

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

HIDDEN VILLAGE, LLC)	CASE NO.: 1:10CV887
)	
Plaintiff,)	JUDGE: JAMES S. GWIN
)	
vs.)	
)	
CITY OF LAKEWOOD, OHIO, et al.)	<u>BRIEF IN OPPOSITION TO</u>
)	<u>DEFENDANTS' MOTION FOR</u>
Defendant.)	<u>SUMMARY JUDGMENT</u>
)	
)	
)	

Plaintiff, Hidden Village, LLC, by and through counsel, hereby opposes Defendants' Motion for Summary Judgment. In Opposition to Defendants' Motion, Plaintiff incorporates by reference:

1. The attached Brief in Opposition;
2. Deposition of Gary Lieberman, excerpts attached as Exhibit 1¹;
3. Deposition of Edward Fitzgerald, excerpts attached as Exhibit 2;
4. Deposition of Mark Brauer, excerpts attached as Exhibit 3;
5. Deposition of Kandi Withers, excerpts attached as Exhibit 4;
6. Deposition of Edward Favre, excerpts attached as Exhibit 5;
7. Deposition of Charles Barrett, excerpts attached as Exhibit 6;
8. Deposition of Wanda Jacobs, excerpts attached as Exhibit 7;
9. Deposition of Thomas George, excerpts attached as Exhibit 8;

¹ Relevant deposition testimony will be cited by noting the individual's last name and the page on which the testimony can be found. The excerpts will be attached as exhibits hereto and, to the extent Defendants did not previously file the complete transcript with the Court, Plaintiff will do so.

10. Deposition of Scott Gilman, excerpts attached as Exhibit 9;
11. Multiple documents, attached as identified in the Brief in Opposition.

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STATEMENT OF ISSUES TO BE DECIDED

Should Plaintiff's claims under Title VIII of the Civil Rights Act of 1968, as amended, the Fair Housing Act, the Constitution of the United States and for trespass be permitted to proceed to a jury?

I. SUMMARY OF ARGUMENTS PRESENTED

Although the Defendants seemingly suffer from an institutional-wide, pervasive amnesia with regard to all facts and circumstances that could negatively impact their defense of this matter, they repeatedly tout a collective motto: their actions were taken out of concern for the health, safety and welfare of the Youth Re-Entry Program's residents. Conspicuously absent from Defendant's Motion is any evidence, facts, or support establishing that there was ever any threat whatsoever to the residents' health, safety or welfare. Instead, City officials were admittedly concerned because there are "**a lot of blacks**" in the Program. The timeline of events coupled with the evidence in this case reveals that this was the concern that prompted Defendants to engage in acts designed to intimidate and force the Youth Re-Entry Program out of Hidden Village and the City of Lakewood. Therefore, Defendants' Motion for Summary Judgment should be denied.

II. STATEMENT OF FACTS

A. Hidden Village, LLC, purchases the apartment complex located at 11849 Clifton Boulevard.

Gary Lieberman and Michael Priore own several apartment complexes in Lakewood, Ohio. (Lieberman, p. 6). In 2001, Lieberman and Priore owned the Drake apartment complex located on Clifton Boulevard. (Lieberman, p. 19). The apartment complex located next door to the Drake housed young men ranging in age from 18-22 who attended the Ohio Diesel Mechanic School. *Id.* Over several years, the Diesel Mechanic students had constantly harassed the Drake tenants, engaged in loud, disturbing revelry late at night, and frequently fought in the parking lots. *Id.* The Drake lost many tenants as a result of the students' conduct. In an effort to

preserve their business, Lieberman and Priore created Hidden Village, LLC, which, in turn, purchased the apartment complex and named it “Hidden Village”. (Lieberman, p. 18-19).

Hidden Village is comprised of 5 buildings; the apartments housed in buildings A through D and a small maintenance building. (Lieberman, p. 20). Buildings A through D are mainly comprised of small efficiency apartments best suited for a single occupant. (Lieberman, p. 20).

After purchasing the property and slowly vacating the Diesel Mechanic students, Hidden Village, LLC, began renovating the apartments. Throughout the complex, Hidden Village installed new windows, garage doors, kitchens, appliances, ceramic tile kitchen floors, bathroom fixtures, sinks, toilets, marble bathroom floors, and marble shower surrounds. (Lieberman, p. 22). In total, Hidden Village, LLC, spent approximately \$1 million dollars in renovations before it began releasing the units. *Id.* The renovations were completed in 2002. *Id.* Edward Fitzgerald, a Building Inspector for the City of Lakewood, inspected the renovations and found them to be “code-worthy”. (Fitzgerald, p. 45; See, also, p. 38).

B. The Youth Re-Entry Program decides to move to Hidden Village in Lakewood.

The Lutheran Metropolitan Ministry (“LMM”), is a social service organization sponsored by two large, Lutheran church bodies in Northeast Ohio. (Brauer, p. 7). The LMM operates the “Youth Re-Entry Program”. (Brauer, p. 6). The Youth Re-Entry Program (“YRP”), is an independent living program for individuals ranging in age from 16-21 who are aging out of the foster care system operated by the Department of Child and Family Services and juvenile offenders released from the Ohio Department of Youth Services. (Withers, pp. 7-8). The YRP provides supervised, cluster site living with the goal of preparing its clientele for independent living. (Withers, pp. 7, 19). The program provides group and individual instruction on topics

such as anger management, banking, using coupons, registering to vote, and renting an apartment. (Withers, p. 19). On average, 80% of the YRP clientele is African American. (Withers, p. 10).

In 2006, the YRP was located in Cleveland, Ohio. The crowded location was riddled with drug activity and, coupled with the at-risk youth YRP serviced, created a situation where the clientele was increasingly getting into trouble. (Brauer, p. 16; Withers, p. 22). The location also required YRP youth to share an apartment with other individuals. (Brauer, p. 17). YRP's lease was due to expire and its leaders began searching for a new location. (Brauer, p. 18). Kyle Withers, a case manager for YRP, found Hidden Village through an ad in the newspaper. (Withers, p. 21). Soon thereafter, Kandi Withers, the Director of YRP, and Mark Brauer, the Director of Youth Services for LMM, scheduled an appointment to view the property. *Id.*

Hidden Village offered YRP an opportunity to house its clients individually and remove them from the crime occurring around the Cleveland location. (Brauer, pp. 16-17). As a result of the meeting, YRP decided to move to Hidden Village. (Brauer, p. 20). Representatives from both entities began negotiating the lease terms. (Lieberman, pp. 33-35). Ultimately, YRP signed a lease for the efficiencies housed in Buildings C and D of Hidden Village. (Withers, p. 65).

C. The YRP meets with immediate and unrelenting opposition from the City of Lakewood when it relocates to the Hidden Village apartment complex.

Before moving into Hidden Village, Brauer reached out to a contact at the health department. (Brauer, p. 20). He asked his contact to arrange a meeting with Lakewood officials for the purpose of developing a good working relationship. *Id.* More specifically, Brauer wanted to establish a positive relationship with the Lakewood police department. (Brauer, p. 33). His request was submitted to Dottie Buckon, who requested information about the YRP.

(Brauer, p. 21). Brauer provided the requested information and a meeting was scheduled for February 14, 2006.

Sergeant Edward Favre of the Lakewood Police Department, who was simultaneously on assignment as the police liaison to the Mayor's office, received the program material provided by Brauer. (Favre, p. 19). He thought that the brochure understated the nature of YRP's client's crimes. *Id.* Before the February meeting, Sgt. Favre, Charles Barrett, the Lakewood Building Commissioner, and his supervisor, Edward Fitzgerald, discussed the YRP. (Barrett, p. 38). Sgt. Favre was concerned about the "**type of people**" the program was bringing into the City. [Emphasis added.] (Barrett, pp. 23, 39). Specifically, Sgt. Favre expressed his concern that the program included juvenile offenders and "**a lot of blacks**". [Emphasis added.] (Barrett, pp. 39, 42).

Barrett claimed that the program constituted an institutional use prohibited by the zoning ordinances. (Barrett, p. 46). He discussed this issue with Tom Corrigan from the Lakewood Law Department prior to the scheduled meeting. (Barrett, p. 44). He then went to the February meeting with the intent to advise the YRP that their intended use violated Lakewood zoning codes. (Barrett, p. 55).

Although Buckon only invited a few officials to attend the meeting, more attended than expected. (Brauer, p. 32). In addition to the LMM/YRP representatives, individuals from the Cuyahoga County Department of Child of Family Services, the Lakewood Law Department, the Building Commissioner, Charles Barrett from the Building Department, the Mayor, Buckon, Sgt. Favre, and other police officers attended the meeting. (Brauer, p. 23; Withers, p. 24). Barrett could not recall another meeting attended by so many City representatives for the mere purpose of discussing a new program moving into Lakewood. (Barrett, p. 54).

Brauer provided the attendees with an overview of the YRP and identified their reasons for choosing Lakewood. (Brauer, p. 24). Immediately following Brauer's presentation, Barrett conveyed his belief that the YRP's intended use of Hidden Village violated the zoning codes. (Brauer, p. 28). Other individuals suggested alternative locations including commercial districts located on Madison or Detroit. (Barrett, p. 59; Brauer, p. 26). Although the parties maintained a civil demeanor, the overall tone expressed by City representatives was that YRP should not move to Lakewood. (Brauer, p. 28).

Following the meeting, Brauer advised Mary Louise Madigan, a member of City council, that the YRP had sought legal advice on the zoning issue and that the YRP's counsel found Barrett's position "untenable". (Brauer email, 3/14/06, attached as Exhibit 10).² Brauer also advised Madigan that the YRP still intended to move into Hidden Village. *Id.*

The YRP moved into Hidden Village in April 2006. (Brauer, p. 34). When Mayor Thomas George learned this fact, he articulated a strict, no-tolerance policy of enforcing the City's zoning laws. (George email, 4/13/06, attached as Exhibit 11). He further indicated that "the Administration opposes the 11849 Clifton location" for the YRP. *Id.* However, the Mayor and Sgt. Favre claim that their only concern regarding the YRP was the zoning issue. (George, p. 33; Favre, p. 50).

On April 18, 2006, Barrett and Fitzgerald visited Hidden Village. (Favre email, 4/18/06, attached as Exhibit 12). Although the police department is not typically involved in zoning issues, Sgt. Favre accompanied Barrett and Fitzgerald. (Barrett, pp. 73, 77; and Ex. 12). The City officials spoke to Wanda Jacobs, the office manager for the YRP. *Id.* Through that visit, the City officials identified the specific buildings occupied by YRP and the manner in which the

² All documents attached hereto were authenticated during the depositions in this case.

units were utilized. *Id.* Jacobs asked the officials if they had a search warrant and, when they answered in the negative, she refused to respond further to their questions. *Id.* Jacobs also explained that she believed the attorneys for the City and the YRP had resolved the zoning issues. *Id.*

On May 18, 2006, Barrett advised Priore that he was disappointed to learn that the YRP had moved into Hidden Village and Priore had until June 17, 2006 to remove the “unpermitted use”. (Barrett Letter, 5/18/06, attached as Exhibit 13). Hidden Village appealed Barrett’s decision and prevailed. (Barrett, pp. 75-76). The Lakewood Planning Commission agreed that the YRP’s use of Hidden Village complied with the applicable zoning laws. (Jordan letter, 7/6/06, attached as Exhibit 14). With the zoning issue resolved, Barrett’s role with the YRP concluded. (Barrett, p. 76). Having indicated that this was their only concern, it should have satisfied the Mayor and Sgt. Favre as well. To the contrary, Sgt. Favre expressed his disappointment with the Planning Committee’s decision. (Barrett, p.76).

Mayor George also disapproved of the Planning Commission’s decision. He noted that “many³...had real concerns” about the YRP moving to Hidden Village and questioned whether they could “bring the issue back to the Planning Commission for further review.” (George, p. 64; George email, 9/11/06, attached as Exhibit 15). Other City officials contemplated a more severe action: actually suing the Planning Commission. (Barrett, p. 84). When those suggestions were vetoed, City officials initiated a concentrated effort to establish the YRP as a criminal nuisance. (Hassing correspondence, 10/12/06, attached as Exhibit 16). If the police could document a certain number of arrests within a concentrated time period, Hidden Village,

³ Sgt. Favre testified that the “many” who had concerns included Mayor George, Barrett, and himself. (Favre, p. 78).

LLC, would be fined and thereby persuaded to eliminate the alleged criminal activity by removing YRP from the location. (Favre, pp. 104-106).

Admittedly unable to “pinpoint” the YRP as the cause of an alleged increase in crime and having arrested no YRP tenants in the first five months following its relocation to Lakewood, Mayor George, instructed Sgt. Favre to “document the problems this program is having for future reference.” (Ex. 15; See, also, Favre, p. 80).⁴ Captain Hassing and Lieutenant Ciresi of the Lakewood Police Department echoed the Mayor’s instructions. (Ex. 16; and Ciresi correspondence, 10/11/06, attached as Exhibit 17). Lt. Ciresi issued the following orders:

Attached is a phone contact list for the Youth Re-entry program (YRE) located at 11849 Clifton. There are 27 clients in the program that reside in buildings C and D...**If you have someone who lives in C or D, they are YRE clients as they have 100% occupancy of those buildings.**

Any contact with YRE clients need to be documented. At minimum, have their names entered in into the CAD person file. The only way we can document that we are having problems with YRE residents is to record their information. FI’s, citations, MIN, person file – all of these can be useful for documentation.

Citations and arrests are the preferred course of action for any violations encountered on or off site, in the vicinity of 11849 Clifton...

DISPATCH: ON ANY DETAILS INVOLVING 11849 CLIFTON PLEASE ATTEMPT TO DETERMINE THE APT. BUILDING (A, B, C, D) AND APT. NUMBER AND PUT THIS INTO THE CAD ENTRY.

[Bold emphasis added.] (Ex. 17). Sgt. Favre conceded that the decision to issue citations or make arrests was typically left to the discretion of the individual officers. (Favre, p. 93). However, this memorandum eliminated that discretion as it related to YRP. *Id.*

⁴ Chief Timothy Malley testified that during the first five (5) months (April-August) there had been no significant incident involving YRP tenants. (Malley depo at p. 39.) Indeed, documents compiled by the Police Department actually showed that crime went down in 2007 after YRP moved into the area. (Malley depo. at pp. 119-120; Exhibit 26, pp. 185-1824).

YRP staff began to receive complaints from their clients about police harassment. (Jacobs, p. 23). Two clients were ticketed for jaywalking, walking on the train tracks, and another received a ticket for not having a license on his bike. (Withers, p. 38; Jacobs, p. 20; Brauer, p. 85). Only YRP's African American clients reported these problems. (Brauer, p. 86; Withers, p. 85). Jacobs advised the YRP clients that the police had made it clear that they were "going to be watching [the] program very closely and clients may be subject to a search at any time." ("Warning", attached as Exhibit 18). The issue was so pervasive throughout the YRP that the staff began logging police visits to Hidden Village. (Withers, p. 41).

At the beginning of October 2006, Council person Madigan requested a meeting to discuss Hidden Village and the YRP. (Moore email, 10/2/06, attached as Exhibit 19). Madigan, Sgt. Favre, Buckon, Withers, Brauer, and two neighbor citizens attended. (Withers, pp. 87-88; Timeline, attached as Exhibit 20). The police blamed the YRP for a crime increase but failed to take into account the fact that the YRP only occupied 30 of 96 apartments. (Ex. 20). Indeed, the police failed to factor out response calls to the other 66 apartments. *Id.* Moreover, when the YRP representatives asked on several occasions how they could cooperate with the police, no suggestions were forthcoming. *Id.* Instead, Sgt. Favre asked Withers, an African American, if she knew what it was like to live in a suburb. (Withers, pp. 87, 90).

The Mayor was "ticked off" to learn that Buckon attended the above meeting and was involved in the attempt to change the perception of the YRP. (Ciresi email, 10/12/06, attached as Exhibit 21). He further advised her that "any policy from this Administration regarding [the YRP] will be directed through [Favre]. *Id.*

When Madigan again approached the issue of easing the YRP's transition into the City, the Mayor forwarded her request to Sgt. Favre. (Favre email, 11/8/06, attached as Exhibit 22).

Believing that Madigan simply wanted to “make nice and keep [YRP] here”, Sgt. Favre indicated that he was “not interested in being a part of that and would prefer not to be involved in any such meeting.” *Id.*

As of January 2007, the Lakewood Police Department was still unable to identify the YRP as the source of criminal activity in the surrounding area. (Favre, pp. 111-112). Yet, Sgt. Favre, Mayor George, Chief Malley, Capt. Hassing, Lt. Gresi, Barrett, Fitzgerald, and Brian Corrigan of the Lakewood Law Department were still looking for ways to force the YRP out of Hidden Village. Sgt. Favre advised the Mayor that Fitzgerald had “a new, untried zoning angle for our problem.” (Favre email, 1/19/07, attached as Exhibit 23). The problem was the YRP/Hidden Village. (George, p. 102).

Although the police could not correlate the YRP to the increase in crime as of January, one month later, on February 28, 2007, Mayor George sent a letter to the President of LMM, advising her that police intervention had more than doubled since the YRP’s relocation to Hidden Village. (George letter, 2/28/07, attached as Exhibit 24). Mayor George also warned that he would “**seek to have the program removed from Lakewood at the earliest possible time.**” [Emphasis added.] *Id.* While Defendants have steadfastly maintained that they only sought to relocate the YRP to a different area of Lakewood, the Mayor admitted that this letter reflected the “policy” of the administration as of February 2007. (George, p. 130).

City and police officials held several meetings in the months that followed but the events culminating in this action occurred in May of 2007. On May 16, 2007, City officials and YRP representatives met to discuss the relationship between the police and the YRP. (Ex. 20). The police were not receptive and, again, accused the YRP of creating a crime wave in Lakewood.

(Withers, pp. 45, 47).⁵ During this “heated” meeting, Withers and Brauer reiterated the fact that the crimes at issue were actually committed by individuals outside of the program. (Withers, pp. 90, 92). The police further accused Jacobs of allowing YRP clients to sell drugs out of her car. (Withers, p. 47). Jacobs expressly denied the accusation and, when asked why they did not arrest Jacobs, the police did not respond. (Withers, pp. 48-49). However, the police did ask the YRP representatives if they would be willing to move voluntarily. (Ex. 20; Withers, p. 93). The YRP explained that there was no reason to do so and they refused the request. *Id.* Although the Mayor appreciated the discrepancy between the picture painted by the police and the actual circumstances as clarified by Withers and Brauer, he indicated his intent to stand behind the police and carefully watch the YRP. (Ex. 20; Withers, p. 94).

Six days after the YRP refused to voluntarily vacate Hidden Village, police officers, at least one swat team member, the canine unit, fire officials, and health department representatives descended upon the YRP. (Withers, pp. 60, 62). Without any notice, without a warrant, and without explanation, the assembled team proceeded to raid the apartments of the YRP’s clients. (Withers, pp. 62-63). Contrary to Defendants’ representations, **Lieberman and Withers objected**, asked why they were conducting the searches and why they failed to warn the YRP. (Withers, pp. 63-64; Lieberman, p. 111). Withers also advised the team that she wanted to speak to her supervisors. (Withers, p. 64). As opposed to waiting for Withers to do so, the team continued with their “inspection.” *Id.*

The team only inspected buildings C and D; the Hidden Village buildings occupied exclusively by the YRP residents. (Withers, p. 71). They were rude and intimidating to the

⁵ Withers initially testified that she believed these events transpired in October of 2006. However, later in her deposition, her recollection was refreshed with notes from the May 2007 meeting and she confirmed that she was referring to the May 16, 2007 meeting.

residents. (Withers, pp. 62, 67). The team also made the residents stand behind the buildings during the raid. (Gilman, p. 39). Gilman, the Lakewood Fire Marshal, acknowledged that was an unusual set of circumstances. *Id.*

To date, no one has identified the underlying reason for the raid on the YRP/Hidden Village. Sgt. Favre claims that the team assembled for an inspection of a different property after receiving reports of criminal activity, drug activity, and resident complaints. (Favre, p. 61; Gilman, p. 29). At the conclusion of that inspection, the team simply decided “on the spot” to go to Hidden Village. (Favre, p. 62). However, he has no idea who made the “spontaneous” suggestion. *Id.*

Gilman testified that a joint inspection of property like Hidden Village is typically conducted when there is a change to the fire protection, a new occupancy permit is required, or they receive complaints from residents. (Gilman, p. 15). Although he remembered why a similar inspection of the property was performed when Ohio Diesel Tech occupied the building in 2000, he had no recollection regarding the trigger for this inspection of Hidden Village. (Gilman, pp. 16, 26, 37). However, he claims he participated to determine the use of the building and the occupants’ safety. (Gilman, p. 37). Specifically, he wanted to determine if it was an institutional or residential use for the purpose of identifying the level of fire protection needed. (Gilman, p. 53). However, this explanation is undermined by his concession that the Building Department is responsible for determining the use and Barrett had previously informed Gilman that it was a residential use. (Gilman, p. 63; Barrett, p. 86). Gilman could not explain why the police attended the inspection. (Gilman, p. 40).

Mayor George claims he had no knowledge regarding the trigger for the joint inspection but maintains that it was a mere coincidence that it occurred only six days after the YRP refused

to voluntarily leave Hidden Village. (George, pp. 119, 122). The Mayor was also unable to explain why the team would inspect only the buildings occupied by YRP residents. (George, p. 124).

Lieberman has owned property in Lakewood since 1986. (Lieberman, p. 15). He has always received notice of any inspections the City wanted to perform beforehand. (Lieberman, 45). Typically, the City would make an appointment and conduct the inspection accordingly. *Id.* Here, the City provided no notice and refused to leave when Lieberman asked them to do so. *Id.* After the raid, Lieberman instructed police to stay off of Hidden Village property absent an emergency. (Lieberman, pp. 101, 118).

Gilman returned to Hidden Village on May 29, 2007. (Gilman, p. 60). He outlined numerous issues with the property and expressed concern over the residents' safety due to the issues identified, but never informed Hidden Village, LLC, of his findings. (Gilman, pp. 61-62). Still claiming to seek clarification of the buildings' use, Gilman contacted the State Fire Marshal for assistance. (Gilman, p. 63).

Gilman and the State Fire Marshall presented to Hidden Village a short time later. (Gilman, p. 65). YRP and Hidden Village, LLC, denied them access on the basis that they did not have a warrant. (Lieberman, p. 123). Although Gilman repeatedly maintained that his desire to inspect Hidden Village was related to the residents' safety, neither he nor the State Fire Marshal ever returned to Hidden Village with a warrant.

III. LAW AND ARUGMENT

A. Summary Judgment Standard

The entry of summary judgment is proper only if the evidentiary materials presented “show that there is no genuine issue as to any material fact and that the moving party is entitled

to judgment as a matter of law.” Fed R. Civ. P. 56(c). This Court is well aware of the summary judgment standard so it will not be restated here.

B. Genuine issues of material fact remain regarding Plaintiff’s federal claims and, therefore, summary judgment is inappropriate.

1. Fair Housing Laws, Generally

Congress enacted the Fair Housing Act to “insure the removal of artificial, arbitrary and unnecessary barriers [which] operate invidiously to discriminate on the basis of impermissible characteristics.” *United States v. City of Black Jack, Missouri*, 508 F.2d 1179, 1184 (8th Cir 1974), cert denied, 422 U.S. 1042 (1975). Congress designed it to prohibit “all forms of discrimination, sophisticated as well as simple minded”. See *United States v. City of Parma, Ohio*, 490, 494 F. Supp. 1049, 1053 (N.D. 1980), affirmed in relevant part, 661 F.2d 562 (6th Cir 1981), cert denied 465 U.S. 926 (1982).

The Fair Housing Act makes it unlawful to discriminate in the provision of housing or to “otherwise make unavailable a dwelling to any person on the basis of race.” 42 U.S.C. §3604. The Act further makes it unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise of enjoyment of any right granted, or protected by [this Act].” 42 U.S.C. §3617. Federal Courts have held that the Fair Housing Act is to be “construed generously to insure the prompt and effective elimination of all traces of discrimination within the housing field.” *City of Parma*, 494 F.Supp. at 1053, citing *Trafflicant v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211-212 (1972); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979); *Marr v. Rife*, 503 F.2d 735 (6th Cir 1974). To determine “whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.”

Village of Arlington Heights v. Metropolitan Housing Development Corp., 426 U.S. 252, 266 (1977). “Very persuasive evidence of racial intent can be found in the statements of decision makers or their agents attesting to a policy of discrimination.” See *City of Parma*, 484 F.Supp. at p. 1054.

2. Plaintiff has Standing to Assert Claims under 42 U.S.C. §§1981, 1982 and 1983

Defendants argue that Plaintiff lacks standing to assert claims under 42 U.S.C. §§1981, 1982 and 1983. As consideration of standing under each of these sections is similar, they will be addressed jointly. Further, since standing is a threshold inquiry, Plaintiff will address the issue of standing first.

Notably, Defendant does not cite to a single case on point for the proposition that the Plaintiff lacks prudential standing under §§1981, 1982 and 1983. As Plaintiff noted, the Court must consider both Constitutional and prudential limitations to jurisdiction. *Warth v. Seldin*, 422 U.S. 490, 498 (1975). Prudential consideration involve matters of “judicial self-governance” and focus on “whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff’s position a right to judicial relief”. *Id.* at 500. The Constitutional dimensions of standing are satisfied “if the plaintiff alleges that he has suffered an injury that ‘is indeed fairly traceable to the defendant’s acts or omissions’”. *Scott v. Greenville County*, 716 F.2d 1409, 1414 (4th Cir 1983), citing *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 261 (1977) [remaining citations omitted].

Numerous courts have addressed the issue of property owners or developers who claim standing to enforce the equal protection clause of the Constitution, or to vindicate rights under either the FHA, §1981, §1982 and/or §1983. In *Scott*, the Fourth Circuit Court of Appeals

concluded that a real estate developer who sought a building permit to construct low income apartments had standing to assert claims of discrimination for denial of the zoning permit pursuant to 42 U.S.C. §1983. In this regard, the *Scott* court noted that a “developer is a proper plaintiff to assert the rights of prospective minority tenants victimized by the alleged racial discrimination”. *Scott*, 716 F.2d at 1415. Likewise, “if defendants singled out [the developer] for disadvantageous treatment because of his willingness to house minority tenants than [the developer] in his own stead suffered injury to his right to be free from official discrimination.” *Id.*

Similarly, the First Circuit Court of Appeals found that a subdivision developer who intended to develop a subdivision to accommodate low income and/or black persons but who asserted that he had been denied inclusion in a town water district for racially discriminatory reasons had standing under 42 U.S.C. §§1981 and 1982 to present claims of discrimination. See *Des Vergnes v. Seeconk Water District*, 601 F.2d 9 (1st Cir 1979). Thereafter, the Court extended its holding to §1983 claims in *Cutting v. Muzzey*, 724 F.2d 259 (1st Cir 1984) [finding subdivision developer had standing to assert civil rights action claiming violation of the equal protection clause for imposing “outrageous conditions” on development of subdivision because of racial animus.] Similarly, the Eleventh Circuit found the owner of an apartment complex had standing to assert a §1983 claim alleging the City violated equal protection clause by trying to eliminate affordable housing to Hispanics. *Young Apartments, Inc. v. Town of Jupiter, Florida*, 529 F. 3d 1027, 1039-1041 (11th Cir 2008) [See exhaustive list of cases summarized supporting standing.

Hidden Village asserts and has demonstrated that they were individually targeted by the Defendants including unwarranted inspections, challenges to the use of the property, efforts to

fabricate a basis for fining them under the nuisance ordinance and generally increasing the cost of doing business as a landlord in the City of Lakewood. Additionally, Plaintiff has asserted that the property value for Hidden Village has declined and they lost an opportunity to sell the property as a result of the disputes that had arisen with the City of Lakewood. (Lieberman depo. at pp. 143-147) Accordingly, Plaintiff has standing to assert its own claims arising out of its own injury in fact.

3. Defendants Have Violated the FHA, §1981, §1982

The Defendants engage in a discussion regarding the *prima facie* elements of a §3604 claim, it is unnecessary to belabor these issues. Plaintiff's claims assert generally that the conduct of the Defendants have violated the Fair Housing Act, §3601 et seq. and specifically assert a violation of the prohibition against coercion and intimidation under §3617 in an effort to deny equal access to YRP tenants on the basis of race.⁶

The elements of this claim were succinctly spelled out in *People Helpers, Inc. v. City of Richmond*, 789 F.Supp. 725. (E.D. Va. 1992). In *People Helpers*, a case factually similar to the case herein, the Court carved out a flexible and workable *prima facie* case necessary to prove a violation of §3617. In this regard, Plaintiff must establish (1) that the residents of the building are in a protected class under the Fair Housing; (2) that Plaintiff actually aided or encouraged the protected individual or group in the exercise or enjoyment of rights under 42 U.S.C. §3604 to equal services and conditions of housing; (3) that the Defendants engaged in intentional discrimination or a policy/procedure of the City of Lakewood resulted in a discriminatory impact; and (4) there is evidence of coercion, intimidation, threat or interference on account of

⁶ Plaintiff seeks injunctive relief to prohibit the Defendant from engaging in similar and/or continuing conduct. Plaintiff does not assert that Defendant was successful in its efforts to keep YRP out of the City of Lakewood, though if permitted to continue such conduct they would likely succeed.

their having aided or encouraged the exercise of the resident's right to live in the neighborhood of their choice. *People Helpers*, 789 F. Supp. at pp. 731-732.⁷

In *People Helpers*, the Plaintiffs maintained that the City engaged in a “systematic and intentional scheme to rid the neighborhood of members of protected classes under the Fair Housing Act.” (*People Helpers, Inc.*, 789 F.Supp. at 732). In finding that summary judgment was not appropriate, the District Court noted that Plaintiff offered evidence that police and other city agencies threatened residents with continuing criminal investigations despite the fact there was no factual basis to support the inquiries; engaged in inspections of tenants property; and, one resident was threatened with a Grand Jury subpoena if he refused to answer certain questions concerning the occupants of the building.⁸

The conduct of the Defendant is more egregious than the evidence in *People Helpers*. In this regard, before the Youth Re-Entry Program moved to the City of Lakewood, Sgt. Favre expressed concern that there were youth offenders and a “lot of black people” in the program. Immediately, the City held a meeting with the Lutheran Metropolitan Ministries and advised them, without any legal support that they felt their use of the property would be in violation of existing zoning laws. When the Youth Re-Entry Program moved to the City of Lakewood, Sgt. Favre, Mayor George and others embarked on a path which commenced with a notice from Defendant Barrett to Hidden Village that the property use violated City zoning and culminated with unwarranted inspections of the premises in an attempt to coerce and intimidate YRP to leave the City of Lakewood.

⁷ Plaintiff concurs with Defendant that the analysis under Title VII of the FHA is the same as the analysis to be conducted under §1981 and §1982. *Selden v. HUD*, 785 F. 2d 152, 159 (6th Cir 1986) proof of equal protection violations §1983 also require proof of intentional discrimination.

⁸ Defendants cite *AHF Community Development v. City of Dallas*, 633 F.Supp. 2d 287 (N.D. Texas 2009). In *AHF Community*, the District Court declined to follow *People Helpers*. In reaching this conclusion, the Court rejected the concept that §3617 protects against post occupancy conduct. A holding which is not supported by other District Courts who have addressed similar claims. See *Sporn v. Ocean Colony Condominium Ass.*, 173 F. Supp 2d 244, 252 (D.N.J. 2001) [Referenced to numerous decisions supporting §3617 claim posts occupancy.]

The term “interference and coercion” has been broadly applied to reach all practice which have the effect of interfering with the exercise of rights under the [Fair Housing Act]. *United States v. American Institution of Real Estate Appraisers*, 442 F.Supp. 1072, 1979 (N.D. Illinois 1977), appeal dismissed, 590 F.2d 242 (7th Cir 1978), *Heights Community Congress v. Hilltop Realty, Inc.*, 774 F.2d 135, 141 (6th Cir. 1975), cert. denied sub nom. *Hilltop Realty Inc. v. Cleveland Heights*, 475 U.S. 1019 (1976); *Marr v. Rife*, 503 F.2d 735, 740-741 (6th Cir. 1974). “[R]etaliation ... is actionable under §3617 ... because [Lakewood in this case] is using [its] superior power to [obstruct] the mandate of the [Fair Housing Act]. *Michigan Protection Advocacy Services v. Babin*, 799 F.Supp. 695, 624 (E.D. Mich. 1982), affirmed 18 F.3d 337 (6th Cir 1994).

As it relates to the issue of pretext, the facts set forth in the foregoing statement of facts belie the Defendants’ defense that they never wanted YRP to leave the City of Lakewood and they were simply interested in the health, safety and welfare of the program residents. The record is replete with evidence that the policy of the City was to expel YRP from the City if possible. (See e.g. Exhibit 24, Mayor George 2/28/07 letter). Moreover, the reason stated for wanting the YRP to leave is not the health, safety and welfare of the program participants. It is the alleged crime wave that the City speciously attributes to YRP. The ample evidence of racial animus, harassment of African Americans and attempts to drive YRP from Hidden Village support a finding of pretext.

4. The Defendants Have Violated the United State Constitution and Summary Judgment Should Be Denied on Plaintiff’s §1983 claims

Defendants assert that the Plaintiff fails to establish a constitutional violation. Defendants’ entire motion is focused on the Fourth Amendment protection against warrantless searches. Defendants concede that unlawful searches under the guise of an administrative

inspection implicates Fourth Amendment rights against unreasonable searches. See *Camara v. Municipal Court*, 387 U.S. 523, 526 (1967). Defendants Motion for Summary Judgment is premised upon the assertion that Defendants had consent to inspect the Hidden Village property both on May 22, 2007 and at the time of subsequent inspections by the State Fire Marshall and the City Fire Marshall, Scott Gilman. However, contrary to Defendants' representations, Lieberman and Withers objected, asked why they were conducting the searches and why they failed to warn the YRP. (Withers, pp. 63-64; Lieberman, p. 111). Withers also advised the team that she wanted to speak to her supervisors. (Withers, p. 64). As opposed to waiting for Withers to do so, the team continued with their "inspection." *Id.* Accordingly, based solely upon the implication of the Fourth Amendment rights against warrantless searches, Defendants' Motion for Summary Judgment should be denied.

Separately, Defendants do not even seek summary judgment under §1983 based upon Plaintiff's equal protection allegations. Plaintiff has brought a claim asserting racial discrimination in the context of housing. These allegations implicate equal protection grounds and support §1983 liability. See *Cutting v. Muzzey*, 724 F.2d 259, 260 (1st Cir 1984), see also *Young Apartments, Inc. v. Town of Jupiter, FL*, 529 F. 3d 1027, 1044 (11th Cir 2008)[“facially neutral law violates Equal Protection Clause if adopted with intent to discriminate against racial group”]. It should not be in dispute, that it “is unconstitutional for a state actor, motivated by discriminatory animus, to interfere with an individual’s right to contract or associate with members of a protected class.” *Young Apartments, Inc. v. Town of Jupiter, Florida*, 529 F.3d 1027, 1039 (11th Cir 2008). In the present case, the individual responsible for dictating the administration’s policy regarding YRP, Sgt. Favre, admitted his concern regarding the program related to the history of Youth Offenders and the fact that there were “a lot of black people” in

the program. In furtherance of these concerns, Sgt. Favre, and in turn the City, engaged in a well documented effort to rid the City of Lakewood of YRP, a program that is approximately eighty percent (80%) African American. Such evidence, if believed, violates the equal protection clause of the United States Constitution and supports liability under §1983.

5. The Individual Defendant's Are Not Entitled to Qualified Immunity

Individual defendants are not entitled to qualified immunity. Plaintiff does not take issue with the Defendants recitation of the case law with respect to qualified immunity under §1983. It should be noted that the Defendants do not argue that they are entitled to qualified immunity with respect to claims under the Fair Housing laws §§1981 or 1982. The arguments with respect to qualified immunity under §1983 are misplaced.

i. Thomas George is not entitled to qualified immunity.

Defendants assert that Thomas George is entitled to qualified immunity because he was not physically involved in the inspection of the YRP premises on May 22, 2007 and he did not make the initial determination regarding zoning. Defendants simply ignore the overwhelming evidence that the policy of Mayor George's administration directed at the Youth Re-Entry Program. First, Mayor George has conceded that Sgt. Favre is the individual through whom all administration of policy regarding YRP flowed and he was concerned about all the "black people" in the program. Contrary to the position of the defendants in their motion for summary judgment, there is no underlying evidence to support the contention that the City of Lakewood was concerned about the health, safety and welfare of the Youth Re-Entry Program tenants. To the contrary, the overwhelming evidence demonstrates that the policy of Mayor George, implemented by his administrative heads, Edward Fitzgerald, Charles Barrett, Sgt. Favre and Scott Gilman was a policy directed at the removal of the Youth Re-Entry Program from the City

of Lakewood, not protecting their health, safety and welfare. In furtherance of this goal, the City of Lakewood expressly and blatantly accused the Youth Re-Entry Program of prompting a crime wave and attempted to establish sufficient evidence to utilize the nuisance ordinance to fine Hidden Village as a result of YRP's tenancy. As issues of fact abound regarding the policies of Mayor George, summary judgment is inappropriate.

ii. Charles Barrett is not entitled to qualified immunity.

As with Mayor George, the Defendants seek to minimize the involvement of Charles Barrett. Though no individuals employed by the City of Lakewood can recall any of the substance of any of meetings which took place regarding the Youth Re-Entry Program, Charles Barrett, as with others, participated in numerous meetings regarding the Youth Re-Entry Program. From these meetings flowed a policy that clearly articulates a desire for the Youth Re-Entry Program to leave the City of Lakewood. Indeed, these specious reasons for seeking the expulsion of YRP from the City of Lakewood, i.e., a crime wave created by the YRP, support liability against the individual officials who implemented this policy. As it relates to Charles Barrett, he acknowledged that he considered the YRP presence to be akin to a group home. The ordinance at issue specifically provides for a group home. Yet Mr. Barrett sought the expulsion of YRP from Hidden Village on the basis of some purported interpretation that their use violated the zoning codes. Indeed, Mr. Barrett participated in conversations with counsel for the Lutheran Metropolitan Ministry wherein the fallacies of his position were explained. Thus, though Mr. Barrett's involvement may be more limited than Mayor George or Sgt. Favre, at the summary judgment stage he cannot defeat liability.

iii. *Edward Fitzgerald is not entitled to qualified immunity.*

Mr. Fitzgerald specifically was involved in efforts to come up with new zoning angles to eliminate the “problem” in the City of Lakewood relating to YRP. Mr. Fitzgerald was specifically involved in directing a representative of the Building Department to participate in the joint departmental inspection on May 22, 2007. Earlier that year, Mr. Fitzgerald participated in a meeting of representatives of the City of Lakewood where it appears that methods for driving the Youth Re-Entry Program out of the City of Lakewood were discussed. (See Exhibits 27 and 28). Curiously, none of the participants of this meeting can remember anything other than what is reflected in the notes of this meeting. Mr. Fitzgerald also participated in the meeting on May 16, 2007 with Lutheran Metropolitan Ministry representatives wherein the policy of the City of Lakewood was reiterated and Lutheran Metropolitan Ministry was asked to voluntarily vacate the City of Lakewood.

6. Defendants are not entitled to Summary Judgment under *Morell*.

Additionally, Defendants assert that the City of Lakewood should be dismissed because Plaintiff has failed to (1) demonstrate a constitutional violation, and, (2) failed to establish a policy, custom or procedure which was the moving force behind the deprivation. *Morell v. Dept. of Social Serv.*, 436 U.S. 658 (1978).

The issue of the constitutional violation has been addressed in Section III, B, 4. The issue of establishing an “official policy” is a simple matter. Mayor George sent an e-mail in October 2006 that “any policy from this administration regarding [the YRP] will be directed through [Sgt. Favre]. (Exhibit 21). Sgt Favre was concerned about the fact that YRP had a “lot of blacks”. Thereafter the “official policy” of the City of Lakewood was memorialized in

writing, i.e. the YRP must leave Lakewood. (Exhibit 24, letter from George) Thus, Plaintiff has offered sufficient evidence of official policy to survive summary judgment.

C. The Claims of Trespass Presents Genuine Issues of Material Fact

Hidden Village agrees with the legal elements of a trespass claim as set forth by Defendants but expressly refutes the remaining legal assertions Defendants made in an attempt to avoid liability for the trespass they committed against Hidden Village. Defendants initially argue that Mayor George, Barrett and Fitzgerald cannot be held liable because they did not enter the property. (Defendants' Motion, p. 28). To the contrary, the Ohio Supreme Court has explicitly determined that “[o]ne is subject to liability to another for trespass... if he *intentionally* (a) enters land in the possession of the other **or causes a thing or a third person to do so**”. [Emphasis added.] *Baker v. Shimkiv* (1983), 6 Ohio St.3d 151, 153, quoting Restatement of Torts 2d 277, Section 158. Therefore, even if these individuals did not personally enter Hidden Village, they can be held liable if they caused those who performed the raid to do so.

Again, all of the Defendants' memories are fuzzy when it comes to the reasons that provoked the raid on May 22, 2007. They are also unable to identify the individual(s) who made the decision to conduct the raid. Their inability to recall these details does not relieve them of liability but renders them incapable of disputing the testimony and reasonable inferences that flow therefrom.

Mayor George admitted that his February 28, 2007 letter, wherein he advised a LMM director that he will seek to have the YRP removed from Lakewood at the earliest possible opportunity, accurately reflected the policy of his administration. During the same time, Fitzgerald, who worked with the Building Department, was looking for an “untried” zoning angle to get rid of their “problem”: i.e., Hidden Village. However, the law department struck

down Fitzgerald's alternative zoning suggestion. (Fitzgerald, p. 40). Thereafter, Mayor George held a meeting during which he asked the YRP to leave Hidden Village voluntarily. **Six days after** the YRP refused to do so, the Lakewood police, fire, building, and health departments invaded Hidden Village. Fitzgerald testified that the building department was asked to assist with the raid and it was at his direction that a building inspector participated. (Fitzgerald, pp. 43-44). Barrett admitted that he, too, was responsible for enforcing the building codes.

Fitzgerald's own admission reveals that he caused a third person to enter Hidden Village and, therefore, he is not entitled to summary judgment on that issue. The remaining facts and the close proximity to which the raid occurred create the reasonable inference that all individual Defendants are liable for the same reasons. During the relevant time, Mayor George, Fitzgerald and Barrett all held positions of authority which allowed them to direct their reports to carry out the duties of their respective office/departments. A reasonable juror could infer that when Defendants' untried zoning angle and "polite" requests failed, Defendants directed those departments/their reports to raid Hidden Village, and more specifically the YRP, in an attempt to forcibly achieve the result that they had been unable to procure through other means. The Defendants further inability to articulate the reason(s) that yielded the raid support the logical conclusion that it was conducted for ulterior motives, i.e., to get rid of their "problem". Therefore, Defendants reliance upon the fact that none of these Defendants entered Hidden Village during the raid is insufficient to defeat Plaintiff's trespass claim.

1. Defendants were not privileged to enter Hidden Village.

Defendants represent to this Court that they were "granted access" to Hidden Village and were, therefore, privileged to enter the premises. These representations directly contradict the testimony of Lieberman, an owner of Hidden Village, LLC, and Withers, the Director of the

YRP. Both of these individuals testified that they objected to the raid. In fact, Withers testified that she objected and advised the team that she wanted to talk to her supervisor first. Defendants ignored her request and continued with their “inspection”. This factual dispute defeats Defendants’ claim that they were privileged to enter Hidden Village on May 22, 2007.

Defendants further claim that they had the legal authority to enter the premises. Because the reasons that contradict this argument are the same reasons that defeat Defendants’ immunity arguments asserted under R.C. 2744, they are addressed in detail below.

2. Defendants are not entitled to immunity under R.C. 2744.

a. The City of Lakewood is not immune for trespass.

Defendants argue that the City of Lakewood is immune from liability under R.C. 2744, *et. seq.* (Defendants’ Motion, pp. 23-25). The Supreme Court of Ohio recently reiterated the three-tiered analysis courts must apply when determining whether the immunity outlined in this statute applies. See *Lambert v. Clancy*, 125 Ohio St.3d 231, 2010-Ohio-1483, at ¶ 8. Under the first tier, “a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.” R.C. 2744.02(A)(1). The immunity afforded under the first tier is obliterated if any of the five exceptions identified in R.C. 2744.02(B) apply to the facts and circumstances of the case. *Id.* at ¶ 8, citing *Elston v. Howland Local Schools*, 113 Ohio St.3d 314, 2007-Ohio-2070, 865 N.E.2d 845, ¶ 11. The defenses to liability outlined in R.C. 2744.03 may then serve to reinstate immunity. *Id.* at ¶ 8-9.

Defendants claim that the City of Lakewood is entitled to immunity because “[t]he claims relate to Lakewood’s administrative inspection of Hidden Village, as well as the provision of

police services” and, therefore, the City was engaged in a governmental function pursuant to R.C. 2744.01(C)(2)(a) and (p). (Defendants’ Motion, p. 24). The facts in this case establish otherwise. As opposed to utilizing the powers of the numerous departments that raided Hidden Village on May 22, 2007 for their legitimate powers of inspection and police service, the evidence reveals that the City used those departments to harass, intimidate, and pressure the YRP to leave Hidden Village and the City of Lakewood. The City used those departments/powers for the sole purpose of forcing that which it was unable to achieve through less severe means. When their various zoning strategies failed and the YRP refused to leave voluntarily, the Defendants decided to raid Hidden Village to rid the City of its “problem”. Defendants’ claim that the City was engaged in the provision of police services is further belied by the testimony of Gilman, Lakewood’s Fire Marshal, who did not know why the police were present. (Gilman, p. 40). At the very least, all of these facts, the short time span between the YRP’s refusal to leave and the raid, and the Mayor’s stated policy of banishing the YRP from the City at the earliest possible opportunity create an issue of fact regarding whether the City was engaged in a governmental function (i.e., inspection or police services), or simply abusing legitimate powers for an illegal purpose (i.e., forcing YRP out of Hidden Village and the City). Because an issue of fact remains under the first tier of the analysis, the City is not entitled to summary judgment on this issue.

b. The individual Defendants are not immune from liability because they acted outside the scope of their responsibilities, with a malicious purpose and in bad faith.

As employees of the City, the individual Defendants are immune from liability unless:

- (a) The employee’s acts or omissions were manifestly outside the scope of the employee’s employment or official responsibilities;
- (b) The employee’s acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

(c) Civil liability is expressly imposed upon the employee by a section of the Revised Code ...

R.C. 2744.03(A)(6); See, also, *Lambert* at 237.

An employee acts with a malicious purpose if he “willfully and intentionally acts with a purpose to cause harm.” *Moss v. Lorain Cty. Bd. Of Mental Retardation* (2009), 185 Ohio App.3d 395, 403, 924 N.E.2d 401, citing *Piro v. Franklin Twp.* (1995), 102 Ohio App.3d 130, 139, 656 N.E.2d 1035. “Bad faith is defined as a ‘dishonest purpose, moral obliquity, conscious wrongdoing, [or] breach of a known duty through some ulterior motive or ill will.’” *Id.* at 403-404.

The evidence in this case epitomizes circumstances under which City employees are not entitled to immunity. If, as Hidden Village demonstrated above, the City was not engaged in a governmental function but was, instead, illegally attempting to force the YRP out of Hidden Village and the City of Lakewood, then the individual Defendants’ participation in those events was necessarily outside the scope of their official responsibilities. Indeed, none of the Defendants’ professional responsibilities included using their position to force the YRP out of the City because of their concern that there were “a lot of blacks” in the program.

However, even if Defendants were acting within the scope of their duties, they did so maliciously and in bad faith. The emails, letters, and memorandums exchanged between and authored by the individual Defendants in this case unequivocally establish that they viewed the YRP/Hidden Village as a problem, they wanted the YRP to leave Hidden Village and the City of Lakewood, and that they utilized or considered utilizing various methods to achieve that goal.

Although Barrett challenged the YRP from the outset, a reasonable juror could easily infer that Barrett’s zoning citation was simply the initial step in the City’s attempt to prevent the YRP from moving into Lakewood. When Barrett was unsuccessful and the YRP moved to

Hidden Village, Mayor George expressly indicated his intent to remove the program from Lakewood. While his stated reason for seeking removal of the program was due to an alleged increase in crime, Defendants could not and have not provided any evidence demonstrating that the YRP was responsible for that alleged increase. In fact, Defendants have abandoned their efforts to blame the YRP and now summarily assert that their actions were taken in consideration of the YRP residents' health, safety and welfare. However, in so doing, they failed to provide this Court with any evidence indicating that any of these elements were in jeopardy. Moreover, Mayor George participated in a meeting where various City officials discussed an "untried" zoning angle to deal with the "problem" of Hidden Village. Fitzgerald was the individual responsible for suggesting the new zoning position. Therefore, there is ample evidence demonstrating that Defendants acted "willfully and intentionally...with a purpose to cause harm" and/or with a "dishonest purpose, moral obliquity, conscious wrongdoing, [or] breach of a known duty through some ulterior motive or ill will." See, *Moss, supra*. Under these circumstances, the individual Defendants are not entitled to summary judgment on this issue.

III. CONCLUSION

Based upon the foregoing, Plaintiff, Hidden Village, LLC, has aptly demonstrated that genuine issues of material fact remain on each legal claim asserted against the Defendants. As a result, Defendants' Motion for Summary Judgment should be denied in its entirety.

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2010, a copy of foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Richard C. Haber
Richard C. Haber (0046788)