

Deposition of Gary L. Lieberman, taken September 29, 2010

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

HIDDEN VILLAGE, LLC)
)
Plaintiff,)
vs.)
)
CITY OF LAKEWOOD, OHIO,)
et al.,)
)
Defendants.)
)

- - - - -

THE DEPOSITION OF GARY L. LIEBERMAN
WEDNESDAY, SEPTEMBER 29, 2010

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The deposition of GARY L. LIEBERMAN, called by the Defendants for examination pursuant to the Federal Rules of Civil Procedure, taken before me, the undersigned, Barbara J. Sedlak, Registered Professional Reporter and Notary Public within and for the State of Ohio, taken at the offices of Mazanec, Raskin, Ryder & Keller, Cleveland, Ohio, commencing at 10:00 a.m., the day and date above set forth.

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1 GARY L. LIEBERMAN
2 of lawful age, called by the Defendants for
3 examination pursuant to the Federal Rules of Civil
4 Procedure, having been first duly sworn, as
5 hereinafter certified, was examined and testified
6 as follows:

7 EXAMINATION OF GARY L. LIEBERMAN

8 BY MR. CLIMER:

9 Q Could you state for the record your name,
10 please, sir?

11 A It's Gary Lieberman. L I E B E R M A N.

12 Q And, Mr. Lieberman, my name is Jim Climer. I
13 represent the City of Lakewood and a number of
14 other officials that have been sued in this
15 action. As I understand it, you are an
16 attorney admitted to practice here in the State
17 of Ohio, correct?

18 A Correct.

19 Q Sometimes being an attorney makes some of the
20 worst witnesses in the world. I'm going to ask
21 you to do a couple of things during the course
22 of the deposition here. If you don't hear or
23 understand a question that I ask you at any
24 time, please let me know and I'll be happy to
25 rephrase. Okay?

1 A That's fine.

2 Q You need to answer verbally. And if you would,
3 we need to try to refrain from talking over one
4 another, because it makes the court reporter a
5 little crazy. If at any point you need to take
6 a break, let us know.

7 A I understand.

8 Q What is your current business address?

9 A 30195 Chagrin Boulevard, Suite 300, Pepper
10 Pike, 44124.

11 Q What business is located there? What is your
12 business at that address?

13 A My business is a law practice.

14 Q What's the name of that law practice?

15 A It's Gary L. Lieberman, Co., L.P.A.

16 Q How long have you practiced law in the State of
17 Ohio?

18 A Since, I think, 1982.

19 Q You are also engaged in property ownership and
20 management, correct?

21 A Yes.

22 Q How many buildings do you own or are you a
23 participant in in the City of Lakewood? And by
24 a "participant in," I mean a shareholder in any
25 corporation or any other entity that may own

1 buildings in Lakewood.

2 A At what point in time? Today?

3 Q Let's take today, first of all.

4 A Three.

5 Q All right. And are those all apartment
6 buildings?

7 A Yes.

8 Q All right. What are they?

9 A Hidden Village, The Drake, and Cynwyd.

10 Q How do you spell Cynwyd?

11 A I think it's C Y N W Y D. They are all on
12 Clifton Boulevard.

13 Q And Hidden Village is at what address?

14 A 11849.

15 Q And The Drake is at what address?

16 A I'm not sure. It's right -- I don't know.

17 It's right next door. It's on the corner of
18 Fry.

19 Q And where is Cynwyd?

20 A Cynwyd is about two blocks up and I don't know
21 the address.

22 Q To the west?

23 A To the west of The Drake.

24 Q Okay. On Clifton, correct?

25 A Yes.

1 Q All right. As of January 1 of 2006, how many
2 buildings were you involved in in Lakewood?

3 A Well, I used to own the Sheffield on Clifton
4 Boulevard, the Clifford on Lake Avenue, and I
5 think it was called The Edgewater on Edgewater
6 Drive, but I don't remember the dates that we
7 sold them.

8 Q You also owned Hidden Village at that point in
9 time?

10 A Yes.

11 Q How about The Drake?

12 A Yes.

13 Q How about Cynwyd?

14 A Yes.

15 Q You have since sold the Sheffield, Clifford and
16 Edgewater?

17 A Yes. I'm not sure of the name of the one on
18 Edgewater Drive, but...

19 Q Fair enough.

20 A Oh, it was the Shorehouse. That's the name of
21 the building.

22 Q I want to talk to you a little bit about the
23 ownership structure of Hidden Village and The
24 Drake.

25 A Okay.

1 Q All right. Hidden Village, if I'm
2 understanding correctly, is owned by an LLC, a
3 limited liability company?

4 A That's correct.

5 Q Does that LLC have any other assets other than
6 the property at Hidden Village?

7 A No.

8 Q Is the proper name Hidden Village, LLC?

9 A It's Hidden Village, LLC.

10 Q How about The Drake?

11 A I'm not really sure.

12 Q The Drake is --

13 A It's an LLC, I know that. I would have to look
14 at the corporate record to figure it out.

15 Q And it's a separate LLC from Hidden Village,
16 correct?

17 A Yes.

18 Q And Michael Priore is designated, I believe, in
19 the Hidden Village Management Agreement as the
20 manager of the Hidden Village, LLC, correct?

21 A Correct.

22 Q Are there any other shareholders in Hidden
23 Village, LLC?

24 A No.

25 Q How about The Drake? Are you and Mr. Priore

1 also designated as managers in The Drake, LLC?

2 A I believe so, yes.

3 Q Are there any other owners of The Drake, LLC?

4 A No.

5 Q Or shareholders? Partners?

6 A The actual members are two other LLCs but they
7 are single member LLCs, so they are disregarded
8 entities of which I'm the sole member of that
9 LLC and Michael is the sole member of his LLC,
10 but we are the only two.

11 Q Fair enough. When you trace it all back, it
12 all comes back to you and Mr. Priore?

13 A Yes.

14 Q All right. Before we go further, I'd like to
15 talk for a minute. There were a significant
16 number of documents produced here this morning
17 in two folders. And as I understand it from
18 Mr. Haber, these documents or these two folders
19 are essentially duplicates. The documents are
20 Bates numbered P 0549 through P 1084.

21 MR. HABER: Not completely
22 correct. Because they also included -- maybe
23 that is correct. Maybe you have the complete
24 set there.

25 MR. CLIMER: Yes, I

1 believe.

2 MR. HABER: If you have
3 the timelines in there, you have the complete
4 set.

5 MR. CLIMER: Yes. The
6 timelines came out of the middle of that series
7 of numbers.

8 MR. HABER: I thought they
9 were at the end, but maybe they were --

10 MR. CORRIGAN: What's the
11 first Bates number in that series?

12 MR. CLIMER: P, as in Paul,
13 0549.

14 MR. HABER: What was the
15 last document that he said the Bates stamp was
16 for?

17 MR. CLIMER: 1084.

18 MR. HABER: I think that's
19 right, because the last page was the second
20 timeline.

21 MR. CLIMER: All right.

22 Q It is my understanding that there is an
23 agreement among counsel that if necessary, you
24 and Mr. Priore will appear to speak to the
25 documents that have been produced here today

1 because, obviously, there has not been an
2 opportunity to sufficiently review three, four
3 hundred pages of documents before your
4 deposition?

5 A That's correct.

6 MR. HABER: There is an
7 agreement.

8 Q Sir, what did you do to prepare for your
9 deposition here today?

10 A I reviewed some documents.

11 Q Can you tell us what it is you reviewed?

12 A Yes. I reviewed a timeline that I prepared. I
13 reviewed two departmental correspondences
14 from -- one dated October 11, 2006.

15 MR. HABER: Just for the
16 record, read the Bates stamp numbers.

17 A 002173 and another departmental correspondence
18 dated October 12, 2006, Bates stamp 002178.

19 I reviewed a letter dated February 28,
20 2007, from Mayor George to Jan Roller.

21 I reviewed my letter dated May 23, 2007,
22 to Mayor George. I reviewed City of Lakewood
23 Property Maintenance and Safety Code Sections
24 13.6.50.

25 I reviewed my letter dated June 1, 2007

1 to Thomas Corrigan.

2 I reviewed a letter from Brian Corrigan
3 dated June 1, 2007 to Windsor Management.

4 I reviewed Ohio Revised Code Section
5 5321.04, Landlord's Obligations, Section 8,
6 with regard to notice to tenants before
7 entering an apartment.

8 I reviewed the July 6, 2006 letter from
9 the City of Lakewood sustaining our appeal to
10 overturn the housing violation.

11 I briefly reviewed a timeline prepared by
12 Marilyn Watts.

13 I reviewed a timeline of Hidden Village
14 sales activity which really pertains to the
15 documents that you just received this morning.

16 MR. HABER: And, Jim, by
17 the way, I did not make a copy of this for you,
18 but I will now, if you would like a copy of
19 this. This was not in the documents that was
20 just produced to you.

21 MR. CLIMER: Okay.

22 A It's a summary of the document.

23 Q Fair enough.

24 A And I reviewed the plaintiffs' responses to the
25 first set of interrogatories. And I met with

1 my counsel regarding the deposition.

2 Q All right. Can I take a look at the packet
3 that you have just referred to? And there is
4 a -- I was going to say, there is a letter from
5 Mr. Haber in there that I don't want to see.

6 (Off the record.)

7 Q Okay. As I understand it, the first of the
8 timelines that you referred to which
9 corresponds to the ones I have dated or that
10 are Bates stamped P, as in Paul, 1083 and 84
11 were prepared by you, correct?

12 A Correct.

13 Q All right. And on the letter of February 28 of
14 2007 from Mayor George to Jan Roller, there are
15 some handwritten notes that are made. Who made
16 those notes?

17 A I did.

18 Q Was that part of your preparation for the
19 deposition or for some other purpose?

20 A Preparation for the deposition.

21 Q Okay.

22 A I forgot to mention the memo to the file. The
23 pages must have stuck together.

24 Q Fair enough.

25 And that, I believe, corresponds to a

1 document Bates numbered P, as in Paul, 1082

2 which I was given this morning, correct?

3 A I can't see it, but yeah, I'll take your word
4 for it, yes.

5 Q I'm sorry.

6 And if I'm understanding correctly, the
7 second of the timelines that you have referred
8 to, which would correspond to documents P 1073
9 to 1081, that document was prepared by Marilyn
10 Watts?

11 A I believe so.

12 Q Okay. And did Marilyn Watts hold a position
13 with Hidden Village, LLC?

14 A Not directly. She was a manager for Windsor
15 Realty & Management.

16 Q Was that one of the constituent organizations
17 of Hidden Village, LLC?

18 A No. They are the company that manages Hidden
19 Village Apartments.

20 Q All right. And is Windsor Management also
21 controlled by yourself and Mr. Priore?

22 A No. It's controlled by Mr. Priore.

23 Q All right. And among the things you also
24 reviewed was a document entitled, "Timeline of
25 Hidden Village Sale Analysis." And if I

1 understand it correctly, that's essentially a
2 summarization of the documents which were given
3 to me this morning in the two folders, correct?

4 A Correct.

5 Q All right.

6 MR. CLIMER: What I'd like
7 to do at break, I'd just like to get a copy of
8 the packet that Mr. Lieberman prepared.

9 MR. HABER: We'll just
10 hold onto it.

11 MR. CLIMER: Yeah.

12 Q I'd like to talk to you for a moment about how
13 long you have been active as a building owner
14 within the City of Lakewood.

15 A Since 1986.

16 Q Okay. And has that all been apartments?

17 A Yes.

18 Q I'd like to talk to you for a moment about
19 other disputes or controversies that you may
20 have had with the City of Lakewood concerning
21 property along there. Have you had any other
22 buildings and zoning disputes with the City of
23 Lakewood that have resulted in appeals,
24 administrative appeals, lawsuits?

25 A Well, since 1986, it's a long time, so I will

1 say that over the years there probably have
2 been instances where we've received building
3 code violation notices that we've probably
4 corrected. We've been involved in lawsuits
5 with tenants occasionally, probably less than a
6 handful of times. No lawsuits with the City of
7 Lakewood other than this one. We currently
8 have a minor dispute regarding a water bill.

9 MR. HABER: Which, by the
10 way, Jim, we're prepared to talk about today,
11 if you'd like, off the record.

12 MR. CLIMER: Sure. That's
13 one of the things I'd like to talk about.

14 MR. HABER: We can talk
15 about the other issues while we are here.

16 A There haven't been any other significant issues
17 other than that that pertain to this lawsuit
18 and what we perceive to be retaliation by the
19 City of Lakewood against us.

20 Q Let's talk for a moment about the building code
21 violations. Are there any building code
22 violations that you can specifically point to
23 here today other than those involving Hidden
24 Village? In other words, do you have any
25 specific recollection of any building code

1 violations that you received other than Hidden
2 Village?

3 A Well, we received a building code violation at
4 The Drake Apartments because there was a bolt
5 missing from a fence, which I believe is
6 retaliatory.

7 Q When did that occur?

8 A I don't -- last year.

9 Q 2009?

10 A I think so.

11 Q Okay.

12 A We received a building violation, which I
13 believe is retaliatory, against The Drake
14 Apartments regarding our intercom system.

15 Q Do you know when that was?

16 A Within the time -- while the lawsuit was
17 pending or while this controversy was pending.

18 Q Okay. You are speaking of the Hidden Village
19 lawsuit that we're here about today?

20 A Today, yes.

21 Q Any other building code violations that you can
22 recall, as we sit here?

23 A Well, if you are talking about the May 22, 2007
24 raid.

25 Q I'm sorry. I'm excluding Hidden Village.

1 A Oh, excluding Hidden Village. Well, like I
2 say, since 1986, it's a long time. Most of
3 them have been relatively minor. Most of them
4 I'm sure we corrected right away.

5 Q Do you know if you have engaged in any
6 administrative appeals concerning any other
7 building code violations in the City of
8 Lakewood other than Hidden Village?

9 A I don't recall.

10 Q Have you had any other zoning disputes other
11 than those relating to Hidden Village with the
12 City of Lakewood?

13 A No.

14 Q How about fire code violations other than
15 involving Hidden Village?

16 A Nothing significant. I'm sure over the years
17 my recollection is maybe we didn't have a fire
18 extinguisher updated or a battery missing from
19 a smoke detector, those kinds of things, but
20 nothing out of the ordinary.

21 Q I'd like to talk for a moment about -- or move
22 to Hidden Village. When was Hidden Village,
23 LLC formed?

24 A I believe in 19 -- no. 2001. I think in 2001.

25 Q And was that at the same point in time the

1 Hidden Village property was purchased?

2 A Yes.

3 Q What did you and Mr. Priore find attractive
4 about the Hidden Village property or what is it
5 that motivated you to purchase it?

6 A Well, we owned The Drake Apartments immediately
7 next door, and Hidden Village had a different
8 name, but it was owned and occupied by the Ohio
9 Diesel Mechanic School. And in those tiny
10 apartments they housed two to three 18- to
11 22-year-old young men that went to the diesel
12 mechanic school. And over the years, they
13 continually harassed our tenants. They
14 squealed tires in the middle of the night.
15 Fighting all the time. Throwing beer cans.
16 Hooting and hollering at the female residents
17 of our building. They made it very, very
18 difficult for us to conduct our business. We
19 lost countless tenants because of the
20 activities that went on at that property.

21 So there was nothing attractive about it.
22 It was actually a disaster and we bought it in
23 order to preserve our other building.

24 Q What did you hope to accomplish by doing that?

25 A Well, we immediately got rid of all of the

1 students. When their leases were up, we had
2 them vacate. And we undertook a complete
3 renovation of the entire complex, upgraded it
4 substantially and retenanted the building.

5 Q Did you have any particular business plan in
6 mind in terms of the types of tenants you hoped
7 to attract?

8 A Well, we expected to attract single individuals
9 because out of the 97 units, all except 12 of
10 them are efficiencies. They are very, very
11 small. So we weren't expecting large families
12 to move in there. There just wasn't enough
13 room.

14 Q Where are the 12 units that are not
15 efficiencies? As I understand it, Hidden
16 Village is divided into buildings A, B, C, D,
17 and so on, correct?

18 A That's correct.

19 Q How many buildings are actually on the
20 premises?

21 A There are five. There are four apartment
22 complex buildings, and then there is a small
23 maintenance building.

24 Q Okay. So it would be buildings A through D
25 plus a maintenance building?

1 A Correct.

2 Q Where are the 12 units that are not
3 efficiencies located?

4 A I don't know.

5 Q Have you calculated -- well, first of all, what
6 was the purchase price for Hidden Village?

7 A I don't recall exactly, but it was somewhere
8 around 1.2 million.

9 MR. HABER: Jim, if you do
10 want the exact amount --

11 A Maybe it was 1.4 million.

12 MR. HABER: It's in the
13 documents that we just produced. I can pull it
14 for you if you want it.

15 MR. CLIMER: No, we can go
16 with an estimate.

17 A I think it was 1.4 million something.

18 MR. HABER: The settlement
19 for the purchase is in there.

20 MR. CLIMER: Fair enough.

21 Q Over the years have you maintained records
22 concerning capital improvements that you have
23 put into Hidden Village?

24 A Windsor Realty should have them, yes.

25 Q Do you have an estimation of the capital

1 improvements that have been put into Hidden
2 Village?

3 A Well, I can tell you that we put all new
4 windows in the complex. We put in new garage
5 doors. We put in all new electrical systems.
6 We put in all new kitchens, all new appliances,
7 ceramic tile floors in the kitchen. We
8 replaced all the bathroom fixtures; sinks,
9 toilets, showers. Put in marble floors and
10 marble shower surrounds. We replaced a
11 significant number of furnaces and air
12 conditioners. We did -- I think we did the
13 roof. We replaced the landscaping and redid
14 the parking lots. All told, I think we spent
15 about a million dollars.

16 Q And was this all done generally at the time of
17 the purchase?

18 A Within -- well, we had to vacate the entire
19 complex. It was empty. So I think it took us
20 approximately a year.

21 Q Okay. But it was more or less co-extensive
22 with the point you purchased the property?

23 A Yes. We started working on it right away.

24 Q During the time leading up to the purchase of
25 Hidden Village, which I understand to be at

1 least in part because you felt your tenants
2 were being harassed at The Drake, did you ever
3 make any complaints to the city, request any
4 kind of special attention, or did you have any
5 other communications of that type with anybody
6 associated with the City of Lakewood?

7 A Yes, we did.

8 Q Can you sort of give me the history of that?

9 A Well, I know our property managers called on a
10 regular basis.

11 Q Who would those persons have been?

12 A I don't recall their names.

13 Q Okay.

14 A I know Michael Priore contacted the city about
15 problems with that complex. They had their own
16 security staff. They had a booth in the
17 parking lot because these kids were so wild.
18 They had a uniformed person on the site at the
19 time. And we complained to the security staff
20 that they should control their kids.

21 Q Okay. And when you say "they," you are
22 referring to the owners and managers of what
23 was then --

24 A Yes.

25 Q -- the Ohio Diesel Mechanic School or whatever

1 it was?

2 A Right. I know I had conversations with the
3 owners of the Ohio Diesel Mechanic School
4 myself complaining about the activities of
5 their tenants.

6 Q Do you have any records of those complaints at
7 all?

8 A No.

9 Q During that period of time, did you find that
10 your tenants at The Drake were complaining
11 about being victims of any criminal activity?

12 A Well, it was mostly minor criminal activity;
13 meaning kids would throw beer cans at them,
14 verbally harass them, that kind of thing.
15 Disturb their sleep because they would be
16 squealing tires at 1:00, 2:00 in the morning.
17 The police were there constantly.

18 Q Now, once the capital improvements were
19 concluded, do you recall about when you began
20 to market the Hidden Village development?

21 A As soon as the suites were ready we started
22 marketing.

23 Q Do you recall approximately when that would be?

24 A Approximately 2002, 2003. I don't know
25 exactly.

1 Q And were you able to fill the building based on
2 your initial marketing strategy?

3 A Rentals were slow.

4 Q Okay. Did there come a time when you rethought
5 your strategy?

6 A Well, initially we had reduced the rent that we
7 were asking for the apartments and found that
8 the quality of the applicant was very low and
9 unacceptable.

10 Q What was the initial rent that was being
11 sought?

12 A I think \$400 a month for the efficiencies.

13 Q All right. What did you lower it to?

14 A 375.

15 Q And if I'm understanding you correctly, that
16 price point brought an unacceptable quality of
17 applicants?

18 A Yes.

19 Q Did you ever form any --

20 MR. HABER: That was a
21 diplomatic way of putting it.

22 MR. CLIMER: Pardon me?

23 MR. HABER: I said, "That
24 was a diplomatic way of putting it."

25 Q Did you take any action to remedy that

1 situation?

2 A Well, yeah. I think we raised the rent to 425.

3 Q What effect, if any, did that have on your
4 marketing plan?

5 A I think we were more successful in renting
6 apartments.

7 Q Okay. The records in this case indicate that
8 your organization first ran across the YRP
9 program, the ministries YRP program in early
10 2006, is that consistent with your
11 recollection?

12 A Yes.

13 Q At that point in time, can you give us an idea
14 of what your vacancy rate was?

15 A I don't know specifically, but we did have a
16 number of vacancies. I do know that.

17 Q Do you have any records that would reflect
18 that?

19 A Yes.

20 Q Okay. What would those?

21 A They would be the rent rolls that Windsor
22 Realty & Management maintains now, not me
23 personally.

24 Q And you have produced in this case a number of
25 rent rolls?

1 MR. HABER: I think they
2 only went back to April of '06.

3 MR. CLIMER: Right.

4 Q Beginning with April of --

5 MR. HABER: Do we have any
6 from earlier? I'm just saying we can get them
7 for you.

8 MR. CLIMER: Beginning in
9 April of 2006, what I would be interested in is
10 the rent rolls from June of 2005 to April of
11 2006. And can those be produced?

12 MR. HABER: I'm sorry.
13 What was the first date?

14 MR. CLIMER: June '05 to
15 March '06.

16 MR. HABER: I'll produce
17 them.

18 Q And the rent rolls that you have produced in
19 this case end with September of 2008. Do rent
20 rolls exist for the Hidden Village complex
21 after September of 2008?

22 A Yes.

23 MR. HABER: I thought I
24 produced into 2009. I might even have them
25 outside in the car. When we take a break, I'll

1 look, if you want. I'm pretty sure they have
2 been produced beyond that.

3 MR. CLIMER: Not to clutter
4 up the record, but it was very difficult to
5 sort out the responses to the request for
6 production of documents that were sent.

7 MR. HABER: These came
8 recently by e-mail.

9 MR. CLIMER: That's what
10 I'm saying. It was because of the size of the
11 e-mails that they came apart, so it was
12 difficult to hook up one thing to another. And
13 at some point, I would like to talk about
14 getting an agreed set of hard copy documents
15 that are your document production because --

16 MR. HABER: I can print --
17 I have stored everything I sent you, so it's a
18 simple matter for me to print it. Obviously,
19 it's 500 pages.

20 MR. CLIMER: That's fine.

21 MR. HABER: I've got, I'm
22 pretty sure in a box in my car, the actual rent
23 rolls that were produced. I can bring them in
24 when we take a break and we can confirm what
25 was sent to you. And if you want to make

1 copies beyond 2008, that's fine.

2 MR. CLIMER: That's fine.

3 All we are able to find was up to 2008. What I
4 would be interested in, Rich, is the rent rolls
5 from 10-08 to the present.

6 MR. HABER: Yeah. In
7 fact, I know we did, because I talked to -- we
8 talked about it yesterday during -- I went
9 through them up to July of 2010.

10 MR. PRIORE: 2010.

11 MR. HABER: I have up to
12 July of 2010 in my car.

13 MR. CLIMER: I can't explain
14 how they didn't make it to us, but in putting
15 the thing together --

16 MR. HABER: It's easy
17 enough for you to copy. I'm sure I have them
18 here in a box.

19 MR. CLIMER: All right.
20 Fair enough. And what I would like to do, Rich,
21 is reserve the right to talk about those, if we
22 reconvene, concerning the other damages issues.

23 Q And when you say "rent rolls," forgive me, I'm
24 not a professional landlord, what are rent
25 rolls in the property management window?

1 A Typically, it will have the apartment number,
2 the name of the tenant, the amount of rent,
3 when the lease commenced and when the lease
4 expiration date is. It might also have their
5 security deposit.

6 Q So it's sort of a compilation of the core
7 information concerning the lease of a
8 particular property?

9 A Well, it's the very basic information.

10 Q By the way, how was the Hidden Village purchase
11 financed?

12 A I think Huntington National Bank financed it.

13 Q All right. Has it been refinanced since the
14 initial purchase?

15 A Yes.

16 Q How many times?

17 A I think twice.

18 Q Okay. Who were the other financing agencies?

19 A I don't recall exactly.

20 Q Or the other mortgagors? Do you still have the
21 financing and refinancing information
22 available?

23 A Yeah. It's public record. It's on the
24 mortgages that are filed with the county.

25 Q All right. I am going to ask you if you would

1 please produce those.

2 A Produce the mortgages?

3 Q The initial mortgage and note and the
4 subsequent refinancing.

5 MR. HABER: I'm making a
6 note here, Gary. Don't worry.

7 Q Does Hidden Village have an accounting firm
8 that it works with?

9 A Yes.

10 Q Who is that?

11 A I'm not 100 percent sure, but I think it's
12 Koester, DiSalvo & Fried.

13 Q Is that handled by Windsor Management and
14 Mr. Priore?

15 A Yes.

16 Q Has it been Koester, DiSalvo & Fried
17 throughout, assuming that's who they presently
18 are?

19 A It may have been somebody else earlier. A
20 company called Debra Sini. I'm not sure of the
21 exact name of the firm.

22 Q Is Debra Sini the individual you dealt with, or
23 is that the name of the firm?

24 A Well, that's the individual, but I think the
25 firm is his own firm. It's a small, small

1 firm.

2 Q Fair enough.

3 Has Hidden Village ever had occasion to
4 challenge its tax assessments?

5 A I don't recall.

6 Q Okay. Let's move over to January of 2006. How
7 is it that Hidden Village and YRP came into
8 contact with one another?

9 A I don't know.

10 Q Do you know who, on behalf of Hidden Village,
11 first came across YRP?

12 A I believe it was Marilyn Watts.

13 Q Did you ever have any discussion with Ms. Watts
14 about how that occurred?

15 A No.

16 Q When did Hidden Village first come up on your
17 radar in terms of being a potential tenant?

18 A I believe Michael Priore told me that the YRP
19 was interested in leasing a group of suites.

20 Q What did you and he talk about in that regard?

21 A Well, we talked about the number of suites that
22 they wanted. We talked about the rental rate
23 and whether we were going to give them a
24 discount because they were renting so many
25 suites. We talked about staggering the leases

1 so that all of the leases wouldn't come due at
2 the same time.

3 Q How many suites was YRP interested in?

4 A I don't recall exactly, but it was 15 to 25
5 initially.

6 Q And what was the rate that you and Mr. Priore
7 were targeting?

8 A \$400 a month is my recollection.

9 Q And did that represent a discount from the
10 normal rate at Hidden Village?

11 A I'm not sure if, at that time, we were charging
12 425 or not.

13 Q And you talked about staggering the leases.
14 Can you explain that for us?

15 A Well, if the tenant wanted 20 suites, for
16 instance, and they wanted a one-year lease,
17 that would mean at the end of one year we'd
18 have 20 vacancies. So we talked about giving
19 them maybe eight units for six months, eight
20 units for nine months, and another eight units
21 for 12 months so that the leases would always
22 roll over at different times so we wouldn't be
23 faced with a large number of the vacancies at
24 the same time.

25 Q Okay. Did you, yourself, participate in any of

1 the negotiations between Hidden Village and YRP
2 or the Lutheran Metropolitan Ministry?

3 A Yes.

4 Q Who participated in those negotiations?

5 A I spoke directly with Mark Brauer.

6 Q Okay. What is Mr. Brauer's position, to your
7 knowledge?

8 A I don't know what his official title is. He's
9 kind of like a director there.

10 Q Okay. Who else did you deal with from Lutheran
11 Metropolitan Ministry or YRP?

12 A That was it.

13 Q These negotiations ultimately resulted in an
14 agreement, correct?

15 A Correct.

16 Q Was there a written lease document?

17 A There should be, yes.

18 Q Okay. Because I have not seen that in the
19 documents that have been produced to us. I'm
20 going to request that you produce any lease
21 that was entered into between Hidden Village
22 and YRP.

23 A Okay.

24 MR. HABER: We'll produce
25 them.

1 Q Do you recall what the term was for that lease,
2 the temporal term?

3 A I believe there was more than one lease because
4 we wanted them staggered, so...

5 Q Okay. Was there a master lease and then 20, 25
6 subleases, or how did that work?

7 A I think there was one lease that covered a
8 group of units.

9 Q All right. And within that lease it was
10 specified that the terms would be staggered for
11 those units?

12 A Well, no. We'd have one lease that covered six
13 or eight apartments that would be for six
14 months. We'd have another lease for six or
15 eight apartments that would cover nine months
16 and a third. You know, that's the way they
17 were staggered.

18 Q Got it.

19 Are those leases still in force?

20 A I don't know. Windsor Realty would have those.

21 Q All right. And in terms of the calendar term
22 on those leases, I understand they were
23 staggered, but were they generally for one
24 year? Two years? Three years? Six months?

25 A Well, that's why I say six months, nine months,

1 12 months. We kept staggering the leases.

2 Q Do you know how many times they've been
3 renewed, if at all?

4 A I know they've been renewed, but I don't know
5 how many times.

6 Q Do you know how many units Hidden Village
7 presently leases to the YRP program?

8 A No, I don't.

9 Q Do you know how it compares to the initial
10 leases in terms of numbers?

11 A No, I don't know.

12 Q Okay. Do you know how the present situation
13 with YRP, in terms of numbers of units leased
14 and price, compares to the highest number of
15 units you ever leased to YRP?

16 A I know it's less than the highest number, but I
17 don't know specifically.

18 Q Has anybody ever expressed to you any reasons
19 why it is now less than it was at some point,
20 less number of units?

21 A Well, for a brief period of time, YRP had some
22 funding issues. For a period of time, there
23 was some uncertainty whether they would be
24 staying or not; whether the city would force
25 them out. There have been a number of issues.

1 Q All right. Who did you obtain the information
2 about the funding issues from?

3 A Mark Brauer.

4 Q Okay. What did he describe in terms of the
5 funding issues?

6 A Nothing specific other than funding was tight
7 and he wasn't sure whether he would be able to
8 renew the leases or not, or whether he'd have
9 to give back units.

10 Q When did this conversation occur?

11 A It's occurred several times in the last few
12 years.

13 Q Okay. And I think you also indicated that
14 there was some discussion of uncertainty as to
15 whether YRP would be staying in the Hidden
16 Village complex, correct?

17 A Correct.

18 Q Who did you obtain that information from?

19 A Mark Brauer.

20 Q Okay. When did that conversation occur, or
21 conversations?

22 A Sometime around after the raid on May 22, 2007.

23 Q Okay. You are talking about a joint inspection
24 that occurred at the Hidden Village premises?

25 A Well, I considered it a raid. You consider it

1 a joint inspection, but it's a raid.

2 Q I just want to make sure we're on the same
3 page.

4 A Yes.

5 Q All right. And that would be May 22 of '07?

6 A Correct.

7 Q And at some point in time, those conversations,
8 to my understanding about the uncertainty of
9 YRP staying at Hidden Village, those
10 conversations occurred prior to the discussions
11 about funding, correct?

12 A Could you repeat that?

13 Q You indicated in the last several years
14 Mr. Brauer has indicated that he was dropping
15 some units because of uncertainty or lack of
16 funding?

17 A Correct.

18 Q All right. If I'm understanding correctly, the
19 discussions with Mr. Brauer about the number of
20 units he might need going down because of
21 uncertainty about whether YRP would be staying,
22 that occurred back in May of '07, around May of
23 '07?

24 A The funding issue has been more recent than in
25 the past.

1 Q Thank you. I was getting a little tangled up
2 there.

3 A Several months ago, for instance, Mark Brauer
4 and I had a discussion about their funding.
5 They weren't sure that they were going to keep
6 certain units. He told me that they weren't
7 sure they had the funding and the kids for the
8 program, and that they might be dropping, I
9 think, eight units. And then a couple of weeks
10 later he sent an e-mail or had a conversation
11 with Michael saying we don't want to drop them
12 anymore, we want to keep them, so...

13 Q All right. In connection with these
14 discussions about uncertainty of funding, has
15 Mr. Brauer ever expressed any dissatisfaction
16 about the current relations with the City of
17 Lakewood?

18 A No.

19 Q Has he expressed any uncertainty about whether
20 YRP would be staying in the Hidden Village
21 property due to relations with the City of
22 Lakewood at the same time these conversations
23 about lack of funding were going on?

24 A No.

25 Q Okay. In the last three years, has Mr. Brauer

1 ever expressed to you dissatisfaction with the
2 way his program has been treated by the City of
3 Lakewood as being a reason for dropping any
4 apartments?

5 A During the period of time that Mayor George was
6 in office, we had those kind of discussions.
7 Since the new mayor took over, we have not had
8 those discussions.

9 Q Fair enough.

10 To your knowledge, did Mr. Brauer ever
11 drop any apartments specifically because of the
12 treatment he perceived his program to be
13 receiving from Lakewood?

14 A I don't know.

15 Q Okay. As opposed to some other issue?

16 A I don't know.

17 Q Do you know about how many meetings you
18 participated in with Mr. Brauer in negotiating
19 YRP's occupation of the Hidden Village
20 property, the initial lease?

21 A I never had a meeting with him. All of my
22 negotiations with him were over the telephone.

23 Q Fair enough.

24 Who else participated in the discussions
25 with YRP other than Mr. Brauer and yourself?

1 A Mr. Priore.

2 Q Anybody else that you are aware of?

3 A Possibly Marilyn Watts.

4 Q During the course of those -- well, strike
5 that.

6 In your complaint it has been alleged
7 that the tenant mix or client mix for YRP is
8 predominantly African American?

9 A That's correct.

10 Q All right. How did you come to learn of that
11 information?

12 A I believe Mark Brauer told me, and I've
13 personally seen a lot of the tenants when I go
14 to visit the building.

15 Q Was that discussed at all during the lease
16 negotiations?

17 A No, it was not.

18 Q Under what circumstances would Mr. -- did
19 Mr. Brauer convey to you the racial makeup of
20 his clients?

21 A All of those discussions had to do with after
22 the May 22, 2007 invasion of the property.

23 Q All right. And by that point in time, YRP had
24 been in the property approximately one year,
25 correct?

1 A Correct.

2 Q How did the racial makeup of the YRP clients
3 enter into that conversation?

4 A We had a discussion that the City of Lakewood
5 was targeting their program because they didn't
6 want blacks in the City of Lakewood on Clifton
7 Boulevard in a predominant spot in the city.

8 Q Who expressed that opinion?

9 A I did.

10 Q Do you recall if anybody else was a participant
11 in this discussion?

12 A It was a telephone conversation.

13 Q Okay. So the answer is no?

14 A No.

15 Q It wasn't a conference call or anything like
16 that?

17 A No.

18 Q When did this -- I tried to call it a
19 conference call. When did this phone call
20 occur in relation to the events of May 22, '07?

21 A Well, we may have had a couple of calls
22 regarding it because we did have a conversation
23 about this letter from Mayor George dated
24 February 28, 2007, which was before the raid.

25 Q Okay. So it could have occurred anywhere

1 between February of 2007 and the events of
2 February 22 of 2007 or shortly thereafter?

3 A Yeah. It could have.

4 Q All right. Did Mr. Brauer react at all to the
5 opinion that you expressed that this had
6 something to do with the racial makeup of YRP's
7 clients?

8 A I don't recall his exact reaction.

9 Q What is it that led you to this conclusion or
10 opinion?

11 A Well, taking it in the context that you have a
12 fully-renovated apartment with brand-new
13 kitchens, brand-new appliances, all new
14 electrical systems, all new windows, a new
15 parking lot, new landscaping, everything
16 brand-new, and the city thinks it's necessary
17 to get the health department, the building
18 department, the fire department and the police
19 department to all raid it at the same time.
20 Not only that, but out of 97 units, they only
21 go in the black kids' units, the two buildings
22 that are occupied by the Youth Re-Entry
23 Program. Talk about target invasion. They
24 systematically went through the apartments of
25 every black resident in our complex and left

1 the other two buildings completely alone.

2 That's the conclusion that I draw.

3 Q Anything else that led you to that conclusion?

4 A Well, I had heard that the police department
5 was stopping and harassing some of those
6 tenants and they weren't harassing our other
7 tenants.

8 Q Anything else that led you to that conclusion?

9 A Not that I can think of at the moment.

10 Q Who did you obtain information from indicating
11 to you that the Lakewood Police were targeting
12 Hidden Village's African-American tenants rather
13 and not white tenants?

14 A Well, take a look at the departmental
15 correspondence Bates stamped 002178 and 002173.

16 MR. HABER: Before you do
17 that, can I hear the question back, please?

18 (Record was read.)

19 A These departmental correspondences specifically
20 target the C and D buildings, which are the
21 buildings that are occupied by the
22 African-American residents from the Youth
23 Re-Entry Program.

24 Q When did you obtain those documents?

25 A Well, these were obtained through the lawsuit.

1 They are Bates stamped. But this confirms my
2 suspicion.

3 First of all, as I told you before, you
4 don't need a building inspector, fire
5 inspection, health department inspection, and
6 police to do an inspection of a building. I've
7 been a landlord since 1986 in Lakewood. I've
8 owned five buildings in Lakewood. Every time
9 the city wants to do an inspection, they call
10 up on the phone, they make an appointment and
11 they come and they walk through the building.
12 We had no building violations. We certainly
13 had no health complaints. Everything was
14 brand-new. There had to be a reason that they
15 felt it necessary to have armed policemen with
16 a K-9 unit and ten people invading our property
17 without even a phone call.

18 Not only that, they wouldn't leave when I
19 told them to get a warrant.

20 Q Forgive me. I'm a little confused on the
21 timing. You had indicated that you heard that
22 the Lakewood Police Department was targeting
23 African-American tenants of Hidden Village and
24 leaving white tenants alone?

25 A Correct.

1 Q And I think you indicated that the departmental
2 correspondence that you just referred to --

3 A Confirmed.

4 Q -- confirmed that in your mind?

5 A Yes.

6 Q Okay. Let's circle back around to the original
7 question which is, who did you hear this from
8 that led you to voice this conclusion in your
9 conversations with Mr. Brauer around the late
10 winter/spring of 2007?

11 A Well, I'm not totally sure, but I've had, you
12 know, conversations with -- I have
13 conversations with Michael Priore probably one
14 or two times a day, so we always have an
15 ongoing conversation. I had conversations with
16 Marilyn Watts probably, at that time, once a
17 week, maybe sometimes more, sometimes less.
18 I've had conversations with Mark Brauer. You
19 know, I can't pinpoint which conversation it
20 was, but a culmination of conversations that I
21 have on a daily basis as an owner of the
22 property. And as the attorney for the property
23 I get that information.

24 Q Okay. So if I'm understanding you correctly,
25 and tell me if I'm wrong, because I don't want

1 to put words in your mouth, you can't point to
2 any one conversation with any one person that
3 led you to this conclusion. It was just a
4 culmination of a series of conversations, most
5 likely with Mr. Priore, with Ms. Watts or with
6 Mr. Brauer?

7 A Yeah. And it's a combination of circumstances.
8 One, that the police cruisers were constantly
9 going through our parking lot. Conversations
10 that they are harassing our tenants. All kinds
11 of things. So yeah, I came to that conclusion
12 from conversations from a number of sources.

13 Q Can I see the departmental correspondence that
14 you are referring to?

15 MR. HABER: Do you want to
16 get those things marked?

17 (Off the record.)

18 - - - - -

19 (Defendants' Exhibits A and B were marked.)

20 - - - - -

21 Q Mr. Lieberman, the departmental correspondence
22 I believe you were referring to in your earlier
23 testimony has now been marked as Defendants'
24 Exhibits A and B, correct?

25 A Uh-huh.

1 Q If I'm understanding your testimony correctly,
2 the reason that you believe -- or the reason
3 for this correspondence confirms in your mind
4 that the City of Lakewood is acting based upon
5 race is that these memos refer to buildings C
6 and D, which are occupied primarily or maybe
7 exclusively by YRP clients, correct?

8 A That's part of it, yes.

9 Q What else?

10 A Well, you have the mayor's letter dated
11 February 28, 2007.

12 Q Okay.

13 A That to me is an indication that he doesn't
14 want those kids in Lakewood.

15 Q All right. But the thing about these two memos
16 that leads you to conclude that the City of
17 Lakewood is targeting African-American
18 residents of Hidden Village versus white
19 residents of Hidden Village is the references
20 in these two memos to buildings C and D?

21 A I say not just the reference to buildings C and
22 D. It's the whole context of both of the
23 memos. The context of the mayor's letter and
24 the fact that these residents of the Youth
25 Re-Entry Program are no different than any

1 other resident that we have in any other
2 building. And here, all of a sudden, we get
3 police correspondence targeting only buildings
4 C and D where the black residents live. We've
5 got the mayor of Lakewood telling us that we're
6 going to end the program. We don't want them
7 in Lakewood. We want them out of the area. I
8 mean, the mayor even admits that the area --
9 the proximate area already presents significant
10 challenges to our police. There is already a
11 problem. So now he wants to get rid of our
12 tenants.

13 So the conclusion I draw is that I have
14 lots of tenants in the City of Lakewood, my
15 clients have lots of tenants in the City of
16 Lakewood, nobody else is being targeted by the
17 police and the mayor other than buildings C and
18 D. Buildings C and D are occupied by black
19 residents. That's the conclusion that I draw.

20 Q Let me ask you this. Do you know the actual
21 racial makeup of the YRP clientele living at
22 Hidden Village as of October 12 and October 11
23 of 2006?

24 A Not exactly, but I know that they are
25 predominantly black.

1 Q Do you know if predominantly is 55, 60 percent?
2 80 percent? 90 percent?

3 A I guess it's more than 80 or 90 percent.

4 Q And that's based on your observations?

5 A And my discussions with Mark Brauer. And my
6 own visits to the building, seeing the tenants.

7 Q You mentioned the other two buildings at Hidden
8 Village, correct? Right?

9 A A and B.

10 Q A and B?

11 A Yes.

12 Q And those are non-YRP clientele in those
13 buildings, or were at that time?

14 A I believe so, yes.

15 Q Did you have African-American tenants in the
16 other two buildings in Hidden Village?

17 A It's possible that we did, but not
18 predominantly.

19 Q Do you have an estimate of the number of
20 African-American tenants in buildings A and B
21 in the time period 2006-2007?

22 A I don't have firsthand knowledge of that.

23 Q Do you have any means of reconstructing that?

24 A No, other than the recollection of the people
25 that work at the buildings.

1 Q And you had never heard of any tenants of
2 buildings A and B being targeted regardless of
3 their race, correct?

4 A Correct.

5 Q Now, you mentioned that the clientele at the
6 YRP program was just like any other tenant in
7 Hidden Village, correct?

8 A Yes.

9 Q All right. Did any other tenants in Hidden
10 Village have on-site social service counseling
11 going on for them?

12 A No.

13 Q Were any other tenants of Hidden Village in
14 buildings A and B required to check in with
15 counselors to enter or leave the building?

16 A No. I'm not sure that the YRP residents are
17 required to either.

18 Q Did any tenants of building A and B -- well,
19 strike that.

20 Were any tenants of buildings A and B
21 receiving social services assistance directly
22 paid to Hidden Village by the social service
23 agency in terms of rent, anything else?

24 A It's possible that they were. Section VIII.
25 NORD. There are a number of agencies that we

1 take vouchers. I can't tell you whether they
2 were or they weren't. Tenants move in and out.
3 But over the years I'm sure we have.

4 Q By the way, was there any discussion at any
5 point in time about the criminal history of any
6 Hidden Village -- or I'm not -- strike that.
7 Not Hidden Village tenants, but YRP clients?

8 A Discussions with who?

9 Q Well, between yourself and YRP?

10 A Yes.

11 Q Okay. Can you tell me about that?

12 A Mark Brauer and I talked about -- I think we
13 talked about a shoplifting incident at some
14 store and that the person may not have been a
15 part of the program. We talked about he had
16 some kind of meeting with the city and the
17 police presented information about crime
18 statistics that listed as a crime -- one of
19 their tenants was a victim of a crime and they
20 attributed that to the program, which is
21 totally false.

22 We also noted that, you know,
23 statistics -- you know, when the city says they
24 jump 40 percent or 50 percent or they double,
25 you have to remember that the building was

1 empty the years before, so if you have no
2 crimes because the building is empty and it
3 jumps to one incident, you have, you know, a
4 100 percent increase.

5 The other thing you have to take into
6 consideration is the fact that the police were
7 specifically instructed to make reports and
8 make arrests of every little incident that
9 occurred in buildings C and D, which skews any
10 statistics whatsoever.

11 Q Did anybody ever express to you the reason for
12 that instruction?

13 A No.

14 Q Is it not possible that that was to ensure that
15 accurate reporting was made and that YRP
16 residents or YRP was not being falsely accused
17 as opposed to the situation you talk about
18 where there is no differentiation between YRP
19 clients and other residents?

20 A That's absolutely ridiculous. If that was the
21 case, you'd have a department memorandum to the
22 police dispatcher saying, "In every incidence
23 in the City of Lakewood we want it documented
24 to make sure that that we can document the
25 statistics of crime throughout the City of

1 Lakewood." This is specifically targeted to
2 two African-American buildings in the city.
3 You don't see the police chief or the mayor
4 targeting some other building down the street
5 saying, you know, citations and arrests are the
6 preferred course of action.

7 My father was a policeman for 25 years.
8 I know that policemen have a wide discretion
9 when dealing with individuals that they
10 encounter during the normal course of a day. I
11 can tell you from my experience that arrests
12 and citations are not the usual, preferred
13 course of action.

14 Q Where was your father -- I'm sorry. Go ahead.

15 A And what you've implied is that it was for
16 accurate statistics is just way off base. They
17 were targeted.

18 Q Where was your father a police officer?

19 A In Woodmere and Huntington Valley.

20 Q When was he last a police officer?

21 A I don't recall because he was injured on the
22 job and hasn't worked for a long time.

23 Q Other than what you may have picked up from
24 your law school education and legal practice,
25 have you ever trained or qualified to act as a

1 police officer in the State of Ohio?

2 A No.

3 Q Have you ever worked as a police officer in the
4 State of Ohio?

5 A No.

6 Q Have you ever worked for any police agency of
7 any type within the State of Ohio whether as a
8 police officer or otherwise?

9 A No.

10 Q Circling back to my original question. Did you
11 ever at any point have occasion to learn
12 whether or not YRP residents had criminal
13 histories?

14 A Could you repeat the question?

15 Q Yeah. Did you ever have occasion to learn or
16 gain any information as to whether or not any
17 YRP tenants had criminal histories?

18 A No, I don't know that.

19 Q You don't know one way or the other?

20 A Right.

21 Q Because I think some correspondence has been
22 sent to the effect that YRP residents are
23 graduates of foster care or allegations have
24 been made that YRP residents are graduates of
25 foster care, and do not have criminal

1 histories?

2 A Well, that was my understanding, but I don't
3 know that firsthand.

4 Q Do you know whether or not any YRP residents
5 had juvenile records which if committed as an
6 adult would amount to felonies or serious
7 misdemeanors?

8 A I don't know that.

9 Q And if in fact YRP's mission statement does
10 indicate that it accepts clients that are being
11 released from the Ohio Department of Youth
12 Services, you would have no reason to disagree
13 with that?

14 A If that's what it says, that's what it says.

15 Q You never had any discussions about the
16 percentage of YRP residents who had been
17 incarcerated as juveniles?

18 A No.

19 - - - - -

20 (Defendants' Exhibit C was marked.)

21 - - - - -

22 Q I'm going to hand you what's been marked as
23 Defendants' Exhibit C. I'll ask you to just
24 take a look at it.

25 A Okay.

1 Q And do you recognize those as being
2 interrogatories that were answered by you and
3 Mr. Priore?

4 A Yes.

5 Q And I'm sorry. Am I mispronouncing that name?

6 A It's Priore.

7 Q Thank you.

8 I'm going to refer you to I Interrogatory
9 14 and your response.

10 A Okay.

11 Q And what that interrogatory generally is
12 intended to do is to obtain from Hidden Village
13 a recount of the things that led it to believe
14 that Lakewood did wrong or that indicated that
15 Lakewood was acting based only on race. And
16 that is your best shot at doing that?

17 A Well, there's certain information that has come
18 to light through discovery such as Exhibits A
19 and B, which further corroborate by assertion
20 that the City of Lakewood had an organized,
21 orchestrated program to eliminate the black
22 tenants from Hidden Village.

23 Q All right. We'll get to that in a moment. I
24 have some questions about the things that have
25 been listed in Interrogatory 14, okay?

1 A Okay.

2 Q And in the first bullet point you indicate that
3 the "Defendant Barrett, on behalf of the City
4 of Lakewood, asserted to Lutheran Metropolitan
5 Ministries that the YRP program violated
6 Lakewood's zoning law even though he knew or
7 should have known that such use was not a
8 violation of the City's zoning code."

9 A That's correct.

10 Q When and how did that occur?

11 A We received a zoning violation. I think it was
12 on the basis that we were operating a group
13 home in violation of city code. I'd have to
14 look at the exact violation.

15 Q Was that in the form of a letter?

16 A I think so. It was a letter dated May 18,
17 2006, from Charles Barrett.

18 - - - - -

19 (Defendants' Exhibit D was marked.)

20 - - - - -

21 Q You've been handed what's been marked as
22 Defendants' Exhibit D. Is that the letter you
23 are referring to?

24 A Yes.

25 Q Now, this letter references a meeting of

1 February 14 of 2006?

2 A Yes.

3 Q All right. Were you a participant in that
4 meeting?

5 A No.

6 Q Do you know who did participate or have you
7 gotten information about who participated?

8 A I did at the time. My recollection was that
9 somebody from the Youth Re-Entry Program,
10 somebody from the city, possibly Mr. Priore,
11 Marilyn Watts. I believe Kandi Withers, who
12 works for the Youth Re-Entry Program. The
13 police department for Lakewood. The law
14 department for Lakewood. And that's my
15 recollection.

16 Q Did anybody ever describe for you what occurred
17 at that meeting?

18 A They were discussing the occupancy of the Youth
19 Re-Entry Program, and my conversations with
20 Mr. Priore led me to believe that the police
21 were there to intimidate the Youth Re-Entry
22 Program into vacating our building.

23 Q Did he say what led him that to conclusion?

24 A The mere presence of a meeting regarding the
25 use of an apartment complex leads me to no

1 other conclusion other than it was to coerce or
2 intimidate our tenants.

3 Q Did Mr. Priore relate to you any threats made
4 by any police officers?

5 A No.

6 Q Did he relate to you any statements indicating
7 that the police officers were motivated to be
8 at that meeting by a reason of some racial
9 makeup? Did he indicate that there were any
10 statements to that effect?

11 A No. It was just their presence.

12 Q Okay. Did he tell you what, if anything, the
13 police representatives at that meeting said?

14 A I don't recall.

15 Q You had occasion, did you not, to review
16 Mr. Barrett's interpretation of the zoning
17 code, did you not?

18 A Yes.

19 Q All right. And what, if any, conclusion did
20 you reach as to the merits of his position?

21 A It was totally without merit.

22 Q Now, he indicated that, I believe, this was
23 potentially considered an institutional use in
24 a residential area?

25 A Yes.

1 Q All right. Did you ever gain any understanding
2 of the criteria that can legitimately be
3 considered in determining whether it's to be
4 used institutional versus residential?

5 A I personally reviewed all of the Lakewood
6 Housing Codes and Ordinances, Ohio Revised
7 Code, and did not come to the same conclusion
8 that Mr. Barrett did. I came to the exact
9 opposite conclusion.

10 Q I understand that. But did you ever gain an
11 understanding of the criteria that are used in
12 making the determination as to whether a
13 particular use is institutional versus
14 residential?

15 A No.

16 Q All right. You just simply concluded that you
17 did not think that the YRP program was an
18 institutional use?

19 A Well, it's the opposite. The definition of
20 this particular zoning district fits exactly
21 what we were doing and that was renting
22 apartments for residential use.

23 Q Okay. And maybe I phrased that bad. I may
24 have phrased that backwards.

25 What specifically led you to conclude

1 that this was a residential rather than an
2 institutional use?

3 A Because the occupants of the units were
4 occupying the units for residential purposes.

5 Q Because they were living there?

6 A Because they were living there.

7 Q Okay. Well, people live in nursing homes,
8 correct?

9 A Correct.

10 Q That's generally considered to be an
11 institutional use, is it not?

12 A I'm not sure.

13 Q All right. People live in jails?

14 A That I would consider an institution.

15 Q All right. People live in hospitals, albeit
16 for short-term?

17 A Yeah.

18 Q Did Mr. Barrett ever express to you or to
19 anyone else, to your knowledge, that his
20 interpretation of the code was based upon the
21 race of the YRP residents?

22 A No. But my recollection about institutional,
23 and I'm not sure whether it was a conversation
24 with Mr. Barrett or somebody else, part of
25 the -- part of -- I think it was Mr. Barrett

1 that said because, you know, our tenants don't
2 pay their own rent, that it was institutional.
3 And because we didn't have an individual lease
4 with each tenant, it was institutional.

5 And I recall my response was that when
6 you have Section VIII tenants, the tenant
7 doesn't pay the rent either and they are
8 residential use. And when you enter into a
9 lease with HUD for subsidized housing, that's
10 not an institutional use. And the mere fact
11 that these tenants don't pay their own rent is
12 no different than accepting rent from a Section
13 VIII tenant. So my conclusion was it was
14 residential use.

15 Q Did Mr. Barrett ever express to you any other
16 reasons that he cited in finding that this was
17 an institutional versus a residential use?

18 A Not that I can recall.

19 Q Okay. Do you know if he had any other reasons?

20 A No, I don't know.

21 Q You ultimately elected to appeal the citation
22 issued to you by Mr. Barrett in the form of
23 Exhibit D, correct?

24 A Not in the form of Exhibit D. I appealed
25 Exhibit D.

1 Q That's what I meant.

2 A Yes.

3 Q I meant that the citation was expressed to you
4 in Exhibit D, correct?

5 A Correct.

6 Q And you elected to appeal that citation?

7 A That's correct.

8 Q All right.

9 - - - - -

10 (Defendants' Exhibit E was marked.)

11 - - - - -

12 Q And you have been handed what's been marked as
13 Defendants' Exhibit E. Is that the appeal you
14 filed?

15 A Yes.

16 Q During the course of the appeal, Lutheran
17 Metropolitan Ministries joined, correct?

18 A Correct.

19 Q And in fact, you and LMM received some guidance
20 as to the proper forum for that appeal,
21 correct?

22 A That's correct.

23 Q And that would have come from Tom Corrigan, the
24 Assistant Law Director at the City of Lakewood?

25 A I believe so.

1 Q In fact, Mr. Corrigan indicated that in his
2 view, the proper forum was not the board of
3 zoning appeals where the appeal was originally
4 taken under Exhibit E, but instead the Lakewood
5 Planning Commission, correct?

6 A Those conversations were mostly between Craig
7 Miller, who was the attorney for the Youth
8 Re-Entry Program, and Mr. Corrigan. And that
9 conclusion was my understanding of those
10 conversations. And I know Mr. Corrigan wrote a
11 letter basically telling us which forum it
12 should be in.

13 Q Okay.

14 - - - - -
15 (Defendants' Exhibit F was marked.)

16 - - - - -
17 Q You've been handed what's been marked as
18 Defendants' Exhibit F, correct?

19 A Correct.

20 Q And is that in fact the letter that you are
21 referring to in which Mr. Corrigan advised that
22 the appeal should be venued with the planning
23 commission instead of the board of zoning
24 appeals?

25 A Yes.

1 Q And in fact, that appeal was transferred there,
2 correct?

3 A Correct.

4 Q And ultimately, that did prove to be a
5 successful appeal, did it not?

6 A Yes.

7 Q All right. In other words, the planning
8 commission agreed with your view of the world
9 which was that this was a residential versus an
10 institutional use and that YRP could carry on
11 its program at the Hidden Village premises,
12 correct?

13 A Correct.

14 - - - - -

15 (Defendants' Exhibit G was marked.)

16 - - - - -

17 Q You are being handed what's been marked as
18 Defendants' Exhibit G.

19 A Yes.

20 Q And can you tell us what that is?

21 A It's the letter from the City of Lakewood
22 sustaining our appeal and overturning the
23 violation that we were issued on May 18, 2006.

24 Q Did you attend the hearing that led to that
25 decision?

1 A Yes.

2 Q You heard all of the testimony and arguments
3 that were made?

4 A Yes.

5 Q At any point was there any reference whatsoever
6 made to the racial makeup of the YRP clientele?

7 A If there was, it wasn't from the city
8 officials. It may have been from one of the
9 residents that spoke at the hearing. I just
10 don't remember.

11 Q I'm assuming given your suspicions that that
12 would have stood out in your mind?

13 A Maybe, yes. I mean, we were faced with the
14 fliers that were circulated around about having
15 the felons -- you know, alleging that we were
16 renting to ex-felons. And, you know, there
17 were no overt accusations about blacks, but
18 there were certain undertones and currents and
19 reasons for us to be aware of that.

20 Q All right. You mentioned some fliers that went
21 out about, "Are you are aware? Convicted
22 felons are living in your backyard," correct?

23 A Yes.

24 Q These were preliminary to the planning
25 commission hearing?

1 A Yes.

2 - - - - -

3 (Defendants' Exhibit H was marked.)

4 - - - - -

5 Q I'm going to hand you what's been marked as
6 Defendants' Exhibit H. Is that one of the
7 fliers that you were referring to?

8 A Yes.

9 Q Are you aware of any other fliers other than
10 the one represented by this exhibit that was
11 spread around concerning the YRP program at
12 Hidden Village?

13 A No. This is the only flyer that -- well, there
14 were multiple fliers of this same -- the same
15 flyer. It was posted in multiple spots.

16 Q I understand.

17 A Yeah.

18 Q That's why I said, "represented by this." Is
19 this the only flyer you are aware of?

20 A That is one.

21 Q With this text?

22 A Is Exhibit H, yes.

23 Q Okay. Albeit multiple copies of it?

24 A Yes.

25 Q Does that flyer at any point refer to race, the

1 race of the people in the YRP program?

2 A No.

3 Q Are you aware of any information that would
4 indicate that any Lakewood official had any
5 part in either composing or printing or
6 distributing this flyer?

7 A I have no idea who posted it.

8 Q I understand you have no idea who posted it.
9 Are you aware of any Lakewood official in any
10 way participating in getting this organized,
11 drafted up, posted, distributed, anything else?

12 A Well, it was only Lakewood officials who had
13 knowledge of the Youth Re-Entry Program. It
14 wasn't like some neighbor down the street in
15 another building knew about it. So the circle
16 of people that knew about the Youth Re-Entry
17 Program was relatively small. I can't tell you
18 that a city official had any participation in
19 this agreement, but I will tell you that, you
20 know, there is information and misinformation
21 in here that only the city would have known and
22 that we would have known other than the people
23 in the Youth Re-Entry Program.

24 Q Well, there is a published agenda for the
25 planning commission, is there not?

1 A Yes.

2 Q All right. And so it would have been no secret
3 that an appeal was pending before the planning
4 commission, correct?

5 A Correct.

6 Q And it would have been no secret that Lutheran
7 Metropolitan Ministries or the YRP was a party
8 to that appeal, correct?

9 A Correct.

10 Q All right. Now, what is the information that
11 you are referring to in Exhibit H that only a
12 city official would have access to?

13 A Well, the mayor and the police department were
14 complaining about the increase in the crime
15 wave. This flyer specifically tells everybody
16 to keep your neighborhood safe. I think the
17 city was under the impression -- and
18 specifically the mayor, you know, he mentions
19 reentering parolees in his February 28, 2007
20 letter. This is talking about convicted felons
21 are living in your backyard and these are
22 things that only city officials would know. So
23 my suspicion was that somebody in the city took
24 part in producing this.

25 Q All right. And you have indicated that

1 suspicion, you are basing that on nothing more
2 than your own conclusion drawn from your view
3 that only city officials would have knowledge
4 of convicted felons being in the Hidden Village
5 property, correct?

6 A No, that's not correct.

7 Q Okay.

8 A It's the fact that the mayor mentions that the
9 residents are reentering parolees. It's the
10 fact that the police document is targeting
11 these individuals and alleging that there is a
12 crime wave. A neighbor that lives down the
13 street doesn't know that there is a crime wave
14 going on if there is in fact a crime wave.
15 Only the city and the police department would
16 know that. So it's not -- it's a totality of
17 information that I draw the conclusion that a
18 city official had something to do with this.

19 Q And the document speaks for itself, but I would
20 ask you if you could refer me where, in Exhibit
21 H, there is any reference to a crime wave?

22 A "Are you aware? Convicted felons are living in
23 your backyard." That's -- I mean, that
24 couldn't get more blatant. "Keep your
25 neighborhood safe." That couldn't get more

1 blatant. That's a far cry from what's
2 published in the public records about a zoning
3 violation between an institutional use versus a
4 residential use.

5 Q There is not, is there, any reference to an
6 actual uptake in crime taking part in the
7 neighborhood in this flyer, is there?

8 A That's exactly the point. The police are
9 alleging that, the mayor is alleging that, and
10 this flyer is designed to get the planning
11 commission to uphold the violation and get rid
12 of the Youth Re-Entry Program. Only they would
13 know. Only they would have reason to
14 distribute a flyer like that. A layperson in
15 the City of Lakewood would have no idea what
16 the makeup of our tenants are. They would have
17 no idea about the Youth Re-Entry Program. The
18 public record merely says that there is a
19 zoning hearing based on institutional use
20 versus residential use. Only the city knows
21 this information. My conclusion is that
22 somebody in the city, part of the orchestrated
23 plan to interfere with my business of renting
24 to people and in an effort to get rid of the
25 black residents in the City of Lakewood had

1 something to do with this flyer. And yes,
2 that's my opinion.

3 Q I understand that, but my question is very
4 simple. Is there anywhere in this document,
5 Exhibit H, a reference to an increase in crime
6 actually occurring in this neighborhood?

7 A It's the corollary that, "Are you aware?
8 Convicted felons are living in your backyard."

9 Q So the answer is no?

10 A No. The answer is not no. It's not a
11 yes-or-no answer. The question is -- you are
12 asking me, "Is there something on here that
13 leads you to believe that there is an increase
14 in crime?" Only the city officials and the
15 police department were the ones complaining
16 about an increase in crime. They are the only
17 ones that have motive to print a flyer like
18 this and put a flyer like this out.

19 Q Fair enough.

20 We can agree, can we not, that as far as
21 you know, the YRP criteria or mission is no
22 secret, correct?

23 A Correct.

24 Q All right. And anybody getting on a website
25 would be able to determine that the YRP accepts

1 youths being released from the Ohio Youth
2 Services Commission, correct?

3 A No, I'm not sure that that's true.

4 Q In the second bullet point under Interrogatory
5 14, which is Exhibit C, you indicate that the
6 "Defendants asserted that YRP was not a
7 residential use but institutional use, despite
8 an explanation by Hidden Village and by YRP
9 that it was strictly residential"?

10 A Correct.

11 Q How was that explanation conveyed?

12 A Craig Miller prepared a fairly complex analysis
13 of the situation and sent it to the city.

14 Q All right.

15 A And also my conversation with Charlie Barrett
16 about the rent issue that I previously
17 discussed.

18 Q And I don't really intend to make this an
19 exhibit here, but I'm going to refer you to a
20 memo of June 12, 2006 to Craig Miller or -- I'm
21 sorry.

22 A Well --

23 Q From Craig Miller to Jan Roller. Is that the
24 analysis that you are referring to?

25 MR. HABER: For the

1 record, it's got a Bates stamp from us of
2 P0180.

3 A Yes, that is the memo I'm talking about.

4 MR. HABER: So that I
5 know, when it says "Hidden Village" and a Bates
6 stamp number, that's just something you have
7 put on it to attribute it to us?

8 MR. CLIMER: Yes.

9 MR. HABER: Okay.

10 Q Who are the officials that insisted that this
11 was a residential use despite your
12 protestations to the contrary?

13 A Well, the official is Charles Barrett. He's
14 the one that issued the citation.

15 Q You have no knowledge that Chief Mroz was
16 involved in any way in that determination,
17 correct?

18 A I have no idea.

19 Q You have no knowledge that Chief Malley was
20 involved in any way in that determination,
21 correct?

22 A I have no idea whether he was or wasn't.

23 Q Now, the third bullet point under Interrogatory
24 14, and I think that's the first one at the top
25 of page 10 of the Interrogatory Answers which

1 are Exhibit C, you indicate that, "At all
2 meetings between YRP, Hidden Village and
3 Defendants, the City of Lakewood had police
4 present in an effort to intimidate the YRP from
5 renting from Hidden Village."

6 A That's correct.

7 Q All right. You had already discussed one
8 meeting in which Mr. Priore, you believe, was
9 present. Are you referring to any other
10 meetings?

11 A I believe there were one or two more meetings
12 that were between the Youth Re-Entry Program
13 and the city directly without Mike Priore and
14 my participation.

15 Q Do you know when that occurred?

16 A No.

17 Q Other than YRP representatives and apparently
18 police representatives, did you understand who
19 else may have attended those meetings?

20 A No.

21 Q Do you know what was said at those meetings?

22 A I was not at the meetings. I don't know
23 exactly what was said.

24 Q Do you know what the agenda was for the
25 meetings?

1 A Well, the Youth Re-Entry Program's agenda was
2 to soothe over any bad relations and
3 misunderstanding with the city. That was their
4 agenda.

5 Q And if in fact the police department was one of
6 the agencies that expressed issues with YRP, it
7 would be very hard or very difficult to
8 communicate with them or soothe some of the
9 things over without their presence, correct?

10 A No. This is not a police issue. This is a
11 zoning issue. As a lawyer, I've been to many
12 zoning meetings with city officials, not
13 Lakewood, but other cities, and I have never
14 had a policeman present at a zoning meeting.

15 Q How did you learn of these one or two other
16 meetings?

17 A I don't know how I learned of them, but I know
18 they occurred.

19 Q Did anybody indicate to you that they felt
20 intimidated by the police presence at these
21 meetings?

22 A I don't recall.

23 Q The second bullet point on page 10 you refer
24 to, "Defendants, in furtherance of their
25 efforts to interfere with the Hidden Village's

1 right to rent to YRP, proposed that YRP move to
2 undesirable sections of the city."

3 I think you also allege that in paragraph
4 38 of your complaint?

5 A That's correct.

6 Q When did this occur?

7 A I believe the mayor's letter. He's asking YRP
8 to relocate the program.

9 Q And you are referring to former Mayor George's
10 letter of February 28 of 2007?

11 A Yes.

12 Q All right.

13 A The mayor is telling Ms. Roller in the first
14 paragraph that it can't continue, particularly
15 at its present location. Then in the last
16 paragraph of the letter, he's telling them
17 that, you know, that they should take voluntary
18 steps to relocate the program. And then in the
19 last paragraph on page 2 of the letter, the
20 mayor tells them, "I will seek to have the
21 program removed from Lakewood at the earliest
22 possible time." So yes, I consider that
23 interference with my right to rent.

24 - - - - -

25 (Defendants' Exhibit I was marked.)

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Q And the letter of February 28, 2007 that you are referring to has been handed to you and marked as Defendants' Exhibit I, correct?

A Correct.

Q Does that letter at any point mention the race of the YRP clientele as being a motivating factor for these suggestions made by the mayor?

A No, it does not.

Q By the way, have you had discussions with Mayor George about this situation with YRP at Hidden Village?

A No.

Q Has anyone come to you with information indicating that they had overheard statements that would lead one -- or statements by Mayor George to the effect that race was a motivating factor for him? I can reask it if you want. I got a little tangled.

A Could you say that again?

Q Has anybody come to you claiming to have heard Mayor George making statements to the effect that race was a motivating factor in his actions relating to YRP and Hidden Village?

A No.

1 Q In fact, Mayor George's suggestion that YRP may
2 want to think about different quarters proved
3 unsuccessful, correct?

4 A Correct. But I do know that he wanted them to
5 move to another part of Lakewood, which is the
6 only other part of town in Lakewood that's
7 predominantly African American.

8 Q Where was that?

9 A I think it's somewhere on Madison or Detroit.

10 Q How did you learn that he was suggesting that
11 area?

12 A I think somebody from Youth Re-Entry told me
13 that.

14 Q Do you know who that was?

15 A No. It probably was Mark Brauer.

16 Q You didn't overhear that statement yourself?

17 A No.

18 Q Are you aware of any census or other data that
19 would indicate the makeup of the
20 Detroit-Madison area?

21 A Say that again.

22 Q Are you aware of any census data or any other
23 information that would give us the actual
24 racial makeup of the Detroit-Madison area?

25 A No, I'm not.

1 Q And so that February 28 letter and the
2 statement from YRP are the only two things upon
3 which you base your allegation that the city
4 encouraged YRP to move to a more undesirable
5 section of the city, correct?

6 A No, that's not correct.

7 Q Okay. Were there other statements made to that
8 effect that you are aware of?

9 A Well, it's not the statements, it's the
10 letters. It's the police being instructed to
11 target those two buildings. It's the May 22
12 raid on our property. It's all of these things
13 in totality that lead me to the conclusion that
14 Lakewood does not want black residents living
15 at Hidden Village.

16 Q I understand. I maybe phrased that question
17 badly. The only two statements you are aware
18 of specifically indicating that YRP -- the only
19 two statements you are aware of from Lakewood
20 officials to the effect that YRP should move to
21 less desirable areas of the city are the
22 February 28 letter from Mayor George, number
23 one. And number two, the statement that was
24 relayed to you by Mr. Brauer, you believe?

25 A No. I think -- I think by -- it's not a

1 yes-or-no answer. It's a totality of the
2 circumstances that led me to believe that.

3 Q I understand. I'm just trying to get my arms
4 around how many times this statement was made,
5 to your knowledge.

6 A Well, I don't recall how many times, but it was
7 more than twice, I can tell you that.

8 Q But the only two specific ones you can cite, as
9 we sit here, are the February 28 letter and the
10 statement relayed to you by Mr. Brauer?

11 A Well, no. I know Michael Priore has indicated
12 to me that he participated in meetings where
13 the city wanted them to move to a less
14 desirable part of town. There have been other
15 statements. I just can't recall what they are
16 right now.

17 Q So the three we can identify as we sit here are
18 the February 28 letter, the statement related
19 to you by Mr. Brauer, and the one by
20 Mr. Priore, which may have been more than once?

21 A Yeah. But the answer to the question results
22 in a misleading conclusion. The conclusion is
23 that the city had an orchestrated program to
24 get rid of the black tenants at Hidden Village,
25 and it's not just one or two statements. It's

1 all of these things that I have told you about
2 in totality. I don't want the record to -- I
3 don't want a sound bite out of this deposition
4 to imply that those are the only things that
5 lead me to conclude that the City of Lakewood
6 was trying to get rid of the black residents,
7 because that's not the case.

8 Q I very well understand, sir, that you are
9 contending that the totality of the
10 circumstances are what lead you to believe that
11 Lakewood was motivated to act against Hidden
12 Village and the YRP program on account of race.
13 Why don't we take that as a given in this case,
14 and I'll give you that stipulation. But if we
15 are going to be clear with each other and move
16 on, we also need to talk about some of those
17 individual parts. Okay?

18 A Okay. Yes.

19 Q All right. And all I'm trying to do is get
20 a -- I'm not trying to bend your contention out
21 or get a sound bite out of context. I'm simply
22 trying to get my arms around the sources of
23 information you have about statements from
24 Lakewood officials that YRP should move to less
25 desirable areas. The basis for that

1 allegation, as I understand it, comes from
2 three basic sources; the May 28 letter from the
3 mayor, statements related to you by Mr. Priore,
4 and statements related to you by Mr. Brauer,
5 correct?

6 A Well, also this departmental correspondence
7 which was previously marked. They want to use
8 the nuisance ordinance to get rid of the
9 program.

10 Q Okay.

11 A That's part of it, too.

12 Q And you are referring to Defendants' Exhibit A?

13 A Yes.

14 Q Okay. In the third bullet point on page 10 of
15 the interrogatories, you indicate that the
16 "Defendants and its officials made clear to
17 Hidden Village that the African-American
18 prospective tenants in the YRP program were
19 unwelcome at Hidden Village Apartments or in
20 the desirable sections of Lakewood."

21 A That's correct.

22 Q I would like you to relate for me the occasions
23 on which this occurred.

24 A Okay.

25 Q As best you can.

1 A For the most part, it's the exact answer to the
2 previous question. The letter.

3 MR. HABER: Your
4 stipulation.

5 A The letter from Lakewood, the police
6 memorandum, the result of conversations that I
7 had after the meetings, it's the flyer that was
8 posted that forms the basis of the allegation.

9 Q So you are saying the totality of the
10 circumstances in this case?

11 A Yes.

12 Q Did any Lakewood officials specifically tell
13 you that hidden -- that YRP's African-American
14 tenants were not welcome in Lakewood?

15 A Well, the mayor's statement in his letter
16 saying that they are not welcome and he's going
17 to take every effort to move them out of
18 Lakewood tells the story.

19 Q Which makes a generic reference to YRP tenants
20 without any reference to race, correct?

21 A Well, I have to assume that, you know, the
22 mayor is somewhat intelligent. And these days,
23 racial discrimination comes in very subtle
24 forms. Nobody out-and-out says, "We don't want
25 blacks here. You have to get out." Racial

1 discrimination occurs in subtle ways. And the
2 mayor's letter is an exact example of telling
3 me that he doesn't want the black people in
4 Lakewood by what he said in the letter.

5 Q Any other specific statements by any Lakewood
6 official that you can cite indicating that
7 African-American tenants of YRP are not welcome
8 in Lakewood?

9 A The zoning violation, for one.

10 Q Okay.

11 A The harassment by the fire officials.

12 Q You are talking about the citation that was
13 issued to you by Mr. Barrett?

14 A Right, correct.

15 Q Correct?

16 A Yes.

17 Q When you talk about the harassment by the fire
18 officials, you are talking about the
19 inspection, or if you want to call it the raid
20 that occurred on May 22 of 2007, and subsequent
21 visits from the fire officials?

22 A Correct.

23 Q Okay. We'll get to those in a little bit.

24 A All of those things are orchestrated to get rid
25 of the Youth Re-Entry Program.

1 Q But my question to you is, are you aware of any
2 specific statement by any other Lakewood
3 official that YRP residents who are
4 African-American are not welcome in Lakewood?

5 A Well, it's like I told you before,
6 discrimination is not overt. Nobody in this
7 day in age when somebody comes to rent an
8 apartment says to a prospective tenant, "We're
9 not renting to you because you are black,"
10 because everybody knows that's discrimination.
11 So they do it in subtle ways. And all of these
12 things that I have told you about is Lakewood's
13 way of telling me that they don't want black
14 residents in the city.

15 Q So the answer is?

16 A Yes.

17 Q You are not aware of any other statements by a
18 Lakewood official specifically indicating
19 African-American tenants of YRP are not welcome
20 in the city?

21 A YRP residents are not welcome in the city and
22 they all happen to be black.

23 Q Okay. The fourth bullet on page 10 says, "When
24 Defendants were not successful in intimidating
25 the Hidden Village from proceeding to rent to

1 the YRP tenants, they then claimed that Hidden
2 Village was operating a group home in violation
3 of the Lakewood zoning code even though
4 Defendants knew or should have known that the
5 Hidden Village was not operating a group home."

6 Am I correct in understanding that this
7 refers to the citation that was issued to you
8 by Mr. Barrett?

9 A Yes.

10 Q All right. Now, we've exhausted that subject,
11 correct?

12 A Yes. Yes.

13 Q And then in the next bullet point you refer to,
14 "On May 18, 2006, Defendants issued zoning
15 violations to Hidden Village."

16 And again, that refers to the citation
17 issued to you by Mr. Barrett which we've
18 already fully discussed, correct?

19 A Correct.

20 Q In the sixth bullet point on page 10 you
21 indicate that the "Defendants' representatives
22 continued to express outrage that Hidden
23 Village permitted the YRP tenants to occupy the
24 units without advance consent from the city
25 though all Defendants knew or should have known

1 that Hidden Village was not required by law to
2 advise city officials when a new tenant was
3 moving into an apartment unit."

4 A Correct.

5 Q How was this outrage communicated to you?

6 A The mayor's letter of February 28, 2007 has a
7 paragraph titled, "Surprise Move-In."

8 Q All right.

9 A And the mayor, the police, the fire department,
10 everybody knew or should have known that a
11 landlord doesn't need, either by statute,
12 ordinance or otherwise, any permission from the
13 City of Lakewood to move a tenant in.

14 Q Am I correct in the impression that the reasons
15 Lakewood should have known were reading its own
16 code, your communication with them indicating
17 disagreement with their assessment, and Mr.
18 Miller's analysis?

19 MR. HABER: Objection to
20 the form.

21 You can answer.

22 A Well, Mark Brauer and Kandi Withers met with
23 the city and told them that they were moving in
24 beforehand.

25 Q All right. I guess what I'm trying to get my

1 arms around is the universe of things that you
2 contend should have led the city to realize
3 that this was a residential rather than an
4 institutional use.

5 A Well, the Youth Re-Entry Program met with city
6 officials themselves. Craig Miller had
7 discussions -- it was my understanding he had
8 discussions with Mr. Corrigan, of the law
9 department, and discussed the issue of moving
10 in. And I am not aware of any statute, rule or
11 ordinance that requires a landlord to get
12 permission from the city to have a tenant move
13 in. And the city officials either knew that or
14 should have known that and there is no basis to
15 complain that we had a surprise move-in. First
16 of all, it wasn't a surprise. And second of
17 all, we can move in anybody we want. We don't
18 need the city's approval to move a tenant into
19 an apartment.

20 Q Am I correct in understanding though that at
21 least at that point in time, there was some
22 discussion going on as to whether YRP was
23 appropriate under the zoning code at the time
24 the move-in occurred?

25 A Yes.

1 Q Okay. And that debate had been going on, as I
2 understand it, for a couple of months maybe?

3 A I don't know the time frame, but it had been
4 going on.

5 Q And so the things upon which you base your
6 conclusion that the city should have been
7 aware, again, that this is an institutional
8 versus a residential use, would be Mr. Miller's
9 discussions with Mr. Corrigan, Mr. Brauer's
10 discussions with the city, your appeal, the
11 analysis given by Mr. Miller, anything else?

12 A Well, the fact that there is no statute, rule
13 or ordinance for one. They should know that we
14 don't need their permission to move somebody
15 in.

16 MR. HABER: So we are
17 clear, I think he's going back and asking the
18 same question that he asked a while ago which
19 was, "Why should they have known it was not an
20 institutional use?" You are answering the
21 question that he was posing more currently
22 which was, "Why should they know that you don't
23 have to give notice?" I want to make sure that
24 we're having --

25 Q The subject was institutional use versus

1 notice. I understand it's your contention
2 there is nothing in the code requiring notice
3 of a move-in.

4 A Well, there is no rule, statute or ordinance
5 that requires notice when somebody moves into
6 an institution either.

7 Q Okay. The seventh bullet point on page 10. On
8 February 28, 2007, Mayor George wrote a letter
9 to Jan Roller complaining of -- I'm
10 paraphrasing -- complaining of the surprise
11 move-in, and in violation of Hidden Village's
12 right to rent to African Americans without
13 interference, threatened to have the program
14 removed from Lakewood at its earliest possible
15 time.

16 Did you ever have any discussion at all
17 with Mayor George concerning that letter?

18 A No.

19 Q All right. Are you aware of or has anybody
20 described for you any discussions that they may
21 have had with Mayor George concerning that
22 letter?

23 A No.

24 Q As we've previously discussed, that letter
25 certainly didn't work, as YRP remains a tenant

1 at Hidden Village, correct?

2 A Right. The city was unsuccessful in coercing
3 and intimidating our tenants to leave, yes.

4 Q The eighth bullet point talks about a flyer
5 distributed throughout the neighborhood before
6 the zoning board meeting. And I take it that
7 refers, again, to the flyer that has been
8 marked as Defendants' Exhibit H?

9 A Yes.

10 Q You are aware of no fliers other than that?

11 A Correct.

12 Q The ninth and tenth bullet points on page 10 I
13 think also mention, which is paragraph 58 of
14 your complaint, you allude to a neighbor
15 reporting that a tenant had verbally harassed
16 someone working at her building, although it
17 was never determined that it was a YRP tenant.
18 And that another neighbor claimed to have seen
19 a YRP tenant making a drug deal. And I
20 understand that to have occurred at a meeting
21 arranged by a City Council person that's
22 referred to in the preceding bullet point?

23 A Yeah. This part of the answer to the
24 interrogatory was contributed by Michael
25 Priore. I don't have any direct knowledge of

1 that. I wasn't at the meeting.

2 Q Okay. Did Mr. Priore attend that meeting? Did
3 he say he attended that meeting?

4 A He attended one of the meetings, yes.

5 Q Do you want to take a short break?

6 A Yeah.

7 (Off the record.)

8 Q On page 11, the first bullet point of the
9 Interrogatory 14 answer, you indicate that the,
10 "Defendant city's police claimed that YRP was
11 responsible for crime wave and that response
12 calls to Hidden Village have doubled since YRP
13 had moved in as compared to the same period the
14 previous year."

15 Previously I think you alluded or
16 indicated that the complex had been empty in
17 the year before YRP moved in?

18 A Well, it was a slow build up of occupancy,
19 because it took a little while to get rid of
20 all the diesel mechanic kids because they all
21 had different leases and we moved them from
22 various buildings and consolidated them into
23 one building so that we would start working on
24 an empty building. So it was a slow, slow
25 build up. So it wasn't exactly empty to full.

1 It was -- you know, over a two-year period it
2 gradually filled up.

3 Q Okay. And I guess your point, if I'm
4 understanding correctly is, you are not really
5 comparing apples to apples, because when YRP
6 moved in, there was substantially more
7 occupancy in the complex than there had been in
8 the preceding year?

9 A Correct. And also the reporting on the basis
10 of the two police memos, the reporting increase
11 makes an unfair comparison also.

12 Q And you are talking about the fact that the
13 memo calls for some more pinpoint type
14 reporting as opposed to --

15 A Well, yeah. The preferred method is to make a
16 report. So, you know, in the prior years, if
17 that wasn't the case, then automatically you
18 get an increase.

19 Q And the upshot of all of this is I assume,
20 then, you are saying that to the extent the
21 police statistics may show an increase in
22 crime, you question the statistics on that
23 basis?

24 A Yes.

25 Q Okay.

1 A And also the mayor's letter and all the things
2 I talked about before.

3 Q Okay. Did you ever bring these -- your point
4 of view on these statistics to the attention of
5 the police or anybody else in administration at
6 Lakewood?

7 A I believe that that was a topic of conversation
8 at one of the meetings that I wasn't present.

9 Q Okay. Do you know who may have brought that
10 up?

11 A I don't know who brought it up, but I know the
12 Youth Re-Entry Program probably did.

13 Q And then the third and fourth bullet points on
14 page 11 of the Interrogatory Answers are
15 additional reasons that you contend the police
16 statistics, at least for that year, may not be
17 correct or may not be an accurate gauge of any
18 uptake in crime?

19 A Well, point four is. Point five is a different
20 topic.

21 Q Yeah, I think we are talking three and four?

22 A Three and four, yes.

23 Q Okay. Now, the second bullet point on page 11,
24 that the, "Defendants were aware that the
25 previous use of the apartment building was by a

1 diesel mechanic school dormitory where there
2 was substantial problems."

3 Can you explain for me why you believe
4 that to be significant to this case?

5 A Well, because the diesel mechanic kids were
6 much more of a problem than the Youth Re-Entry
7 kids and nobody ever took any action to try to
8 get them to move out of Lakewood.

9 Q Okay. Have you reviewed any reports of
10 statistics of crimes that were occurring while
11 the diesel mechanic school was being run versus
12 after YRP moved in?

13 A No. That's just from my own personal knowledge
14 of complaints from tenants about fighting and
15 squealing tires and the fact that they had
16 their own security staff on the parking lot
17 during the night. So, you know, maybe the
18 police involvement was less because they had
19 their own uniformed patrolman. So the
20 statistics may not reflect that activity.

21 Q Okay. Are you aware of any felony misconduct
22 occurring or being committed by residents who
23 were there during the tenure of the diesel
24 mechanic school?

25 A I'm not aware.

1 Q The fifth bullet point, you indicate that the,
2 "Defendant's city councilwoman recommended that
3 only YRP tenants be placed in community
4 service, but did not urge similar service for
5 white tenants at Hidden Village Apartments or
6 for any other location in the City of
7 Lakewood."

8 Do you know who the councilperson was who
9 allegedly made this suggestion?

10 A I did not participate in that particular
11 answer.

12 Q Do you know whose answer that is?

13 A I think it's --

14 MR. HABER: Well, for the
15 record, it's Hidden Village's answer.

16 MR. CLIMER: Well, I
17 understand that.

18 Q But do you know who it is that propounded that
19 answer on behalf of Hidden Village?

20 MR. HABER: Which one are
21 you on now?

22 A It's the one about the Lakewood councilwoman.
23 I'm not sure.

24 Q Okay. And you have no knowledge as to what, if
25 anything, was said that led to that answer?

1 A No.

2 Q Said by the councilperson?

3 A No.

4 Q Okay. Now, at bullet points six, seven and
5 eight on page 11, you refer to a letter of
6 April 28 of 2007 written by Mayor George
7 which --

8 A It's a typo.

9 Q I was going to say, the descriptions given in
10 those three bullet points sound suspiciously
11 like Mayor George's letter of April 28?

12 A Yes. That's a mistake.

13 Q And we've already discussed that letter which
14 has been marked as Defendants' Exhibit I,
15 correct?

16 A Correct.

17 Q I believe the ninth bullet point on page 11 of
18 the interrogatories that we've been discussing
19 talks about, "Defendant city continued to
20 harass and attempt to intimidate Hidden Village
21 through its police department, fire department,
22 and building department."

23 And I know that you have made some
24 mention of the raid or inspection that occurred
25 on May 22 of 2007 and some subsequent visits by

1 fire officials?

2 A Uh-huh. Right.

3 Q And we'll get to those in a little bit, but my
4 question to you is this. Are you referring to
5 any other efforts to harass or intimidate
6 Hidden Village other than those?

7 A Well, the police department continually drove
8 through our parking lot, frequently stopped
9 Youth Re-Entry tenants, asked for
10 identification and those kinds of things.

11 Q I've noticed that you have a security system
12 that records events?

13 A Yes.

14 Q Are any of those police drive throughs recorded
15 on video, to your knowledge, or otherwise?

16 A I don't know whether we -- it automatically
17 records over the disk drive, so I don't --
18 unless we do something on purpose to save it,
19 it's probably not saved.

20 Q Okay.

21 A I've personally seen the police drive through.

22 Q Okay. Have you ever on any occasions, say, for
23 instance, when you were cleaning out the diesel
24 mechanic school tenants, requested police
25 attention to your parking lot?

1 A We hired the police as security when we
2 initially took over the building. We -- they
3 had so many kids there that were really just
4 out of control. For example, when we took over
5 the building, there was a couch on the roof
6 where the kids would drink beer and later we
7 found when our gutters didn't work and we took
8 the gutters out, they had kept putting the beer
9 cans in the gutters. I mean, the whole place
10 was just so out of control that we initially
11 hired Lakewood Police as our security staff.

12 Q Okay. And I take it there were drive throughs
13 as part of that?

14 A Yeah. But what I'm talking about, the drive
15 through is recent, you know, after, not
16 initially when we bought the property.

17 Q And I understand that. And is it unusual for
18 the Lakewood Police Department to do drive
19 throughs in apartment parking lots where there
20 have been reported problems?

21 A Well, it's probably not unusual except for the
22 fact that after the May 22 raid, I instructed
23 the City of Lakewood in writing that they
24 weren't allowed on our property without there
25 being an emergency or without there being a

1 warrant and they continued to do so.

2 Q Okay. They continued to do drive throughs?

3 A Right.

4 Q Did you lose any tenants as a result of those
5 drive throughs, to your knowledge?

6 A I don't know.

7 Q And by the way, that brings me to another
8 subject. When you purchased the Hidden Village
9 property, I take it that you did get a title
10 report and all of that?

11 A Correct.

12 Q Were you made aware of any easements running
13 through the property that impaired or impinged
14 on its use in any way?

15 A I know there is an easement from the building
16 next door to use our driveway.

17 Q And the building next door is not The Drake?

18 A It's on the other side, Executive something.

19 Q Hidden Village is the grantor of that easement
20 giving the building next door the right to use
21 that building?

22 A Right.

23 Q Are you aware of any public right of way
24 through the parking lot, or anything like that?

25 A I'm not aware of that. That's not to say that

1 it doesn't exist. I just don't recall.

2 Q I understand. And the reason I ask is, some
3 parking lots might appear to be private
4 property or actually public thoroughfares and
5 that's --

6 A I believe we own this parking lot.

7 Q Okay. Understanding that you objected to any
8 police presence on your property absent some
9 emergent circumstances after May 22, 2007, did
10 you object to these police drive throughs after
11 that?

12 A Well, I didn't think I needed to. I wrote a
13 letter to the city telling them to stay out of
14 our property.

15 Q I understand. I'm not suggesting you did have
16 to do that. I'm just asking, did you?

17 A No. I don't recall that I did.

18 Q Other than the events of May 22 and thereafter,
19 and these police drive throughs, any other
20 forms of harassment or attempted intimidation
21 that you are aware of that are referred to in
22 this bullet point?

23 A Oh, in that bullet point? Which number are we
24 on?

25 Q I think the tenth one here.

1 A Not other than what we already talked about,
2 the memos and the police being directed to
3 target them.

4 Q And I understand that later on down in the
5 bullet points there are some references to
6 police interactions with some of the YRP
7 tenants and we'll address those individually,
8 okay?

9 A Uh-huh.

10 Q In the third bullet point from the bottom on
11 page 11 you refer to, "Unsubstantiated
12 assertions by the Defendant's police department
13 were behind the Defendants' efforts to coerce
14 and intimidate young African Americans to leave
15 their residences at Hidden Village Apartments."

16 What are you referring to there?

17 A Well, the police presence at meetings, the
18 police stopping tenants without any probable
19 cause. The continual drive throughs of the
20 apartments. The targeting of those tenants as
21 we discussed in those two departmental
22 correspondence. The city, the mayor, telling
23 Youth Re-Entry that he'll do all that it takes
24 to get rid of them. I mean, that's all part of
25 it.

1 Q Okay. Just so I understand. To your
2 knowledge -- well, the meetings you are
3 referring to are the meetings between YRP and
4 the city and perhaps Mr. Priore and the city
5 where the police were present?

6 A Correct.

7 Q Okay. If I'm understanding correctly, you have
8 no knowledge as to what, if anything, the
9 police said in those meetings other than there
10 is a crime wave?

11 A Me personally, no, because I was not present.

12 Q Okay. And to be fair, I guess you could
13 characterize the, quote/unquote, crime wave
14 assertion and the statistics that are cited in
15 the first four bullet points on page 11, to be
16 assertions by the police department, correct?

17 A Correct.

18 Q We've already discussed your view of those
19 statistics?

20 A Correct.

21 Q The next to the last bullet point on page 11,
22 you refer to Mayor George telling Lutheran
23 Metropolitan Ministries he supported the police
24 and that they would continue to scrutinize
25 Hidden Village to make sure its residents would

1 not be causing problems. Am I correct in the
2 understanding that those statements are
3 contained in the mayor's February 28 letter?

4 A No, not completely. I think somebody from
5 Youth Re-Entry may have had a conversation with
6 the mayor or -- with the mayor between Mayor
7 George and Lutheran Ministries. I think they
8 got that from either one of the meetings or a
9 direct conversation.

10 Q You were not a party to that meeting?

11 A No, I was not.

12 Q You also refer in the last bullet point on page
13 11 that Mayor George expressed resentment that
14 the YRP tenants moved into Lakewood by stealth
15 on Good Friday. Does that statement refer
16 to -- you are taking that from the February 28,
17 2007 letter?

18 A Correct. It's directly in there.

19 Q Are you aware of it being expressed in any
20 other place by any others?

21 A I know he's mentioned it at some of the
22 meetings or city officials have mentioned it in
23 other meetings.

24 Q All right. Now, turning to page 12 of the
25 interrogatories. The first seven bullet points

1 refer to what you've characterized as a raid,
2 and I call it an inspection, on May 22, 2007.

3 Okay?

4 A Okay. Yes.

5 Q And in discovery, we have been provided a
6 disk -- a video disk of that incident depicting
7 certain portions of that incident.

8 A Yes, that's correct.

9 Q Have you had a chance to review that disk?

10 A Yes. It's been a while, but I did look at it.

11 Q There are two females and we can turn it on
12 here, if you want. But there are two females
13 depicted. Do you know with whom they are
14 associated?

15 A The older woman is Marilyn Watts.

16 Q She, I believe, is like in a red dress?

17 A I can't remember what she was wearing.

18 Q All right. And there is a younger woman that
19 appears to be accompanying personnel around?

20 A I think that might have the been Kandi Withers
21 from Youth Re-Entry.

22 MR. HABER: Do you know?

23 THE WITNESS: I don't know.

24 No.

25 MR. HABER: If you want to

1 put it on, he can tell you if he recognizes
2 her.

3 Q Will you recognize Kandi?

4 A No, I wouldn't.

5 Q Okay.

6 A I would recognize Marilyn Watts. I know for
7 sure that Marilyn Watts is in the video.

8 Q All right.

9 MR. HABER: Then don't
10 guess or speculate on the other person. We'll
11 confirm it one way or another.

12 Q When did you first become aware of or involved
13 in that May 22, 2007 event?

14 A As soon as it happened.

15 Q How did you become aware of it?

16 A Marilyn called me and told me that all these
17 people were at Hidden Village demanding to
18 inspect the C and D building units.

19 Q And is that specifically what she told you,
20 they wanted to see C and D?

21 A Well, she may have said the Youth Re-Entry
22 units, but...

23 Q So what was relayed to you from Ms. Watts is
24 that the city officials were there specifically
25 asking to see the YRP units and the YRP units

1 only?

2 A Could you restate that again?

3 Q Their interest or their expressed interest in
4 being there was limited to the YRP units,
5 according to Ms. Watts?

6 A Yes.

7 Q Okay. What else was said in that conversation
8 you had with Ms. Watts?

9 A I asked her who was -- who was there. And the
10 first time that she called me she -- she was en
11 route, so she had not actually gotten there
12 yet. Then she called me again. I told her to
13 call me as soon as you get there. A couple
14 minutes later she called me again and she told
15 me the police were there and the fire
16 department and the health department and the
17 building department.

18 Q Did she describe to you how many police
19 officers were there?

20 A She told me about ten. Oh, police officers?
21 Three. I think she said three.

22 Q Okay.

23 A And there was a K-9 van or car in the parking
24 lot.

25 Q Do you know if the K-9 was ever out of that

1 vehicle?

2 A Don't believe it was. I'm not even sure it was
3 in the vehicle. It was a vehicle that said
4 "K-9 Unit" on it.

5 Q Was anything else said in the first
6 conversation with Ms. Watts other than, "Gee,
7 the city officials are there and I'm on the
8 way"?

9 A Not really, other than my instructing her to
10 call me as soon as she gets there.

11 Q The second call, she's there and she describes
12 to you who all is there. Did she tell you
13 anything else?

14 A She told me that they wanted to go in and
15 inspect the Youth Re-Entry units.

16 Q Are those the words she said, "The YRP units"?

17 A She either said the C and D buildings, or the
18 Youth Re-Entry units, I don't know which. Like
19 I said, I talk to her at least once a week, and
20 the Youth Re-Entry participants were in the
21 C and D buildings and there weren't any other
22 occupants other than them.

23 Q That was going to be my question.

24 A Yeah. They occupy the whole building. If they
25 didn't occupy it, the unit was empty.

1 Q Okay. Anything else said in the second
2 conversation with Ms. Watts that you are aware
3 of?

4 A I asked her if they had a warrant.

5 Q What did she say?

6 A She said, "I'll find out."

7 Q Okay. Did she get back to you on that?

8 A Yeah. It was a long conversation. She asked
9 somebody if they had a warrant. They said,
10 "No."

11 Q What then?

12 A I told her to tell them that they are not
13 allowed in without a warrant.

14 Q All right.

15 A I told her to tell them to leave the property.
16 That they didn't have our permission or consent
17 to come on our property without a warrant.

18 Q What happened then?

19 A She had a conversation with one of the
20 policemen and one of the building department
21 officials who told her they had the right to
22 inspect without a warrant.

23 Q Could you overhear that conversation?

24 A No.

25 Q All right. So she relayed that back to you?

1 A She related that conversation to me.

2 Q Did she tell you who the police and building
3 officials were that she talked to?

4 A No.

5 Q Okay. What happened then?

6 A She told me that they said that they could
7 inspect without a warrant and they didn't need
8 a warrant.

9 Q Uh-huh.

10 A And I told her again to tell them to leave,
11 that I wanted them to have a warrant to inspect
12 the property.

13 Q Uh-huh.

14 A And at that point they just went ahead and
15 inspected anyway.

16 Q Did you ever appear at the property on that
17 day?

18 A No.

19 Q Okay. Do you know how long the officials
20 remained after you told them to leave?

21 A Well, I told them to leave before they started
22 their inspection.

23 Q Okay.

24 A And they conducted their full inspection.

25 Q How did you know that they had not already

1 inspected any units before you told them to
2 leave?

3 A Because Marilyn and the other person had to let
4 them in unless they broke down the door. And I
5 know that they hadn't been in the building yet.

6 Q Did you ever talk to Ms. Watts or Mr. Brauer or
7 anybody else there on behalf of YRP as to who
8 voluntarily permitted entry by the police in
9 the building, that contingent that was there?

10 A Well, they showed up unannounced and the very
11 first telephone call was to me. I'm the owner
12 of the property. I did not grant them
13 permission. Marilyn Watts was the property
14 manager and did not grant them permission and
15 neither did any Youth Re-Entry person grant
16 permission. They let them in because they were
17 there, three policemen, a show of force. I
18 told them to leave, to come back with a
19 warrant. They disregarded my direct
20 communication to get off my property.

21 Q So let's back up a minute. And I understand
22 we've got a totality of circumstances going on
23 here, but I want to break it down a little to
24 see if I understand.

25 My question to you is, do you know

1 whether or not anybody associated with YRP let
2 this contingent into the property before Ms.
3 Watts arrived, or you told them to leave?

4 A They did not let them in before I told them to
5 leave.

6 Q And you've spoken with the YRP people about
7 that?

8 A I've talked to Marilyn about it. She was
9 there. They weren't in the units when she
10 called me.

11 Q And is this the first call or the second call?

12 A The second call, when she arrived on the
13 property, they had not started their
14 inspection.

15 Q Okay. I think you testified that your
16 information is that after you told the
17 contingent to leave or had that message
18 relayed, they nevertheless went on and
19 conducted their full inspection anyway?

20 A That's correct.

21 Q All right. What areas do you understand that
22 the contingent entered?

23 A The C building and the D building and the units
24 in those two buildings.

25 Q You understand that they inspected all of these

1 units?

2 A If not all, most of those units.

3 Q Okay. Do you know how long the contingent was
4 on the property in total?

5 A No, I don't.

6 Q Do you know if any discussion was had with any
7 of the occupants of the individual units as to
8 whether or not they consented to the entry of
9 the inspection people?

10 A I think they weren't given a choice. I've
11 watched the tape and, you know, you have the
12 property manager there, the person from Youth
13 Re-Entry, armed police officers, and a whole
14 contingent of city officials. These are young
15 kids. I think they were so intimidated that
16 even if they said, "No," they were going to go
17 in any way.

18 Q But you weren't present to overhear any
19 discussions to know whether or not consent was
20 granted by the individual occupants, correct?

21 A Correct. But if you look at the tape, you can
22 see that there was not an ongoing discussion
23 with the tenants. They opened the door, they
24 walked right in.

25 Q Has anybody relayed to you any information as

1 to whether any of the individual tenants
2 consented?

3 A No.

4 Q And I may have asked this, I'm sorry. Do you
5 know how long in total the contingent was on
6 the property?

7 MR. HABER: You did ask.

8 A You did ask, but I don't know.

9 Q You don't know if it was an hour? Two hours?
10 Three hours? Four hours?

11 A No, I don't.

12 Q Okay. In the third bullet point on page 12 you
13 indicate that this type of raid or inspection
14 was unprecedented in your experience in
15 Lakewood, correct?

16 A Correct.

17 Q I think you also testified to that?

18 A That's correct.

19 Q Are you familiar at all with the Lakewood Club
20 Apartments, I think?

21 A The name sounds familiar.

22 Q I think it's North and South Lane Apartments
23 they are also known as?

24 A The name sounds familiar.

25 Q Do you know anything about the makeup of the

1 tenants of those apartments?

2 A There is one building, I'm not sure whether I'm
3 getting it confused or not, but it's a disaster
4 area. I mean, the physical condition of the
5 building is in very poor condition.

6 Q Do you know where it's located in relation to
7 Hidden Village?

8 A I'm not 100 percent sure, but for some reason I
9 think it's on the other side of the railroad
10 tracks.

11 Q Have you ever heard of such joint inspections,
12 or if you want to call them raids, happening
13 elsewhere in Lakewood?

14 A Only in defense of this lawsuit.

15 Q Now, you say "only in defense of this lawsuit."
16 Are you telling me you have heard of those
17 things occurring on the other properties, or
18 you have only heard of it happening at Hidden
19 Village?

20 A No. I'm saying that the city's defense in this
21 lawsuit has indicated that they have conducted
22 these raids in the past.

23 Q I see. Okay.

24 MR. HABER: He's reviewed
25 the documents.

1 Q But you have not heard of that from any other
2 source?

3 A No.

4 Q Okay. You indicate in the sixth bullet
5 point -- by the way, have we talked about your
6 full involvement with this May 22 occurrence?
7 And I understand that you later wrote a letter
8 to the city saying, "Hey, don't do this again."
9 But have we fully exhausted your involvement in
10 this occurrence?

11 A No. I think I had a conversation with Tom
12 Corrigan about it.

13 Q Okay. When did that occur?

14 A I think it happened on the 22nd.

15 Q Okay. What happened?

16 A I think I told him to tell everybody to leave.
17 Get a warrant. It was either the 22nd or the
18 23rd. We had a conversation about it. I told
19 him that city officials were not allowed on my
20 property without a warrant.

21 Q All right. Did he respond to you?

22 A I think he indicated he would talk to other
23 city officials. And I followed it up with the
24 letter dated May 23rd to Mayor George.

25 Q Anything else about your conversation with

1 Mr. Corrigan, that you can recall?

2 A No. We had several conversations, but more of
3 it had to do with the fire department.

4 Q More of it had to do with the fire department?

5 A It had to do more with the fire department
6 showing up.

7 Q Okay. We're not going to mark it, because I
8 screwed up and didn't get it copied. I'm going
9 to show you what has been produced to me as
10 page -- or as document Bates number P 0196 and
11 97, which appears to be a letter to you of May
12 23, 2007 to Mayor George.

13 A It's a letter from me to Mayor George.

14 Q I'm sorry. Yeah.

15 A Yeah.

16 Q The last paragraph of the first page I think
17 indicates, "Don't come on my property again,"
18 correct?

19 A Correct.

20 Q Is that the letter you were referring to
21 before?

22 A Yes.

23 Q Okay. And that's a part of the package that
24 you brought here today refreshing yourself for
25 the deposition, correct?

1 A Correct.

2 Q Okay. You indicated that you may have had a
3 couple of other conversations with Mr. Corrigan
4 other than the one we just talked about?

5 A Yes.

6 Q About this specific incident, or was it other
7 issues?

8 A There were other issues. I know we had talked
9 about the fire department showing up.

10 Q Now, you indicated that the fire department
11 appeared on the premises several days later
12 with a state fire official?

13 A Correct.

14 Q And I think that's basically bullet points
15 seven, eight, nine, and ten on page 12 of the
16 interrogatories?

17 A Correct.

18 Q All right. Did you become involved in that
19 second appearance at the premises?

20 A Yes.

21 Q All right. Tell me about that.

22 A Marilyn Watts called me to tell me that the
23 fire inspector, Scott, and someone from the
24 state fire marshal wanted to inspect the units.
25 I spoke with the fire inspector and --

1 MR. HABER: The Lakewood
2 fire inspector?

3 THE WITNESS: Yes. Scott.

4 A And I asked him, you know, why he was there and
5 why he had the state fire marshal there.

6 Q You spoke directly with Scott?

7 A Yes.

8 Q Do you know where in the building he would have
9 been located at that point in time?

10 A In the parking lot.

11 Q And were you communicating with him via
12 somebody's cell phone?

13 A It was Marilyn's cell phone.

14 Q All right.

15 A Marilyn had called me and told me that Scott
16 and the state fire marshal were there. They
17 wanted to inspect the property and I asked
18 Marilyn, I said, "Marilyn, let me talk to
19 Scott. Give him your phone."

20 Q Is there a unit in that complex that serves as
21 sort of the complex office or --

22 A Yes.

23 Q Okay. And is it your understanding that's
24 where Scott was?

25 A I thought they were in the parking lot. I

1 thought they were in the parking lot.

2 Q Well, I'm talking about -- it's a fairly large
3 complex. I mean, do you know where in the
4 complex this parking lot was?

5 A No.

6 Q Okay. All right. Go ahead with your
7 conversation with Scott.

8 A And Scott told me that they had a question
9 about the zoning classification of the property
10 and the state fire marshal had to go through
11 the building and inspect it.

12 Q Okay.

13 A And I asked to speak with the state fire
14 marshal. And the state fire marshal refused to
15 speak with me.

16 Q Okay. What happened then?

17 A I asked Marilyn to ask him why he would refuse
18 to speak with me. And it was relayed back to
19 me that he wouldn't speak with me because I was
20 an attorney.

21 MR. HABER: My wife has
22 the same problem.

23 A So I told Marilyn, "Tell him that he needs to
24 speak with me. I'm the owner of the property.
25 Forget I'm an attorney." He still refused to

1 speak with me.

2 So I told Marilyn to tell him to get off
3 my property and come back with a warrant. And
4 they -- they talked awhile and --

5 Q Could you hear any of the conversation?

6 A Well, I heard them talking, but I can't hear
7 what they were saying.

8 Q Okay.

9 A But the gist of it was that, you know, Marilyn
10 told me, "He said they were going to come back
11 with a warrant."

12 Q And this was Marilyn relating that to you as
13 opposed to being able to make it out over the
14 phone?

15 A Correct.

16 Q Okay. All right.

17 A And they left. This was May 31st.

18 Q How long did this conversation occur?

19 A Well, it was just a few minutes, because I
20 spoke with Inspector Scott for a minute,
21 Marilyn for a minute, and then the fire
22 marshal. The state fire marshal refused to
23 talk to me, so it wasn't a very long
24 conversation.

25 Q Do you know what areas of the property these

1 people had been to before the conversation took
2 place?

3 A No.

4 Q Did you do anything in response to this
5 conversation?

6 A Yeah. I hung up the phone and dictated a memo.

7 Q All right. And would that have been --

8 A Yeah, you have it.

9 Q And that is the memo that bears the Bates stamp
10 number P 1082, correct?

11 A Correct.

12 Q Did you have any further conversations with any
13 city officials about this occurrence?

14 A I believe I called Tom Corrigan.

15 Q Do you recall that conversation?

16 A Well, the gist of the conversation I recall. I
17 don't remember the exact words, but the gist of
18 it was, you know, why is the state -- how did
19 the state fire marshal even become aware of
20 Hidden Village? And he told me that Scott had
21 sent him an e-mail.

22 Q "He" being Tom Corrigan?

23 A Tom Corrigan told me that Inspector Scott had
24 sent him an e-mail and that they wanted to
25 investigate whether it was an institutional use

1 or a residential use.

2 Q Okay.

3 A And I know we had a discussion about my
4 instruction not to have any city official come
5 on my property without a warrant.

6 Q All right. Anything else about that
7 conversation that you can recall?

8 A I know we had a conversation about the
9 institutional/residential use issue that had
10 already been resolved and that there was no
11 real reason for them to come inspect it now.

12 Q Do you recall any response by Mr. Corrigan?

13 A I think he was kind of apologetic, my
14 recollection.

15 Q By the way, were any of these conversations
16 that we've been talking about recorded in any
17 way?

18 A No.

19 Q Anything else that you can recall about your
20 conversation with Mr. Corrigan after this visit
21 from the fire inspector and the fire marshal?

22 A No.

23 Q All right. Did you speak with any other city
24 officials about it?

25 A No.

1 Q Do you know of anybody who addressed this with
2 any other city officials?

3 A Not that I'm aware of.

4 Q And then the next to the last bullet point on
5 page 12. And let back up just a minute.

6 Are you aware of any further unauthorized
7 entries into the Hidden Village property other
8 than the police drive throughs that you
9 described earlier?

10 A For some reason -- I may have the dates
11 confused. For some reason, I think that the
12 fire marshal showed up a second time.

13 Q Okay. What do you recall about that?

14 A You know, on June 5, 2007.

15 Q What happened then?

16 A The state fire marshal, again with Scott, shows
17 up to inspect Hidden Village.

18 Q Okay. And I'm sorry. You were referring to?

19 A My timeline.

20 Q The timeline that you prepared?

21 A Yes.

22 Q The Bates stamp starting with PA 1083?

23 A Whatever it says on there.

24 Q I'm sorry. I thought that was on yours, too?

25 A Yeah.

1 Q All right.

2 MR. HABER: He doesn't
3 have the Bates stamped version in front of him.

4 MR. CLIMER: Yeah. I
5 didn't realize that.

6 A It's the June 5, 2007 entry.

7 Q All right. Did you have any conversations with
8 the fire marshal or the fire inspector on that
9 day?

10 A No, not directly. I -- my conversation, I
11 believe, was with Marilyn Watts.

12 Q Okay. So anything you had to say was related
13 through Ms. Watts, and I think your entry
14 indicates that you asked her to tell him to
15 leave?

16 A Correct. Because they didn't have a warrant.

17 Q And I take it Ms. Watts told you that the fire
18 marshal took pictures of the YRP offices?

19 A Correct.

20 Q Where, to your understanding, was the fire
21 marshal when he took these pictures in terms of
22 inside? Outside?

23 A I think he was inside the office.

24 Q Okay. Which would be inside the building?

25 A Correct.

1 Q All right. Do you know which of the buildings
2 this was?

3 A No.

4 Q How many offices does YRP have in that
5 building?

6 A I'm not sure at the time whether they had one
7 or two.

8 Q And to your understanding, the fire marshal did
9 not go into any of the apartments?

10 A No.

11 Q All right. Do you know how long these people
12 were on the property?

13 A No, I don't.

14 Q Do you know where they went other than the YRP
15 offices?

16 A My understanding was that they left.

17 Q Okay. You indicate that the Lakewood Police
18 Department continued to attempt to intimidate
19 YRP/Hidden Village residents. And you refer to
20 an incident on May 23, '07 in the last bullet
21 point on page 12. An African-American YRP
22 tenant being approached at the bus stop. Are
23 you aware of any further attempts by Lakewood
24 to intimidate or coerce YRP residents other
25 than those two and the ones you've already

1 mentioned?

2 A It was my understanding that police harassment
3 of these tenants was a usual and customary
4 occurrence. I can't cite to you any specific
5 one instance, but this was typical of what
6 happened.

7 Q These were the only two specific things brought
8 to your attention and you were given to
9 understand there was a larger set of
10 interactions, so-to-speak?

11 A Yes.

12 Q Okay. Who gave you that information?

13 A Marilyn and Kandi.

14 Q When was this relayed to you and in what form?

15 A Well, it's a little hard to say. It was most
16 likely sometime that I stopped in at the
17 building to visit. And I occasionally go to my
18 buildings. I look around. I look at vacant
19 suites. I talk to the staff there.

20 Q Were there any memos or anything in writing
21 given to you in this regard?

22 A No.

23 Q Were there any specifics given to you about the
24 manner in which this harassment was visited
25 upon the people? I mean, pulling them over?

1 Stopping them? Patting them down? Any
2 specifics along those lines?

3 A It was typical in what's described in the
4 answers to interrogatories, police requiring
5 tenants to produce IDs, those kinds of things.

6 Q All right. The May 23, 2007 incident with the
7 gentleman in a suit at the bus stop, which I
8 think is detailed in the last bullet point on
9 page 12 and the first one on page 13, you,
10 yourself, did not witness that?

11 A Correct.

12 Q Do you have any further information other than
13 what's detailed in those two bullet points?

14 A No, I don't.

15 Q Do you know who related that to you?

16 A One of my attorneys.

17 Q Okay. And in terms of the bus stop
18 interactions that are on the third bullet point
19 from the bottom on page 13, were any specific
20 bus stops named to you so we could go out and
21 identify where those are?

22 A The bus stop is directly in front of The Drake
23 Apartments.

24 Q Okay. On the south side of Clifton?

25 A Yes.

1 Q Second and third bullet points on page 13, you
2 allude to being served with a citation at The
3 Drake for, I guess, your hedges being too high,
4 correct?

5 A Yes.

6 - - - - -

7 (Defendants' Exhibit J was marked.)

8 - - - - -

9 Q And I'm going to hand you what's been marked as
10 Defendants' Exhibit J. Is that the citation
11 you are referring to?

12 A Yes.

13 Q Whatever became of that?

14 A Michael cut the hedges down or had one of our
15 employees cut the hedges down.

16 Q Removed altogether or --

17 A Yeah. I think so.

18 Q All right. I understand that you believe that
19 this was related to the issues at Hidden
20 Village, all right?

21 A Yes.

22 Q Did anybody specifically indicate that to you
23 at any time?

24 A Well, the timing of the violation, which is
25 June 6 of '07, is, you know, right at the time

1 when I'm telling the fire marshal and the city
2 officials to stay off my property and the city
3 gets a letter to stay off of Hidden Village, so
4 they come on The Drake, which is right next
5 door. I have owned this building since 1986.
6 The hedges have been at that height for over 20
7 years and here, the day after I tell the fire
8 inspector to leave my property, I get a
9 building violation that the bushes need to be
10 3 feet high. I went back and I checked the
11 city ordinances to see if there is such an
12 ordinance and found out that there isn't. So
13 my conclusion is that, yes, the city was
14 targeting me as an owner of the building and
15 harassing me.

16 Q Okay. Have we now exhausted your knowledge of
17 inappropriate treatment afforded to Hidden
18 Village as a result of YRP and racial issues,
19 or have there been other incidents that we have
20 not discussed here today?

21 A Well, we've discussed all the major issues that
22 I can think of. There are other things that we
23 have not discussed that relate to it, but...

24 Q All right. Does anything come to mind?

25 A Well, for one, when I had checked the property

1 and maintenance and safety code for the City of
2 Lakewood, and specifically 1306.50, Subsection
3 C, it says, "Except in emergency situations, no
4 penalty under the penalty provisions of this
5 code shall apply against any owner who refuses
6 the right of entry hereunder until a search
7 warrant is obtained." And I had looked that up
8 because I had insisted that the city officials
9 get a search warrant, and they insisted that
10 they didn't need it. And my reading is that
11 your city code specifically authorizes me to
12 tell the city to go get a search warrant, which
13 is what I did, and they didn't listen to me.

14 The second thing is that I was upset
15 about the raid on our building and the going
16 into the apartments because in my view, it
17 violated the Landlord-Tenant Act. And
18 specifically, if you want to know specifically,
19 5321.04, Subsection 8, "Except in the case of
20 an emergency, or if it is empirical to do so,
21 give the tenant reasonable notice of his intent
22 to enter and enter only at reasonable times.
23 24 hours is presumed to be a reasonable notice
24 in absence of evidence to the contrary."

25 And it was my belief and part of the

1 reason I was so outraged about the raid is that
2 we don't go in tenants' apartments or authorize
3 anybody to go in tenants' apartments without
4 24-hour notice.

5 In addition, in the 20 years plus that
6 I've been a landlord in Lakewood, every time
7 somebody has wanted to inspect, they've called
8 up and they say, "Hey, can we inspect?" We'd
9 set up a time and a date and they'd inspect.
10 There was no emergency going on here.

11 Q Anything else about the things detailed in the
12 Answer to Interrogatory 14 that we've not
13 gotten into that you believe is significant to
14 this case?

15 A Well, it's kind of an open-ended question, but
16 what has caused or contributed to Hidden
17 Village's damages, the damages aspect is a
18 whole other issue.

19 Q We're going to get to that in a minute. I'm
20 talking about acts that have been committed by
21 Lakewood.

22 A We didn't say specifically, but the acts of the
23 city violated specific provisions of the
24 Federal Fair Housing Act, and those are
25 actionable.

1 Q And I understand that that's actually a matter
2 of debate with the court.

3 A We implied, but didn't specifically say,
4 "tortious interference with my business," which
5 they've done. I had a contractual arrangement
6 with the Youth Re-Entry Program that the city
7 did nothing but try to damage. They trespassed
8 on my property. I told them to get off. They
9 didn't. That's actionable. Damageable.

10 Q Okay. Okay.

11 A Most of these things are so interrelated, that
12 it's hard to give you a definite, concrete
13 answer.

14 Q Fair enough.

15 Now, in all fairness, I believe these
16 interrogatories were answered back probably in
17 the summer of 2009. Since that time, have you
18 suffered any other acts of retaliation from the
19 City of Lakewood or other acts improperly based
20 on racial discrimination that we have not
21 talked about here today?

22 A I can't think of any at this time with regard
23 to the racial discrimination. We did get a
24 building violation for the buzzer, the intercom
25 system at The Drake, which was after that that

1 I believe was retaliatory. I sent a letter to
2 the city regarding that. We got a building
3 violation at The Drake again for a missing
4 bolt. We had a bolt missing from a fence.
5 That was after. I believe that was
6 retaliatory.

7 Those are the ones that come to my mind
8 at this moment.

9 Q Fair enough.

10 A couple of other things I want to ask
11 you about in the interrogatories. If you would
12 turn to Interrogatory No. 6. You indicated you
13 communicated on this matter with Mark Brauer,
14 Kandi Withers, Jan Roller and Craig Miller
15 concerning the matters at issue in this case,
16 or the events that lead up to this case.

17 We talked about your discussions with
18 Mr. Brauer leading up to the lease.
19 Mr. Brauer, I think, related to you some of his
20 conversations with Lakewood officials about
21 meeting with the police and whether this was an
22 appropriate use under the zoning code and all
23 of that?

24 A Correct.

25 Q Any other subjects of discussion that you had

1 with Mr. Brauer?

2 A Well, we talked about harassment of their
3 tenants. We talked about the city's desire to
4 have them move elsewhere. We talked about that
5 I would do everything to protect their right to
6 live in Lakewood. We talked about other
7 business issues such as future needs for future
8 apartments, you know, signing new leases, those
9 kinds of things.

10 Q Okay. If I understand your previous testimony
11 correctly, Mr. Brauer never related to you a --
12 strike that.

13 A We also had a lot of conversations at the time
14 that we were appealing the zoning issue.

15 Q Okay. And those would be about the merits of
16 the appeal though?

17 A Right.

18 Q Okay. What did you talk to Ms. Withers about?

19 A She was not my primary point of contact; Mark
20 Brauer was. My conversations with her were
21 fairly limited in that they usually occurred
22 when I visited the property. We occasionally
23 may have talked about the police harassment of
24 their tenants, but she was not my main contact.

25 Q Okay.

1 A And the same with Jan Roller.

2 Q And that was going to be my question. You
3 spoke with Jan about?

4 A Well, like I say, I had very few conversations
5 with Jan Roller. Most of my conversations, and
6 probably 99 percent of them, were with Mark
7 Brauer.

8 Q Okay. Do you recall what you spoke to Jan
9 Roller about, albeit in a limited number of
10 conversations?

11 A I think I had one conversation with her about
12 the letter that she had received from the
13 mayor.

14 Q Okay. Fair enough.

15 And what were your conversations with
16 Craig Miller about?

17 A Well, we had extensive conversations about the
18 zoning issue. And, you know, we were comparing
19 notes on our research on whether we believed
20 that we were correct or whether the city was
21 correct. We had discussions about who was
22 going to present the testimony, him or I, and
23 how we were going to divide up that work. We
24 had conversations about -- I know we had a
25 conversation after the raid about the city

1 intimidating the Youth Re-Entry Program, and we
2 had conversations about whether Youth Re-Entry
3 was going to file their own lawsuit against the
4 city, or did they want to piggyback on our
5 lawsuit. We had some of those conversations.

6 Q Okay. The answer to Interrogatory 11 indicates
7 that complaints were received from Mark Brauer
8 and Ms. Withers on behalf of YRP tenants
9 concerning threats and harassment or coercion.
10 If I understand your earlier testimony,
11 somebody related to you this May 23 incident
12 about the African-American that's an employee
13 of a member of Congress getting approached at a
14 bus stop and asked for ID, and then some other
15 people being approached at bus stops. I take
16 it from that answer you don't recall any
17 specific incidents of harassment or threats or
18 coercion related to you by Mr. Brauer and
19 Ms. Withers other than those two areas?

20 A I think we covered all of them already that I
21 was involved with.

22 Q Now, in answer to Interrogatory No. 12, there
23 is an indication that YRP refused to enter into
24 new leases as a result of the actions of the
25 city. I'm paraphrasing that. I'm a little

1 confused, because as I understood your earlier
2 testimony, nobody from YRP specifically linked
3 an inability to carry forward with further
4 leases due to the harassment.

5 A We had some conversations with Mark Brauer on
6 whether they were going to continue to sign
7 leases with us in light of what the City of
8 Lakewood was doing to their tenants. And, you
9 know, these were answered a long time ago. And
10 as it played out, they ended up continuing to
11 renew leases partly because the new mayor has
12 not continued this program to try to get rid of
13 Youth Re-Entry as Mayor George did.

14 Q Got you. And the present issue seems to be
15 financial?

16 A Correct.

17 Q Okay. Whether YRP gets enough grants?

18 A Yeah. That doesn't have anything to do with
19 the city.

20 Q Okay. And my question to you is this. Have
21 you ever attempted to calculate the revenue --
22 well, first of all, whether or not any specific
23 leases with YRP were lost as a result of the
24 harassment?

25 A I don't think there were any.

1 Q Okay. In Interrogatory 17 there is an inquiry
2 as to people who witnessed the events at issue
3 in this case, and you name yourself,
4 Mr. Priore, Mark Brauer, Kandi Withers, Marilyn
5 Watts. Is there anything you are aware of that
6 they could tell us other than what we have
7 talked about here today?

8 MR. HABER: Objection.
9 You can answer if you know.

10 A Well, with respect to the items that we talked
11 about, they may know things that I don't know.
12 Kandi Withers would know much more about the
13 day-to-day things, and so would Marilyn Watts,
14 than I would.

15 Q I'm just asking if there is anything that you
16 are aware of that they could tell us beyond
17 what we've talked about today?

18 A No.

19 Q You also list unknown tenants. Do you know if
20 any of those tenants have been identified to
21 date?

22 A No, I do not know.

23 Q All right. In response to Interrogatory No.
24 24, this is again about people with knowledge
25 about various matters. You list Donald Porz,

1 Pat Doan and Janet Brancatelli.

2 A Yes.

3 Q Do you have any knowledge as to who those
4 people are?

5 A Yes. Donald Porz works for Windsor Realty &
6 Management. Pat Doan was an employee of
7 Windsor Realty & Management. She no longer
8 works there. And Janet Brancatelli is an
9 employee of Windsor Realty & Management.

10 Q What can they tell us?

11 A I don't know.

12 MR. HABER: Objection.

13 Q I want to talk to you for a moment about
14 damages, although this discussion is going to
15 be incomplete because of the nature of the
16 discovery that's been produced.

17 - - - - -

18 (Defendants' Exhibits K and L were marked.)

19 - - - - -

20 A Now I recall who that relates to when you asked
21 me before.

22 Q Maybe FirstMerit?

23 A Yes.

24 Q All right. You've been handed what's been
25 marked Defendants' Exhibits K and L. And in

1 your answer to Interrogatory 22, you indicate
2 that you believe that the Hidden Village
3 property has lost \$825,000 in market value
4 between the time YRP entered the premises and
5 the time, I believe, you attempted to market it
6 on May 31 or May of 2008, is that correct?

7 A That's correct.

8 Q All right. And if I'm understanding that, you
9 are basing that on the difference in values
10 assigned between the asking price noted in
11 Exhibit K, which was the Bridge Partners'
12 brochure, for lack of a better word, marketing
13 the property?

14 A Correct.

15 Q And the value assigned in Exhibit L, which
16 appears to be an appraisal done by Looking
17 Glass Technologies, is that correct?

18 A Correct.

19 Q First of all, I'm assuming that as of August 2
20 of 2006, you had the Hidden Village property on
21 the market to be sold?

22 A Starting around January of '06, we wanted to
23 market the property.

24 Q Okay. Why was that?

25 A Well, Michael Priore and I determined that the

1 market was at its peak. At that time, in 2006,
2 the Cleveland area was flooded with California
3 buyers that were paying very large amounts of
4 money for buildings in Cleveland because a
5 building that would sell for, you know, 50 or
6 60,000 a suite in Cleveland would be 150,000 in
7 LA. And Bridge Partners had a program where
8 they brought people in from the West Coast to
9 buy properties. And we originally, you know,
10 came up with our business plan that we would
11 sell as many buildings as we could at these
12 high values. And in accordance with that plan,
13 Michael and I owned five buildings together in
14 Lakewood. We put them all up for sale.

15 Q Okay.

16 A And we were successful in selling three of the
17 five buildings.

18 Q And those were which?

19 A That was the Clifford, the Sheffield. The
20 Clifford on Clifton Boulevard, the Sheffield on
21 Lake Avenue, and the Shorehouse on Edgewater
22 Drive.

23 Q Okay. And were those all sold in this 2006
24 time frame?

25 A 2006, 2007. I don't remember exactly. But we

1 got a lot of money for them.

2 Q Did you receive any offers on Hidden Village?

3 A Yes.

4 Q Okay. And have those been produced in the
5 folder that I have?

6 A Yes. That's what you have.

7 MR. HABER: There are
8 three letters of intent in there is what they
9 were called. Two or three. I don't remember.

10 Q Why did those letters of intent not result in a
11 sale, if you know?

12 A Well, some of them didn't result in a sale
13 because they offered too little money.

14 Q Okay.

15 A Some of them resulted in a -- resulted in the
16 potential buyer walking away because they were
17 concerned about the City of Lakewood issue and
18 the Lutheran Re-Entry Program.

19 Q Do you recall who those buyers were?

20 A The names are on the letters of intent.

21 Q Okay. Well, we'll get to that later.

22 A See, before they issued their letter of intent,
23 they would have seen the package like this from
24 Bridge Partners that would have described the
25 property and then when Ray Demby would have

1 gotten an inquiry, you know, the first thing an
2 apartment investor would ask for would be, "Let
3 me see your rent roll." And he would send out
4 our rent roll. And it's fairly obvious when
5 you look at our rent roll, when you see 20
6 apartments rented to the Lutheran Ministries,
7 the very next question is, "Who are they? What
8 do they do? What's the deal with them?" And
9 we believed that that had an impact, but...

10 Q The fact of the one tenant being so predominant
11 in the complex, or the problems between that
12 tenant and the city, or both?

13 A Both, really. I mean, there were some people
14 that we talked to that were concerned that one
15 tenant occupied 30 or 40 percent of the
16 building, and I can't tell you which ones they
17 were. And there were other prospective buyers
18 who said, "Oh, great. We've got the Lutheran
19 Ministries. We get one check. We don't have
20 to worry about chasing checks from 20 or 30
21 tenants."

22 So that aspect went both ways.

23 We made the decision, meaning Michael
24 Priore and I, that we would disclose to any
25 prospective purchaser that we've been having

1 issues with the city. We didn't want to sell
2 the building and then get sued that we failed
3 to disclose if the city was successful in the
4 zoning or if they ran them out of town or
5 whatever. We didn't -- we didn't want to sell
6 the building to somebody that was not fully
7 aware that we were having issues with the city.

8 Q And certainly as of August of 2006, one of the
9 pending issues was whether or not this was a
10 proper use in a residential district, correct?

11 A Right.

12 MR. HABER: I'm sorry.
13 What was the date?

14 MR. CLIMER: August of
15 2006.

16 MR. HABER: I don't think
17 that's true. I think July was the date of the
18 letter.

19 A Well, we got the violation in June of '06. And
20 it was not resolved until July 5 of '06.

21 Q Okay. Fair enough. So that was out of the
22 picture at this point in time?

23 A Well, it wasn't out of the picture because, you
24 know, you have incidents with the fire marshal
25 showing up saying they want to check the

1 zoning. You've got the police harassment. If
2 it would have been put to bed after the zoning
3 matter was resolved, we wouldn't be sitting
4 here today.

5 Q Okay. And did you give out any written
6 disclosures to any people expressing interest
7 in this property of the issues that were had
8 with the city?

9 A I don't believe so.

10 Q Okay. Is there a place that you could check?

11 A Well, it wouldn't have come from me. It would
12 have come from Ray Demy. I mean, he may have
13 sent an e-mail to somebody that I wouldn't know
14 about.

15 Q By the way, do you know Mr. Demy's whereabouts
16 at this point in time?

17 MR. HABER: Is he missing?

18 MR. CLIMER: We've been
19 unable to locate him.

20 A Yes. I can give you his telephone number. I
21 know he lives -- I know he moved. I don't know
22 his new address.

23 Q Okay. Do you have his number handy?

24 A It's 440-777-2777.

25 Q Do you know if he has a present business

1 address anywhere other than his home?

2 A Yes. He's a licensed agent with Melus
3 Partners. I think it's, M E L U S.

4 Q Okay. Where are they located?

5 A They are in Northfield Center.

6 Q Okay.

7 A I can provide his address or his contact
8 information. I know you issued him a subpoena
9 that's probably been coming back, but I can --
10 if I had a copy of it, I can give it to him.

11 Q I'd appreciate that. If you could just give
12 the address to Mr. Haber.

13 A I'll do that.

14 Q I'd appreciate that.

15 So we roll around to May 31 of 2008. At
16 that point, you have an appraisal done by
17 Looking Glass, and what motivated that
18 appraisal?

19 A That was an appraisal that the bank ordered; we
20 didn't order it. FirstMerit ordered that as
21 part of our refinancing.

22 Q Did you -- in the course of getting that
23 appraisal, did you disclose the issues that you
24 were having with the city?

25 A No.

1 Q All right. And I haven't read the report very
2 thoroughly having gotten it not very long ago.

3 A I'm not sure I've read it at all.

4 Q Are you aware of any problems with the city
5 being taken into account or influencing the
6 figure reached in this appraisal?

7 A I don't believe the city had -- I don't think
8 they even knew about the problem with the city.

9 Q Okay. You have also indicated that you believe
10 that The Drake lost \$375,000 in value as a
11 result of the issues between the city and
12 Hidden Village?

13 A Correct.

14 Q All right. Tell me how you arrived at that
15 figure?

16 A I can't recall. I think we were trying to sell
17 it for a million-one, and because of the
18 harassment from the city and the building
19 violations and those kinds of things, we would
20 have to disclose it. In a nutshell, what
21 happened is, we lost our window of opportunity
22 to sell these buildings at the top of the
23 market. And even though the appraisal says 3.1
24 million or 3.150, the reality is that since
25 2008 and today, the value has dropped even

1 more. So in real numbers, I would question
2 whether we could even get, you know, 2.5 for
3 the building. And that's not a function of the
4 city, that's just a function of the economics.

5 Q You are speaking of Hidden Village?

6 A Hidden Village, yeah. But the same thing
7 happened to The Drake. We lost our window of
8 opportunity and the market value of all these
9 buildings and the buildings in Lakewood has
10 dropped considerably.

11 Q Okay. And so your 375 is?

12 A It's a difference between the million one-fifty
13 and then at the time that we answered the
14 interrogatories, we thought the value was
15 875,000.

16 Q Okay. Was that based on any kind of an
17 appraisal?

18 A No.

19 Q If I understand correctly, The Drake is owned
20 by an entirely separate corporation than Hidden
21 Village, correct?

22 A Correct.

23 Q Okay. You also list \$2 million in
24 stigmatization. Can you tell me how you
25 arrived at that figure?

1 A Well, that's a number that we developed in
2 consultation with counsel, but basically what
3 it means is that --

4 Q I don't want you to relate to me conversations
5 you had with your counsel.

6 A I won't. It has to do with, you know, the
7 police raid on our building stigmatized the
8 building. I mean, word gets out about things
9 like that. People don't want to live there.
10 They don't want to be subjected to it. People
11 don't want to buy a building that is subject to
12 ongoing police harassment and city harassment.
13 And it -- it -- it results in a loss of value.

14 Q Has anybody ever related to you that the Hidden
15 Village brand, so-to-speak, has lost value with
16 members of the public? I mean, for instance,
17 have any potential renters told you, "I don't
18 want to live there because the cops don't like
19 us"?

20 A Well, you don't get that kind of feedback.
21 It's when you advertise the building, they just
22 don't call.

23 Q So we have no way of quantifying any actual
24 losses as a result of the stigmatization?

25 A Right. I can't tell you that these six tenants

1 refused to rent there because of it.

2 Q And you also list \$4 million for Civil Rights
3 violations. How is that calculated?

4 MR. HABER: Hold on one
5 second. I'm going to object because I'm not
6 sure that he can answer any of the remaining
7 questions without communicating information
8 given to him by counsel. Because I'll
9 represent to you that to the extent that the
10 interrogatories asked for amounts claimed, you
11 know, this is a function of counsel's
12 cooperation, participation in this response.

13 Q Well, did you calculate that figure, or did you
14 calculate it with the input of your attorney?

15 A Which figure?

16 Q The Civil Rights violations?

17 A In consultation with counsel.

18 Q How about the tort claims?

19 A In consultation with counsel.

20 Q Okay. How about the legal fees?

21 MR. HABER: That's an
22 understated statement.

23 A Yes, that's an understated statement. We've
24 already paid a substantial amount, but...

25 Q Let me ask you this. Did you incur any legal

1 fees prior to the filing of this lawsuit?

2 A Well, we didn't -- I didn't bill myself and I
3 will tell you that it took a substantial amount
4 of time. I could bill my entity because I
5 don't own it 100 percent, but I have not done
6 so at this time.

7 MR. HABER: Jim, hold on
8 one second just because I want to make sure
9 he's got a complete answer.

10 Didn't Avery Friedman charge you hourly
11 prior to the filing of the lawsuit?

12 A Oh, yeah. Avery charged us before filing the
13 lawsuit.

14 Q All right. And were those fees for pursuing
15 the underlying issues with the city, or for
16 pursuing this lawsuit? Investigating and
17 pursuing this lawsuit?

18 A It was both.

19 Q Okay. And then you've also listed punitive
20 damages in the amount of \$5 million. Again,
21 that was arrived at in consultation with your
22 attorney?

23 A Yes.

24 Q As opposed to some independent calculation?

25 A Correct.

1 MR. HABER: There is no
2 mathematical formula that was utilized in
3 responding to this. As you know, there is no
4 such thing as a mathematical formula that will
5 apply to damages.

6 Q Other than fees you may have incurred with
7 Mr. Freidman for pursuing some of the
8 underlying issues that are the subject of this
9 case, have you incurred any other expenses and
10 damages that you can quantify for us here
11 today?

12 A Well, we incurred some expenses with
13 Mr. Freidman.

14 Q Okay. We were excluding those.

15 A Oh, no.

16 Q Mr. Lieberman, that's all I've got. Well, I
17 want to consult my other counsel. That's all
18 I've got for the moment. I am going to reserve
19 the right to call you back on the issues of the
20 things that were just produced. But I just
21 want to take a minute with my co-counsel here.

22 MR. HABER: That's fine.

23 A Okay.

24 (Off the record.)

25 MR. CLIMER: We're

1 adjourned.

2 MR. HABER: He'll read,
3 but since you are probably not done with him,
4 he can read it all when it's done, or do you
5 want him to read it as we go?

6 MR. CLIMER: Come around to
7 November 15, we will need a signature.

8 MR. HABER: I'll just have
9 him read it.

10 (Deposition adjourned at 3:00 p.m.)

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THE STATE OF OHIO,) SS:
COUNTY OF CUYAHOGA.)

I, Barbara J. Sedlak, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that GARY L. LIEBERMAN, was first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by him was by me reduced to stenotypy in the presence of said witness, afterwards transcribed on a computer/printer, and that the foregoing is a true and correct transcript of the testimony so given by him as aforesaid.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified. I do further certify that I am not a relative, counsel or attorney of either party, or otherwise interested in the events of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office at Cleveland, Ohio, on this _____ day of October, 2010.

Barbara J. Sedlak, Notary Public
within and for the State of Ohio
My Commission expires August 24, 2015.

THE STATE OF)
) SS:
COUNTY OF)

Before me, a Notary Public in and for said state and county, personally appeared the above-named GARY L. LIEBERMAN, who acknowledged that he did sign the foregoing transcript and that the same is a true and correct transcript of the testimony so given.

IN TESTIMONY WHEREOF, I have hereunto affixed my name and official seal at
this day of
, 2010.

GARY L. LIEBERMAN

Notary Public

My Commission expires:

bjs