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M e m o r a n d u m

TO: MARK CUTHBERTSON, ESQ.
JOAN CERGOL
EDMUND SMYTH, ESQ.
EUGENE COOK

FROM: DIANE KREBS, ESQ.

DATE: NOVEMBER 10, 2020

RE: INVESTIGATION REGARDING SUPERVISOR CHAD LUPINACCI AND
[REDACTED]

This memorandum summarizes my investigation, at the request of the Town of Huntington ("Town" or "TOH"), into allegations of possible sexual harassment by Supervisor Chad Lupinacci directed at [REDACTED] at the [REDACTED] ([REDACTED]). As discussed below, I was not able to substantiate any allegations of sexual harassment. However, I believe that individuals were untruthful during the investigation process or refused to respond to my questions, which impeded my ability to obtain the full story

I. The "Complaint"

Notice of the possible harassment came to the Town in a circuitous manner. On Thursday, February 24, 2020, [REDACTED], [REDACTED], received two reports from secondary sources of possible improper conduct by Lupinacci toward [REDACTED]:

- [REDACTED] received a telephone call from [REDACTED], a prior Town employee who now works at [REDACTED], a current Town vendor. [REDACTED] said [REDACTED] had spoken with [REDACTED], a [REDACTED] working in the [REDACTED] office. [REDACTED] relayed a discussion [REDACTED] had with [REDACTED]. Per [REDACTED], [REDACTED] told [REDACTED] that [REDACTED] had screen shots of texts between Lupinacci and [REDACTED], which included Lupinacci asking [REDACTED] over to his house for drinks at 2 am and then saying [REDACTED] was ungrateful when [REDACTED] refused the invitation.
- [REDACTED] was visited by Joan Cergol, one of the Town Board members. She had spoken with [REDACTED], who had shared with her the same information [REDACTED] had shared directly with [REDACTED].

█. Cergol wanted to make sure █ was aware. (Cergol confirmed this information with me directly during the course of my investigation.)

Neither reporter shared any documents with █ (e.g., the texts). After considering the information and how to proceed, █ decided to speak with █, the █ who also functions as the █. █ did so on March 4, 2020. After sharing the information and discussing procedure and next steps, they agreed that █ would meet with █ alone to determine if there was anything to the "rumor" █ had heard.

█ met with █ on March 5. After discussing some other issues in connection with █ position, █ advised █ of the rumor █ had heard and stated that, even though it was just a rumor, █ needed to be sure all was okay with █ and that █ was not being made to feel uncomfortable. █ only substantive response was, "I'm handling it," causing █ to believe that there might be something to the rumor. █ explained the Town policies that could be relevant and said █ could file a complaint or speak to █ or █ if there was an issue. █ answered █ questions about the policies, time frames for reporting and the like. Although █ encouraged █ to share whatever was on █ mind, █ did not. █ left the door open for █ to come back to █ if █ changed █ mind.

█ reported the substance of this discussion to █, and they talked about what to do next. They felt they needed to look into the situation more, and they needed to move more quickly because █, although reticent about it, indicated there was an issue.

█ and █ together then met with █ to ask █ about the material █ saw in connection with this issue. █ was concerned about █ loyalty to Lupinacci, and █ was uncomfortable sharing what █ knew. Nevertheless, █ answered their questions. █ indicated that █ correspondence with █ was through Snapchat, and █ told █ that Lupinacci was stalking █. █ based this on the fact that █ saw Lupinacci in his car one night when █ was leaving a bar, as well as that █ believed Lupinacci was watching █ comings and goings from Town Hall via the cameras and/or Novatime. █ also indicated █ told █ Lupinacci texted █ to come over to his house alone and made sexual advances toward █, to which █ responded that █ was not gay. █ indicated █ felt uncomfortable with the texting, because it was too much and overbearing.

On advice of outside counsel █, █ met again with █, this time with █, to discuss the information they had learned from █. █ reluctantly explained █ had a personal friendship with Lupinacci from before █ began working for the Town (in █). Last summer, they agreed they would no longer hang out together other than for work, because it may be perceived as unprofessional.

Nevertheless, since █ began working for the Town, Lupinacci had been asking █ to accompany Lupinacci to political and Town events, and █ did not think it was appropriate for █ to go alone with Lupinacci. In addition, when █ did so, people asked him things such as, "Are you Chad's assistant?" and "Are you two together?" Lupinacci told █ that going

to these events with him was part of [redacted] job and if [redacted] was not going to do it, [redacted] should submit resignation. This issue was hashed out in a meeting with [redacted] (who also internally acts as a [redacted]).

Aside from that issue, [redacted] also told [redacted] and [redacted] that Lupinacci was "stalking" [redacted]. [redacted] stated a few nights before, [redacted] saw Lupinacci sitting in his car when [redacted] left a bar, and [redacted] also would run into him at various places in town – though [redacted] acknowledged they used to hang out at the same places. In addition, [redacted] said Lupinacci would text [redacted] in the middle of the night, asking [redacted] to come over – though [redacted] was clear that there were *no* sexual advances in the texts. In addition, [redacted] said Lupinacci told [redacted] he watched Novatime to see when [redacted] clocked in and out, and he saw [redacted] on the Town cameras. Indeed, [redacted] said that as soon as the last person left [redacted] office and [redacted] was alone, Lupinacci would show up. Finally, [redacted] mentioned that Lupinacci occasionally called [redacted] when [redacted] was on call at [redacted] ([redacted]) and gave [redacted] a hard time if [redacted] did not want to talk.

During this meeting, [redacted] and [redacted] told [redacted] multiple times they were concerned about [redacted] and wanted to make sure nothing was making [redacted] uncomfortable, and [redacted] should report anything to them that made [redacted] uncomfortable or [redacted] thought was inappropriate. When [redacted] expressed concern about losing [redacted] job, which [redacted] said [redacted] loved, [redacted] assured [redacted] [redacted] would not lose [redacted] job for making such a report. [redacted] also said [redacted] did not want to hurt Lupinacci, and [redacted] expressed serious concern about any issue of this nature showing up in the press, for both Lupinacci and [redacted].

After speaking with [redacted] again, [redacted] and [redacted] met with Lupinacci to advise him of the allegations against him and get an initial reaction. Lupinacci said he has known [redacted] since [redacted] was a baby and they spoke often. Indeed, he indicated that the prior month [redacted] asked if Lupinacci was going to be [redacted] attorney for [redacted] house closing. He acknowledged checking Novatime, but only because he did not want to run into [redacted], [redacted] [redacted] [redacted], at [redacted] if he went to see [redacted] and [redacted] advised Lupinacci that he should not have any contact with [redacted] going forward, not even to respond to contact initiated by [redacted]. They also told him not to check the Town cameras or Novatime in connection with [redacted].

Based on the above information, despite the lack of an actual complainant who was willing to make a complaint, upon the advice of outside counsel the Town decided an investigation needed to be done. Moreover, given the senior status of the alleged harasser, the Board determined they needed an outside independent investigator to look into these issues, which created additional cost to the Town. [redacted] and [redacted] advised [redacted] of the impending investigation.¹

¹ [redacted] took detailed notes of all the above events. A copy of those notes is annexed to this report as Exhibit A. [redacted] also took some very limited and cryptic notes of [redacted] own, including from conversations with Lupinacci (which are described more fully in Section III.B). Though they are not very detailed, for the sake of completeness a copy of these notes is annexed to this report as Exhibit B. Some of the details in the above recitation are from my interview with [redacted], which may not be contained in either set of attached notes.

II. Conduct of the Investigation

To properly investigate the situation, I met with and interviewed the following individuals:

- [REDACTED] (July 8)
- [REDACTED] (July 8)
- [REDACTED] (July 10 and September 16)
- Lupinacci (July 13)
- [REDACTED] (July 13²)
- [REDACTED] (July 15)
- [REDACTED] (July 29)

Each person interviewed (aside from [REDACTED], who is not an employee and also refused to speak substantively) was given an Upjohn statement, was advised of the confidentiality of the investigation, and was informed there would be no retaliation (by or against them or anyone else) as a result of anyone's honest participation in the investigation process, though there could be adverse ramifications if (a) they were untruthful, (b) they withheld material information during the investigation, or (c) misconduct, performance or other issues came to light as a result of truthful information learned during the investigation. All those interviewed (again, aside from [REDACTED]) agreed to proceed.

Summarized below is the information obtained from the investigation and conclusions reached based on that information.

III. Information Obtained from the Investigation

Usually, in a report like this, I would present the information overall, based on an amalgam of statements from all witnesses. In this case, however, that will not work. Instead, it is important for you to understand what each person said (and how), because of the difficulties in getting certain individuals to share and the issues with truthfulness I encountered.

² Toward the conclusion of this investigation, I learned that [REDACTED] had submitted [REDACTED] and we considered [REDACTED] might be more forthcoming now that [REDACTED] did not have to "fear" for [REDACTED] job in any respect. Accordingly, I reached out to [REDACTED] attorney, [REDACTED], to see if [REDACTED] wanted to have a follow-up meeting, whether to clarify or correct anything [REDACTED] previously told me or to supplement our prior discussion with additional information. On September 29, [REDACTED] responded via email, "My client has nothing more to add."

A. [REDACTED]

[REDACTED] has known Lupinacci since in or about 2003, as a result of their respective political activities. [REDACTED] considers Lupinacci a friend, though when they interact in the office it is all business. [REDACTED] worked on Lupinacci's campaign for State Assembly in 2012 and then worked for him for several years after Lupinacci was an assemblyman.

[REDACTED] met [REDACTED] around the time Lupinacci was elected to the State Assembly in 2012. His understanding is that Lupinacci has basically known [REDACTED] since [REDACTED] was born, as Lupinacci is close friends with one of [REDACTED] family members. [REDACTED] perception of their relationship is almost like they are family even though they are not actually related. [REDACTED] is on good terms with [REDACTED] but considers [REDACTED] merely an acquaintance.

A few months after [REDACTED] was hired to work at the [REDACTED], [REDACTED] mentioned to Lupinacci they hadn't seen [REDACTED] lately and wondered why. Lupinacci responded that [REDACTED] was concerned their friendship could create problems for [REDACTED] at work and [REDACTED] was distancing [REDACTED] from Lupinacci as a result. This was just a conversation in passing, not a complaint, concern or request for assistance. There may have been a follow-up discussion of a similar nature, but [REDACTED] could not recall for certain.

At some point thereafter ([REDACTED] could not recall when), [REDACTED] called a meeting with [REDACTED] and Lupinacci, in Lupinacci's office, at [REDACTED] request. [REDACTED] did not give a specific reason in advance for the meeting, and [REDACTED] thought it was simply to discuss [REDACTED] position, how [REDACTED] liked [REDACTED] new job, and perhaps about possible opportunities for advancement. When the meeting commenced, however, [REDACTED] learned [REDACTED] had concerns about being asked by Lupinacci to accompany him to events, which typically took place outside of regular working hours.³ [REDACTED] said [REDACTED] only wanted to perform tasks associated with [REDACTED] position at [REDACTED] and not go with Lupinacci to events. [REDACTED] could not recall if [REDACTED] gave a specific reason why [REDACTED] did not want to go to events, other than repeating multiple times [REDACTED] was hired to work at [REDACTED] and this had nothing to do with why [REDACTED] was hired or [REDACTED] job duties.

[REDACTED] reported that Lupinacci seemed taken aback by [REDACTED] stance. Lupinacci's posture was along the lines of, "There is so much going on, can't you help me out." Lupinacci did not say anything during the meeting about [REDACTED] having to perform these tasks or [REDACTED] could lose [REDACTED] job, though [REDACTED] acknowledged [REDACTED] would not know if something like that had been expressed previously outside of [REDACTED] presence. The meeting ended somewhat awkwardly, according to [REDACTED] - Lupinacci said something along the lines of, "Okay, if that's how you feel, you don't have to do them anymore."

³ Per [REDACTED], it is not uncommon in the governmental realm for someone like Lupinacci to be "staffed" for events. Indeed, [REDACTED] said that some bosses consider it a favor to the staffer, because they are exposing the staff person to more aspects of government. Only certain individuals are generally asked to do this kind of staffing, but it is not unheard of for politicians to ask someone they trust and on whom they feel they can rely.

█████ felt some distance and tension between Lupinacci and ██████ during this meeting, which was not typical of ██████ past experiences with ██████. Nevertheless, a few months after the meeting, ██████ had lunch with the two of them and ██████ (█████), and everything seemed fine. Given the absence of any tension, ██████ believed the issue had been resolved.

One last item of relevance ██████ mentioned. ██████ reported that about one month after the meeting, ██████ was talking with Lupinacci, who mentioned there were rumors going around about the relationship between Lupinacci and ██████. ██████ never heard the rumors ██████, but ██████ understanding from Lupinacci was that they involved some vague but nasty comments about possible impropriety. ██████ did not explore that further because Lupinacci had been the target of multiple nasty comments like this in the past few years (indeed, as you know, there is another lawsuit ongoing involving harassment allegations of this sort), which ██████ felt had no merit.

Overall, I felt that ██████ was forthcoming in response to my questions. ██████ knowledge of relevant issues was limited, but I felt that ██████ fully shared whatever information ██████ had.

B. ██████

█████ has known Lupinacci since they were kids. They became close friends ██████, and have worked together in a variety of capacities over the years. ██████ considers Lupinacci a close friend, which ██████ acknowledged can make things both easier and more difficult in terms of their working relationship.

█████ met ██████ through Lupinacci in or around 2012. ██████ and ██████ are just acquaintances, not friends, but ██████ believes ██████ saw ██████ at a few social events due to ██████ friendship with Lupinacci. ██████ understanding is that Lupinacci has known ██████ a very long time, as Lupinacci is close friends with ██████ (█████) – they all ██████, and ██████ and Lupinacci have remained close. ██████ noted ██████ has not seen ██████ much in a social setting since ██████ began working for the Town, and ██████ does not have much occasion to interact with ██████ on a business level.

At some point after ██████ hire (█████ is not sure when), Lupinacci mentioned to ██████ he had been asking ██████ to accompany him to governmental and political events, but ██████ said no. Lupinacci sounded disappointed to ██████. ██████ explained during ██████ interview that it was regular practice for an elected official like Lupinacci to have an aide with him at events, so they could take pictures, carry things, and help shepherd the official through the event. ██████ said ██████ had acted in that role for Lupinacci in the past. It would not be typical for someone in ██████ position to perform this task, but, though they did not discuss it, ██████ assumed Lupinacci asked ██████ because ██████ was someone Lupinacci felt he could trust. ██████ did not speak with ██████ about this issue at the time.

█ did not learn that something might be amiss until █ was contacted by █ in or about February 2020. At that time, █ reported to █ what had been told to █ by █ and Cergol. █ explained to me this was not the typical way issues like these are raised – third hand, without an actual complainant – which meant they needed to figure out how to proceed. (How they did proceed is described in full in Section I above.)

█ remembers sitting down with Lupinacci at some point to ask him questions about the situation. █ recollection is that they spoke at least twice – once just the two of them and once with █ there as well. █ made sure Lupinacci knew █ was speaking to Lupinacci as █, not his friend. █ told Lupinacci what the Town had learned from █ and █ and sought to get his response.⁴ █ acknowledged to me █ was not able to distinguish between the two meetings, given the passage of time, and so █ described what █ learned and how Lupinacci acted in both meetings as a collective matter⁵:

- Lupinacci and █ used to be close friends.
- Lupinacci was upset about the accusation and indicated he felt kind of blindsided.
- Lupinacci is not the only one who does the contacting; █ calls Lupinacci too. In addition, █ asked Lupinacci to do █ house closing (Lupinacci used to have a real estate practice and he still does closings all the time for people).
- Lupinacci acknowledged that he sometimes checks the Town cameras with respect to █, but only because he wanted to check if █ was around. He was concerned that if they spoke with █ was there, █ might not be as candid about events within the █.
- Lupinacci did not say much about the texts, other than they were friends and had a close relationship, so they texted. Per █, Lupinacci did not seem to perceive that any of the texts were unwelcome. He said he considered █ to be like a █, and sometimes █ go through phases in terms of the level and desirability of contact.
- Though █ could not be certain, █ believed during one of these conversations Lupinacci confirmed that he told █ should resign if █ did not want to accompany him to events – or at least he did not deny the allegation when presented with it. Lupinacci indicated he and █ had discussed going to events before █ started working at the Town and had agreed that accompanying Lupinacci to events was part of █ employment package.

⁴ █ is not certain if █ mentioned █ name to Lupinacci, but █ believes █ did. █ said █ thinks █ spoke with Lupinacci and that Lupinacci thus knew this meeting was coming (just █ sense).

⁵ Because █ could not distinguish between the meetings in terms of the information █ obtained, some of this description may overlap with information in Section I of the meeting between █, █ and Lupinacci.

warned Lupinacci against engaging in any retaliatory behavior. Lupinacci asked about next steps, and told him the situation would have to be investigated by someone external. sense was that Lupinacci might have wanted to say more but did not because of the setting.

Overall, I felt that was forthcoming in response to my questions. Although had some memory issues, those appeared to be normal and appropriate for the topic and level of involvement in the underlying events. I felt fully shared whatever information had. In particular, I got the impression that was not allowing friendship with Lupinacci to interfere with obligations to the Town.

C.

As far back as can remember, Lupinacci has been in life. He has been like an uncle or distant cousin to . Lupinacci took on somewhat of a mentoring role when took some classes of his at Farmingdale College. But has always seen him at family events and considers him a friend, "or at least certainly a family friend." They have had lunch together, taken family trips together to places like Cancun and Jamaica, and has been to Lupinacci's home, though could not recall a time when Lupinacci came to place. But denied using Lupinacci for a closing.

began working for the Town in ; he assumed the position of for the . said when began working for the Town, started feeling the weight of Lupinacci being so much higher up on the totem pole, being the ultimate boss, and so became more wary. said felt it was not place to be Lupinacci's friend, and needed to stick to own role and make own mark. compared it to a being friends with the or . said felt it just did not look good to have such a junior person with the Supervisor, because it was not place. was particularly concerned about doing things with Lupinacci alone, because the dichotomy between their roles was more pronounced when it was just the two of them. Accordingly, felt better doing things with Lupinacci only when others were there as well.

claims could not remember if spoke to Lupinacci about pulling back on their friendship. Nevertheless, feels the separation naturally happened, and they evolved into more of a professional, not personal, relationship.

Once started working at , said questions came up about attending events with Lupinacci. was not sure about obligations in this regard, because it was not in job description, and was not clocked in for those events, so thought it was a grey area. acknowledged had staffed Lupinacci in the past, before worked for TOH – driving Lupinacci to events, attending with him, taking pictures, and the like. understood that attending events with Lupinacci after began working for the Town was being done more on a "friend" level and for Lupinacci to act as a mentor, and admitted was learning a lot, but did not want to do it anymore. felt attendance was weird and could be misconstrued. For example, at one event, got questions about why was there, and what

relationship was with Lupinacci. It sounded like they were insinuating something was going on between them, though that was completely untrue.⁶ [REDACTED] was particularly concerned with the political ramifications and whether someone could use [REDACTED] attendance against [REDACTED] and/or Lupinacci; in other words, [REDACTED] was afraid of how it looked. [REDACTED] specifically noted [REDACTED] was aware another [REDACTED] had made accusations against Lupinacci (and that case was ongoing), and that other person was [REDACTED]. Even though [REDACTED] denied that Lupinacci was doing anything similar to [REDACTED] as alleged in that other matter, [REDACTED] was concerned that someone might try to twist the situation and see if they can use it against Lupinacci.

[REDACTED] denies any specific recollection about the meeting with [REDACTED]. [REDACTED] did not recall ever telling anyone that Lupinacci had told [REDACTED] [REDACTED] should resign if [REDACTED] did not want to accompany Lupinacci to events. [REDACTED] did remember meeting with [REDACTED] and Lupinacci to discuss [REDACTED] "real" work duties. But other than that very vague recollection, [REDACTED] could not recall anything about the conversation, including how the issue about attending events with Lupinacci was resolved (if that was even discussed at the meeting, which, again, [REDACTED] said [REDACTED] could not recall).⁷ [REDACTED] said it was so long ago (this was a constant refrain from [REDACTED] with respect to [REDACTED] recall of events). [REDACTED] claims that at some point [REDACTED] discussed this issue with Lupinacci, and they jointly decided [REDACTED] should not attend events. Since that time, this has not been an issue.

On the issue of text messages [REDACTED] received from Lupinacci, [REDACTED] readily admitted that over the years [REDACTED] and Lupinacci exchanged many texts and also spoke on the phone. After [REDACTED] began working at TOH, the content of those communications was mostly about work, including [REDACTED] seeking Lupinacci's guidance on work projects – usually Lupinacci would point [REDACTED] in the right direction of who could assist [REDACTED]. There were also times Lupinacci invited [REDACTED] over to his place for a drink, both before and after Lupinacci became the Supervisor. [REDACTED] often went, but after [REDACTED] started working for the Town and [REDACTED] became concerned about the disparity between their levels, [REDACTED] rarely accepted. [REDACTED] typically responded with a "thanks but no thanks" kind of declination. [REDACTED] denied remembering whether, in response to any of [REDACTED] declinations, Lupinacci told [REDACTED] that [REDACTED] was ungrateful.

[REDACTED] also said that there were times Lupinacci contacted [REDACTED] when [REDACTED] was working at [REDACTED]. However, [REDACTED] denies that [REDACTED] ever felt that was an issue or a problem or that any of [REDACTED] fellow [REDACTED] raised any questions or eyebrows about it. Those contacts were typically about work, and [REDACTED] did not always pick up, because [REDACTED] often left [REDACTED] phone in [REDACTED] [REDACTED] so it would not get ruined while he was performing [REDACTED] work. If [REDACTED] did not pick up,

⁶ [REDACTED]

⁷ Notably, at this point in the interview, [REDACTED] got visibly disturbed and said [REDACTED] wanted to consult with [REDACTED] counsel. I allowed [REDACTED] to do so, but after the consultation, [REDACTED] had nothing to add. I asked [REDACTED] why [REDACTED] needed to speak with [REDACTED] counsel if [REDACTED] could not remember the conversation, as I was not sure how that would help. [REDACTED] said it probably would not, but [REDACTED] counsel had told [REDACTED] if [REDACTED] got a question [REDACTED] did not know how to answer, [REDACTED] should ask to speak with counsel, so [REDACTED] did. The fact that [REDACTED] felt [REDACTED] did not know how to answer my questions about that meeting, even though the simple answer would have just been to say [REDACTED] did not remember, if that was truly the case, was revealing to me.

█ would call Lupinacci back later, and that was never an issue. Moreover, █ never told Lupinacci as a general rule not to call █ at █; on occasion, however, when █ knew something was going on and █ would not be available, █ gave Lupinacci a heads-up.

With respect to the question of Lupinacci "stalking" █, █ said █ believes █ was likely feeling paranoid when █ thought that, because of all the stress █ has been under (on a personal level). █ ran into him in town on multiple occasions, but █ does not think now that Lupinacci was following █; they just happened to be in the same place (and they are places both of them had gone in the past, so in retrospect █ felt it was not surprising). Similarly, █ believes █ concern about Lupinacci possibly checking the Town cameras or Novatime regarding █ movements was paranoia and misunderstanding as well. In retrospect, █ believes Lupinacci was just looking out for █ and trying to give █ advice. █ gave as one example a comment Lupinacci made to █ about how it is important █ put in 35 hours per week but that should be the minimum, and █ should try to do more because it looks good. At the time █ mistakenly thought Lupinacci was checking up on █, but █ believes █ misinterpreted Lupinacci's intent; look back on it, █ now believes Lupinacci was just trying to help █ do well in █ job and make a good impression.

█ denied that Lupinacci ever made any sexual advances toward █. Moreover, █ could not identify any situation in which Lupinacci did or said something that may not have been overtly sexual but that █ interpreted as a possible advance. █ emphasized that the two of them have had a good, friendly and respectful relationship, and any friendly tiffs (which █ could not identify) were worked out.

Regarding █ conversations with █ and █ about the situation, █ recalls such a conversation occurred but claimed █ could not remember the specifics. █ claims █ does not have the best memory, and in the months leading up to our interview things were very stressful. █ explained both █ parents are in poor health, and both █ and █ are █ and have very stressful responsibilities in that regard, especially in a COVID environment. █ said █ family is very close and █ is worried about █ parents. The one thing █ was very clear on is that at the time of that conversation, and still through to today, █ had and has no complaint █ wanted or wants to make.

I also spoke with █ about several other issues, but those have likely become moot as a result of █. These include things such as █ use of the █ title (which █ says was authorized by █ at █ request) and the fact that █ received affordable housing through the █ (which, based on █ and other people's descriptions, was done appropriately and without Lupinacci's involvement in any way; indeed, I understand that counsel was consulted and determined █ could proceed with the housing).

Overall, I felt that █ was less than fully forthcoming. I did not find it believable that █ could recall no details of the meetings with either Lupinacci and █ or █ and █. Regarding the former, per █, █ was the one who asked for the meeting (which makes sense due to the reason for it), and so it is not credible that █

would remember nothing about the substance of the meeting – not to mention that the topic of the meeting is one that is quite memorable. Indeed, [REDACTED] desire to speak with [REDACTED] attorney about that meeting, even though there was no assistance [REDACTED] could provide if [REDACTED] really did not remember it, was telling to me. Similarly, regarding the latter, given how unusual it is to meet with both the [REDACTED] and [REDACTED], and on top of that given the topic of conversation, I do not believe anyone would so thoroughly forget such a meeting, especially given some of the concerns [REDACTED] expressed during that meeting. Indeed, certain things [REDACTED] said during our interview gave a clear implication that [REDACTED] remembered more than [REDACTED] let on (e.g., that [REDACTED] remembered expressing concern about stalking by Lupinacci, or [REDACTED] could not have explained to me [REDACTED] had misconstrued Lupinacci's intentions or how [REDACTED] had done so).

It is also not believable that [REDACTED] would not remember one way or the other whether Lupinacci told [REDACTED] [REDACTED] was "ungrateful" after turning down a late-night drink invitation. [REDACTED] [REDACTED] talked about [REDACTED] awareness of the big gap between them in terms of their positions in the Town, and if the head of the Town had criticized [REDACTED] in that way, that would be a memorable thing. Conversely, if it never happened, that would be memorable as well.

Finally, while [REDACTED] emphasized repeatedly that [REDACTED] memory was not good and [REDACTED] had a lot of personal issues going on that occupied [REDACTED] thoughts and time, that again is simply not credible. I do not care what else you have going on or what other worries are on your mind – these events are things you remember.

D. Lupinacci

Lupinacci has known [REDACTED] since [REDACTED] was born. Lupinacci is very good friends with [REDACTED] [REDACTED], and has been since middle school. Thus, at family and friend events, including trips and vacations, they were often together. Moreover, by chance, in around 2011 and 2012, when [REDACTED] was at Farmingdale College, [REDACTED] took two of Lupinacci's classes. That helped shift the relationship to become closer friends, as opposed to just knowing each other and [REDACTED] being the [REDACTED] of one of his friends. Lupinacci thinks [REDACTED] feels the same way about their relationship.

Lupinacci said he was a little involved in [REDACTED] coming to work for the Town. Generally, [REDACTED] had asked him to let [REDACTED] know if any positions at the Town opened up that would fit [REDACTED] skill set and background. When the [REDACTED] [REDACTED] in [REDACTED] opened up, Lupinacci was one of the people who interviewed [REDACTED]. At the time, Lupinacci was aware that the [REDACTED] was going to retire, and so he thought [REDACTED] would be able to take over some of those tasks.

Lupinacci denied that [REDACTED] ever brought to his attention any concerns or issues about their interactions. He also could not recall ever specifically discussing with [REDACTED] the work-friendship balance that can go on, but it was his understanding that at work they were to remain business-oriented and professional. He did acknowledge that [REDACTED] concern

about their friendship being perceived as unprofessional was a legitimate one, and they needed to be careful to make sure their prior friendship did not interfere on the job.

With respect to [REDACTED] accompanying him to events, Lupinacci claimed he could not recall any issues or meetings about that. Lupinacci explained he usually has a staff member with him at events to take pictures, speak with attendees on his behalf, collect business cards, help pave the way for him to move along and even leave the event, and other similar tasks. He said in the past, before [REDACTED] worked for the Town, and even before Lupinacci was Supervisor, [REDACTED] staffed him at multiple events. Although a person in [REDACTED] job would not ordinarily be selected to staff an event for Lupinacci, Lupinacci knew [REDACTED] had done it before and had built up that skill set, plus since they knew each other for so long, Lupinacci trusted [REDACTED]. He said he could not recall ever saying to [REDACTED] if [REDACTED] did not want to accompany Lupinacci to events, [REDACTED] could resign; indeed, he said he could not even recall feeling that way.

Nevertheless, when I specifically asked him about the meeting attended by him, [REDACTED] and [REDACTED], he said he could not recall details, but he did say that it was important for everyone to have a good comfort level on the job. Thus, although he did not recall [REDACTED] ever specifically saying [REDACTED] did not want to attend events, [REDACTED] was told if [REDACTED] did not want to accompany Lupinacci to events, [REDACTED] did not have to. On the other hand, if [REDACTED] ever wanted to help out in that regard, [REDACTED] should let the others know. Lupinacci also indicated he was aware that [REDACTED] was very busy, including with [REDACTED] work at the [REDACTED].

With respect to text messages, Lupinacci readily acknowledged he has exchanged personal text messages with [REDACTED], both before and after [REDACTED] began working at [REDACTED]. He did not recall any specific messages, including one in which he may have invited [REDACTED] to his place for a drink. Nevertheless, he acknowledged it would not be uncommon to invite [REDACTED] in this way, and he has done that for [REDACTED] and [REDACTED] too. All three have been to his place at various times. He denied recalling ever saying anything to [REDACTED] about being ungrateful because [REDACTED] declined such an invitation.

Lupinacci denied ever engaging in any behavior that could constitute "stalking" [REDACTED]. He said there were definitely times he ran into [REDACTED] in town when they did not have plans to meet, but he said that was not unusual, especially since they have frequented similar places in the past. Furthermore, he recalled no issues with respect to contacting [REDACTED] when [REDACTED] was at [REDACTED]. Lupinacci was fairly certain he had contacted [REDACTED] at [REDACTED], because he does not know [REDACTED] schedule there (which may have changed over time), and so he contacted [REDACTED] when he needed to. He said it was likely there were times [REDACTED] did not pick up, or texted him to call later, which was fine.

Moreover, Lupinacci denied ever checking the Town cameras or Novatime to look for [REDACTED]. Indeed, despite what Lupinacci told [REDACTED] and [REDACTED] (see above), during my interview with him Lupinacci denied ever checking the cameras or Novatime to see if [REDACTED] had left [REDACTED] so that he could speak with [REDACTED] alone. He told me there was no business reason he would need to talk to [REDACTED] without [REDACTED] present.

Lupinacci denied ever making any sexual advances toward [REDACTED], or even doing anything he believes could be misinterpreted as making such an advance. He also denied that [REDACTED] ever did anything Lupinacci construed as a sexual advance to him.

Overall, I felt that Lupinacci was less than fully forthcoming and/or at times internally inconsistent. Like [REDACTED], Lupinacci's lack of memory was not wholly believable, especially given some of the issues raised (though given his senior status, the number of items on his plate, and his role as the alleged harasser and not the victim (victims generally remember things more strongly, since they felt put upon), it is somewhat possible). It is least believable with respect to the issue of accompanying Lupinacci to events, given how significant it was represented to be and how "blindsided" Lupinacci indicated he felt (per [REDACTED]), as well as how "taken aback" he was at the meeting (per [REDACTED]). Indeed, it does not quite make sense that Lupinacci remembers nothing about [REDACTED] saying [REDACTED] did not want to accompany to him events, but he did remember that [REDACTED] was nonetheless told if [REDACTED] did not want to accompany Lupinacci to events, [REDACTED] did not have to. Lupinacci also apparently changed his story from the time he spoke with [REDACTED] and [REDACTED] to the time he spoke with me, at least with respect to checking Novatime/Town cameras.

E. [REDACTED]

[REDACTED] has known Lupinacci [REDACTED] entire life. He was [REDACTED] neighbor a few doors down growing up. Because he is a few years older than [REDACTED], they never really interacted, though he did with [REDACTED] brothers. [REDACTED] stated [REDACTED] believes the first time they really talked was after he became Supervisor. [REDACTED] describes him as the nicest manager [REDACTED] has ever had. On the other hand, [REDACTED] does not really know [REDACTED]. They have not interacted for work, and in fact [REDACTED] thinks the only time they have spoken was in connection with a scavenger hunt done by the Huntington Chamber of Commerce. In addition, [REDACTED] did not know anything about the prior relationship between Lupinacci and [REDACTED], including whether they were personal friends.

[REDACTED] utterly denied any knowledge of an issue between Lupinacci and [REDACTED]. [REDACTED] said [REDACTED] did not recall any conversations with [REDACTED] or others about issues [REDACTED] had with respect to Lupinacci. [REDACTED] denied knowing anything about texts from Lupinacci to [REDACTED] or that [REDACTED] believed Lupinacci was stalking [REDACTED] or watching [REDACTED] movement at the office. [REDACTED] also denied ever seeing any communications (texts, emails, etc.) between the two of them.

Overall, I felt that [REDACTED] was less than fully forthcoming. Unless [REDACTED] out-and-out lied to Cergol and [REDACTED] about the call [REDACTED] received from [REDACTED], as described at the beginning of Section I above – which I do not believe is the case, based on the totality of circumstances – then [REDACTED] misrepresented the situation to me. Again, I believe these events are too memorable to forget, especially when it led to [REDACTED] making a report of possible impropriety against the Supervisor by contacting [REDACTED] – how often does that happen?

F. [REDACTED]

[REDACTED] agreed to speak with me, but only to tell me that [REDACTED] would not substantively speak with me. [REDACTED] informed me [REDACTED] "thought long and hard" about this, and [REDACTED] did not believe [REDACTED] had anything to contribute to this investigation. [REDACTED] did not know if anything [REDACTED] heard was true. [REDACTED] also said [REDACTED] did not want to be involved, and [REDACTED] was only a vendor of the Town, not an employee. Indeed, [REDACTED] was concerned that any Town Board members knew [REDACTED] name in connection with this situation.

I explained to [REDACTED] I understood [REDACTED] concerns, but I believed [REDACTED] did have a contribution to make, if only to fill in the blanks about the process that led us to this point. (Indeed, though I did not share this with [REDACTED], my sole purpose in speaking with [REDACTED] was to confirm who at the Town told [REDACTED] about anything related to this issue, what they told [REDACTED], what [REDACTED] decided to do with that information, and why.) I tried multiple times to engage [REDACTED] in the questions I had, but [REDACTED] told me point blank [REDACTED] was refusing to answer any of my questions and did not care to be involved. Accordingly, I was unable to get any confirmation directly from [REDACTED], for example, that [REDACTED] was [REDACTED] source.

G. [REDACTED]

[REDACTED] has known Lupinacci since about 2014. [REDACTED] met him when [REDACTED] was doing an internship in the State Assembly. He hired [REDACTED] as his [REDACTED] in or around the end of 2016. [REDACTED] assisted during the campaign for Supervisor, volunteering after hours. [REDACTED] then came with him to the Town as his [REDACTED] when he was elected Supervisor and has been in that role ever since. On the other hand, [REDACTED] has known [REDACTED] since high school. They were friendly at that time and had physics class together, but they lost contact after high school. When [REDACTED] got the job at [REDACTED], the two of them reconnected. They became friendly again, though [REDACTED] denies ever "hanging out" with [REDACTED]. [REDACTED] denied knowing that Lupinacci and [REDACTED] had any sort of personal friendship.

Things went south quickly during the interview when I asked [REDACTED] about [REDACTED] knowledge of issues or concerns raised by [REDACTED] about Lupinacci's interactions with [REDACTED]. [REDACTED] response to essentially every question I asked [REDACTED] was, "I do not recall." [REDACTED] could not remember learning or telling anyone of any issues between them, of text messages that disturbed [REDACTED], that [REDACTED] thought Lupinacci was stalking [REDACTED] (whether in town or through the TOH cameras or Novatime), or that Lupinacci made sexual advances toward [REDACTED]. In other words, [REDACTED] claims to have remembered *nothing*. [REDACTED] also claimed [REDACTED] and [REDACTED] were not friends on Snapchat – which [REDACTED] told [REDACTED] was how [REDACTED] learned about the text messages issue – but [REDACTED] refused to give me [REDACTED] Snapchat handle (though [REDACTED] did give me [REDACTED] personal email address and cell phone number).

As an explanation for [REDACTED] total lack of recall, [REDACTED] claimed the events we were discussing allegedly happened many months before, and [REDACTED] does not focus on the past. [REDACTED] also says [REDACTED] does not care about other people's problems; [REDACTED] just moves on.

█ statements during our interview were simply not believable. Aside from the fact that █ representations were inconsistent and did not match up with what █ had previously told █ and █, █ is also not a very good liar, and █ body language, eye contact, tone of voice, and all other non-verbal cues made it clear that █ was lying. Accordingly, after discussing this with Mark Cuthbertson and █, we decided I should meet with █ again, let █ know we believed █ was not being forthcoming or truthful, remind █ of possible adverse repercussions for █ conduct, see if anyone was compelling █ not to share what █ knew, and give █ one last chance to be honest.

At that second meeting, I asked █ whether █ remembered meeting with █ and █ in or around March 2020 (which was about six months before our second interview). █ said █ remembered it taking place in █ office, but █ claimed █ could not remember any substance of the meeting. █ assumed it discussed the subject matter of the investigation, because why would I be asking about it otherwise (█ said █ "put two and two together"), but █ claimed not to remember any specific questions. █ thinks they asked questions about Lupinacci, and █ name came up at some point – maybe if the two of them were friends or not – but █ could not recall anything else about the meeting, including what information █ shared with █ and █.

I then confronted █ with the information █ gave to █ and █ at their meeting, listing it all and then asking █ if that refreshed █ memory of the meeting. █ said none of it rang a bell and █ just could not remember. █ would not go so far as to say █ and █ were lying about what █ told them, but rather said █ could not speak to it either way because █ could not remember the meeting.

After this presentation, I tried to warn █ about the fact that █ statements simply were not believable. With respect to the meeting with █ and █, I told her that, given how rare it is to meet with the █ and █ together, and on top of that given the nature of the discussion, I did not believe anyone would so thoroughly forget such a meeting, which could be a problem for █. I said either █ lied to █ and █ during their meeting, or █ lied to me during our meeting about █ ability to recollect – and based on all surrounding circumstances and other statements, I believed it was the latter. I explained my report to the Board was going to reflect my belief that █ was being untruthful, and I did not know what the Board would do in response to that assessment. I reminded █ of the warning I gave at the start of both interviews that there could be adverse ramifications for being untruthful and/or for withholding material information, and making a misrepresentation about what █ remembered certainly qualified – saying you do not remember if you actually do is no less untruthful than providing the wrong substantive facts. Thus, if █ wanted to roll the dice with █ job, █ could do so, but I wanted to give █ a last chance to come clean and answer my questions fully and honestly.

I then pulled back a little to try to show █ some understanding. I told █ I realized being involved in an investigation like this can be unsettling, and I imagined █ did not want to create problems for anyone, which I respected. But I explained █ has a duty to her employer, the Town, to tell me what █ knows in response to my questions, not to mention a moral obligation

to tell the truth. I also explored whether anyone had put [redacted] in this position by asking [redacted], pressuring [redacted], suggesting to [redacted], etc., whether directly or indirectly, to claim a lack of memory about the events under investigation. I thought if anything like that had occurred, bringing it out in the open and letting [redacted] know [redacted] would be protected for [redacted] truthful responses might cause [redacted] to open up and feel more comfortable that [redacted] would not be in trouble for lying up to that point. But [redacted] denied any request or pressure and affirmatively stated [redacted] had no fears of retaliation or retribution for answering my questions.

All my efforts were for naught. After giving [redacted] the full explanation and possible ramifications, I again asked [redacted] about the underlying events and what [redacted] knew about the situation between [redacted] and Lupinacci. [redacted] held firm to [redacted] position that [redacted] did not remember any of it and again claimed [redacted] has had a lot going on, much time has passed, and those issues were not [redacted] concern – purportedly to explain why [redacted] would not remember these very memorable issues and discussions. I ended the second interview by telling [redacted] I would give [redacted] a few days to reach out to me if [redacted] “remembered” anything more, but after that I would be preparing my report. [redacted] never reached out to me.

Please note that [redacted] demeanor during the second interview was a bit strange. When I told [redacted] I did not believe her statements to me and I would be reporting that to the Board, [redacted] stayed calm and seemingly unaffected by it. I would have expected some sort of protest or concern when [redacted] honesty – indeed [redacted] integrity – was being so directly challenged. [redacted] also did not seem at all worried by the possibility that [redacted] job could be at risk. It is conceivable [redacted] spoke with someone about this issue and was told [redacted] job was safe (either because that person would protect [redacted] or based on Town and civil service rules), but of course I have no way of knowing that.

IV. Analysis

As explained at greater length above, I was asked to investigate whether Lupinacci engaged in any inappropriate, sexually harassing behavior toward [redacted], even though [redacted] did not make a complaint. As demonstrated by the analysis below, I was unable to substantiate this allegation, but my investigation was hampered by the untruthfulness and/or lack of cooperation by several witnesses.

A. The Underlying Investigation in Substance

As an initial matter, there is no hard evidence of any kind to substantiate the allegations. We have no copies of any text messages, emails or other communications of the kind reported to [redacted], for example, though we asked all relevant parties to produce what they had. I received copies of a few innocuous email and text communications between Lupinacci and [redacted], and a few other equally innocuous emails between [redacted] and [redacted] (the latter emails having nothing to do with Lupinacci), and all stated they had no other communications. At most, the emails between Lupinacci and [redacted] reflected that [redacted] seemed to shy away from socializing with Lupinacci alone, though [redacted] was fine having lunch with him if others were there. These emails do not mean there was anything improper going on; it could simply have

been a result of [REDACTED] desire to separate from Lupinacci on a personal level once [REDACTED] started working at [REDACTED].

Second, I have not gotten confirmation of any of the allegations, or even of the chain of events leading up to the reporting of the allegations, from any of the witnesses. Lupinacci and [REDACTED] both denied any sexual advances in their communications.⁹ Moreover, for the most part, anyone with a direct role has amnesia about the relevant events. At best, I have [REDACTED] statement (which I believe) about the meeting [REDACTED] held, at [REDACTED] request, to discuss [REDACTED] having to attend events. This indicates there was some issue between [REDACTED] and Lupinacci about attending events, but it does not mean there was harassment going on, as opposed to [REDACTED] wanting to simply clarify and define the parameters of [REDACTED] responsibilities. Indeed, [REDACTED] could not confirm Lupinacci told [REDACTED] [REDACTED] should resign if [REDACTED] did not want to attend events (nor did either Lupinacci or [REDACTED] admit to such a statement), which is really the only part of that situation that could potentially be improper.¹⁰

Third, aside from the amnesia (or perhaps as a result of it), the statements were generally consistent in pointing away from a significant violation. [REDACTED] did initially tell [REDACTED] [REDACTED] was "handling it," which indicated [REDACTED] felt there was a problem of some sort, but as indicated above, what [REDACTED] was "handling" did not necessarily have to be harassment or some sort of sexual impropriety. The only real inconsistency was Lupinacci "changing" his story about checking Novatime. He told [REDACTED] he did so occasionally, but only so that he would not run into [REDACTED] if he went to talk to [REDACTED]. But when I spoke with him, he denied it entirely, saying there was no business reason he would need to talk to [REDACTED] without [REDACTED] present. On the whole, while this inconsistency is somewhat troubling, it does not point to any real violation or problem.¹¹

⁸ Moreover, [REDACTED] confirmed that, early on in [REDACTED] employment, Lupinacci told [REDACTED] of [REDACTED] concerns about their friendship, given their vastly different roles, and [REDACTED] desire to distance from Lupinacci so their friendship would not create problems.

⁹ I tend to believe that there were no such blatant propositions or advances. [REDACTED] denied any such conduct by Lupinacci even during [REDACTED] conversations with [REDACTED] and [REDACTED], when [REDACTED] was reluctantly forthcoming about other concerns or issues [REDACTED] had. Similarly, I can even believe that, in retrospect, [REDACTED] had an incorrect and paranoid reaction with respect to the various so-called "stalking" behavior by Lupinacci; indeed, [REDACTED] explanation seemed logical. Nevertheless, the fact that [REDACTED] may have been paranoid enough to misinterpret innocent behavior as stalking tells me it is likely there was something else going on that caused enough concern to make [REDACTED] react this way. Unfortunately, the investigation did not yield enough credible information to conclude what that "something else" was and whether it rose to the level of a violation.

¹⁰ Moreover, while [REDACTED] said [REDACTED] thought Lupinacci may have confirmed such a statement to [REDACTED], [REDACTED] was not certain, and that comment by Lupinacci is not in [REDACTED] or [REDACTED] notes. Accordingly, I have no sufficient basis to conclude that Lupinacci ever made such a statement to [REDACTED].

¹¹ Indeed, there are many completely innocent reasons Lupinacci may have wanted to deny he engaged in that conduct, e.g.: he was speaking or wanted to speak to [REDACTED] about something personal (albeit appropriate), and did not want that clouding the investigation (indeed, his statement to me was that there was no *business* reason for avoiding [REDACTED]); he may have been checking up on [REDACTED] at the time for some reason but did not find anything and thus did not want us to be concerned about [REDACTED] now.

In sum, based on the information gathered during my investigation, I cannot conclude that any violation of law or Town policy occurred with respect to Lupinacci's treatment of and behavior toward [REDACTED].

B. Issues with Witness Conduct During Investigation

An entirely separate – and unusual – issue arose as a result of this investigation, separate and apart from a determination as to whether the allegations raised were true. Unfortunately, and as explained in greater detail above, I was forced to conclude that several individuals interviewed were unforthcoming, and even untruthful, during the interviews underlying the investigation. Ultimately, it is up to the Board to decide how to proceed with respect to these individuals, but I feel obligated to describe these issues and how I reached each determination.¹²

1. [REDACTED]

[REDACTED] was not untruthful or misleading during [REDACTED] interview; to the contrary, [REDACTED] was very transparent. [REDACTED] was, however, uncooperative, in that [REDACTED] refused to answer any of my questions. Obviously I had no leverage to use with [REDACTED]; [REDACTED] is not employed by the Town, and as such [REDACTED] has no obligation to respond to my inquiries ([REDACTED] works for a vendor, but as far as I am aware there is nothing in any agreements between the Town and [REDACTED] company that compels [REDACTED] to participate in this investigation). I can certainly appreciate [REDACTED] desire to stay out of this internal matter, even if [REDACTED] did play a critical part in bringing the investigation about, and I respect [REDACTED] direct approach with me – no false claims of memory loss, for example. But despite [REDACTED] belief that [REDACTED] had nothing to contribute, there were definitely process issues I needed to confirm with [REDACTED], and [REDACTED] refusal to answer my questions hampered my investigation.

2. [REDACTED]

As explained above, I believe [REDACTED] was not fully forthcoming in [REDACTED] interview with me. Primarily leading me to this conclusion are [REDACTED] repeated statements about [REDACTED] inability to remember. Even with [REDACTED] explanation of a poor memory and other alleged personal issues, these claims are simply not believable; the events under investigation are far too memorable to just forget. Among the things [REDACTED] claimed to not remember were:

- Any details of the meeting with [REDACTED] and Lupinacci. Aside from the absolute memorability of a meeting like this, considering the subject matter and his role in it, [REDACTED] asked [REDACTED] for the meeting and was apparently, per [REDACTED] statement, very upset about doing events. Those factors make this meeting even more memorable. And my questioning on this topic clearly hit a sore spot, because that was the only time

¹² Please note that, although I believe Lupinacci was less than fully forthcoming with me, I am not including a discussion of him in this section. Lupinacci is an elected official, not an employee or third party, and thus is not subject to the same protocols and procedures as the others. Moreover, the issues with Lupinacci are not, in my opinion, as stark as with some of the other witnesses, especially given his status as the alleged harasser – if he did not do anything wrong as he claims, most of the items raised are not things he would necessarily remember (the event attendance issue being the one possible exception).

during our entire interview [REDACTED] wanted to talk to [REDACTED] counsel. This reinforces my impression that [REDACTED] remembered more about the meeting than [REDACTED] let on (but was unsure how to handle it).

- Any specifics from the meeting with [REDACTED] and [REDACTED]. This is a particularly memorable meeting, especially given how unusual it is to meet with both the [REDACTED] and [REDACTED] and how uncomfortable [REDACTED] was discussing the issues raised during the meeting. Moreover, [REDACTED] gave [REDACTED] away somewhat with respect to this meeting. While simultaneously claiming [REDACTED] could not remember it, [REDACTED] made affirmative statements to me that contradicted this position. Specifically, [REDACTED] asserted to me that (a) [REDACTED] did not initiate the meeting and had no desire to make a complaint, and (b) [REDACTED] statement to [REDACTED] and [REDACTED] that Lupinacci was stalking [REDACTED] was, in retrospect, [REDACTED] misconstruing Lupinacci's intentions (*i.e.*, [REDACTED] remembered enough of what [REDACTED] said at the meeting about the stalking and on top of that remembered the behavior sufficiently to be able to recategorize it).
- Whether Lupinacci ever called [REDACTED] "ungrateful" in response to rejecting an invitation to come over. It is just not believable that [REDACTED] would not remember one way or the other whether the most senior person in the Town administration said this, especially given [REDACTED] concern over the disparity in their positions.

[REDACTED] also changed [REDACTED] story a bit. During the meeting with [REDACTED] and [REDACTED] a, [REDACTED] said Lupinacci gave him a hard time if [REDACTED] did not want to talk when Lupinacci called [REDACTED] at [REDACTED]. During my interview, however, [REDACTED] denied any issues with such calls – and not based on a lack of memory, but rather as a direct contradiction to [REDACTED] earlier statement. While this is not necessarily a significant issue, it adds to the analysis when combined with the other problems.

Of course, the issue of how to address this with [REDACTED] seems moot, as [REDACTED]. I expect anything the Town might have wanted to do in response to [REDACTED] lack of forthrightness would have related to [REDACTED] job, which is no longer possible. There is thus no need to discuss further steps in relation to [REDACTED].

3. [REDACTED]

As explained previously, I believe [REDACTED] was less than forthcoming. I credit [REDACTED] statement and notes that [REDACTED] told [REDACTED] learned of the possible issue from [REDACTED], and so unless [REDACTED] straight up lied about that, which I do not believe is the case, [REDACTED] clearly had knowledge of the underlying conduct. Furthermore, given (as I have already stated numerous times) how memorable these events are, not to mention how memorable it would be to report to a

¹⁵ And this is separate from consideration of whether the Board would *want* to take action against [REDACTED], even if [REDACTED]. Even if [REDACTED] was less than forthcoming, as the alleged victim in this scenario, one might feel it is [REDACTED] right not to want to pursue a complaint if [REDACTED] felt [REDACTED] was able to handle it on [REDACTED] own, and there could also be concern about discipline being interpreted as some sort of retaliation.

former co-worker (i.e., [REDACTED]) about possible impropriety by the head of the Town, it is simply not believable that [REDACTED] would not remember anything about the situation.

Although it is only supposition on my part, I think [REDACTED] did not necessarily realize the can of worms [REDACTED] was opening by calling [REDACTED] to report what [REDACTED] told [REDACTED] (though [REDACTED] may have realized enough to use [REDACTED] as a conduit, instead of speaking with [REDACTED] or [REDACTED] directly). Thus, when the ball got rolling and [REDACTED] realized how big it was getting, [REDACTED] may have gotten concerned about potential fallout and wanted to try to put the genie back in the bottle.

Unfortunately, we have no direct evidence that [REDACTED] reported the incident to [REDACTED] (or anyone), or that [REDACTED] spoke with [REDACTED] about the situation. [REDACTED] statement that [REDACTED] was [REDACTED] source is, at its core, hearsay. My interview with [REDACTED] was the first time [REDACTED] was ever asked about the situation directly, and so [REDACTED] has never made a statement [REDACTED] later contradicted. Moreover, when [REDACTED] and [REDACTED] spoke with [REDACTED] at the outset, [REDACTED] never stated who, if anyone, [REDACTED] told about what [REDACTED] had learned from [REDACTED]. In addition, [REDACTED] interview did not reveal any indicia of lying (such as from body language, facial expression, tone of voice, etc. – in other words, [REDACTED] is a good liar if [REDACTED] was not telling me the truth). Accordingly, I wonder about the grounds for taking disciplinary action against [REDACTED] for [REDACTED] alleged failure to cooperate fully and honestly. Of course, it is ultimately up to the Board to decide how to proceed, within the confines of civil service law and all other applicable laws and policies.

4. [REDACTED]

As I have already made clear, I believe [REDACTED] flat out lied to me. As compared with [REDACTED], [REDACTED] was asked about this situation back in or around March 2020, and [REDACTED] made direct statements to [REDACTED] and [REDACTED] evidencing [REDACTED] knowledge of the situation and some of [REDACTED] significant concerns with respect to Lupinacci. Yet when I asked [REDACTED] about it, [REDACTED] standard reply throughout was, “I do not recall,” representing to me that [REDACTED] remembered *nothing*. Indeed, [REDACTED] said [REDACTED] did not even remember anything about the content of [REDACTED] meeting with [REDACTED] and [REDACTED]; [REDACTED] only remembered that such a meeting took place.

As I have repeatedly expressed, it is wholly unbelievable that someone would not remember either the nature of these allegations or the content of a meeting as rare as one with the [REDACTED] and [REDACTED] especially after I refreshed [REDACTED] recollection by telling [REDACTED] what [REDACTED] said. And [REDACTED] explanation for not remembering – that it was months ago, and [REDACTED] does not focus on other people’s problems – is far too tame to justify an utter lack of recall of such memorable events. Furthermore, as I mentioned previously, [REDACTED] is a bad liar; [REDACTED] body language, eye contact, tone of voice, and all other non-verbal cues made it clear [REDACTED] was lying.

Based on the chain of events surrounding [REDACTED], my belief is that [REDACTED] was surprised by the initial contact from [REDACTED] and [REDACTED] and was not prepared to lie or avoid the questions – after all, the only person we believe [REDACTED] told was [REDACTED] (at least that we can trace), and it is unlikely [REDACTED] told [REDACTED] [REDACTED] was sharing the information with anyone else. Thus, [REDACTED] fell back on [REDACTED] natural instinct, which was to answer the questions honestly despite [REDACTED] discomfort. But

after [redacted] realized an investigation had ensued and this was a "serious" matter with real possible repercussions for multiple individuals, including [redacted], [redacted] backtracked and did what [redacted] could to undo the potential danger to others, for which [redacted] perhaps did not want to feel responsible. It is also possible [redacted] learned from [redacted] that [redacted] did not want to make a big deal out of the situation and felt [redacted] may have "betrayed" [redacted] in some way, and [redacted] was therefore trying to respect [redacted] wishes as the "victim" and roll back what [redacted] started.

Whatever [redacted] reasons, and however well-intentioned [redacted] may have been, it is very clear to me that [redacted] lied, which is a violation of [redacted] duty to the Town to participate fully and honestly in its internal investigation. (Of course, the Board needs to draw its own conclusions, which is why I have described in detail throughout this report the basis for my opinion.) Moreover, there is no question that [redacted] was well-informed of the possible adverse repercussions for [redacted] untruthful conduct; not only did I give [redacted] that warning at the beginning of [redacted] first interview, as I did with everyone as a matter of practice, but I met with [redacted] a second time to emphasize this point and give [redacted] a chance to clear the air before I reported my conclusions in this regard to the Board. Indeed, I even gave [redacted] an "out" by asking [redacted] if anyone was influencing [redacted] in any way to make the statements [redacted] made, but [redacted] denied that completely and even affirmatively stated [redacted] had no concerns about retaliation or retribution. I thus believe that [redacted] is withholding material information deliberately and with full knowledge that it could result in discipline against [redacted].¹⁴

V. Conclusion

In sum, I could not substantiate any allegations of sexual harassment, but I was stymied in my attempt to uncover all the facts by what I believe is deliberate misrepresentation and/or withholding of relevant (even critical) information. The most obvious demonstration of this is by [redacted]. It is up to the Board to decide how to proceed in response to this revelation, assuming the Board shares my perspective.

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¹⁴ Of course, I only told [redacted] that there *could* be adverse consequences to [redacted] job, not that there *would* be. I explained to [redacted] that it was ultimately up to the Board to decide how to proceed, and I did not know what they would do. But I do not believe [redacted] is overly concerned about being at risk, based on [redacted] strangely calm reaction to my challenge to [redacted] integrity. As I mentioned earlier, it is possible [redacted] spoke with someone about this issue and was told [redacted] job was safe (either because that person would protect [redacted] or based on Town/civil service rules).

Thursday Feb 24th

[redacted] calls [redacted] to tell [redacted] that [redacted] told [redacted] that [redacted] has screen shots of texts between Chad (C) & [redacted] which include 'll asking [redacted] over to his house for drinks @ 2pm & [redacted] refusing. Ch then texts that [redacted] is ungrateful.

Jon Cergol visits [redacted] to tell [redacted] she heard some rumor from [redacted]

March 4th

[redacted] tells [redacted] about conversations with [redacted] & Cergol. [redacted] & [redacted] discuss proper procedure. [redacted] to meet w/ [redacted]

March 5th

[redacted] meets w/ [redacted] Discussion with [redacted] about the status of [redacted] being appointed provisionally to [redacted] title. ~~Answer~~ Explains civil service process & answers [redacted] questions. Then tells [redacted] about rumor & although it was only a rumor I need to be sure that [redacted] was OK & was not uncomfortable. [redacted] Asks where rumor started. Tell [redacted] I did not know but once I heard I had to take action. [redacted] said "I'm handling it" I explained that the Town had two policies - Code of Conduct

& Anti Harassment/Retaliation & that [redacted]
 was ~~not~~ could file a complaint under
 either one or [redacted] could either speak to
 me or [redacted] if anything was
 going on that was making [redacted] uncomfortable
 [redacted] asked what the process would be if
 [redacted] had a complaint & what the time
 frame was to file such a complaint.
 I encouraged [redacted] to share anything that
 was on [redacted] mind. [redacted] did not. I told [redacted]
 that if [redacted] changed [redacted] mind [redacted] could come
 to me & that I would circle back with
 [redacted] in the near future.

[redacted] met with [redacted]
 [redacted] encouraged to ask [redacted] about what texts [redacted] may
 about loyalty have received. [redacted] said that all of [redacted]
 to CL correspondence w/ [redacted] was on Snapchat
 [redacted] was uncomfortable sharing [redacted] information
 but [redacted] told [redacted] that [redacted] told
 [redacted] that CL was stalky [redacted] saw
 him in his car one night leaving a Bar,
 CL would text [redacted] to come over to his
 house alone, [redacted] watches when [redacted] comes &
 goes from Town Hall on cameras & checks
 Navigation to see when [redacted] is in the Area.
 CL made several advances to [redacted] & [redacted]
 told him [redacted] was not gay.

[redacted] call [redacted] - outside lab
 counsel. [redacted] advises to speak to [redacted]
 agent w/ info for [redacted]

[REDACTED] & [REDACTED] speak to [REDACTED] in Personnel office.
~~It was~~ [REDACTED] was told that we had
 additional information about texts between
 [REDACTED] & CL. & we needed to ask [REDACTED]
 some more questions. [REDACTED] was hesitant
 to speak but said that [REDACTED] & [REDACTED]
 had a personal relationship but ~~not~~ ~~some~~
 & would hang out together but last
 summer they agreed that they would
 not hang out other than for work because
 it may be perceived as unprofessional. CL
 had been asking [REDACTED] to accompany [REDACTED] to
 events & [REDACTED] did not think it was
 appropriate for [REDACTED] to attend alone with CL
 [REDACTED] was concerned that people were
 saying "Are you Chad's Assistant" Are you
 two together?"

CL had told [REDACTED] that ~~the~~ ^{it} was
 part of [REDACTED] agreement agreement when [REDACTED]
 was hired that [REDACTED] had to attend these
 events. & if [REDACTED] was not going to do it
 [REDACTED] should submit [REDACTED] resignation. Had
 meeting in CL's office w/ [REDACTED]
 present - [REDACTED] said [REDACTED] was not resigning
 [REDACTED] said CL was stalky [REDACTED] - 2
 nights ago [REDACTED] saw CL in car when
 [REDACTED] left a BAR. Said [REDACTED] would run into
 him at places in Town - [REDACTED] acknowledges
 that they both ~~would~~ hang out @ the
 same places. CL would text [REDACTED] in
 the middle of the night - want [REDACTED]
 to come over, - no sexual advances in
 texts. CL told [REDACTED] that he watched
 Neovaine to see when [REDACTED] clocked in & out

Also mentioned that CL would call [redacted] when he was on call at [redacted] a girl [redacted] hard time if [redacted] did not want to talk

CL also told [redacted] that he saw [redacted] on ^{Town} cameras. [redacted] said that as soon as the last person left [redacted] office @ night - [redacted] CL would show up

[redacted] & [redacted] told [redacted] several times that they were concerned about [redacted] & want to be see that nothing was going on that made [redacted] uncomfortable. [redacted] was told several times that if anyone said anything to [redacted] that [redacted] thought was inappropriate or made [redacted] uncomfortable, [redacted] should let [redacted] or [redacted] know. [redacted] said [redacted] was fearful of losing [redacted] job - [redacted] loved [redacted] job. [redacted] assured [redacted] that [redacted] would not lose [redacted] job. [redacted] said [redacted] did not want to hurt CL. [redacted] When asked if CL had made any sexual advances, [redacted] answered "No"

[redacted] & [redacted] called [redacted] back & [redacted]
 [redacted] & should the conversation
 with [redacted] [redacted] recommended that [redacted] &
 [redacted] speak to Ch. & tell him what
 was alleged. Further [redacted] recommended that
 Ch be told to not have any further
 communication / contact with [redacted], don't access
 Navatime or the cameras. Recommended
 that an outside [redacted] person be
 appointed to do an investigation. Sent
 [redacted] a recommendation.

[redacted] spoke to Ch. Ch said he &
 [redacted] had a close relationship. Had
 known [redacted] since [redacted] was a baby -
 knows [redacted] family. [redacted] has just
 called Ch this morning & they had
 spoke to night before. Ch said he
 checked Navatime because he did not
 want to run into [redacted]
 when he went to visit [redacted] Said he
 did not check cameras. Said that
 on Feb 5th he was with [redacted] &
 [redacted] what if Ch was going to be [redacted]
 lawyer when [redacted] bought [redacted] house
 [redacted] told Ch not to have any
 contact with [redacted] - even if [redacted]
 contacted him. Also told him not
 to check Navatime & not to check
 the cameras

Friday, March 6th

[redacted] & [redacted] called [redacted] on [redacted] cell phone ([redacted] called in sick & was not @ work) left a message with [redacted] to call back. [redacted] intended to tell [redacted] that an investigation was going to be [redacted] hired & he would be contacting [redacted] - [redacted] never called back to get message.

Monday, March 9th

[redacted] & [redacted] speak to [redacted] - tell [redacted] that an outside, independent investigation will be conducted. [redacted] told [redacted] can meet outside of Town that if [redacted] is more comfortable doing so [redacted] asked [redacted] who the attorney doing the investigation would represent. [redacted] & [redacted] explained that he was functioning as an attorney - he did not represent the Town but that [redacted] was using him to do the investigation as attorneys are experienced in doing investigations. [redacted] asked if [redacted] should get [redacted] own attorney. [redacted] advised that we could not advise [redacted] either way but that [redacted] job was not in jeopardy. [redacted] reiterated that [redacted] job was not in jeopardy or any terms/conditions of [redacted] employment. Further advised that if [redacted] had any concerns or anyone said anything to [redacted] about [redacted] job [redacted] should contact [redacted] or [redacted].

I think I have it under control



Do you think you can advise
or this?

you should resign

no one else knew unprofessional
would not have get outside of work #

- changed work hours -

- no sexual advances -

- nothing ~~of~~ advances of a sexual nature

- would not go out alone

- would go on a business lunch
with them during business hours

- show up in the same place

- look on positive camera

worried about entry of in press - would
run life

+ Looked at [REDACTED] on camera -
Saw [REDACTED] talking to [REDACTED]

+ denied sexual advances

~~denied~~ denied for speak with a
Town employee

+ No communication with [REDACTED] +

+ obligation make this step +

+ difficult when accused +
1) elected official

- + ① investigation + advise T/B after investigation +
- + ② insulate employee +

+ Do not contact +

+ No retaliation +

+ No looking at cameras +