

# FIKE & BORANIAN

ATTORNEYS AT LAW

*An Association of Attorneys*

David A. Fike  
A Professional Corporation  
[dfike@fikeboranianlaw.com](mailto:dfike@fikeboranianlaw.com)

Meggin Boranian  
[mboranian@fikeboranianlaw.com](mailto:mboranian@fikeboranianlaw.com)

401 Clovis Avenue, Ste. 208  
Clovis, California 93612

Telephone (559) 229-2200  
Facsimile (559) 225-5504

Daniel W. Rowley  
Of Counsel  
[drowley@fikeboranianlaw.com](mailto:drowley@fikeboranianlaw.com)

March 1, 2019

## VIA EMAIL AND FIRST-CLASS MAIL

Mario Zamora, Esq.  
Griswold, LaSalle, Cobb Dowd & Gin, LLP  
111 E. 7<sup>th</sup> Street  
Hanford, CA 93230  
[zamora@griswoldlasalle.com](mailto:zamora@griswoldlasalle.com)

Re: Report on Confidential Investigation

Dear Mr. Zamora:

In October 2018, I was asked to conduct an impartial, objective investigation of complaints made by several employees of the City of Tulare ("City") Economic and Community Development Department ("Department") regarding their interactions with City Council Member/real estate developer/contractor Greg Nunley. I agreed to perform the investigation and have recently completed my work on this matter. The purpose of this letter is to provide you with a report setting forth my factual conclusions and findings regarding this matter.

Initially, it must be noted that I was retained as an attorney to conduct an objective, impartial, factual investigation and provide a report containing my conclusions regarding the facts. It is my understanding that you will use my report to provide legal advice to the City regarding the matters that are the subject of this report.

The investigation consisted of the personal interviews of Darlene Thompson, John Karlie, Josh McDonnell, Lucie Brown, Mike Bruening, Mike Miller, Ninfa Condie, Steve Hammond, Traci Myers, Tyler Dodson, Willard Epps and Greg Nunley. I have also had follow up phone calls with and emails from some of the witnesses and Mr. Nunley's attorney, James Wilkins.

Mr. Nunley provided me with the names of three witnesses he suggested I interview: Lucy Arruda, Kent McNiece and William Trampas Fagundes. I was able to interview Ms. Arruda and Mr. Fagundes by phone. Mr. McNiece declined to be

COT/JA000001

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 2

interviewed without receiving more information in writing. We agreed that I would send him an email with the requested information. We also agreed that if he was willing to cooperate after he got my email, he would contact me. Otherwise, I would not contact him again.<sup>1</sup>

In addition, I was provided with and/or obtained copies of the following documents during the investigation:

- Copies of emails, notes and memoranda totaling 15 pages from City employees setting forth their complaints, concerns and/or experiences with Mr. Nunley. A copy of these documents is attached as Exhibit 1.
- Copies of numerous emails between Mr. Karlie and Mr. Nunley totaling approximately 59 pages. A copy of these emails is attached as Exhibit 2.
- Copies of numerous emails between Mr. McDonnell, Mr. Nunley and others, and some attachments, totaling approximately 23 pages. A copy of these emails is attached as Exhibit 3.
- Copies of various emails and handwritten notes prepared by Ms. Myers regarding her interactions with Mr. Nunley and/or issues raised by Mr. Nunley. A copy of these documents is attached as Exhibit 4.
- A copy of an email chain ending October 22, 2018 from Janice Avila to Dan Rowley, Subject: FW: Fwd. A copy of this email chain is attached as Exhibit 5.
- A copy of an email chain ending October 31, 2018 from Janice Avila to Dan Rowley, Subject: FW: 2590 Diamante Dr. (Nunley Residence) – Gas line inspection. A copy of this email chain is attached as Exhibit 6.

---

<sup>1</sup> If I am contacted by Mr. McNiece after this report is submitted, I will provide a supplemental report with the information he provided.

# FIKE & BORANIAN

ATTORNEYS AT LAW

*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 3

- A copy of pages 157-168 of what appears to be the deposition of Joseph Carlini taken on October 10, 2018. A copy of this document is attached as Exhibit 7.
- A copy of a letter dated March 27, 2014, from City Attorney Martin Koczanowicz to Mr. Nunley, Re: Contact with City Staff. A copy of this letter is attached as Exhibit 8.
- A copy of type written notes provided by Mr. Dodson dated December 13, 2018, Subject: Interaction with Greg Nunley – Tyler Dodson and Mike Bruening. A copy of these notes is attached as Exhibit 9.
- A copy of an email chain ending on January 23, 2019 with an email from Mr. Dodson to Dan Rowley, Subject: FW: Nunley PRA re emails from 1/1/18 to present JK, TM, JMC, CA, TC, LB, NC & ML. A copy of this email chain is attached as Exhibit 10.
- A copy of pages 78-79 of what was reported to me to be a part of the deposition of Josh McDonnell. A copy of this document is attached as Exhibit 11.
- A copy of a photograph of a “Stop Work” (i.e., “red tag”) dated September 6, 2018 with the handwritten note “3031 Windmill.” A copy of this photograph is attached as Exhibit 12.
- A copy of a text message exchange between Mr. Karlie and Ms. Arruda which Mr. Karlie represented occurred on September 7, 2018. A copy of this document is attached as Exhibit 13.
- A copy of City of Tulare Building Department Correction Notices forms for 2590 Diamante Avenue signed by Mr. Dodson, copies of related photographs taken by Mr. Dodson regarding the gas line issues mentioned in the correction notices and copies of a few pages from the 2008 California Plumbing Code provided by Mr. Dodson. Copies of these documents are attached as Exhibit 14.
- A copy of the complete deposition of Mr. McDonnell dated November 9, 2018. Attached as Exhibit 15 is copy of an excerpt from Mr. McDonnell’s deposition consisting of pages 14-24.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 4

- A copy of the complete deposition of Joseph Carlini dated October 10, 2019. Attached as Exhibit 16 is a copy of an excerpt from Mr. Carlini's deposition consisting of pages 161-168.
- A copy of various documents provided by Mr. Dodson consisting of emails and inspection cards. A copy of these documents is attached as Exhibit 17.

## I. BACKGROUND

### A. Greg Nunley

Mr. Nunley reported that when he graduated from high school, he began studying architecture under the supervision of a licensed architect. His goal was to become an architect. In 2005, he obtained his general contractor license and began building and developing real property.

According to Mr. Nunley, approximately 95% of what he builds is for himself. He reports that he builds single and multifamily residential buildings as well as commercial buildings. He also commented that while most of his work is in Tulare, he builds/develops property in other jurisdictions as well.

Mr. Nunley was elected to the Tulare City Council in November 2016 and took office shortly thereafter. According to Mr. Nunley, before he was elected, he attended meetings as a builder/developer with City staff. However, before he was elected, he did not call anyone at City Hall if he had an issue with City staff because the City Manager Don Dorman had directed the City staff to not be friendly to developers. He reported that Mr. Dorman ended his tenure with the City a few months before Mr. Nunley was elected.<sup>2</sup>

Mr. Nunley then noted that he had spoken with Ms. Myers one time before being elected. Apparently, that conversation did not go well because he later attempted to patch up the relationship with Ms. Myers before running for City Council.

Mr. Nunley reported that since being elected, he sends others to represent him at meetings with City staff. He stated that he made this change because he did not

---

<sup>2</sup> According to accounts on the Internet, Mr. Dorman retired in September 2016. See, <https://www.visaliatimesdelta.com/story/news/local/2016/05/13/tulare-city-manager-announces-retirement/84360750/>



# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 5

want City staff to accuse him of anything. He noted that there was one exception in which he was invited to a meeting and he did attend. In addition, he pointed out that he does have contact with City staff who come to inspect his personal residence.

According to Mr. Nunley, his shifting away from having contact with City employees did not include Mr. McDonnell, the City Manager or Mr. Karlie, the Chief Building Official for the City.

Mr. Nunley claims that he has never spoken to Mr. Karlie in the capacity of a City Councilman. Instead, he views all his communications with Mr. Karlie as coming from a citizen/developer. Likewise, according to Mr. Nunley, all his communications regarding his building projects with City employees, including the City Manager and the City Attorney, have been as a citizen/developer.

From Mr. Nunley's perspective, currently there are employees at City Hall with whom he has a good relationship<sup>3</sup> and some a not-so-good relationship. The individuals with whom he believes he does not have a good relationship include Mr. Karlie, Mr. Dodson, Mr. Bruening, Tony Trevino, Ms. Myers and Mr. McDonnell.

Former Interim City Manager Willard Epps was absent from Mr. Nunley's list of employees with whom he has a not-so-good relationship. According to Mr. Nunley, other than at City Council meetings, he only spoke to Mr. Epps one time and that was by phone. Mr. Nunley reported that on this one occasion, he asked Mr. Epps to have Mr. Karlie not perform any of Mr. Nunley's inspections because Mr. Karlie was harassing him. According to Mr. Nunley, Mr. Epps responded that he would not prohibit Mr. Karlie from inspecting Mr. Nunley's projects. Mr. Nunley claims that he then stated to Mr. Epps, "Good luck being the City Manager for a short period of time."<sup>4</sup> Mr. Nunley reported that thereafter he never spoke to Mr. Epps in connection with issues

---

<sup>3</sup> During his interview, Mr. Nunley reported information that suggested, if he was telling the truth, it could have only come from a current City employee. For example, he reported that the City had recently decided to contract with a private firm to perform the building inspections on his projects and then commented that Mr. Karlie was irate about this decision. Mr. Nunley was then asked if he had a "mole" at City Hall. Initially, Mr. Nunley refused to answer the question but then commented that he has people that like him down there.

<sup>4</sup> According to Mr. Nunley, this was a reference to the fact that everyone knew that Mr. Epps was going to retire in December 2018. During his interview, Mr. Nunley reported that Mr. Epps did retire in December 2018.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 6

he had with City staff because he had no faith that Mr. Epps would do anything to resolve the problems he was having. He also opined that Mr. Epps was letting people run all over him.

## **B. City Staff**

City staff have reported experiencing issues with Mr. Nunley going back to at least 2014. Exhibit 8 is a copy of a letter that then City Attorney Martin Koczanowicz wrote to Mr. Nunley regarding his reported inappropriate interactions with City staff. The reports recited in Mr. Koczanowicz's letter include the use of vulgar language, accusing City staff of lying and being rude and abusive.

In his interview for this investigation, Mr. Nunley reported that in all his dealings with City staff over the years, there have only been two instances in which he yelled at City staff. One incident involved Don Dorman. The second incident involved Rob Smith and is discussed in the March 27, 2018 letter. In this instance, Mr. Nunley admits that he was mad and that he hung up on Mr. Smith. According to Mr. Nunley, he and Mr. Smith have since resolved their differences and put this incident behind them.

Mr. Nunley reports that the restrictions mentioned in Mr. Koczanowicz's letter were never enforced.

The more recent incidents involve a variety of allegations including the following:

- Rude, inappropriate treatment of building inspectors by Mr. Nunley during inspections of the construction of Mr. Nunley's private residence.
- Demands to have City staff fired.
- Having to address complaints from Mr. Nunley that Mr. Karlie, directly and through the other building inspectors, harassed Mr. Nunley.
- Threats of a lawsuit.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 7

Mr. Nunley's alleged treatment of City staff resulted in their complaints about this treatment of them.<sup>5</sup> It is my understanding that those complaints led to this investigation.

## C. Mr. Karlie and Mr. Nunley

At the center of the current disputes between Mr. Nunley and City staff is Mr. Karlie. Their relationship goes back several years.

According to Mr. Karlie, when he was hired as the Chief Building Official for the City, he learned that it was "like the wild, wild west" and rules were not always enforced as they should have been. One of his goals was to begin consistently enforcing the building codes.

Mr. Karlie reported, and Mr. Nunley confirmed, that in response to Mr. Karlie's increased scrutiny, Mr. Nunley circulated a petition demanding that Mr. Karlie be fired. According to Mr. Nunley, Mr. Karlie took things too far and was making statements like he was the new sheriff in town. According to Mr. Nunley, he collected about 400 signatures from contractors and suppliers. However, Mr. Nunley never turned in the petition. Instead, according to Mr. Nunley, he decided to give Mr. Karlie a chance and went to talk with him.

Mr. Nunley reported that this led to the development of a friendship between the two of them.<sup>6</sup> According to Mr. Nunley, before he was elected to the City Council, he and Mr. Karlie used to meet for lunch on a regular basis.<sup>7</sup> Furthermore, when Mr. Karlie had him "correct" things that Mr. Nunley disagreed with, he complied without complaint. By way of example, Mr. Nunley reported that Mr. Karlie had him tear out the plumbing in a home after it was installed. According to Mr. Nunley, the basis

---

<sup>5</sup> For example, Exhibit 1.

<sup>6</sup> Mr. Karlie denies that they were social friends. Instead, he describes the relationship as being professional and that all his contacts with Mr. Nunley, including the lunches, were business related.

<sup>7</sup> Mr. Karlie denies that they met regularly for lunch. According to Mr. Karlie, they met for lunch approximately three times and Mr. Karlie paid each time. Mr. Karlie reported that this is a practice he has with other builder/developers in town in order to develop and maintain a good working relationship.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 8

for Mr. Karlie's order to tear out the plumbing was wrong, but Mr. Nunley never told Mr. Karlie that he was wrong or complained about it.

According to Mr. Nunley, after he was elected, the lunch meetings ended but Mr. Karlie would stop by Mr. Nunley's office unannounced about one time per week and just sit and talk for about an hour.<sup>8</sup> The discussions, according to Mr. Nunley, included the bad mouthing of City staff. According to Mr. Nunley, this began in approximately January 2017 and continued to approximately the middle of 2018. He reports that they had a falling out and, among other things, Mr. Nunley filed a police report making accusations against Mr. Karlie.<sup>9</sup>

While Mr. Nunley was not willing to discuss the police report he filed, he openly accused Mr. Karlie and his inspectors of harassing him and making Mr. Nunley's construction crew do additional work that was not required by the building code. For example, Mr. Nunley reported that on one project, after the sheet rock installation had been inspected and approved, Mr. Karlie required that some of the sheet rock be removed so he could inspect for "draft stops" in the walls. When Mr. Karlie did the inspection, he reportedly told Mr. Nunley to "fire tape" the draft stops. Mr. Nunley claims that the employee did this and called for another inspection. Mr. Karlie was not satisfied with the fire taping and told the employee to do it again. The employee did as requested and when

---

<sup>8</sup> Mr. Karlie denies this allegation. He reported that there was a period in which he did all of Mr. Nunley's inspections because no one else was willing to do them. According to Mr. Karlie, during this period he would go to Mr. Nunley's office when needed to review plans because they were not on site for his inspection, report a change that needed to be done or discuss something else related to the inspections he was doing. The only exception to this, according to Mr. Karlie, was the one time he stopped by to get some water to drink on a hot summer day.

<sup>9</sup> Although Mr. Nunley reported filing the police report, he refused to discuss anything about it. However, Mr. Karlie reported that he was questioned by two police detectives. Mr. Karlie stated that he was questioned about his inspection on the construction of Mr. Nunley's residence when an inspection had not been requested by Mr. Nunley. According to Mr. Karlie, he responded that he had been called out to do an inspection by the plumber and that a building inspector can inspect any home under construction at any time for code violations. The detectives also told him that Mr. Nunley had alleged that Mr. Karlie told him that if Mr. Nunley did not get a public works inspector named Martin fired, Mr. Karlie would make it hard on Mr. Nunley's inspections.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 9

Mr. Karlie returned to inspect the taping, it was approved. However, according to Mr. Nunley, Mr. Karlie now claimed that the taping had been done in the wrong location.

Mr. Karlie's response to these allegations is that Mr. Nunley had covered the draft stops with dry wall before the draft stops were inspected.

This example is typical of the allegations Mr. Nunley and Mr. Karlie make against each other regarding construction issues. Mr. Karlie will say that it was not done right, that it was not disclosed before or that it was not previously inspected. In response, or by way of accusation against Mr. Karlie, Mr. Nunley will assert that it was done right, that Mr. Karlie knew about it long before and said nothing or that Mr. Karlie, or some other inspector, had previously inspected and approved it.

By way of another example, Mr. Karlie sent Mr. Nunley an email dated September 24, 2018 which states in part, "It has come to our attention that the two garages have been converted to living space. . . . Please submit plans for the changes." In response, Mr. Nunley wrote, "No they have not. The garage has only a swamp cooler. It is a showroom for motorcycles. . . . Not sure what your [sic] talking about on the other garage. [¶] Funny you [sic] been there over 50 times and now this pops up all the [sic] sudden."<sup>10</sup>

Mr. Karlie responded, "We have until final for code compliance." Mr. Nunley responded stating that Mr. Karlie had previously signed off on the framing, lathe, removing the garage door and adding the double door and windows. Mr. Nunley goes on to state that what was a "showroom for motorcycles" was now "a workout room not with [sic] AC." Mr. Nunley went on to add, "As for the other garage I see now we are changing that to conditioned space."<sup>11</sup>

It is noteworthy that Ms. Arruda reported that she is assigned to act as the contact person for building inspectors on some of Mr. Nunley's commercial projects as well as the Quail Creek project, which is residential. She also reported that she could not think of an instance in which a correction notice was wrong. She noted that on one occasion, Mr. Karlie wrote a correction notice to add a smoke detector when one was already installed, but she viewed that as just something that he had missed and a minor

---

<sup>10</sup> See, pages 15 of Exhibit 2.

<sup>11</sup> See, pages 16 of Exhibit 2.



# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 10

issue. She also reported that she has not had any problems with Mr. Karlie, Mr. Dodson or Mr. Bruening as building inspectors or the building inspections they perform.

It must be noted that the issue of whether Mr. Nunley did things correctly or not is not within the scope of this investigation. Likewise, the scope of this investigation does not include Mr. Nunley's allegations against Mr. Karlie regarding his job performance.

In addition to the relationship between Mr. Karlie and Mr. Nunley, Ms. Arruda reported that beginning in July 2018 (see discussion below regarding Ms. Arruda's opinion about the changing point), Mr. Karlie told her that she needed to quit her job with Mr. Nunley, that he did not know how Ms. Arruda can work for Mr. Nunley, that she needed to get out, etc.

Mr. Fagundes reported that he received a copy of an email from Mr. Karlie to Mr. Nunley regarding a gas line that allegedly said, "How do you like this? You have to rip up your gas line." Later that day, according to Mr. Fagundes, he went to City Hall to drop off plans. When he arrived at the transaction counter for the Building Department Mr. Karlie was behind the counter with three female employees, including Ms. Condie. According to Mr. Fagundes, as he walked up Mr. Karlie said, "How did your boss like that email?" Mr. Fagundes decided to try and deflect the comment, so he ducked behind the counter for a second and when he stood up, he (Mr. Fagundes) was smiling. Ms. Condie, according to Mr. Fagundes, then said to Mr. Karlie, "He just works for him." Mr. Fagundes took this statement to mean that Mr. Karlie should leave him alone.

Mr. Fagundes reported that he was offended by this exchange and reported it to Mr. Nunley.<sup>12</sup> However, other than this incident, Mr. Fagundes has not had any issues with Mr. Karlie.<sup>13</sup>

---

<sup>12</sup> See, Exhibit 5. Mr. Nunley did report the matter to Mr. Epps and the matter was investigated.

<sup>13</sup> Mr. Fagundes did have other issues with the Department, such as how long it took to get plans for commercial buildings and multi-family buildings approved. He reported that plans for these buildings can go through multiple rounds of submittal, corrections, submittal, corrections, etc. He complained that recently Interwest, who is now handling all plan checks and inspections of Mr. Nunley's projects, gave him nine pages of corrections on the Oak Creek project. This was after Mr. Karlie had reviewed the plans and corrections made on three occasions.



# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 11

Mr. McDonnell opined that the changing point in the relationship between Mr. Karlie and Mr. Nunley occurred in the summer of 2018 when Mr. Nunley was the recipient of a red tag and a correction notice that required Mr. Nunley to install a fire system in a building that was nearly complete. According to Mr. McDonnell, the events of that week resulted in Mr. Nunley becoming very upset and beginning to complain about Mr. Karlie. The complaints at one point, according to Mr. McDonnell, included Mr. Nunley saying that he wanted Mr. Karlie fired.

Ms. Arruda reported that from her perspective, the relationship between Mr. Karlie and Mr. Nunley changed in July 2018 as a result of a meeting regarding a commercial building known as Kings Academy. She reported that sometime prior to the meeting, there had been an issue about whether or not a fire alarm needed to be installed in the building. Mr. Karlie had told Ms. Arruda to not worry about it because the fire department did not know what they were talking about.

Subsequently, a meeting was held that included Mr. Karlie, Ms. Arruda, a representative from the fire department and perhaps others. During this meeting, according to Ms. Arruda, the fire department representative said that Mr. Karlie had no jurisdiction over fire related issues and that Mr. Karlie was wrong. Ms. Arruda opines that this was the changing point and thereafter Mr. Karlie has had nothing good to say about Mr. Nunley.

## **D. Credibility Assessment**

In large part, the issues in dispute involve instances in which there is conflicting evidence and no neutral third-party witnesses. Therefore, the credibility of the witnesses is a significant factor in determining what, if anything, occurred. Accordingly, this section will provide my assessment of the credibility of Mr. Nunley, Mr. Karlie, the other City staff as a group and Mr. Nunley's witnesses, Ms. Arruda and Mr. Fagundes.

### **1. Greg Nunley**

I was impressed by Mr. Nunley during his interview. He was cooperative, volunteered information and was very cordial. His demeanor was calm and pleasant. He also appeared to have a very good memory and often added details that were previously

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 12

unknown to me. Nevertheless, there were a few statements that Mr. Nunley made that cause me to question his credibility. They are discussed below.

- During his interview, Mr. Nunley claimed that the one and only time he ever mentioned anything about a lawsuit to Mr. Dodson and Mr. Bruening was when they were at his home for an inspection and he told them that he had a video of Mr. Dodson dropping a pebble in his gas line. This discussion is described in Exhibit 9. According to the Exhibit and Mr. Dodson, this discussion took place on December 12, 2018. Mr. Dodson and Mr. Bruening were interviewed for this investigation on November 1, 2018. During their interviews, they reported that on October 31, 2018, Mr. Nunley mentioned a lawsuit and suing for harassment several times.

The report of Mr. Nunley talking about a lawsuit was received from two separate witnesses more than a month before the pebble dropping incident. Because Mr. Nunley demonstrated a very good memory and often added additional details that were previously unreported, I find that the issue is not Mr. Nunley's memory. Therefore, I find that Mr. Nunley was not credible on this issue.

- In connection with the alleged pebble in the gas pipe conversation, as noted above, Mr. Nunley told Mr. Dodson that he had a video recording of Mr. Dodson dropping a pebble into Mr. Nunley's gas pipe. Mr. Nunley was asked to provide a copy of the video and he declined to do so, stating that if needed he has it for litigation.

In addition, during his interview, Mr. Nunley identified individuals who he claimed were witnesses to some of the incidents that occurred during inspections of his home. He agreed to provide the phone numbers for these witnesses but failed to do so. During the preparation of this report an email was sent to Mr. Nunley's attorney asking for those phone numbers. A response was not received prior to the completion of this report.

If a witness provided weaker evidence when it could have provided stronger evidence a trier of fact may distrust the weaker evidence. (See, Evidence Code section 412.) Mr. Nunley's verbal report is, in my assessment, weaker evidence which is disputed by Mr. Dodson. Mr. Nunley claimed to have stronger evidence in the form of a video

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 13

recording showing Mr. Dodson putting a pebble in his gas line yet refused to provide it. Likewise, he claims to have witnesses that can support his version of the facts but failed to provide the contact information to these third-party witnesses. During the preparation of this report I sent an email to Mr. Wilkins asking for the contact information for these witnesses, but no response was received prior to the completion of this report.

- In an email exchange between Mr. Nunley and Mr. Karlie dated September 24, 2018<sup>14</sup> Mr. Karlie informed Mr. Nunley that because “two garages have been converted to living space” his building plans needed to be revised. In response, Mr. Nunley stated “No, they have not” and then argues that one of the garages is “a showroom for motorcycles.” Mr. Nunley also claims that he is “Not sure what your [sic] talking about on other garage.”

Approximately one hour later, Mr. Nunley claims that instead of a showroom for motorcycles, the one garage “will be a workout room.” He also states, “As for the other garage I see now we are changing that to conditioned space.”<sup>15</sup>

Because this has to do with Mr. Nunley’s private residence and he is the builder, it is reasonable to conclude that he would be aware what was going on with the construction of his home, such as converting a garage to “conditioned space.” While Mr. Nunley may have had a difference of opinion with Mr. Karlie about the showroom/workout room being “living space” or not, the initial denial is unequivocal.

This, in my opinion, is an example of Mr. Nunley initially “shooting from the hip” with a response that he does not know to be true. Thereafter, when he realizes he did not state the truth, he admits

---

<sup>14</sup> See, Exhibit 2, pages 15 and 16.

<sup>15</sup> It was explained to me that living space in a home is required to be heated and cooled. A garage is not living space and, therefore, not considered living space. Thus, I understand the admission that the second garage is being changed “to conditioned space” as an admission that it should be considered living space.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 14

what he said was wrong. Such behavior, in my assessment, demonstrates a lack of commitment to telling the truth.

## 2. John Karlie

John Karlie, like Mr. Nunley, was pleasant to talk with. He was confident, consistent and appeared to be knowledgeable about his profession. His statements were consistent with the documentation he provided and that was requested and produced. In short, Mr. Karlie appeared to be a credible witness.

Mr. Nunley asserted that Mr. Karlie has some animus against him that could motivate him to lie. Mr. Nunley did not identify the source of or reason for this animus. When Mr. Nunley was asked why Mr. Karlie would have it out for him, he responded that Mr. Karlie had some strong opinions and would leave it at that. In an attempt to provide evidence of animus by Mr. Karlie, without providing a reason for the animus, Mr. Nunley recited an incident in which Mr. Karlie required the removal of sheetrock so he could see draft stops.<sup>16</sup>

Another example of what Mr. Nunley perceives as Mr. Karlie's animus toward him was reported by Mr. Wilkins following Mr. Nunley's interview. Mr. Wilkins reported that during Mr. Nunley's deposition in connection with a lawsuit, he was questioned by attorney Michael Lampe. Mr. Wilkins reports that Mr. Lampe is also the attorney for Mr. Karlie in another matter.

According to Mr. Wilkins, during Mr. Lampe's questioning, Mr. Nunley was asked about his alleged failure to pay Developer Impact Fees ("DIF") for an apartment complex he had built. In response, Mr. Nunley explained that the fees were not due and payable until the City issues Certificates of Occupancy for all of the buildings in the development and that the City had not yet done so. Mr. Lampe then presented Mr. Nunley with a Certificate of Occupancy dated October 2017. Mr. Nunley explained that this certificate was only for building number 1 and the fees were not due until such a certificate was issued for all the buildings.

After a lunch break, Mr. Lampe presented Mr. Nunley with a new exhibit consisting of an original Certificate of Occupancy dated October 2017 and signed by Mr.

---

<sup>16</sup> This incident is discussed above in section I C.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 15

Karlie which was for all the buildings in the development. Mr. Nunley claimed that he had never seen the document before.

According to Mr. Karlie, he prepared and issued the Certificate of Occupancy for all the buildings at the request of his attorney, Mr. Lampe. He explained that he did so because back in approximately September/October 2017, Mr. Karlie had performed the final inspections on all the buildings and, at that time, prepared and signed Certificates of Occupancy. However, according to Mr. Karlie, not all of the Certificates were in the file. Therefore, he created a new document and dated it as of the date the buildings passed their final inspections and were certified for occupancy, October 2017.

In Mr. Karlie's opinion, the DIF fees were due and payable under law when the final inspections were completed. Mr. Karlie reported that he told Mr. Nunley when he did the final inspections that the fees were due. Mr. Nunley, according to Mr. Karlie, objected, refused to pay the fees and has continued to fail to pay the fees.

Mr. Karlie noted that until recently, the City's computer system did not show the project as "finalized" because of an ongoing engineering dispute over a ponding basin between the Engineering Department and Mr. Nunley. Mr. Karlie noted that that dispute has nothing to do with the apartment buildings that have been inspected and approved for occupancy and have been occupied for over a year.

Mr. Karlie denied having any desire or plan to attack or go after Mr. Nunley. Mr. Karlie stated that what he is concerned about is enforcing building code compliance.

Mr. McDonnell reported that Mr. Karlie, as the City's Building Official, was acting within his authority to issue the Certificate of Occupancy. Mr. McDonnell questions the timing and manner it was issued, however. Mr. McDonnell did confirm that the buildings have been occupied since November/December 2017.

Ms. Condie is responsible for and has access to the files for each development in the City. She reported that in 2017, Mr. Karlie did in fact issue a permanent Certificate of Occupancy for each building in the development in question.

Ms. Arruda reported that she viewed Mr. Karlie as a father figure when she worked for the City and sometime afterwards. She also used to consider him to be an honest person.

According to Ms. Arruda, her opinion of Mr. Karlie's honesty has changed based on his report to her that Mr. Nunley had asked Mr. Epps to fire him (Mr. Karlie).



# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 16

Ms. Arruda reported that when Mr. Karlie shared this with her, he also told her that he was in Mr. Epps' office when this was said and that he (Mr. Karlie) heard Mr. Nunley make the statement that he wanted Mr. Karlie fired.

Subsequently, according to Ms. Arruda, she spoke to Mr. Epps. She did not recall what the exchange consisted of, but she reported that as a result of that short discussion, she formed the conclusion that Mr. Karlie was not in the room when Mr. Epps spoke to Mr. Nunley. She acknowledged that she did not ask Mr. Epps if Mr. Nunley had told him to fire Mr. Karlie.

Mr. Epps and Mr. McDonnell reported that Mr. McDonnell and Mr. Karlie were in Mr. Epps' office discussing an issue when Mr. Nunley called Mr. Epps on his cell phone. Mr. McDonnell and Mr. Epps reported that Mr. Nunley's voice was so loud that Mr. McDonnell and Mr. Karlie could hear what Mr. Nunley was saying. They also both confirmed that, among other things, Mr. Nunley asked Mr. Epps to fire Mr. Karlie and Mr. McDonnell.

Thus, it appears that Ms. Arruda apparently misunderstood what Mr. Epps told her.

Based on the facts set forth above, I find that the Certificate of Occupancy that was issued by Mr. Karlie at the request of his attorney was a replacement for the Certificates of Occupancy that Mr. Karlie had previously issued in 2017. Therefore, Mr. Wilkins/Mr. Nunley's assertion that the new certificate was the first time Mr. Karlie had issued Certificates of Occupancy for all the buildings is not supported by the weight of the evidence and, therefore, does not support the theory that Mr. Karlie is out to get Mr. Nunley and that he would lie to do so.

Another basis that may provide Mr. Karlie with a reason to harass and lie about Mr. Nunley is the allegation that Mr. Karlie threatened to be hard on Mr. Nunley if Mr. Nunley did not fire a public works inspector. (See, Exhibit 8.) Mr. Karlie is the one who reported this allegation during his interview. As discussed in Exhibit 8, he became aware of it when he was interviewed by police detectives based on a complaint from Mr. Nunley. Mr. Karlie denied the allegation. In his interview, Mr. Nunley refused to discuss what he reported to the police. Because this involves a criminal investigation, it is not within the scope of this investigation. Furthermore, because Mr. Nunley refused to discuss the matter, there is insufficient evidence to support this theory.



# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 17

Mr. Karlie was consistent, responsive and provided documentation that supports some of his allegations. The information he reported is also consistent with the reports of others. Based on the foregoing, I find Mr. Karlie to be a credible witness.

### **3. Other City Staff**

In my assessment, the other City employees, from Ms. Condie to Ms. Thompson to Mr. Epps, and everyone else were credible witnesses. Where applicable, their verbal reports were consistent with prior statements reported by themselves or others and, in some cases, supported by documentation that was created at the time of the alleged event.<sup>17</sup>

It should also be noted that the investigation did not result in the receipt of any credible evidence that any of the other City staff had any reason or motive to fabricate what they were saying. For example, no one objected to or shared Mr. Nunley's political position or platform. Their only complaints were the negative interactions with Mr. Nunley that they described. Also, I was not made aware of any benefit that any of these witnesses would receive based on the outcome of this investigation.

For the reasons set forth above, I find the other City staff to be credible witnesses.

### **4. Mr. Nunley's Witnesses**

Both Ms. Arruda and Mr. Fagundes were cooperative and open in their interviews. They volunteered information and answered all of the questions asked. Ms. Arruda even called back after her interview to provide dates for some of the things she reported.

I find both Ms. Arruda and Mr. Fagundes to be credible witnesses.

### **5. Conclusions Regarding Credibility**

Mr. Nunley was not a credible witness. This is not to say that everything that Mr. Nunley stated was false or twisted. As noted above, he has a good memory. Several of the things he reported were supported by evidence. However, on the key issues involving his interactions with City staff, I find him to lack credibility in comparison to Mr. Dodson, Mr. Bruening, Mr. Karlie and the other City employees.

---

<sup>17</sup> See, e.g., Exhibits 1, 3 and 4.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 18

Mr. Nunley is of the opinion that Mr. Dodson and Mr. Bruening are controlled by Mr. Karlie and have made false accusations against him, which he has denied. However, there is no evidence to support this allegation. In balance, I find Mr. Dodson and Mr. Bruening to be more credible than Mr. Nunley.

Likewise, in my assessment, the other City staff, Ms. Arruda and Mr. Fagundes were credible witnesses.

## **II. THE COMPLAINTS**

The complaints regarding Mr. Nunley fit within the following three categories:

- Behavior alleged to have created a hostile work environment.<sup>18</sup>
- Threats.
- Private Citizen or City Council Member

Each of the categories will be discussed below.

### **A. Behavior Alleged to Have Created a Hostile Work Environment**

The following are examples of some of the events which form the basis for the allegation that Mr. Nunley's behavior has created a hostile work environment. I have used these examples because, according to Mr. Dodson, the way Mr. Nunley treated himself and Mr. Bruening on the two occasions discussed below is consistent with the type of treatment he received from Mr. Nunley prior to October 31, 2018, but perhaps not as severe as what allegedly occurred on December 13, 2018.

#### **1. October 31, 2018**

By way of background, the gas piping for Mr. Nunley's home, according to Mr. Dodson, is unusual. In most cases the gas line from the gas supplier (e.g., SoCal Edison or PG&E) comes from the gas line in the street up to the side of the house where a

---

<sup>18</sup> The allegations do not include any assertion that the alleged hostile work environment was based on any protected class. Instead, the witnesses assert that Mr. Nunley attempted to bully and/or intimidate them because it is just the way he is. Some also allege that this behavior is an attempt to obtain favoritism because of his status as a City Council member.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 19

meter is attached. The gas line to the meter is done by PG&E and is not inspected by the City. However, the gas line leaving the meter and going into the home must be inspected, including being subjected to a pressure test.

Mr. Dodson reported that the gas meter at Mr. Nunley's home is a short distance from the street. Therefore, the gas line from the meter to the actual home is subject to inspection by the City and must comply with the building code requirements. According to Mr. Dodson, the building code requires that the gas line be pressure tested. Furthermore, if there are valves in the gas line, there are other requirements that may need to be met.<sup>19</sup>

Mr. Dodson also reported that after the gas line leaves the meter at Mr. Nunley's home, it branches off to create a few separate gas lines that will ultimately enter the home in different locations.<sup>20</sup> Between October 15, 2018 and December 13, 2018, Mr. Dodson inspected/re-inspected the gas lines and left correction notices for issues Mr. Nunley needed to fix in order to get approval for his gas lines.<sup>21</sup>

According to Mr. Bruening, at some point he and Mr. Dodson noticed that the corrections that still needed to be done consisted of at least two things. First, on a prior visit, Mr. Dodson had noticed that where the gas lines enter the home there was no tracer wire. Therefore, Mr. Dodson required Mr. Nunley to pot hole the area where those three lines come out of the ground so that he could confirm that there was a tracer wire in place for each line.<sup>22</sup> The second correction required Mr. Nunley to provide new calculations demonstrating that the supply line he installed from the meter to his home was large enough to meet the gas needs for all the appliances and other uses of natural gas in the home.<sup>23</sup>

Mr. Dodson and Mr. Bruening<sup>24</sup> reported that on October 31, 2018, they

---

<sup>19</sup> See, the fourth paragraph of Exhibit 9.

<sup>20</sup> Mr. Dodson reported that the lines that actually penetrated the walls of the home had been capped and had not yet been connected to the lines from the gas meter.

<sup>21</sup> See, Exhibit 14.

<sup>22</sup> See, the correction notice dated October 31, 2018 on page 2 of Exhibit 14.

<sup>23</sup> See, the correction notice dated November 6, 2018 on page 1 of Exhibit 14.

<sup>24</sup> Because of disputes between Mr. Nunley and building inspectors about what was said and done during inspections, Mr. Karlie had begun assigning two inspectors to every inspection of Mr. Nunley's projects.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 20

went to Mr. Nunley's home to conduct an inspection of the gas lines. However, the tracer wire was not exposed, and they asked him why he had not dug pot holes and exposed the wire so they could complete their inspection. According to Mr. Dodson, Mr. Nunley asked why he must be inspected multiple times when the gas pipeline had previously been inspected. Mr. Dodson responded that the prior inspections did not cover these gas lines.

Mr. Dodson reported that they walked the gas pipeline and pointed out to Mr. Nunley where the pot holes needed to be dug. During the walk, Mr. Nunley repeatedly stated that the pipeline had already been inspected by Mr. Karlie. At one point, there was scaffolding over the area where a pot hole needed to be dug.<sup>25</sup> According to Mr. Dodson, when he mentioned the need to pot hole under the scaffolding, Mr. Nunley "went off" about how he was being harassed and that he was going to sue Mr. Karlie and the City for harassment. Mr. Dodson and Mr. Bruening reported that Mr. Nunley went on about a lawsuit and questioned why he was subjected to so many inspections in comparison to a competitor, San Joaquin Homes. Mr. Dodson also reported that Mr. Nunley asked other questions, such as why it took so long to get re-inspections after something is corrected. He also reported that Mr. Nunley kept coming back to the lawsuit.

Mr. Bruening reported that he told Mr. Nunley that they did not want to discuss lawsuits and that all they wanted to do was their job. Mr. Nunley told them that he did not have anything against them, but that he had issues with the City and Mr. Karlie. Mr. Bruening also recalled that Mr. Nunley asked them how long they had been inspectors and accused them of doing what Mr. Karlie told them to do. According to Mr. Bruening, Mr. Nunley also questioned them about an inspection on one of his other construction projects where he claimed that the plans were thrown in the trash.

In addition to the tracer wire, another correction item required Mr. Nunley to submit new calculations to prove that the addition of more living space to the home did not require an adjustment to the size of the supply line that provided gas to the home. When Mr. Nunley was asked about submitting the new calculations, he informed Mr. Dodson that he was not going to comply because the calculations were on the original set of plans submitted and approved by the City. When the addition of living space was pointed out,<sup>26</sup> Mr. Nunley responded that it was not living space. Because it

---

<sup>25</sup> See, page 6 of Exhibit 14.

<sup>26</sup> The plans originally called for two garages which are not considered living space. However, during construction they were not being finished like they were garages. For

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 21

was not living space, according to Mr. Nunley, it did not require heating, cooling or the recalculation of the amount of gas needed for the home.

Mr. Bruening reported that Mr. Nunley makes it very stressful to do his job and he feels tightness in his chest. He also noted that no one else gives him problems like Mr. Nunley.

Mr. Dodson reported that he feels that Mr. Nunley is using his power as a City Councilman to pressure him into doing things his way regardless of whether it is within the building code or not. Mr. Dodson opined that Mr. Nunley is harassing him and the City.

Mr. Nunley reported that that first time he was asked to pot hole the gas lines, he got upset about it. However, later he called his attorney James Wilkins who advised him to dig the pot holes and move forward. He did it the next day and called for an inspection.

Mr. Nunley also claims that he was asked to dig up the gas line three times to prove that the tracer wire was there.

Mr. Nunley also denied saying anything about a lawsuit or asking questions. According to Mr. Nunley, the only time he mentioned a lawsuit was on December 13, 2018, when Mr. Dodson and Mr. Bruening were at his home for a gas pressure test and Mr. Nunley accused Mr. Dodson of putting rocks in an open gas line. (See, discussion of this incident below.) However, Mr. Dodson and Mr. Bruening both reported during their interviews on November 1, 2018 that Mr. Nunley had threatened a lawsuit.

Mr. Nunley admits that when he was told he needed to pot hole the gas lines, he got upset. According to Mr. Nunley, this was unnecessary work and delay because these gas lines had previously been inspected and approved. From this perspective, it is understandable that the request to pot hole gas lines would be frustrating to Mr. Nunley.

---

example, neither room had garage doors. Mr. Nunley reported that one of the rooms was going to be a showroom and then later it became a gym. The other garage was turned into a family room. Mr. Dodson reported that Mr. Karlie had determined that both of the "garage" spaces were living space.



# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 22

In addition, as noted above, Mr. Dodson and Mr. Bruening were credible witnesses and Mr. Nunley was not.

Mr. Nunley's admission that he was upset by the request to pot hole the gas lines is important. Based on his admission, and the relative credibility of the witnesses, I find that the weight of the credible evidence supports the allegation that on this occasion, Mr. Nunley went off about how he was being harassed, and that he was going to sue Mr. Karlie and the City for harassment and questioned the need for two inspectors, how long they had been building inspectors, etc. Therefore, these allegations are sustained.

The issue of whether this behavior by Mr. Nunley supports the claim of harassment is beyond the scope of this investigation.

## **2. December 13, 2018**

Another incident involving Mr. Nunley, Mr. Dodson and Mr. Bruening occurred on December 13, 2018. Mr. Nunley had called in for an inspection requesting a pressure test of the gas line that runs from his meter to his home. Mr. Dodson and Mr. Bruening went to the property to do the inspection on Wednesday, December 12, 2018.

When they arrived, they found that Mr. Nunley had removed some concrete and was working to repair a leak in a gas line. According to Mr. Dodson and Mr. Bruening, Mr. Nunley accused Mr. Dodson of putting a rock into his gas line. He also told them that he had it all on video tape. Mr. Nunley told them that everything would come out in court. Mr. Dodson responded that the allegation was not true and that he was not going to listen to Mr. Nunley talk about "court stuff."<sup>27</sup> Mr. Nunley stopped making such remarks. Because the inspection could not be performed that day, they all agreed to postpone the inspection until the next day.

When Mr. Dodson and Mr. Bruening arrived the next day, December 13, 2018, Mr. Bruening informed Mr. Nunley that the inspection included a pressure test. Because the lines going to the home had valves installed, Mr. Bruening informed Mr. Nunley of the specific requirements regarding the testing of gas lines with valves, such as removing the valves before the test can be performed.

According to Mr. Bruening and Mr. Dodson, Mr. Nunley responded that he was not going to remove the valves because it was a waste of his time and his plumber's

---

<sup>27</sup> According to Mr. Nunley, this was the first and only time he mentioned a lawsuit.



# FIKE & BORANIAN

ATTORNEYS AT LAW

*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 23

time. He also accused them of making him jump through hoops. Mr. Bruening attempted to explain the building code requirements. This resulted, according to Mr. Bruening and Mr. Dodson, in Mr. Nunley saying, "This is bulls---. John [Karl] is just f---ing with me and your [sic] are f---ing with him." He further stated that Mr. Karl's "time is coming and so in the f--- is yours. You guys get the f--- off my property." Mr. Dodson reported that Mr. Nunley shook his finger in Mr. Dodson's face while making these statements. Mr. Dodson and Mr. Bruening left the property without responding to Mr. Nunley.

Mr. Dodson and Mr. Bruening reported that Mr. Nunley was volatile, hostile and just exploded on them. They reported that they felt threatened by this incident.<sup>28</sup>

Mr. Nunley reported that on one occasion when Mr. Dodson and Mr. Bruening were at his home to inspect a gas line, he jokingly accused Mr. Dodson of dropping rocks in his gas line. Mr. Nunley claims that while he has video to prove this occurred<sup>29</sup>, he was not upset about it and was just joking with Mr. Dodson. However, according to Mr. Nunley, Mr. Dodson got upset and denied that he dropped rocks in Mr. Nunley's gas line. Mr. Nunley reports that he responded that he had 30 cameras on site and told Mr. Dodson to not put rocks in his gas lines in the future.

Mr. Nunley reported that during this visit, he was asked for the third time to dig up his gas supply line from the meter to his home. He refused to do so because they had previously inspected it and verified the presence of tracer wires.

Regarding the alleged events of December 13, 2018, Mr. Nunley reported that Mr. Dodson and Mr. Bruening wanted him to dig up one end of the gas line because his landscaper had inadvertently put some dirt over the area where the tracer wire was located and could not be seen. However, according to Mr. Nunley they had seen the tracer wire on that end during a previous inspection. Mr. Nunley told Mr. Dodson that the building code only requires the wire to be exposed on one end.<sup>30</sup> According to

---

<sup>28</sup> This incident is described in more details in Exhibit 9. Mr. Dodson reported that Exhibit 9 was prepared by Janice Avila, the City's Human Resources Director following a meeting Mr. Dodson, Mr. Bruening and Mr. McDonnell had with Ms. Avila.

<sup>29</sup> Mr. Nunley refused to provide a copy of the video in connection with this investigation but stated it would be used if there were future litigation.

<sup>30</sup> Page 9 of Exhibit 14 is what appears to be a copy of a page from the 2013 California Plumbing Code. Section 1210.1.7.2 entitled "Tracer Wire" states, "One end shall be

# FIKE & BORANIAN

ATTORNEYS AT LAW

*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 24

Mr. Nunley, this seemed to surprise Mr. Dodson and he attempted to place a phone call. He suspects that Mr. Dodson was attempting to call Mr. Karlie. Mr. Dodson was unable to reach whoever he was calling and after hanging up, began looking through a book he had. According to Mr. Nunley, Mr. Dodson got upset because Mr. Nunley had proven him to be wrong about needing both ends of the wire exposed.

Mr. Nunley reports that they then went to a different part of the supply line and, again, they asked Mr. Nunley to dig up that part of the gas line to expose the wire. Mr. Nunley admits that being asked a fourth time to dig up the gas line caused him to lose it and he went off on Mr. Dodson and Mr. Bruening. He claims that he did not make any physical threats. He reported that he told them to get the f--- off of his property and to not come back. He also admits saying that Mr. Karlie is f---ing with him.

As part of his interview, Mr. Nunley was given a copy of Exhibit 9 and given the opportunity to read it and respond. After reading Exhibit 9, Mr. Nunley stated that about one-half of what was reported is true. In addition to disputing the underlying facts as set forth above, Mr. Nunley proceeded to deny saying "Mr. Karlie's time is coming and so is yours." He acknowledged that nothing else was false in Exhibit 9.

The issue in dispute here is Mr. Nunley's treatment of Mr. Dodson and Mr. Bruening, not the underlying building code compliance issues. Mr. Nunley admits most of the behavior that Mr. Dodson and Mr. Bruening complain about.

With regard to the events of December 12, 2018, Mr. Nunley read Exhibit 9 and did not deny that he made the statement to them that "everything will come out in court." In addition, he admits that he went off on them due to his frustration over being repeatedly asked to dig up gas lines. Mr. Nunley reported that he told them to "get the f--- off of his property" and to "not come back." He also admits saying that Mr. Karlie is "f---ing with" him.

Based on Mr. Nunley's admissions and the relative credibility of the witnesses, I find that it is undisputed that on this occasion, Mr. Nunley made the

---

brought aboveground at a building wall or riser." The issue of whether this is the applicable provision to which Mr. Nunley was referring is beyond the scope of this investigation. However, I noted it because the photographs that are part of Exhibit 14 show that factually the location of the potholes were adjacent to walls and/or risers.

# FIKE & BORANIAN

ATTORNEYS AT LAW

*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 25

statements to Mr. Dodson and Mr. Bruening as they allege. Therefore, this allegation is sustained.

The issue of whether this behavior by Mr. Nunley supports the claim of harassment is beyond the scope of this investigation.

### **3. Mr. Karlie's Complaint**

Mr. Karlie reports that he feels harassed and retaliated against by Mr. Nunley for doing his job. According to Mr. Karlie, in the past, Mr. Nunley had partners or employees who were good craftsman and worked well with Mr. Karlie.<sup>31</sup> He describes them as being competent and easy to work with. When he, or others, performed inspections, the building plans and inspection cards were made available. If something did not pass inspection, it would be corrected and then signed off. According to Mr. Karlie, these partners/employees are no longer around, and since then, Mr. Nunley's projects have had problems passing inspections.

Mr. Karlie claims that Mr. Nunley has the mindset that if Mr. Karlie or one of his inspectors step on Mr. Nunley's property, they have inspected everything and approved everything unless there is a correction notice left. However, Mr. Karlie and Mr. Dodson both reported that inspections are requested for specific things; for example, the rough electrical, meaning the installation of wires inside the walls of a building. They are not there to look at other things and unless they expressly approve something, it is not approved.

Mr. Karlie reported that when Mr. Nunley disagrees with him or his inspectors, Mr. Nunley will call or email his superiors, specifically Mr. McDonnell or, at the time, the then Interim City Manager Willard Epps, and complain about Mr. Karlie, the other inspectors and their failure to do what Mr. Nunley wanted done.<sup>32</sup> Mr. Karlie asserts that there is no legitimate basis for Mr. Nunley's ongoing complaints. Therefore, from Mr. Karlie's perspective, Mr. Nunley is harassing him and his inspectors.

Mr. Nunley denied the allegations that he is harassing Mr. Karlie or his inspectors. Instead, according to Mr. Nunley, Mr. Karlie and his inspectors are harassing

---

<sup>31</sup> Mr. Karlie identified Victor Cervantes, Gary Goulet and Tom Olivera.

<sup>32</sup> See, Exhibit 3 which contains several emails between Mr. Nunley, Mr. McDonnell, Mr. Epps and Mr. Zamora regarding Mr. Nunley's questions and complaints about being harassed and/or treated differently than other developers by Mr. Karlie and his staff.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 26

him.<sup>33</sup> Mr. Nunley did acknowledge that he has sent emails to Mr. McDonnell, Mr. Epps and Mr. Zamora regarding issues he has had with Mr. Karlie and his staff. According to Mr. Nunley, he began sending the emails after he called Mr. Epps and asked him to keep Mr. Karlie off of Mr. Nunley's job sites. According to Mr. Nunley, Mr. Epps told him that he could not do that. Mr. Nunley reports that after that phone call, the only time he spoke to Mr. Epps was in City Council meetings.

Mr. Nunley has sent several emails expressing his displeasure with the decisions made by Mr. Karlie and his staff.<sup>34</sup> It should be noted, however, that Mr. Nunley has never personally attacked Mr. Karlie or his staff by email or face to face other than to claim that they have it out for him and are making him do things that do not need to be done.

Furthermore, in none of the emails does Mr. Nunley assert that he is making any requests or inquires as a member of the City Council. In fact, in his interview, Mr. Nunley asserted that he has never had any contact with any City staff member regarding his projects in the capacity of a member of the City Council. He claims, instead, that he is acting as a builder/developer and resident of the City.

The mutual allegations of harassment are cyclical. Mr. Nunley calls for an inspection and during the inspection something happens that Mr. Nunley disagrees with, such as being required to provide new calculations for the gas pipe sizing.<sup>35</sup> According to Mr. Nunley, there is no need to do this because the gas pipe to his home is the correct size. Therefore, he claims that he is being harassed.

From Mr. Karlie and his building inspectors' perspective, they are not asking Mr. Nunley to do anything other than comply with the building code. In the example above, the reason for the request for new calculations is that the size of the home has expanded since it was originally approved and there are new and different appliances that were not part of the original calculations. Therefore, Mr. Karlie and his inspectors view themselves as just trying to do their jobs.

The issue of who is correct regarding corrections, changes and building code requirements is beyond the scope of this investigation.

---

<sup>33</sup> See, Exhibit 3 for emails from Mr. Nunley making this allegation.

<sup>34</sup> See, Exhibit 3.

<sup>35</sup> See, page 1 of Exhibit 14.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 27

Mr. Karlie's allegation that Mr. Nunley has gone above his head and contacted Mr. McDonnell and Mr. Epps is supported by Exhibit 3 and Mr. Nunley's admission that he has done so. Therefore, this allegation is sustained.

The issue of whether this behavior by Mr. Nunley supports the claim of harassment is beyond the scope of this investigation.

#### 4. Questioning of Truthfulness

Ms. Thomson, the City Finance Director, and Ms. Brown, an Administrative Assistant for the planning and building departments, both reported incidents in which Mr. Nunley has asked them questions, yet treated their responses as if they were not telling him the truth.<sup>36</sup> Specifically, according to them, he has asked them if they are telling him the truth, asked "are you sure," or "you're not lying to me?"

Ms. Brown reports that other developers do not question her in this manner. She believes that this behavior is retaliatory for Mr. Nunley not getting his way on something.

Ms. Brown reported that on one occasion, Mr. Nunley questioned her regarding how she determined who owned real property. According to Ms. Brown, as she walked up to the counter to answer his question, Mr. Nunley stated that there was no need to be afraid of him as he was not going to bite her. He also assured her that he was not mad at her. Ms. Brown also noted that Mr. Nunley has not verbally attacked her, but she is concerned about what he may say behind her back.

Regarding Ms. Thompson, her contact with Mr. Nunley has been in his role as a member of the City Council. According to Ms. Thompson, Mr. Nunley questioned her during budget meetings about some tasks she was asked to do by the City Manager. She felt he was being rude, condescending and accusing her (impliedly) of not telling the truth. She reported that this behavior continued until she provided Mr. Nunley with a spreadsheet with the information for which he was asking.

Mr. Nunley denied treating Ms. Brown in this manner and claimed that he did not recall questioning Ms. Thomson during a budget meeting. He also denied making the comment about not biting Ms. Brown.

---

<sup>36</sup> Ms. Brown's complaint is attached as page 4 of Exhibit 1.



# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 28

Mr. Nunley reported that the only time he accused a City staff member of lying was an incident involving Ms. Myers and, he claims, he did that in private with the then City Attorney Heather Phillips. He also reported that, in one public meeting, he said that Mr. Karlie had lied to him but did not provide any specifics.

In connection with these allegations, it is not alleged that Mr. Nunley raised his voice, yelled or threatened anyone. Nevertheless, I find that the weight of the credible evidence supports the allegations that, at times, Mr. Nunley has asked City staff if they are telling him the truth, asked staff “are you sure” and similar questions. As Mr. Nunley pointed out, he has not accused these City employees of actually lying. However, his questions do imply or suggest that they are not telling him the truth.

These employees report that they viewed Mr. Nunley’s questions as being rude, condescending and intimidating. They made credible witnesses.

Based on the foregoing, including the relative credibility of Mr. Nunley compared to the City staff, I find that the weight of the credible evidence supports the allegation that, at times, Mr. Nunley has asked City staff if they are telling him the truth, asked staff “are you sure” and similar questions. In addition, I find that the weight of the credible evidence supports the conclusion that Ms. Thompson and Ms. Brown viewed Mr. Nunley’s questioning as being rude, condescending and intimidating. Therefore, these allegations are sustained.

The issue of whether this behavior by Mr. Nunley supports the claim of harassment is beyond the scope of this investigation.

## 5. Traci Myers

Ms. Myers submitted a memorandum dated September 14, 2018 chronicling “the events in the past where I have felt intimidated, bullied, harassed and/or threatened by Greg Nunley, both as a developer and as a council member . . .”<sup>37</sup> In addition, Ms. Myers submitted several documents in support of her allegations.<sup>38</sup>

Some of Ms. Myers’ allegations are discussed below.

---

<sup>37</sup> See, pages 8-15 of Exhibit 1.

<sup>38</sup> See, Exhibit 4.



# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 29

## **(a) Mr. Nunley Wants to Fire You**

Ms. Myers reported that on April 26, 2017, she met with then City Manager Joe Carlini and Director of Human Resources Janice Avila regarding an email she sent to front-counter staff about professionalism. Ms. Myers reports that Mr. Carlini and Ms. Avila told her that there was nothing wrong with her email. However, she was also told that Mr. Nunley was upset by the email because he believed that she was attempting to establish new policy on behalf of the City Council. According to Ms. Myers, during this meeting Mr. Carlini told her “you know Greg Nunley wants you fired.”

Mr. Nunley denied asking Mr. Carlini to fire Ms. Myers on this occasion. He further denied asking Mr. Carlini to fire anyone. Mr. Nunley stated that he thinks Mr. Carlini is the biggest liar ever.

In support of Mr. Nunley’s assertion that Mr. Carlini is a liar, Mr. Wilkins provide me with Exhibit 11. This exhibit consists of two pages from the deposition transcript of Mr. McDonnell. Specifically, in this deposition excerpt, Mr. Wilkins asked Mr. McDonnell “Did you ever reach the conclusion based on any experience you ever had with him that he was in any way dishonest or untruthful?” In response, Mr. McDonnell responded, “Yes.” Mr. McDonnell went on to testify that he has heard others “express the view that they found Mr. Carlini to be dishonest or untruthful or untruthful” but he could not recall who had expressed such opinions.

Mr. Carlini reported that Mr. Nunley never told him specifically to fire anyone. However, he also reported that Mr. Nunley made statements to him such as, “if they worked for me, they would be fired,” and “I do not understand why they are still working here given how incompetent they are.”

As part of this investigation, Mr. McDonnell was asked about this portion of his deposition testimony. He confirmed that it was accurate and true. However, he also stated that when Mr. Carlini told him, on more than one occasion, that Mr. Nunley wanted Ms. Myers fired he believed that Mr. Carlini was telling him the truth.

A review of Mr. McDonnell’s deposition revealed that he testified that Mr. Carlini discussed with him Mr. Nunley’s desire to have Ms. Myers terminated on at least three occasions. Mr. McDonnell testified that on one of those occasions, Mr. Carlini told him that Mr. Nunley said that if Ms. Myers and another employee named Tony Trevino were not fired, Mr. Nunley would make sure that Mr. McDonnell and Mr. Carlini were terminated. He also testified that he discussed Mr. Nunley’s directive to fire

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 30

Ms. Myers with Ms. Avila and the two of them met with Mr. Carlini to tell him that Mr. McDonnell was not going to fire Ms. Myers.<sup>39</sup>

Mr. McDonnell also testified that Mr. Nunley complained to him regarding Ms. Myers' job performance and competency, but that Mr. Nunley never directly asked Mr. McDonnell to fire her.

In Mr. Carlini's deposition, he testified that Mr. Nunley told him, in reference to Ms. Myers, "You need to get rid of her." He also testified that Mr. Nunley said something like, "You do them, or I do you," which Mr. Carlini understood to mean that if he did not terminate the employees Mr. Nunley wanted fired, including Ms. Myers, that Mr. Nunley would fire him.<sup>40</sup>

Mr. Carlini was not interviewed as part of this investigation. However, his deposition was taken under oath.

Mr. McDonnell testified that he and some other City employees were of the opinion that Mr. Carlini was not always honest or truthful. However, he also reported as part of this investigation that he believed Mr. Carlini to be telling the truth on this matter.

It is also noteworthy that Mr. McDonnell shared his concerns about Mr. Carlini's directive with Ms. Avila and they met with Mr. Carlini to inform him that Ms. Myers was not going to be fired. This is significant because it supports Mr. McDonnell's report that when Mr. Carlini told him that Mr. Nunley wanted Ms. Myers fired, he believed Mr. Carlini was telling him the truth.

Mr. Carlini's deposition testimony reports that Mr. Nunley told him, "You need to get rid of her." I find this to be credible. It is consistent with Mr. McDonnell's report that Mr. Carlini told him in 2017 that Mr. Nunley wanted Ms. Myers fired. In addition, it is consistent with Mr. Nunley's complaints to Mr. McDonnell that Ms. Myers was not competent and not performing her job well.

It should also be noted that no one has offered an explanation as to why Mr. Carlini would fabricate the claim that Mr. Nunley wanted Ms. Myers fired. There is

---

<sup>39</sup> Exhibit 15 contains the excerpt from Mr. McDonnell's deposition from which this information was taken.

<sup>40</sup> Exhibit 16 contains the excerpts from Mr. Carlini's deposition from which this information is taken.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 31

no evidence that Mr. Carlini had any issues with Ms. Myers' job performance or had any animus or reason to want her fired.

It is significant to note that Mr. Epps also reported that, while he was serving as the City Manager, Mr. Nunley told him that Mr. Karlie, Mr. McDonnell, Mr. Dodson, Mr. Bruening and Fire Inspector Ryan Leonardo all needed to be fired because they did not know what they were doing. Mr. Epps reported that Mr. Nunley has said things like, "they do not know what they are doing," and "they do not deserve to be working for the City and should be fired." Mr. Epps was asked if these statements were opinion or directive from Mr. Nunley. Mr. Epps responded that the way they were presented to him, he understood them to be directives.

Mr. Epps' experience is consistent with Mr. Carlini's report to Mr. McDonnell and Ms. Myers that Mr. Nunley told him to get rid of Ms. Myers.

Mr. Nunley denies ever asking or directing Mr. Epps or anyone else to fire a City employee. In addition, Mr. Nunley reported that in his 20 years as a private employer, he has only fired two employees and both of those times it was because of theft.

In my assessment, the weight of the credible evidence, including the relative credibility of the witnesses, supports the allegation that on April 26, 2018 Ms. Myers was told by Mr. Carlini that Mr. Nunley wanted her fired. In addition, the weight of the credible evidence supports the conclusion that at some point prior to this meeting, Mr. Nunley told Mr. Carlini, "You need to get rid of her."<sup>41</sup> Therefore, Ms. Myers' allegation is sustained.

## **B. Threats**

Mr. Karlie, Mr. Dodson, Mr. Bruening, Ms. Myers and Mr. Epps report being or feeling threatened by Mr. Nunley. Each of their complaints are set forth below.

---

<sup>41</sup> The statement "You need to get rid of her" can be read as a directive or opinion depending upon the context and/or how it is said. Based on Mr. Carlini's communications with Ms. Myers and Mr. McDonnell it is clear that Mr. Carlini understood this statement to be a directive. Likewise, Mr. Epps reported that Mr. Nunley's comments to him about firing employees was presented to him as a directive.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 32

Before discussing these reports, it should be noted that no one reported any physical contact with Mr. Nunley, except Mr. Bruening. Mr. Bruening reported that while at an inspection of Mr. Nunley's home, Mr. Nunley asked why two inspectors were sent to inspect his projects. Mr. Nunley further commented, while touching Mr. Bruening's shoulder and laughing, "It's not like I am going to kill you."<sup>42</sup> Otherwise, there have been no threats of physical violence from Mr. Nunley.

## 1. John Karlie

As discussed above, sometime in the fall of 2018, Mr. Nunley filed a complaint against Mr. Karlie with the City police department. This resulted in two detectives showing up at City Hall to interview Mr. Karlie in connection with Mr. Nunley's allegations. Mr. Karlie reports that he felt threatened by the police interviewing him at work regarding the allegations made by Mr. Nunley.

Mr. Nunley refused to discuss the complaint he made to the police department. The complaint may be a way for Mr. Nunley to threaten and/or harass Mr. Karlie. However, if Mr. Nunley had a valid basis for filing the complaint or believed in good faith that he had a valid basis for doing so, it may be a legitimate complaint. In any event, the merits of the complaint and the ultimate determination of that issue are beyond the scope of this report.

It should be noted that there is no evidence that Mr. Nunley directed the police to interview Mr. Karlie or to interview him at work. Instead, common sense indicates that interviewing suspects is a normal part of the process followed by police officers when investigating a complaint.

Based on the forgoing, I find that there is insufficient evidence to support Mr. Karlie's allegation that Mr. Nunley unjustly threatened him by filing the criminal complaint.

## 2. Mr. Dodson and Mr. Bruening

Exhibit 9 states that Mr. Dodson and Mr. Bruening both reported that they felt threatened by the events at Mr. Nunley's home on December 13, 2018. As I understand it, the specific action that caused them to feel threatened was Mr. Nunley's statement, "John's time is coming and so in the f--- is yours . . ." On prior inspections, Mr. Nunley had mentioned things like "everything will come out in court," in connection

---

<sup>42</sup> Mr. Nunley denies both making this statement and touching Mr. Bruening.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 33

with Mr. Nunley's assertion that Mr. Dodson put a rock in his gas pipe, as well as suing Mr. Karlie and the City for harassment. When Mr. Nunley made these comments, both Mr. Dodson and/or Mr. Bruening objected and told Mr. Nunley that they were not there to talk about lawsuits and did not want to hear about it.

Mr. Dodson reported that Mr. Nunley's threats have caused him to fear for his job and his ability to provide for his family.

Mr. Nunley has specifically denied making the statement that "John's time is coming and so in the f--- is yours . . . ." However, he does acknowledge that, on this occasion, he was upset and used the "f" word, including telling Mr. Dodson and Mr. Bruening to "get the f--- off of my property." In addition, as discussed above, when given the opportunity to review Exhibit 9, Mr. Nunley did not deny saying that everything would come out in court.

Based on Mr. Nunley's admission that he was upset, that he used the "f" word, as well as his implied admission that he said "everything would come out in court," his multiple allegations that he was being harassed, the allegation that Mr. Dodson placed rocks into a gas pipeline and the relative credibility of the witnesses, I find that the weight of the credible evidence supports the allegation that on December 13, 2018, Mr. Nunley told Mr. Dodson and Mr. Bruening, "John's time is coming and so in the f--- is yours . . . ." I further find that Mr. Dodson and Mr. Bruening reasonably understood this to be a threat, that Mr. Nunley was going to sue them in an attempt to have them fired.

Based on the forgoing, the allegation that Mr. Dodson and Mr. Bruening were threatened is sustained.

However, it must be noted that the threat was that of a lawsuit seeking to have them fired. It was not a threat of physical violence.

### 3. Threat to Ms. Myers

Ms. Myers reports that in 2015, before Mr. Nunley was elected to the City Council, there was a hearing of the City's Board of Public Utilities that included an issue involving one of Mr. Nunley's projects. Ms. Myers reported that the Board rejected Mr. Nunley's request. After the hearing, as Mr. Nunley was leaving the building, Ms. Myers told him to let her know if there was anything further, she could assist him with. Ms. Myers alleges that in response Mr. Nunley stated, "You know what Traci? I drive half-a-million dollar trucks and fly in million dollar planes and I'm going to run for



# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 34

City Council. And if I win, you'd better watch your back." She reports that this statement shocked, surprised and scared her. She also claims that she had no idea what she had done to receive such a comment from Mr. Nunley.

Mr. Nunley had a different version of the incident. Mr. Nunley denied Ms. Myers' allegations. According to Mr. Nunley, as he left the meeting, Ms. Myers made a "smart ass" comment about his project not being approved. In response, he turned around and told her, "I am tired of being treated like s--- and I am thinking about running for City Council." Mr. Nunley claims that nothing else was said.

As discussed above, after Mr. Nunley was elected to the City Council, he complained about Ms. Myers' job performance and competency and, according to Mr. Carlini, directed him to fire Ms. Myers. It should also be noted that Mr. McDonnell reported that in his professional assessment as her supervisor, while Ms. Myers is not perfect, she does a good job and there are no legitimate grounds to fire her.

These facts, in my assessment are consistent with and support Ms. Myers' allegation that Mr. Nunley told Ms. Myers that she had better watch her back.

In my opinion, given Mr. Nunley's statements regarding Ms. Myers and the relative credibility of the witnesses, I find that the weight of the credible evidence supports Ms. Myers' allegation that Mr. Nunley told her that she had better watch her back. Therefore, this allegation is sustained.

#### 4. Willard Epps

Mr. Epps, by way of background, was a career firefighter with the City beginning in 1984. He rose through the ranks and in 2011 was appointed as Fire Chief. In March 2018, he was appointed as the Interim City Manager.

According to Mr. Epps, in a phone call, Mr. Nunley stated that Mr. Karlie and Mr. McDonnell should be fired. Mr. Nunley further stated that if Mr. Epps did not fire them "you may just find yourself back at the fire department; you could be fired too." Mr. Epps reported that he responded, "If that is what you would like to do, go ahead."

Mr. Nunley admits talking to Mr. Epps, complaining about Mr. Karlie and asking Mr. Epps to keep Mr. Karlie off of his job sites. In response, according to Mr. Nunley, Mr. Epps said that he could not do that. Mr. Nunley claims that he responded, "Good luck being the City Manager for a short period of time." Mr. Nunley reported that his comment was in reference to the fact that everyone knew that Mr. Epps

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 35

was retiring in December 2018.<sup>43</sup> Mr. Nunley also commented that, from his perspective, Mr. Epps was letting people run all over him.

Mr. Epps did report that, in a separate conversation, Mr. Nunley had asked him to not have Mr. Karlie inspect his projects. According to Mr. Epps, he reminded Mr. Nunley that he had said that he wanted equal treatment with other developers and, therefore, Mr. Epps could not allow Mr. Nunley to pick and choose which inspectors he would get. It was Mr. Epps' recollection that this discussion occurred in approximately September.

Mr. McDonnell reported that after Mr. Epps' conversation with Mr. Nunley, Mr. Epps met with him and Mr. Karlie. In that conversation, Mr. Epps reported that Mr. Nunley wanted them fired and that Mr. Epps told Mr. Nunley that that was not going to happen. This, according to Mr. McDonnell, resulted in Mr. Nunley telling Mr. Epps, "Good luck being the short-term City Manager." According to Mr. McDonnell, this conversation was in late June/early July 2018.

Given Mr. McDonnell's account of Mr. Epps' report of Mr. Nunley saying "good luck being a short-term City Manager" and Mr. Nunley's report that he said, "Good luck being the City Manager for a short period of time," I find that the weight of the evidence does not support Mr. Epps' recollection that Mr. Nunley told him that he could find himself back at the fire department. Accordingly, this allegation is not sustained.

However, I also find that the evidence does support the conclusion that Mr. Nunley did tell Mr. Epps "Good luck being the City Manager for a short period of time." Mr. Nunley characterized this comment as wishing Mr. Epps good luck during the short time before his retirement.

The context of this statement, according to Mr. Nunley, was Mr. Epps' refusal of Mr. Nunley's request to keep Mr. Karlie off of Mr. Nunley's job sites. According to Mr. Epps, the context was Mr. Epps' refusal to fire Mr. Karlie and Mr. McDonnell. In either event, it was not pleasant news for Mr. Nunley. Therefore, wishing Mr. Epps "good luck", in my opinion, was intended as a threat that Mr. Nunley

---

<sup>43</sup> According to news reports on the internet and Mr. Nunley, Mr. Epps did in fact retire in December 2018.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 36

was going to make Mr. Epps' job as the City Manager more difficult until his retirement or seek to have him replaced as the City Manager.

I find that the weight of the credible evidence supports the conclusion that Mr. Nunley told Mr. Epps, "Good luck being the City Manager for a short period of time." I also find that, under the circumstances in which the statement was made, as reported by Mr. Nunley, Mr. McDonnell and Mr. Epps, it would be reasonable to conclude that Mr. Nunley's statement should be understood as an attempt to intimidate and/or threaten Mr. Epps. Therefore, the allegation that Mr. Epps was threatened by Mr. Nunley is sustained.

## **C. Private Citizen or City Council Member**

Some witnesses reported that they are of the opinion and allege that Mr. Nunley's behavior toward them is an attempt to obtain favoritism because of his role as a member of the City Council. However, nobody reported any requests by Mr. Nunley for favoritism or any mention by him to them that he is a member of the City Council.

Furthermore, the evidence supports the conclusion that Mr. Nunley has engaged in this type of behavior long before he was on the City Council. For example, Mr. Koczanowicz's March 27, 2014 letter<sup>44</sup> and the threat to Ms. Myers in 2015. Furthermore, Ms. Myers' complaint<sup>45</sup> references the same type of issues with Mr. Nunley going back to 2013.

Mr. Nunley reported that he views all of his interactions with building department employees to be in his role as a developer/builder and not as a member of the City Council. However, Mr. Epps reported that he told Mr. Nunley that if he had an issue as a City Councilman, he should come to Mr. Epps but that if he had an issue as a developer/builder he should contact the City staff.

City staff point to the fact that Mr. Nunley copies Mr. Epps and Mr. Zamora on a lot of the emails,<sup>46</sup> and they further claim that no other developer does this when they have any issue. Employees also claim that when other developers have

---

<sup>44</sup> See, Exhibit 8.

<sup>45</sup> See, Exhibit 1.

<sup>46</sup> See, Exhibits 2 and 3.

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 37

issues with City staff, those developers do not notify the City Manager or the City Attorney.

This all may be true. However, it is clear that Mr. Nunley is not like the other developers. He is an assertive, aggressive person who has a high opinion of his own thoughts and viewpoints. He is not one to sit around and wait or accept what others have to say at face value. This trait is reflected in his interactions with Ms. Thompson and Ms. Brown, discussed above.

In my opinion, the line between anyone serving on a City Council and their professional interactions with City staff is very fine. While some members of City staff perceive and are of the opinion that in their interactions with Mr. Nunley, he has been acting in his capacity as a City Council member, I find that there is insufficient evidence to support this allegation. Therefore, this allegation is not sustained.

### **III. CONCLUSION**

Mr. Nunley's admission that he was upset by the request to pot hole the gas lines is important. Based on this admission and the relative credibility of the witnesses, I find that the weight of the credible evidence supports the allegation that, on this occasion, Mr. Nunley went off about how he was being harassed and that he was going to sue Mr. Karlie and the City for harassment as well as questioning the need for two inspectors and how long they had been building inspectors, etc. Therefore, these allegations are sustained.

Based on Mr. Nunley's admissions and the relative credibility of the witnesses, I find that it is undisputed that Mr. Nunley made the statements to Mr. Dodson and Mr. Bruening that they allege. Therefore, this allegation is sustained.

Mr. Karlie's allegation that Mr. Nunley has gone above his head and contacted Mr. McDonnell and Mr. Epps is supported by Exhibit 3 and Mr. Nunley's admission that he has done so. Therefore, this allegation is sustained.

Based on the foregoing, including the relative credibility of Mr. Nunley compared to the City staff, I find that the weight of the credible evidence supports the allegation that, at times, Mr. Nunley has asked City staff if they are telling him the truth, asked "are you sure" and similar questions. In addition, I find that the weight of the credible evidence supports the conclusion that Ms. Thompson and Ms. Brown viewed

# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.

March 1, 2019

Page 38

Mr. Nunley's questioning as being rude, condescending and intimidating. Therefore, these allegations are sustained.

In my assessment, the weight of the credible evidence, including the relative credibility of the witnesses, supports the allegation that on April 26, 2018, Ms. Myers was told by Mr. Carlini that Mr. Nunley wanted her fired. In addition, the weight of the credible evidence supports the conclusion that, at some point prior to this meeting, Mr. Nunley told Mr. Carlini, "You need to get rid of her." Therefore, Ms. Myers' allegation is sustained.

Based on the forgoing, I find that there is insufficient evidence to support Mr. Karlie's allegation that Mr. Nunley unjustly threatened him by filing the criminal complaint.

Based on Mr. Nunley's admission that he was upset, that he used the "f" word, as well as his implied admission that he said "everything would come out in court," his multiple allegations that he was being harassed, the allegation that Mr. Dodson placed rocks into a gas pipeline and the relative credibility of the witnesses, I find that the weight of the credible evidence supports the allegation that on December 13, 2018, Mr. Nunley told Mr. Dodson and Mr. Bruening, "John's time is coming and so in the f--- is yours . . ." I further find that Mr. Dodson and Mr. Bruening reasonably understood this to be a threat, that Mr. Nunley was going to sue them in an attempt to have them fired. Based on the forgoing, the allegation that Mr. Dodson and Mr. Bruening were threatened is sustained. However, it must be noted that the threat was that of a lawsuit seeking to have them fired. It was not a threat of physical violence.

In my opinion, given Mr. Nunley's statements regarding Ms. Myers and the relative credibility of the witnesses, I find that the weight of the credible evidence supports Ms. Myers' allegation that Mr. Nunley told her that she had better watch her back. Therefore, this allegation is sustained.

I find that the weight of the credible evidence supports the conclusion that Mr. Nunley told Mr. Epps "Good luck being the City Manager for a short period of time." I also find that under the circumstances in which the statement was made, as reported by Mr. Nunley, Mr. McDonnell and Mr. Epps, it would be reasonable to conclude that Mr. Nunley's statement should be understood as an attempt to intimidate



# FIKE & BORANIAN

ATTORNEYS AT LAW  
*An Association of Attorneys*

Mario Zamora, Esq.  
March 1, 2019  
Page 39

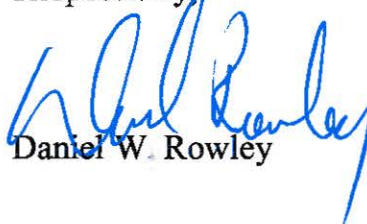
and/or threaten Mr. Epps. Therefore, the allegation that Mr. Epps was threatened by Mr. Nunley is sustained.

In my opinion, the line between anyone serving on a City Council and their professional interactions with City staff is very fine. While some members of City staff perceive and are of the opinion that in their interactions with Mr. Nunley, he has been acting in his capacity as a City Council member, I find that there is insufficient evidence to support this allegation. Therefore, this allegation is not sustained.

The issue of whether Mr. Nunley's behavior, which has been sustained above, supports the claim of harassment, bullying, rude behavior, etc. is beyond the scope of this investigation.

The opinions and conclusions expressed above are based solely upon my evaluation of the evidence I obtained during my investigation. I hope this report will be of assistance to you. If I can be of any further assistance, or if you have any questions, please let me know.

Respectfully,



Daniel W. Rowley

Attachments