

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

HIDDEN VILLAGE, LLC, )  
)  
Plaintiff, )  
)  
vs. ) Case No. 1:10CV00887  
) Judge Gwin  
CITY OF LAKEWOOD, OH, ET AL, )  
)  
Defendants. )

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DEPOSITION OF EDWARD FITZGERALD  
WEDNESDAY, NOVEMBER 10, 2010  
- - - - -

Deposition of EDWARD FITZGERALD, called by the  
Defendants for cross-examination under the Federal  
Rules of Civil Procedure, taken before me, the  
undersigned, Jennifer L. Bowen, Notary Public in and  
for the State of Ohio, at the Lakewood Mayor's Court,  
12650 Detroit Avenue, Lakewood, Ohio, 44107, commencing  
at 10:15 a.m., the day and date above set forth.

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1 APPEARANCES:

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On Behalf of the Plaintiff:

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ALSO PRESENT:

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EDWARD FITZGERALD

called by the Defendants for examination under the Federal Rules of Civil Procedure, after having been first duly sworn, as hereinafter certified, was examined and testified as follows:

EXAMINATION

BY MR. HABER:

Q Sir, would you please state your full name for the record and spell your last name.

A Edward F. Fitzgerald, F-i-t-z-g-e-r-a-l-d.

Q Mr. Fitzgerald, my name is Rich Haber. You and I met moments ago. I'm an attorney representing Hidden Village in a lawsuit filed against the City of Lakewood and others, including yourself.

Have you ever been deposed before?

A Once. Yes.

Q What was that matter regarding generally?

A It had to do with a suit against a business in the City of Lakewood.

Q Involving something to do with the building code?

A Yes.

Q Let me explain a few ground rules for the deposition. As you can see while I speak the court reporter is taking everything down. In turn, she's

1 going to record all of the answers that you give to my  
2 questions. So you need to give me verbal responses to  
3 my questions so that she can accurately record your  
4 testimony. Is that understood?

5 A Yes.

6 Q If at any time I ask you a question that you  
7 don't understand, ask me to restate the question so  
8 that you do understand it. Okay?

9 A Yes, sir.

10 Q If you answer my question, I'm going to assume  
11 that you understood the question that I was asking.  
12 Is that fair?

13 A Correct.

14 Q If at any time during the course of the  
15 deposition you need to take a break, you want to speak  
16 with counsel, get a cup of coffee, just let me know  
17 and I will be happy to let you take that break. Okay?

18 A Okay.

19 Q If at any time you don't remember something when  
20 I'm asking you a question and you later remember, feel  
21 free to chime in and supplement your prior testimony  
22 so we can make sure your testimony is completely  
23 accurate. Okay?

24 A Okay.

25 Q Please state your home address for the record.

1 A 35064 Sullivan Drive, North Ridgeville, Ohio  
2 44039.

3 Q Are you currently employed?

4 A I'm working part-time for a local community.  
5 Yes.

6 Q Which community?

7 A Brooklyn.

8 Q What do you do for Brooklyn?

9 A Building inspector.

10 Q How long have you been a part-time building  
11 inspector?

12 A June of this year.

13 Q How many hours a week do you work there?

14 A Eight hours.

15 Q Do you do anything else?

16 A No.

17 Q Prior to June of 2010, where were you employed?

18 A City of Lakewood.

19 Q In what capacity?

20 A I was the project administrator for "New"  
21 Lakewood.

22 Q How long did you hold that position?

23 A Five years.

24 Q Prior to that, what position did you hold?

25 A Assistant building commissioner.

1 Q How long did you hold that position?

2 A I think it was around two years.

3 Q All told, how long were you employed by the City  
4 of Lakewood?

5 A 26 years.

6 Q Starting at the beginning, tell me the various  
7 positions you held with the City of Lakewood.

8 A I was building inspector. Then I was the  
9 assistant building commissioner and project  
10 administrator. And I was also the acting building  
11 commissioner.

12 Q When were you the acting building commissioner?

13 A Let's see. '07 and '08, I believe.

14 Q Can you tell me what the project administrator  
15 for the City of Lakewood entails?

16 A Basically the administrator for the Division of  
17 Housing & Building.

18 Q What does that mean, administrator for the  
19 Division of Housing?

20 A I did the budget and all the -- it's been so  
21 long. All the administrative paperwork for the  
22 department.

23 Q If I understand correctly, you held that  
24 position from 2005 to June of 2010?

25 A No.

1 Q When I was asking you what position you had in  
2 June of 2010 before you left the City of Lakewood you  
3 told me that you were the project administrator.

4 A No. Actually, I retired from the city  
5 March 1, 2010.

6 Q At the time you retired just prior to  
7 retirement, what position did you hold?

8 A I was project administrator and acting building  
9 commissioner.

10 Q Were you the project administrator for the  
11 preceding five years?

12 A Correct.

13 Q And you were the acting building commissioner  
14 for the preceding approximately two years or three  
15 years?

16 A Two years. Yes.

17 Q Prior to being the acting building commissioner,  
18 were you the assistant building commissioner?

19 A I was the project administrator at the time.

20 Q It looks like you were the project administrator  
21 and the acting building commissioner running  
22 concurrently. Correct?

23 A Correct.

24 Q When were you the assistant building  
25 commissioner? If you go back five years then prior to

1 that you were the assistant?

2 A Right.

3 Q How long were you the assistant building  
4 commissioner?

5 A I think I said two years.

6 Q You did say two years. Back then to  
7 approximately 2003 and before that you were a building  
8 inspector?

9 A Correct.

10 Q As the acting building commissioner, what were  
11 your responsibilities?

12 A Interpretation of the building codes and the  
13 enforcement of the codes.

14 Q Does that have anything to do with the zoning  
15 codes?

16 A Yes, it does.

17 Q Are the zoning codes found within the building  
18 codes or is it a separate code?

19 A It's a separate code.

20 Q Did Mr. Barrett report directly to you?

21 A Yes.

22 Q Both when you were the assistant building  
23 commissioner and acting building commissioner?

24 A He had retired. That is why I become the acting  
25 building commissioner.

1 Q When did Mr. Barrett retire, sometime in 2007?

2 A Yes.

3 Q Before he retired, did he report to you?

4 A Yes.

5 Q To whom did you report as the assistant building  
6 commissioner?

7 A As the assistant building commissioner at that  
8 time I reported to the assistant safety director for  
9 the Division of Housing & Building.

10 Q Who was that?

11 A Mr. John Gallagher.

12 Q You said assistant safety director?

13 A Right. For the Division of Housing & Building.

14 Q So at all times from 2003 until the retirement  
15 of Mr. Barrett, he was somebody who reported directly  
16 to you?

17 A Yes.

18 Q As the acting building commissioner, to whom did  
19 you report?

20 A To the Mayor.

21 Q From 2003 through 2007 or at least 2004 to 2007,  
22 the person to whom you would have reported ultimately  
23 was Mayor George?

24 A Correct.

25 Q During the course of your employment with the

1 City of Lakewood, had you received any training with  
2 respect to Fair Housing Laws?

3 A I can't remember. I would say yes, I did. But  
4 I can't remember when.

5 Q Can you remember anything about the training  
6 that you may have received?

7 A No.

8 Q Do you have an understanding as to what the Fair  
9 Housing Laws require?

10 A I would say no, I don't.

11 Q With the understanding you are not going to  
12 remember the exact date, but, ballpark, when did you  
13 first learn about the Youth Re-entry Program's desire  
14 to relocate to the City of Lakewood?

15 A 2005, 2006.

16 Q To give you some context, there was a meeting  
17 held February 14, 2006. I will show you what has  
18 previously been marked as Exhibit 112, which is a list  
19 of attendees of the meeting as well as some notes that  
20 follow. Do you have a recollection of that meeting?

21 A Yeah. I remember the meeting.

22 Q With that timing in mind that that meeting was  
23 February 14, 2006, when in relation to that meeting  
24 did you learn about the Youth Re-entry Program's  
25 desire to relocate to the City of Lakewood?

1 A I can't give you a date.

2 Q Obviously sometime before this meeting?

3 A I would have to say yes.

4 Q Do you know what you knew about the Youth  
5 Re-entry Program before you attended this meeting?

6 A Absolutely nothing.

7 Q Had you personally received any information or  
8 material regarding the nature of the program?

9 A I remember that there was a flyer describing the  
10 program. That is about it.

11 Q By flyer, you mean something circulated by  
12 E-mail?

13 A No. I think it was something that was sent by  
14 the ministry or whatever it is.

15 Q Let me show you Exhibit 14 and 15. Exhibit 14  
16 is an E-mail that references information regarding the  
17 Youth Re-entry Program. Exhibit 15 is the document  
18 that would have been attached to one of those E-mails.

19 Do you remember seeing either of those  
20 documents, 14 or 15?

21 A Well, yeah. I was obviously named in it, so I  
22 must have seen it. Yes. This is what I was referring  
23 to as far as what was supplied to us.

24 Q By "this," you're referring to Exhibit 15?

25 A Correct.

1 Q Now, it appears this document, Exhibit 15, would  
2 have been circulated it looks like late January, early  
3 February. Did you read it before you went to the  
4 meeting?

5 A The document?

6 Q Yes. Did you read this Exhibit 15?

7 A Probably.

8 Q Well, did you form any conclusions upon reading  
9 that document as to whether the Youth Re-entry Program  
10 violated the particular zoning at the Hidden Village  
11 location?

12 A Probably.

13 Q But you don't remember?

14 A I don't remember. It was something that was  
15 thrown at you. You have to review it, and look at  
16 ordinances and do all that.

17 Q Do you that or did you delegate that to someone?

18 A That was delegated to Mr. Barrett.

19 Q Ultimately at that meeting, Exhibit 112, the  
20 notes reflect -- let me take Exhibit 14 back. Exhibit  
21 112 were notes that were prepared by Dottie Buckon.  
22 And it indicates down at the bottom of the second page  
23 that Charlie Barrett communicated to people in  
24 attendance at that meeting the belief that the Youth  
25 Re-entry Program's use would violate applicable zoning

1 codes. Do you see that?

2 A Yes.

3 Q Prior to that being communicated by Mr. Barrett  
4 in that meeting, was that information communicated to  
5 you by Mr. Barrett or anybody else?

6 A No.

7 Q Did you know that that was ultimately  
8 Mr. Barrett's conclusion before he expressed that at  
9 the meeting?

10 A No.

11 Q Did you have any meetings with anybody at the  
12 City of Lakewood prior to February 14, 2006 to discuss  
13 the Youth Re-entry Program and concerns that the city  
14 may have?

15 A I don't remember any previous meetings.

16 Q Did you ever speak with Edward Favre about his  
17 concerns regarding the program?

18 A Possibly.

19 Q If you possibly discussed with Edward Favre his  
20 concerns regarding the Youth Re-entry Program, what do  
21 you recall him telling you?

22 A I couldn't tell you what he told me.

23 Q Did he, to your knowledge, express concerns  
24 prior to February 14, 2006 about the program?

25 A Not that I'm aware of. No.

1 Q Mr. Barrett has testified that Edward Favre  
2 followed him prior to this meeting that he had two  
3 concerns. The first one was that there were juvenile  
4 offenders within the program. Did he ever express  
5 that to you?

6 A Not that I'm aware of.

7 Q Did Mr. Barrett communicate to you that  
8 Mr. Favre had told him that?

9 A No.

10 Q Mr. Barrett also testified that Mr. Favre told  
11 him there were a lot of blacks in the program.

12 MR. CATHCART: Objection.

13 Q Did Mr. Favre ever tell you that?

14 MR. CATHCART: Objection.

15 A No.

16 Q Did Mr. Barrett ever tell you that Mr. Favre had  
17 told him that?

18 A No.

19 Q At the point in time that this meeting occurred  
20 having not been advised that Mr. Barrett concluded  
21 that the use of Hidden Village by YRP would violate  
22 the zoning, had you independently formed any opinion  
23 before that meeting?

24 A No.

25 Q After that meeting, February 14, 2006, did you

1 have meetings with any member of your administration  
2 regarding the opinions of the administration that the  
3 Youth Re-entry Program's use of Hidden Village  
4 violated the applicable zoning?

5 A I'm sure that I discussed it with Mr. Barrett at  
6 the time. There is a reasoning of his interpretation  
7 of the zoning code.

8 Q Would you have discussed it immediately  
9 following that meeting having heard for the first time  
10 at that meeting that that was his opinion?

11 A Probably.

12 Q Is it unusual for somebody who works for you to  
13 express an opinion like this without first consulting  
14 you?

15 A It was his job to interpret the building zoning  
16 codes as the building commissioner.

17 Q Did he explain to you after that meeting why he  
18 believed it was a violation of the applicable building  
19 code?

20 A I believe he did when he reviewed that other  
21 exhibit that you showed me that was attached to that  
22 E-mail.

23 Q Exhibit 15?

24 A Through reviewing that and then comparing it to  
25 the zoning code, that is where he formed his opinion

1 that it was a violation.

2 Q Did he tell you whether he consulted with anyone  
3 from the legal department in the City of Lakewood  
4 before reaching that conclusion?

5 A Knowing Mr. Barrett, yes, he did.

6 Q That he told you that or that he consulted?

7 A No, he never told me. I'm sorry.

8 Q You just assume that he consulted with somebody?

9 A Correct.

10 Q When you say "knowing him," why do you say that  
11 he consulted with someone in the legal department?

12 A Mr. Barrett was very thorough on reviewing the  
13 code and getting the proper and correct interpretation  
14 of it.

15 Q Now, after that meeting did you have, to your  
16 knowledge and recollection, any conversations  
17 regarding the Youth Re-entry Program before they moved  
18 to the City of Lakewood after the February 14th  
19 meeting?

20 A Could you ask the question again, please?

21 Q Just so you understand, I'm generally speaking  
22 going chronologically. What I'm asking you is did you  
23 have any conversations from February 14, 2006 with  
24 anybody in the administration, but before YRP actually  
25 moved into the city? To give you some context, it's

1 about two months later. So for a period of two months  
2 before they moved in, did you have any discussions  
3 other than your conversation with Mr. Barrett?

4 A I might have, but I couldn't be positive.

5 Q You have no recollection of saying anything?

6 A Correct.

7 MR. CATHCART: In reference to the  
8 flyer that he saw, I believe it is this  
9 one.

10 MR. HABER: Okay.

11 MR. CATHCART: It is not the  
12 information you showed him.

13 MR. HABER: Bates stamped 645?

14 MR. CATHCART: Yes.

15 Q Did you see Exhibit 15 as well in addition to  
16 that flyer?

17 A If it was attached to the E-mail then yes. I  
18 would have to say I saw it.

19 Q Showing you what has been marked as Exhibit 1  
20 previously. It's an E-mail from Edward Favre  
21 regarding the Youth Re-entry Program moving to the  
22 City of Lakewood. And you appear to be a recipient to  
23 that E-mail. Correct?

24 A Okay.

25 Q Do you remember receiving that E-mail?

1 A I was named on it. Yes, I received it.

2 Q But do you remember receiving it?

3 A Yes, I remember it.

4 Q Did you have any meetings regarding Hidden  
5 Village and the Youth Re-entry Program with these  
6 individuals in or around April 13, 2006 regarding the  
7 fact that YRP moved into the city?

8 A Probably yes.

9 Q Do you have any recollection of what was  
10 discussed at those meetings?

11 A I believe the discussion was somewhat about the  
12 fact that they went ahead and moved in, and they  
13 didn't notify the city.

14 Q Was there discussion about getting them to leave  
15 the city now that they have moved in?

16 A Not that I recall.

17 Q Do you ever recall any discussions about the  
18 administration's desire for the Youth Re-entry Program  
19 to leave the City of Lakewood?

20 A Not that I recall.

21 Q As we sit here today, nobody told you that they  
22 wanted the Youth Re-entry Program to leave the City of  
23 Lakewood?

24 A Not that I recall.

25 Q Did anybody ever tell you that they wanted the

1 Youth Re-entry Program to move to another location in  
2 the City of Lakewood?

3 A I do recall some conversation about relocating  
4 within the city.

5 Q When do you recall those conversations taking  
6 place?

7 A I would have to say sometime after the fact that  
8 they moved in.

9 Q But sometime relatively near when they moved in?

10 A I don't remember.

11 Q Exhibit 2 is an E-mail that Mayor George sent  
12 out on April 13, 2006. While you're not listed up  
13 here as a recipient, please note that there are dot,  
14 dot, dots after "Recipient" and because of the manner  
15 it is produced, I don't know whether you would have  
16 received this E-mail or not. I would like you to read  
17 it and tell me if you remember receiving it.

18 Mr. Corrigan has helped us out. Apparently a  
19 different version of the same E-mail shows you as a  
20 recipient. Independent of that, do you have a  
21 recollection of having received it?

22 A Yes.

23 Q In this, Mayor George indicates that the city's  
24 zoning codes will be strictly enforced. Did he give  
25 you instructions to take action to enforce the zoning

1 code?

2 A Not me particularly. No.

3 Q Do you know who you would have given those  
4 instructions to?

5 A The building commissioner.

6 Q That would have been Mr. Barrett?

7 A Correct.

8 Q Who reported to you?

9 A Yes.

10 Q By the way, I should have asked this when you  
11 were telling me the various positions, you said you  
12 were project administrator of "New" Lakewood. What is  
13 that, "New" Lakewood?

14 A Can I --

15 MR. CORRIGAN: Go ahead and explain  
16 it.

17 A It was a position that Mr. Corrigan came up with  
18 and gave me that title, which was very hard to  
19 understand. And I don't think anybody still  
20 understands it.

21 Q Notwithstanding the title, what was the purpose  
22 of this new position, "New" Lakewood?

23 A The position of being the administrator for the  
24 building department.

25 Q Why did they call it "New" Lakewood?

1           A     Because it was a new beginning and we had a lot  
2           of construction going on. And we were going to renew  
3           the city as far as we had new schools going, the new  
4           Y. There was so many projects going on across the  
5           street here, the new townhouses and all that.

6           Q     If I can understand, essentially what was going  
7           on was that there was a concerted effort to revitalize  
8           the City of Lakewood, to revitalize and redevelop the  
9           City of Lakewood?

10          A     Right.

11          Q     And in furtherance of that, Mr. Corrigan came up  
12          with the snazzy new title to portray the image that  
13          you are now in charge of this revitalization project  
14          as opposed to simply the building commissioner?

15          A     Correct.

16          Q     But in truth, what it was was essentially the  
17          building commissioner position just with a really  
18          snazzy new name?

19          A     No. It was the administrative -- commissioner  
20          was one entity. And I basically took away all his  
21          administrative duties so he could concentrate on  
22          zoning codes. And I handled all the administration.  
23          So that's what it was.

24          Q     So they kind of split the position?

25          A     Correct.

1 Q And you just got the really long title?

2 A Right. And I still have a lot of business  
3 cards.

4 Q As the building commissioner or the project  
5 administrator for "New" Lakewood, or in any role in  
6 which you served as the assistant or acting building  
7 commissioner, have you ever been called upon to engage  
8 in joint departmental inspections of properties?

9 A Yes.

10 Q Tell me the circumstances under which a joint  
11 departmental inspection of properties would be done.

12 A We would do joint departmental inspections if  
13 there were issues at a property that did not fall  
14 under the realm of building codes; health department  
15 issues, rodents, bug infestation, fire codes.  
16 Basically issues that building department could not  
17 enforce that we would have to have other departments  
18 come in jointly. And if there was a violation, they  
19 could cite it.

20 Q Would these ordinarily be triggered by a request  
21 from another department or would they be triggered by  
22 a request from the building department?

23 A Both.

24 Q Those type of joint departmental inspections,  
25 are they always triggered by some problem associated

1 with the property, whether it be health, fire or  
2 other?

3 A Like a complaint?

4 Q Yes. Tenant complaints or some other issues.  
5 You don't randomly do joint departmental --

6 A Right. If a call came in about an item or items  
7 then we would dissect what it is. And if there were  
8 issues that they were complaining about that the  
9 building department could not handle, we would call in  
10 the department that could handle the situation.

11 Q On May 22, 2007 there was a joint departmental  
12 inspection conducted on the Hidden Village property.  
13 Were you aware of that inspection?

14 A Yes.

15 Q What triggered it?

16 A I would have to say a complaint.

17 Q Complaint from a tenant?

18 A That I don't know.

19 Q Do you know whether it was a complaint from  
20 anybody associated with Hidden Village?

21 A That I don't know.

22 Q Have you ever seen the complaint?

23 A I couldn't tell you.

24 Q This wasn't an ordinary random  
25 we-are-going-to-do-a-joint-departmental inspection,

1           you believe it would have been triggered by a  
2           complaint?

3           A     Possibly.  Yes.

4           Q     Do you know whether the complaint was related to  
5           the issues of health?

6           A     No, I don't.

7           Q     Do you know whether it was related to issues of  
8           fire?

9           A     No.

10          Q     Was the joint departmental inspection in this  
11          case triggered by Edward Favre?

12          A     I don't remember how that happened.

13          Q     If you still worked for the City of Lakewood and  
14          you wanted to figure out what triggered that  
15          inspection, where would you look?

16          A     I guess I would look to the department heads of  
17          all of the departments and say, "Why are we doing this  
18          inspection?"

19          Q     So you would go to the fire department, maybe  
20          either the Fire Marshal or the Fire Chief and ask him.  
21          Right?

22          A     Right.

23          Q     You would go to the health department, which was  
24          ultimately supervised by Dottie Buckon, who was  
25          Director of the Division of Human Services.  Right?

1 A Right.

2 Q Or you would go to Mr. Barcep (sic) if he was  
3 the one that was doing the inspection, even though he  
4 is not the head of the department. Right?

5 A Correct.

6 Q You would go to who in the police department?

7 A The chief.

8 Q Chief Malley?

9 A Yes.

10 Q Going back then to April 2006, May 2006  
11 timeframe, there was a letter sent. Exhibit D was a  
12 letter authored by Mr. Barrett to Michael Priore with  
13 respect to the city's position that the Youth Re-entry  
14 Program violated the zoning for that particular  
15 property. Correct?

16 A Correct.

17 Q Did you see that letter before it was sent?

18 A I don't remember if I did or not.

19 Q Would you ordinarily review something like that  
20 before it went out to a property owner?

21 A No.

22 Q Now, ultimately in the City of Lakewood who has  
23 ultimate authority to interpret the zoning code for  
24 the City of Lakewood? It's the Planning Commission.  
25 Right?

1 A No. It would be the Zoning Board.

2 Q In this particular case there was an appeal  
3 taken to the Planning Commission. Did you participate  
4 in the Planning Commission hearings?

5 A No, I did not.

6 Q Were you in attendance at the Planning  
7 Commission hearings?

8 A No.

9 Q If the Planning Commission in your practice  
10 sustains an appeal and concludes that the particular  
11 use proposed for the property is acceptable under the  
12 zoning codes in the City of Lakewood, is that  
13 ordinarily the end of the inquire as it relates to  
14 your portion of the zoning?

15 MR. CATHCART: Objection. Go ahead.

16 A I would say no.

17 Q What else would you then do with respect to  
18 enforcement of zoning at Hidden Village, for example,  
19 after the Planning Commission has indicated that the  
20 use of the property is appropriate?

21 A I would confer with Law to see if it can be  
22 appealed.

23 Q If ultimately the decision made not to appeal  
24 it, do you then live by the ruling of the Planning  
25 Commission?

1 MR. CATHCART: Objection. Go ahead.

2 A You would have to accept the Planning  
3 Commission's decision.

4 Q On July 6, 2010 the Planning Commission issued a  
5 determination concluding that the zoning or that the  
6 use of the property was consistent with the applicable  
7 zoning that has been previously marked as Exhibit 26.  
8 Did you ever receive this letter?

9 A Yes.

10 Q Having received this letter, and I don't want to  
11 know what you talked about at this juncture, did you  
12 talk with the legal department at the receipt of this  
13 letter with regard to whether you could appeal this  
14 decision?

15 A I think it was discussed.

16 Q And, ultimately, without regard to why, a  
17 decision was made not to appeal the decision.  
18 Correct?

19 A Correct.

20 Q Once that decision is made not to appeal the  
21 decision from your perspective in your role with the  
22 City of Lakewood, is the issue of the use of that  
23 property now over with? In other words, it's now  
24 acceptable and you move forward enforcing the zoning  
25 codes?

1 A Correct.

2 Q As the Planning Commission has dictated?

3 A Correct.

4 Q In this case as of July 6, 2006, once a decision  
5 was made by the Planning Commission and a decision was  
6 made not to appeal it from your perspective your job  
7 was to accept the decision of the Planning Commission  
8 and move forward?

9 MR. CATHCART: Objection.

10 A Yes.

11 Q Did you ever attempt to come up with some other  
12 way to get the Youth Re-entry Program out of the City  
13 of Lakewood?

14 A Not that I'm aware.

15 Q Did Mayor George ever ask you or any other  
16 administrative heads in the City of Lakewood to come  
17 up with ways to get the Youth Re-entry Program out of  
18 the City of Lakewood?

19 A Not that I recall.

20 Q Did you ever propose some alternative zoning  
21 issues that might help get the Youth Re-entry Program  
22 out of the City of Lakewood?

23 MR. CATHCART: Objection. Go ahead.

24 A I was looking at the zoning and the minutes of  
25 the meeting. Myself looking at it, I felt we should

1 have went as an accessory use, not a principle use.

2 Q What does that mean?

3 A In the zoning code you have for each zoning  
4 district a principle use and an accessory use. In my  
5 reading it, I felt that they should have been taken to  
6 the Planning Commission as an accessory use, not a  
7 principle use.

8 Q But they weren't. Did you propose later on that  
9 that might be a way to approach the Youth Re-entry  
10 Program?

11 A I floated the idea to the law department and  
12 that was the end of it.

13 Q Do you remember how long after this hearing you  
14 floated it to the law department?

15 A I couldn't tell you.

16 Q Did Mayor George tell you at any point in time  
17 he wanted you or any other administrative heads with  
18 the city to come up with creative approaches to get  
19 the Youth Re-entry Program out of the City of  
20 Lakewood?

21 A Not that I recall.

22 Q Do you remember attending a meeting in January  
23 of 2007 where that issue was discussed?

24 A No.

25 Q Were you ever at the meeting where Ed Favre

1 wanted to get the Youth Re-entry Program out of the  
2 City of Lakewood?

3 A No.

4 Q Were you ever at a meeting where anybody from  
5 the police department told you that there was an  
6 increase in crime around the Hidden Village property  
7 that they attributed to the Youth Re-entry Program?

8 A I had heard there was an increase. But there  
9 was nothing attributing it to anything.

10 Q Who did you hear there was an increase from?

11 A Just the word around. No individual.

12 Q Let me show you Exhibit 64.

13 MR. HABER: Which is Bates stamped  
14 217, Tom.

15 Q Exhibit 64 is an E-mail that you were not a  
16 recipient of, but I want to draw your attention to the  
17 E-mail above from Ed Favre. This is in November of  
18 2006. And it says, "That all ML," meaning, Mary  
19 Louise Madigan, "wants to make nice to keep them here.  
20 I'm not interested in being a part of that and would  
21 prefer not to be involved in any such meeting."

22 Did Ed Favre ever tell you that he wasn't  
23 interested in being part of any meeting that would  
24 keep the Youth Re-entry Program in Lakewood?

25 A No, not that I remember.

1 Q Down below he said, "Is Tom Corrigan going back  
2 at the Planning Commission angle?" Had you had any  
3 conversations as of November 8, 2006 with Ed Favre  
4 regarding any proposed Planning Commission angle?

5 A No, I don't recall.

6 Q Do you keep any files regarding Hidden Village?  
7 Do you have any personal files?

8 A No.

9 Q Let me show you Exhibit 72, Exhibit 70 and  
10 Exhibit 71 are notes of a meeting that occurred on  
11 January 18, 2007. And I will represent to you that  
12 notwithstanding the date of January 18, 2006 on  
13 Exhibit 70 that those notes in 70 reflect the same  
14 meeting as Exhibit 71. They are just misdated. Okay?

15 A Okay.

16 Q If you look at Exhibit 70, you are listed as an  
17 attendee of that meeting in Edward Favre's notes. Do  
18 you see that?

19 A Yes.

20 Q In that there are discussions regarding, No. 1,  
21 application, Building & Housing ruling. That it was  
22 not residential rather a program, institutional use.

23 No. 2, the Planning Commission ruled -- I can't  
24 tell what that says. Not a program. YRP had told  
25 Buckon and Jordan it was transitional, et cetera. Do

1           you remember that meeting?

2           A       Not that I know.

3                           MR. HABER:   It says B. Corrigan.

4                           MR. CORRIGAN:  This happened before.

5                           It's crazy when I don't remember something  
6                           and then find out there's a good reason.

7           Q       Do you remember meeting with Mayor George, Ed  
8           Favre, Chief Malley, Captain Hassing, Captain Ciresi,  
9           Brian Corrigan, Charlie Barrett, yourself, Tom Jordan,  
10          I don't know who the other person is,  
11          P.   Bennett or --

12                           MR. CATHCART:  It is D. Bennett.

13          Q       -- and Dottie Buckon were present.  Do you  
14          remember that meeting?

15          A       I am sure we met, but I don't remember the  
16          meeting.

17          Q       You don't remember anything about it?

18          A       No.

19          Q       Do you remember -- if you look at Exhibit 71,  
20          there were questions about zoning issues, there were  
21          discussions of a spike in violent crime and there were  
22          questions posed.  Can we go back to Planning  
23          Commission, can we appeal decisions of Planning  
24          Commission, nuisance laws, and then something with  
25          respect to fire safety.  Do you see that?

1 A Yes.

2 Q Do you remember any of those discussions?

3 A I don't remember the specifics of the meeting to  
4 answer your question.

5 Q But somehow what appears to come out of that  
6 meeting was an idea that you came up with, Exhibit 72,  
7 where Ed Favre indicated to Mayor George that you  
8 think you have a new untried zoning angle for our  
9 problem. "He would like to run it by us and law in  
10 time for the next meeting."

11 A I would have to refer back to my earlier  
12 testimony of the accessory use.

13 Q So that would have been the idea that you came  
14 up with?

15 A Yes.

16 Q You would have come up with it sometime in  
17 January of 2007?

18 A I guess.

19 Q As it relates to the accessory use, was it your  
20 opinion that if you approached planning at the time  
21 that this was an accessory use that it would have  
22 prohibited the Youth Re-entry Program from using that  
23 facility?

24 A I was looking at it -- as I said, looking at the  
25 minutes, reviewing the zoning code and then I put it

1 by the law department.

2 Q But I'm trying to understand was the new angle  
3 that you were coming up with an angle that would have  
4 resulted in a conclusion that the Youth Re-entry  
5 Program was not permitted to use the Hidden Village  
6 property?

7 A I don't know.

8 Q Why were you trying to come up with a new angle  
9 after the Planning Commission had ruled five months  
10 earlier?

11 MR. CATHCART: Objection.

12 A Since I wasn't the code interpreter, the  
13 official interpreter of it, I was just looking at it  
14 as a case to look at it.

15 Q Do you know why anybody cared at this point in  
16 January of 2007?

17 A Don't know.

18 Q The idea of enforcing zoning codes is not  
19 something new to you, that's part of your job,  
20 enforcing zoning codes. Right?

21 A Right.

22 Q If the Planning Commission disagreed with your  
23 interpretation of the zoning code, there is nothing  
24 wrong with that, is there?

25 A No.

1 Q Once the Planning Commission decides that your  
2 interpretation or Charlie Barrett's interpretation of  
3 the zoning code is wrong, there's no reason to come up  
4 with new angles to get somebody out of that building,  
5 is there?

6 MR. CATHCART: Objection. Go ahead.

7 A I don't understand when you use the term  
8 "angle." I know it is in this memo.

9 Q Let me be honest with you, I will tell you  
10 exactly what I think was going on. I think Mayor  
11 George wanted to try and get the Youth Re-entry  
12 Program to leave the City of Lakewood. By the way,  
13 that is not a guess on my part, because one month  
14 after the E-mail he sent a letter to the Youth  
15 Re-entry Program saying, "I want you to leave the City  
16 of Lakewood." I believe Mayor George said to you,  
17 "What can you come up with that will give me some  
18 legal key to get them out of the City of Lakewood?"

19 My question to you is, is that what happened?

20 MR. CATHCART: Objection.

21 A No. Not that I remember.

22 Q You don't seem to remember anything now about  
23 this conversation.

24 MR. CATHCART: He testified that he  
25 didn't remember what you asked him.

1 Q No. You said not that I remember. You don't  
2 remember the meeting on January 18th, do you?

3 A If my name was on there then yes, I was there.

4 Q That wasn't my question. Do you remember  
5 anything about --

6 A No, I do not remember.

7 Q If your name was on it, you were there. You  
8 just don't recall what transpired?

9 A That's correct.

10 Q Because you don't recall what transpired, it is  
11 possible that Mayor George told the attendees at this  
12 meeting that he would like to come up with a legal  
13 reason to force the Youth Re-entry Program out of the  
14 City of Lakewood. Right?

15 MR. CATHCART: Objection. Go ahead.

16 Q It is possible he came up with that?

17 MR. CATHCART: Objection. Go ahead.

18 A It could be a possibility.

19 Q For whatever reason, whatever was said on  
20 January 18, 2007, you apparently communicated as of  
21 11:14 in the morning on January 19th that you  
22 apparently have a new untried zoning angle for our  
23 problem.

24 MR. CATHCART: Objection.

25 Q Do you know what that problem was?

1 A No.

2 Q The subject line is "Hidden Village." Did Ed  
3 Favre tell you that Hidden Village was a problem?

4 A No, he did not.

5 Q You didn't know that Hidden Village was a  
6 problem at all?

7 A Building and Fire never had a problem with it.

8 Q In fact, the building department never had a  
9 problem with the Hidden Village property because it  
10 was well maintained. Right?

11 A I wouldn't go that far.

12 Q How far would you go?

13 A It wasn't a source where we were extending our  
14 services there.

15 Q At any point in the years in 2007, 2006, you  
16 weren't extending your services over to the Hidden  
17 Village property?

18 A I would have to look at the files.

19 Q Did you know that Hidden Village had recently  
20 been renovated?

21 A Yes.

22 Q And having been renovated it was inspected upon  
23 completion of the renovations?

24 A Correct.

25 Q It passed all those inspections immediately

1 following the renovations?

2 A Yes.

3 - - - - -

4 (Defendants' Deposition Exhibit 73  
5 was marked for identification.)

6 - - - - -

7 Q Exhibit 73, I don't think this one has been  
8 marked before. This was not an E-mail you were a  
9 recipient of. It indicates that Ed Favre is asking  
10 Mayor George to give him sometime for followup on the  
11 Hidden Village meeting and another time to get  
12 together with you and Brian Corrigan regarding your  
13 zoning idea.

14 Did you ever get together with Ed Favre, Mayor  
15 George and Brian Corrigan regarding your zoning idea?

16 A I don't remember if we did or didn't.

17 Q Do you have a recollection as to what the  
18 opinion was regarding your zoning idea?

19 MR. CATHCART: Objection. Can you  
20 clarify, whose opinion?

21 MR. HABER: The administration's  
22 opinion. If you want to check and see if  
23 somebody from Legal expressed an opinion to  
24 him, that's fine.

25 MR. CATHCART: To the extent that it

1                   wasn't from the legal department, you can  
2                   go ahead and say.

3           A       Yeah. Law said no. They were not going to run  
4           with it, not go with it.

5                   MR. CATHCART: That's enough.

6           Q       Exhibit 74. Exhibit 74 is an E-mail dated  
7           January 24, 2007. Then again follows up with  
8           scheduling a meeting so you can float your idea and,  
9           in fact, it even goes as far to say that you want to  
10          have a meeting to float your idea. Do you remember  
11          any discussions like this with Ed Favre?

12          A       Again, I talked to Law about it and it was dead  
13          in the water there.

14          Q       At some point in time I'm sure you did talk to  
15          the legal department. This is suggesting that you  
16          were having multiple conversations -- to me it  
17          suggested you are having multiple conversations with  
18          Ed Favre wanting to float your idea to the  
19          administration about a new zoning angle.

20                   As we sit here today, do you have a recollection  
21          of any conversations with Ed Favre regarding floating  
22          some new angle?

23          A       I might have. I might not have. I can't tell  
24          you for sure.

25          Q       I realize this was back in 2007. Has something

1 happened since 2007 that has affected your ability to  
2 recall?

3 A No.

4 Q It's just the passage of time that inspires you  
5 not to remember anything?

6 A It's the passage of time. I can't answer for  
7 what Ed Favre writes in his memos.

8 Q I'm asking if you recall having discussions with  
9 Ed Favre that might have prompted these E-mails?

10 A I don't recall.

11 Q Do you remember having a meeting on January 30,  
12 2007 as requested in that E-mail?

13 A No.

14 Q Did you ever review Mayor George's letter to the  
15 Youth Re-entry Program in February of 2007 requesting  
16 them to leave the City of Lakewood?

17 A No, I never reviewed it.

18 Q Did you know that one was sent?

19 A After the fact.

20 Q How did you become aware after the fact?

21 A I might have gotten a copy of it.

22 Q Do you know who you got a copy from?

23 A That I don't know.

24 Q Other than Mayor George's letter, has anybody  
25 communicated to you that they desired the Youth

1 Re-entry Program to leave the City of Lakewood?

2 A No.

3 Q After January 2007, did you have any further  
4 discussions with anyone from the administration  
5 regarding the Youth Re-entry Program? I'm using  
6 January 2007 because this is around the timeframe that  
7 this new zoning angle came out. After that, did you  
8 have any conversations?

9 A Possibly. I can't be specific.

10 Q Did you meet up with representatives from the  
11 Lutheran Ministry in May of 2007?

12 A No, I don't think I did.

13 Q Exhibit 80 is an E-mail string. The bottom  
14 E-mail appears to be an E-mail to you requesting that  
15 you join Mayor George.

16 A I probably was there then.

17 Q You have no recollection of that meeting either?

18 A No.

19 Q Showing you Exhibit 82, which are handwritten  
20 notes that appear to reflect you as an individual in  
21 attendance at the meeting. Does that help you refresh  
22 your memory if you attended?

23 A If my name was there, I was there.

24 Q As you sit here today, you have no recollection  
25 of what was discussed. Is that correct?

1 A No.

2 Q Do you remember during that meeting Mayor George  
3 asking the Youth Re-entry Program to leave the City of  
4 Lakewood?

5 A No.

6 Q That meeting in the Mayor's office was May 16,  
7 2007. Did you participate in any discussions  
8 following that meeting regarding planning a joint  
9 departmental inspection of the Hidden Village property  
10 that occurred six days later?

11 A As I recall, we were asked to assist Police,  
12 Fire and Health regarding that inspection.

13 Q Do you recall who that made request that you  
14 assist?

15 A It might have been the Fire Marshal.

16 Q But you don't recall?

17 A All I remember is we were advised to provide a  
18 building inspector to assist.

19 Q My question is, who advised you to provide a  
20 building inspector to assist?

21 A I believe it was the Fire Marshal.

22 Q Mr. Gilman?

23 A Yes.

24 Q Did Mr. Gilman tell you what triggered this  
25 inspection?

1 A No.

2 Q Do you know who it was that attended from the  
3 fire department for this inspection?

4 A It was Inspector Kulcsar.

5 Q How do you spell that?

6 A K-u-l-c-s-a-r.

7 Q Would you have given the direction to Inspector  
8 Kulcsar to assist in this joint inspection?

9 A Yes.

10 Q And to your recollection would that request for  
11 his involvement come after the meeting in the Mayor's  
12 office on May 16, 2007?

13 A Probably. Yes.

14 Q Sometime in the intervening six days?

15 A Yes.

16 Q Have you had any further requests from May 16,  
17 2007 from any department to participate in a joint  
18 departmental inspection of the Hidden Village  
19 property?

20 A Not that I am aware of.

21 Q At the time that that request came to you to  
22 assist in a joint departmental inspection, had you  
23 ever been advised that there was a spike in crime  
24 attributable to the Youth Re-entry Program?

25 A I was told there was a spike in crime, but not

1 necessarily due to the Youth Re-entry Program.

2 Q Has anybody ever told you up until today that  
3 the spike in crime in that area was actually  
4 attributable to the Youth Re-entry Program?

5 A No.

6 (Brief recess had.)

7 BY MR. HABER:

8 Q Mr. Fitzgerald, how many times have you been to  
9 the Hidden Village property while you worked for the  
10 City of Lakewood?

11 A I would have to say many times.

12 Q What were the purposes of your visits to the  
13 Hidden Village property?

14 A Well, complaint issues. And for the most part  
15 when they renovated I was the building inspector on  
16 that project.

17 Q After the renovation, by the way, what was your  
18 assessment of the renovations?

19 A The renovations were code-worthy. But I would  
20 have made them into single or two-bedroom apartments  
21 so they would work.

22 Q Instead of efficiencies?

23 A Correct.

24 Q That ultimately is the decision of the landlord?

25 A Yeah. That was just my opinion.

1 Q Since you were the building inspector on those  
2 renovations have you been back to the Hidden Village  
3 property?

4 A I don't believe I have.

5 Q Your prior visits for complaints would have been  
6 in years past when the diesel tech, for example, was  
7 at the facility?

8 A Yes.

9 Q Did you ever have any discussions with Fire  
10 Marshal Gilman regarding the institutional use of the  
11 property and how it relates to the fire code?

12 A I do recall he was calling it institutional use.  
13 And the fire code was specific on that type of use.

14 Q What did he say about the use of the property in  
15 that regard?

16 A It was Charlie Barrett's determination regarding  
17 the zoning of the use.

18 Q Did Charlie Barrett tell you that it was his  
19 opinion that it was not institutional use?

20 MR. CATHCART: Objection. What  
21 institutional use are we talking about now?

22 MR. HABER: I'm talking specifically  
23 about institutional use specifically  
24 suggested by Fire Marshal Gilman because  
25 that was his testimony.

1 MR. CATHCART: Was it under the fire  
2 code, zoning code, which one are we talking  
3 about?

4 MR. HABER: I think Mr. Barrett's  
5 opinion was that it was institutional use  
6 and Mr. Gilman's assessment wasn't going to  
7 fly. I am not sure there is a difference.

8 Q Did Mr. Barrett tell you that he did not believe  
9 this was an institutional use?

10 A I recall he did mention that in his opinion it  
11 was not an institutional use.

12 Q Did he tell you that he communicated to Fire  
13 Marshal Gilman that he did not believe it was an  
14 institutional use?

15 A I think he did. Yes.

16 Q Did you know that notwithstanding what Charlie  
17 Barrett had advised Fire Marshal Gilman and then Fire  
18 Marshal Gilman contacted the State Fire Marshal to  
19 inspect the property to determine whether it was  
20 institutional use?

21 A I was not aware of that.

22 Q I take it that you were not involved in that  
23 decision to contact the State Fire Marshal?

24 A No.

25 Q How many times have police accompanied you on a

1 building inspection?

2 A I can't give you a number. I know they have.

3 Q What would be the circumstances in which police  
4 would accompany you on a building inspection?

5 A If we had a complaint that there was some kind  
6 of illegal activity going on that would concern the  
7 police.

8 Q Anything else?

9 A If we felt that our inspector felt they were  
10 threatened.

11 Q Any other reasons?

12 A Just the fact that if an issue regarding police  
13 was in there realm that we would have that.

14 Q Are you aware that there was any allegation that  
15 there was criminal activity going on that would  
16 require the police presence during an inspection?

17 A I had heard there was drug activity.

18 Q Where did you hear that?

19 A Through the meetings.

20 Q Your meetings with the other administrators?

21 A I heard through the police chief that there was  
22 an increase in drug activity.

23 Q At Hidden Village?

24 A Not at Hidden Village, but in that area.

25 Q There was not a specific allegation of drug

1 activity at the Hidden Village property?

2 A No.

3 Q That would warrant police involvement in a  
4 building inspection, would it?

5 MR. CATHCART: Objection.

6 A Not that I am aware of.

7 Q Then you say that if there's been an allegation,  
8 criminal activity, you mean criminal activity at the  
9 property in question where you're going to be doing  
10 the inspection. Right?

11 A Correct.

12 Q Had there been an allegation that there was a  
13 safety issue for a building inspector to conduct an  
14 inspection at Hidden Village that you're aware of that  
15 would warrant the participation of the Lakewood Police  
16 Department?

17 A No.

18 MR. CATHCART: Objection. Go ahead.

19 Q Were you aware that on May 22nd that inspectors  
20 were asked to leave the premises and get a warrant  
21 before they returned?

22 A No.

23 Q Has that ever happened in an inspection that you  
24 were involved in?

25 A No.

1 Q If that did happen, would you go get a warrant  
2 and come back?

3 A Yes.

4 Q In preparation for your deposition today, what  
5 did you review documentwise? I know you spoke with  
6 your lawyer and I don't care about what you talked  
7 about.

8 A Documentwise, I didn't see any documents.

9 Q As you building inspector, are there a set of  
10 circumstances where you would inspect a portion of the  
11 building as opposed to the entire building?

12 A If there was a complaint in a specific area then  
13 that's all we would look at.

14 Q If you were there for reasons other than a  
15 complaint, would it be an overall inspection of the  
16 entire premises?

17 A I'm sorry. Say that again, please.

18 Q If it wasn't a complaint that triggered your  
19 inspection, would you then inspect the entire  
20 premises?

21 A Yes.

22 Q If it wasn't a complaint that triggered an  
23 inspection of the Hidden Village property, would you  
24 have inspected all four of the buildings; A, B, C and  
25 D?

1           A       Yes.

2                               MR. HABER:  I have nothing further.  
3                               Thank you for your time.  I appreciate you  
4                               coming in.

5                               MR. CATHCART:  You have an  
6                               opportunity to review the deposition for  
7                               errors or you may waive the right.  I  
8                               recommend you waive.

9                               THE WITNESS:  All right.

10                              - - - - -

11                              (Deposition concluded at 2:56 p.m.)

12                              (Signature waived.)

13                              - - - - -

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CERTIFICATE

