at one point added the -- said he would finance it.

4 My three preferences -- and I believe I did discuss this
with

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5 him and all the commissioners. My first preference was to --

6 there's a state grant called an SRF. It's through the

7 Department of Environmental Protection specifically for

8 utilities. It is a low interest rate loan, and sometimes they

9 forgive a portion of that capital, depending on the -- the

10 fiscal size and healthiness of the entity.

11 That was my first choice because the interest rate was the

12 lowest. That would require at least probably a year, a year and

13 a half, so in this, quote/unquote, "fix-it-now" approach that 14 wasn't an option.

15 You'll see in this -- in the finance instrument, because - -

16 because I could kind of tell where it was going with the

17 commission. I made sure in the instrument -- there it is, yeah.

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18 I'm sorry. Right here: *The City of Lynn Haven has the*
right to

19 *pay off the note with no penalty for the term of the note.*

20 So my first option was SRF. The City goes with the

21 fix-it-now program. It's not an option because it takes a
year, year and a half. I do believe we could -- we had a
chance of getting that and to reimburse, so Mr. Finch
included that in his document so that perhaps two or three
years later -- and I wasn't there to see that through --
that we could pay the note

off and have a lower interest rate and forgive the capital.

My second recommendation was to go with Mr. Finch's rate,
because it was at least a point -- again, vetted through the 4
attorney, but it was at least a point or more below current

5 market.

6 Q. I'm sorry to interrupt you, but do you remember,

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Cross-Examination - Mr. Schubert

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7 Mr. Schubert, that somebody had actually gone and checked with
8 one of the local banks and said, Hey, what would this cost us
if 9 we go with a commercial institution?

10 Do you remember that being discussed, and it was several 11
points -- I think even three points higher than what Mr. Finch 12
was offering? Do you remember that?

13 A. It could have been. My research showed at least a point,
14 if not more.

15 Q. Okay.

16 A. But it was -- with a note like that, it's substantial. 17 Q.
And over the term of the note, that could save the City of 18
Lynn Haven a lot of money; fair to say?

19 A. Yes. The only -- the only feedback I got from the city
20 attorney was that it was a covenant bond, they were calling it,
21 but Mr. Finch might not be able -- there was a weakness on
Mr. Finch's side.

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Q. What was that?

A. Not a weakness, but enforcing the note. The City, I don't think, would ever default, but if they did, he would have more issues to run down his payment. So to me, that wasn't a risk for the City.

4 it Q. That was actually a risk for Mr. Finch in that y'all raised
5 and said, Hey, if the City defaults, you're not going to get
6 paid?

7 A. Yes.

8 Q. And what did Mr. Finch tell you?

9 A. I don't know that I had that conversation with him, but I
10 didn't think Mr. Finch was going to be ripping it out of the
11 ground.

12 Q. That's right.

13 A. And if he did, there'd be a way to handle that. 13 Q. In any
14 event, y'all worked it out and you went forward; 14 correct?

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15 A. It was vetted through the city attorney, and because -16 yes,
I recommended that because it was a better, more favorable

17 rate to the City and, again, my plan was to backstop
that in a

18 couple of years with a -- even a lower interest loan.

19 MR. LEWIS: Let's go to 47, please.

20 BY MR. LEWIS:

21 Q. Tell the jurors what this is and why there's a
difference in the amounts. Same rate you see, same
year, but a different amount?

A. The 3.9 versus 5 point?

Q. Yes, sir.

A. So this is just the east side versus the west and the east.
I believe this was about 3,300 feet, and the other side was
1,500 feet.

4 Q. And you at the time were also working trying to get a grant
5 from the FDOT for a portion as well; correct? Do you remember

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6 that?

7 A. No, sir, not a grant, but I do remember -- and that's the
8 third major issue I would point out. In my opinion and in 9
staff's opinion the west side did not present the same hazard as
10 the east side.

11 Q. East side was much more dangerous?

12 A. Yes. No one had had any wrecks on the west side. There
13 were not nearly as many residential homes there, if any. It 14
abutted a commercial shopping area. It was more of an eyesore
15 than anything.

16 In addition, the DOT owned 60 percent of it, so I saw
17 Department of Transportation -- I saw no reason for the
City to
18 pay to pipe somebody else's ditch, especially when it
wasn't a
19 hazard to the City.

20 Q. And --

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21 A. So I petitioned the commission at a meeting to at least
let me try to negotiate the DOT to pipe their own ditch or
pay for their own ditch.

Q. And the commission agreed with you?

A. Yes.

Q. Including, at that time, Commissioner Barnes who was on the
commission; right?

4 A. Yes. I believe there were two commissioners that were
driving hard for the whole side, but the five of them, I
5 believe, voted to hold off until at least I had that
6 conversation with DOT.

7 Q. And you remember people being in the audience, homeowners
8 and others, showing up at these meetings and expressing -- I
9 mean, they were very vocal. Do you remember that?

10 A. Yes.

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11 Q. So going to 51, when we look at the vote on this one, for 12
example, at the top -- or, first of all, familiarize yourself,
13 if you will, please, for a minute.

14 This is August 24, 2015, at a commission meeting and these 15
are the minutes.

16 Did you get a chance to look -- had you seen this before 17
court today, this document?

18 A. Is there any way I can scroll down or see the rest of it --

19 Q. Yes, sir.

20 A. -- and I can --

21 Q. And while you're looking at those, please, Mr. Schubert,
just make sure I'm right on this, make sure I know what I'm
talking about. Tell me if I don't -- but you have various item
numbers, correct?

A. Yes.

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Q. And they would be brought up in terms of either a motion or a presentation; correct?

A. Yes.

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Q. And the mayor would generally -- as she's running the meeting would call for a discussion; correct?

5

6

A. Typically -- I don't mean to mince words, but typically she

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would call for a motion, and then if a motion is made and seconded, they would discuss it.

8

9

Q. And it had discussion, an open discussion, in front of the

10

rest of the people in the commission -- I mean the audience;

11

correct?

12

A. Yes.

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Q. She'd often ask for public input, like if somebody wanted

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to walk up to the podium and say something about it.

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15 Do you remember that happening at times?

16 A. Yes. I think back in '15, the City used to do a
publicly

17 advertised workshop where just the commission spoke about
all

18 the issues that were coming up on the agenda. At some
point 19 they stopped doing that.

20 But essentially there were two meetings, one where they

21 voted and one where they didn't. The workshop that
preceded the commission was where they discussed at length
what the topics were. And then a week or so or a few days
later, they had the commission meeting and voted.

Q. Were there times when commissioners did not show up and
you'd be one shy?

A. Yes.

Q. So it would be four votes; correct?

4 A. Yes.

5 Q. And the fifth wouldn't be there.

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Cross-Examination - Mr. Schubert

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6 How did you -- did you document --

7 MR. LEWIS: Let's go back up to the top of that one.

8 BY MR. LEWIS:

9 Q. Can you see at the top it says, *Motion by*
Commissioner

10 *Schad to excuse Commissioner Barnes from the meeting.*

11 Do you see that?

12 A. Yes.

13 Q. Mr. Barnes wasn't at this meeting; correct?

14 A. Correct, yes.

15 Q. And he didn't vote for this project at this
meeting;

16 correct?

17 A. I don't think he voted for anything. I'm not --
I'd assume

18 there is a 17th Street action item below, but -19 Q.

Yes, sir. Let's go to that.

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20 A. -- I don't think he voted for any of it.

21 Q. No. 14, Item No. 14: *Discussion and possible action
regarding 17th Street.*

And this was the \$3.7 million that was referenced in the
other letter; am I right about that?

A. Yes.

Q. And Mr. Barnes was not present; correct?

A. Was not.

Q. And the commission voted in favor without Mr. Barnes being
4 present; correct?

5 A. Yes.

6 Q. And at that point Mr. Finch had lowered -- lowered the 7
3.920, the \$3,920,000, to the contract amount of \$3,720,000.

8 Do you remember that happening?

9 A. So I'd have to look at other documents, but what I would
10 assume that is the engineering I spoke about.

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11 So we pulled the engineering out, because we wanted to 12
ensure that the engineer was working in the best interests of
13 the City.

14 Q. That's right.

15 So the original price that we looked at before was 3.9, 16
almost 4. You negotiated some more with Mr. Finch, and you got
17 it down to the 3.72?

18 A. So the engineer -- my recollection is that 3.9 would have
19 included the engineering. We weren't going to -- we wanted the
20 engineers to stay in-house so that that design was the City of
21 Lynn Haven's design and that the inspection was somebody that
was working directly for the City of Lynn Haven.

Q. That savings was passed on to the City, that \$200,000
savings was passed on to the City?

A. Theoretically, it's not savings if Mr. Finch doesn't have

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to hire an engineer and the engineer gives him the design.
But, yes, that's why it was pulled out.

Q. It was less. It was 3.9 versus 3.7?

4 A. Yes. Right.

5 Q. Were there other times that you recall that Mr. Barnes 6
wasn't present at some of these meetings?

7 A. I'm sure there was. There was a mechanism if they could 8
attend by phone. The commission would make a motion, and, if
9 approved, the commissioner could attend by phone.

10 Q. But that didn't happen here?

11 A. It doesn't appear that way because there's only four
votes.

12 Q. Only four votes, and it's reflected in the top where
one of

13 the other commissioners made note of Mr. Barnes not being
14 present; correct?

15 A. Yes.

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16 Q. And the vote was 4-0 without Mr. Barnes?

17 A. Yes.

18 Mr. Barnes had expressed his desire to see both sides
piped

19 publicly before. And, like I said, I tried to keep open
20 communications with the commission, if not every week,
every two

21 weeks. I sent what I call the commissioner -- or city
manager's update. And I would keep them abreast of all
the projects or anything that I thought would be of
interest to them.

Q. You said earlier that -- excuse me. Let me find -- at some
point -- so at -- the contract was signed on this proposal, and
it was a -- it was -- it was voted on by the commission 4 to
zero on this change order?

A. Yes.

4 Q. Okay. And that gave Mr. Finch authority to go forward and

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Cross-Examination - Mr. Schubert

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5 begin the process?

6 A. Yes.

7 Q. Did you think Mr. Finch had good equipment?

8 A. I had no reason to believe he didn't. 9 Q. Did you have any
reason to think he didn't have

10 knowledgeable, competent people?

11 A. No, I didn't.

12 Q. Did you often see over the years Mr. Finch being awarded
13 contracts because he had the lowest bottom-line price?

14 A. Mr. Finch won a lot of awards.

15 Q. Did he ever bribe --

16 A. He was awarded a lot of contracts being the low price.

17 Q. Did he ever bribe you?

18 A. No.

19 Q. Did he ever offer to bribe you?

20 A. No.

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21 Q. Are you here to testify in any way, shape or form that he
bribed Mr. Barnes in any way?

A. I have no knowledge of that situation.

Q. Did you see anything that you could turn to the jury and say
Mr. Barnes was bribed?

A. While I was there, if I would have seen anything like that,
I would have gone to the city attorney and probably law
enforcement after that, because I believe in transparency.

4 Q. And you never did that?

5 A. I did not.

6 Q. Because you didn't see it?

7 A. I did not see that.

8 MR. LEWIS: Okay. Now, give me one moment, Judge,
9 please?

10 THE COURT: Certainly.

11 MR. LEWIS: Thank you.

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Cross-Examination - Mr. Schubert

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12 THE COURT: Do you need some water, sir?

13 THE WITNESS: I've got some.

14 THE COURT: Oh, you got some.

15 (Pause in proceedings.)

16 BY MR. LEWIS:

17 Q. Let me -- take your time for a minute.

18 MR. LEWIS: So Defendant's Exhibit 53, please,

19 Mr. Forman, and 21.

20 BY MR. LEWIS:

21 Q. I want to show the documents related to the FDOT
side as well, just to show you everything was tied up
in a bow.

You see that exhibit, sir?

A. Yes.

Q. And tell the jurors what that is.

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A. So this would be -- while I said Mr. Finch made a proposal, and you saw on that last -- the notes where everybody was congratulating me, if I had something -- hindsight is 2020. If I were to do that over again, I would have had Mr. Finch come and present his project, and I would have talked about the three major components that I think needed to be changed.

So this would be the third -- and that's what I believe -- the commission were saying good job to me on, which it wasn't me, it was me and -- my staff and me.

But there was a lot of scepticism that DOT would pipe the other side. In my mind it didn't need to happen anyway. But we

were able to negotiate an agreement with them where essentially

they took five properties from the City. Two of them had some

value. It was de minimis. We would have probably donated these

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15 five properties anyway. They needed them for a road widening.

16 So in exchange for that, the DOT agreed to pay for their
17 portion, I think it was 900 of 1500 feet on the west side.
18 Again, staff's opinion was it didn't need to happen anyway.

19 But certainly we didn't want to -- I didn't want to burden the

20 City with more debt for something that didn't need to
happen, 21 especially if we didn't own it.

So this is when we brought back the agreement with DOT where they would pay to get their section piped, which saved the City coffers upwards of a million dollars.

Q. Has that project been completed as well, the west side?

A. So I left in the middle of '17. Just driving by, it has.

Q. So really as a result -- by the way, let me make sure I got timing right.

4 Before you left -- when was it you left as city manager?

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5 A. Officially, in July of '17.

6 Q. July of '17.

7 And by then is it fair to say the terms of this really
8 wonderful project had already been negotiated? Fair to
say?

9 A. I would disagree with that because the west side had yet
to 10 be determined of how to -- how that agreement was
going to work.

11 So the east side, I think there was a punch list going on.

12 But it essentially had been completed. This is February
of

13 2017, so I do not recall -- it was bid out after I left,
that

14 west side was bid, because I assume -- I wasn't there, but

I 15 assume that's because DOT, if there were -- if they
were piping 16 it, that's their process, they would have
bid it out.

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17 Q. But certainly the financing rate had been agreed upon, the 18
2.55 percent; fair to say?

19 A. Yes. Because my recollection is Mr. Finch offered a rate
20 that -- if the east side was done, and he discounted the rate
21 even further if the commission would agree to do the west and
east side.

So when the commission voted to move forward -- well, when
they signed this agreement, that was indicating that the
commission would do both sides.

Q. Uh-huh.

A. So at that point he offered, I believe at the commission
meeting, a lower rate.

4 Q. And oftentimes Mr. Finch would appear himself at the
5 commission meeting; right?

6 A. If he had a project on the agenda, he would.

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Cross-Examination - Mr. Schubert

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7 Q. And he would either make presentations or take questions.

8 You recall that happening; right?

9 A. Yes.

10 Q. And, again, this is -- would be reflected in the minutes,

11 as well as the videos that were taken of the commission meetings; correct?

13 A. Yes.

14 Q. And to go back, Commissioner Barnes -- how long have you
15 known Commissioner Barnes, then-Commissioner Barnes, no
longer 16 commissioner?

17 A. I met him when I interviewed in March or April of 2014.

18 Q. How had he been -- you talked about -- you were asked a
19 question about he was re-elected in 2015, I think; right?

20 A. Yes.

21 Q. Do you remember that question? A. Yes.

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Cross-Examination - Mr. Schubert

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Q. But he was actually a commissioner well before that;
correct?

A. Yes.

Q. He was elected first in 1996; correct?

A. That sounds right. I don't have the biographies of all of
them.

4

Q. Commissioner Barnes, he was a teacher there in Lynn Haven;
right?

5

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A. Yes.

7

Q. Taught at the high school; correct?

8

A. Yes, and Haney Vo Tech. While I was there he was working
for Haney Vo Tech, a vo tech school.

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Q. He's a married man. Did you ever meet his wife?

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A. Yes.

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Q. Did you get along with him?

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A. Yes.

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Cross-Examination - Mr. Schubert

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14 Q. Did you distrust him?

15 A. No.

16 Q. Ever?

17 A. Did I distrust him ever?

18 Q. Let me rephrase the question.

19 Did he ever come tell you, Hey, we've got to do something 20
for James Finch?

21 A. No. He showed -- Commissioner Barnes, as you stated, I believe
grew up in that city. He knew most of the staff. He was
certainly less engaged than some of the other commissioners. He
would constantly state that he trusted the staff. But he showed
particular interest in certain projects, and they were
usually the ones that weren't status quo. So it's not, you
know, typical operations of utilities or parks, it would be
something like the 17th Street ditch.

4 Q. Which section of the town did he actually represent and was

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Cross-Examination - Mr. Schubert

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5 elected by? Did Lynn Haven break them up like that?

6 A. No, sir. They are all at large.

7 Q. Okay. But certainly he showed interest -- he pushed for
8 the 17th Street -- he was interested in this ditch getting
9 fixed?

10 A. He pushed for both sides, as well as Margo Anderson, Mayor
11 Margo Anderson.

12 Q. And ultimately the west side went with the DOT-funded 13
project that you had pulled together?

14 A. I negotiated an agreement with them so they would pay a
15 million dollars towards that end.

16 Q. And was he in favor of that ultimately?

17 A. I believe they all were in favor of saving a million 18
dollars. There were two that were more in favor of piping that
19 side than the other three.

20 Q. Who were they?

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21 A. Mayor Margo Anderson and Commissioner Barnes.

Q. Okay. Let's go now, briefly, to the -- you were asked questions about the Hatchet Drive (sic) purchase of property.

Do you remember that?

A. Yes, sir. Hatcher.

Q. That was 640 acres; correct?

A. Yes.

4 Q. And you -- I believe you used the word that there was no reason to have that land; correct?

5 A. Most of it. There was section of it in the northwest that 6 the City wanted to retain that they carved out.

7 Q. I believe your words were let's eliminate -- and you even, 8 in your interview process -- let's eliminate nonperforming 9 assets?

10 A. That was in the strategic plan.

11 Q. Anything wrong, from your perspective, with that philosophy

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12 at all?

13 A. With liquidating nonperforming assets?

14 Q. Yes, sir.

15 A. No. I believe that's a strong strategic initiative. 16 Q.
And one of the people that wanted to buy it was Mr. Finch; 17
correct?

18 A. He initiated it. He sent a -- he sent what's called an
19 unsolicited offer. And there's a process to follow in our 20
procurement manual -- or the City of Lynn Haven's procurement
21 manual to address that.

Q. To your knowledge, did he follow that process?

A. The City followed that process, yes, sir.

Q. And from Mr. Finch -- did you see anything where Mr. Finch
was acting out of the ordinary on that process?

A. Mr. Finch, just like any prudent businessman, wanted to
maximize his profits. I'm sure he did not want to go through

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the process. He initially bid \$1,200 an acre. I consulted
with

4 the city attorney for what the process was, because this was a 5
little atypical, because he had already not only expressed an

6 interest but had put a value out there. That's public
record.

7 So the city attorney's solution to that would be to have an
8 open bid instead of a closed bid, so essentially you are
9 turning -- on a date certain anyone who is interested in
that 10 property turns in their bid. And essentially you
are turning it 11 into an auction house like you'll see
with some tax deeds.

12 So he initially bid 1200. That property was advertised;
it

13 was posted; it was run in the paper. It complied with,

14 comported to the procurement manual or exceeded it. I
think a

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15 sign was placed on the property. All bids were to be accepted. 16

There was another bid that came in for 2,000, or a little bit

17 more than 2,000. And I believe Mr. Finch moved after
that. He

18 came in with a higher bid, or his agent brought in a bid
for

19 2100.

20 So initially the City realized 600-something thousand

21 dollars for their general fund for a nonperforming asset.

And, again, the City did save the portion of that 640
acres, carved it out, for the area that they had utility for,
the use for. But because it was -- we went by our process, I
believe -- roughly 900 times 6 times 288 I think is 260,000,
something like that. The City's objective is to always
maximize value --

Q. Were you pleased --

4 A. -- when you're liquidating property.

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Cross-Examination - Mr. Schubert

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5 Q. Were you pleased with what happened on that transaction?

6 A. I was pleased the City coffers got 260,000 more dollars 7
than the initial officer.

8 Q. Lastly, the prosecutor asked you about purchasing a new
9 home?

10 A. Yes.

11 Q. Do you remember those questions?

12 A. Yes.

13 Q. You went and looked at a house; correct?

14 A. Yes.

15 Q. You found out that Mr. Finch had the second mortgage on
16 that house; correct?

17 A. Through Mr. Finch.

18 Q. Right.

19 A. Yeah.

20 Q. Yes.

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Cross-Examination - Mr. Schubert

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21 Mr. Finch had told you, Hey, I have the second mortgage on that house?

A. Right.

Q. And he was asking you if you -- first of all, I think you said he offered to sell it to you at market value.

Were those your words?

A. So I've been a real estate appraiser since 1993, I believe.

I keep my license active, but I haven't done an appraisal for 20

4 years, but I know how to use an MLS; I know how to pull 5 comparable sale. But an appraiser never appraises property that

6 he's interested in because there's bias.

7 So I engaged an appraiser I know to pull sales before I

8 knew Mr. Finch had a second on it. I thought that property was

9 worth low 400s, and that's why I offered, through a realtor, low

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Cross-Examination - Mr. Schubert

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10 400s. That property sat there for at least a year, if not more,

11 and had issues with the roof, HVAC. The pool was old,

12 et cetera. Anyway, I don't mean to go on a diatribe. But, yes,

13 Mr. Finch wanted 520 for it. And I didn't want to pay 520 for 14 it. I thought it was worth high 400s at most.

15 Q. And never the less -- by the way, did he call you Joel or
16 Mr. Schubert?

17 A. I'm sorry?

18 Q. Did he call you Joel or Mr. Schubert?

19 A. He called me Joel.

20 Q. Did he ever say, Joel, if you'd do me a solid in the
21 future, I let you have it for 450?

A. If he did, I wouldn't have purchased it.

Q. But he didn't?

A. He did not.

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Cross-Examination - Mr. Schubert

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Q. That's my question.

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Redirect Examination - Mr. Schubert

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He never did anything like that?

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A. If nothing else but for optics, I assured -- I wanted to be sure I paid market value for that house. And I did not accept his offer of financing.

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MR. LEWIS: Thank you, Judge.

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And thank you, Mr. Schubert, for answering my questions.

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THE COURT: Mr. Grogan, I'm not in any way rushing 9 you, sir. If you're -- if it's brief, we can go. It's going to

10

be a little bit longer, we should take a break.

11

MR. GROGAN: It's relatively brief, Your Honor.

12

THE COURT: Ladies and gentlemen of the jury, does

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anybody need -- if you do, that's fine. Does anybody need a

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break or do we have a few minutes to wrap things up?

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Redirect Examination - Mr. Schubert

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15 All right.

16 Mr. Grogan, you may proceed.

17 REDIRECT EXAMINATION

18 BY MR. GROGAN:

19 Q. Mr. Schubert, you were just talking with Mr. Lewis about
20 financing on your home.

21 Why didn't you agree to accept Mr. Finch's offer of financing
on your home?

A. I think it would go past optics. I don't think that's a
good relationship to have, to owe a contractor that does
business with an entity that I'm the city manager of.

Q. You didn't want to be beholden to him in any way; is that
right?

A. Yes, sir.

4 Q. Now, you mentioned, I think, that Commissioner Barnes was a 5
somewhat disengaged commissioner; is that right?

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Redirect Examination - Mr. Schubert

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6 A. Generally he didn't deal with the day -- yes,
generally he

7 didn't deal with the day-to-day.

8 Q. But he was interested in some projects?

9 A. Yes.

10 Q. Including Mr. Finch's project?

11 MR. LEWIS: Judge. Objection to the form. It's
12 leading.

13 THE COURT: It is. Sustained.

14 BY MR. GROGAN:

15 Q. Now, you were asked whether there was anything out
of the 16 ordinary about the Hatcher Drive purchase.

17 Was there anything Mr. Finch said or did about wanting to 18 go
around the city attorney?

19 A. He -- he -- I remember he wasn't -- most contractors are --
20 they don't like the government bureaucracy. They don't like
the

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Redirect Examination - Mr. Schubert

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21 process. He did not want to go through that process. I had no
option, though.

Any property that's sold by a city, or any jurisdiction,
is typically advertised in the paper. He felt like since he
made the first move on it that he should have first right of
refusal or something like that.

Q. Did Mr. Finch ever tell you that he'd given \$45,000 in
checks to Commissioner Barnes?

4 A. No.

5 Q. Did Commissioner Barnes ever tell you that he received
6 money from Mr. Finch?

7 A. No.

8 Q. You were asked whether or not Mr. Finch had ever tried to 9
bribe you, I think by Mr. Lewis.

10 How did you feel when Mr. Finch offered to give you a raise 11
when you were planning to leave?

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Redirect Examination - Mr. Schubert

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12 A. Could be two possibilities. You know, maybe he
thought I

13 was doing a good job, or maybe he wanted me to be
beholden and

14 do what Margo Anderson directed me to do that I
couldn't do

15 unless three commissioners told me to do.

16 MR. GROGAN: Thank you, sir.

17 THE COURT: Anything additional before this witness
is

18 excused?

19 MR. LEWIS: Nothing from the defense, sir.

20 THE COURT: Is the witness excused, Mr. Grogan?

21 MR. GROGAN: Yes, Your Honor.

THE COURT: You may step down.

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