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Cleveland, Ohio 44113

Court of Common Pleas

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March 14, 2016 14:13

By: CHRISTOPHER M. DEVITO 0047118

Confirmation Nbr. 696202

EDWARD GRAHAM, ET AL

CV 15 846212

vs.

CITY OF LAKEWOOD, ET AL

Judge:

JOHN P. O'DONNELL

Pages Filed: 95

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

EDWARD GRAHAM, et al.

Plaintiffs

v.

CITY OF LAKEWOOD, et al.

Defendants

CASE NO. CV-15-846212

JUDGE JOHN P. O'DONNELL

**PLAINTIFFS' MOTION FOR LEAVE
TO FILE AMENDED COMPLAINT**

Plaintiffs Edward Graham, et al., by and through their counsel **Morganstern, MacAdams & DeVito Co., L.P.A.**, hereby move this honorable Court for leave to file a Second Amended Complaint pursuant to Civ. R. 15(A). Amendment of the First Amended Complaint is consistent with the requirements of justice as contemplated in Civ. R. 15(A), and it is also appropriate pursuant to Civ. R. 15(B) to cause the First Amended Complaint to conform to newly acquired evidence in the deposition of Defendant Mayor Michael Summers and new facts and events arising out of Defendants' subsequent conduct. A memorandum in support is attached hereto and incorporated by reference. Plaintiffs request further leave to file the Proposed Second Amended Complaint 15 days after the Court grants their Motion for Leave.¹

Respectfully submitted,

/s/ Christopher M. DeVito

Christopher M. DeVito (0047118)

Morganstern, MacAdams & DeVito Co., L.P.A.

-and-

/s/ A. Steven Dever

A. Steven Dever (0024982)

A. Steven Dever Co., L.P.A.

Attorneys for Plaintiffs

¹ Plaintiffs are not attaching the Proposed Second Amended Complaint to this Motion at this time because of its length. However, attached hereto is Mayor Michael Summers' deposition transcript and an affidavit from a shunned bidder Surgical Development Partners, LLC ("SDP").

MEMORANDUM IN SUPPORT

I. Statement of Procedure and Fact

New facts and continuing wrongs by Defendants give rise to this Motion for Leave to File Amended Complaint. Subsequent acts and the deposition of Defendant Michael Summers have disclosed facts substantiating the counts already pled in Plaintiffs' First Amended Complaint and supports additional counts in the Proposed Second Amended Complaint, specifically a new count regarding an illegal restrictive covenant and an improper (i.e. none) bidding procedure on public real estate, medical services contract, and medical equipment (which serves as a continuation of the taxpayers lawsuit).

A. Improper Bidding Process (i.e. No Open or Public Bidding)

On December 21, 2015, the City of Lakewood Council enacted Emergency City Ordinance 49-15, authorizing Mayor Michael Summers to execute a Master Agreement among the City of Lakewood ("City"), Lakewood Hospital Association ("LHA"), and The Cleveland Clinic Foundation ("CCF"). This Ordinance and the Master Agreement were the direct result of an improper bidding (i.e. no notice or open bidding) procedure involving public (i.e. City of Lakewood) real estate, medical services contract, and medical equipment.

Public contracts not entered into in accordance with the legal requirements which govern them are "void, not merely voidable." *Kraft Constr. Co. v. Cuyahoga Cty. Bd. Of Commrs.*, 128 Ohio App. 33, 44-45, 713 N.E.2d 1075 (8th Dist. 1998), citing *Buchanan Bridge Co. v. Campbell*, 60 Ohio St. 406, 419-420, 54 N.E. 372 (1899). R.C. 121.22(H) provides that "[a] resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body." R.C. 121.22(G)(2) provides that "[a] purchase or sale of a public property is void if the seller or buyer of the public property has received covert information from a member of the

public body that has not been disclosed to the general public in sufficient time for other prospective buyers and sellers to prepare and submit offers.” Further, the City's Codified Ordinances—Section 111.04 and Chapter 155—provide the proper procedure regarding competitive bidding on real estate, service contracts, and goods.

No competitive open bidding process ever took place, in contravention of the Revised Code and the City's Codified Ordinances. In fact, of the few parties who knew about Lakewood Hospital's rumored sale and who were willing to submit an offer (i.e. MetroHealth and Surgical Development Partners) in continuing Lakewood Hospital's inpatient operations, were turned away by the City and never advised of any open bidding (i.e. Affidavit of Frank Sossi, General Counsel and member of Surgical Development Partners, LLC (“SDP”)). CCF was given a competitive advantage with the City and Mayor Summers blocking out all other competitors and secretly talking only to CCF in executive sessions. Thus, City Ordinance 49-15 and the Master Agreement are void.

It is important for the Court to note that the SDP attached affidavit by Frank Sossi clearly evidences the past, current, and future intention to bid on maintaining and providing inpatient medical services at Lakewood Hospital and for the purchase of real estate above the price being sold to CCF. With this new sworn testimony, there can be little doubt that the City representatives through the Mayor and Council are abusing their corporate powers and violating the laws of Ohio. Such conduct must be stopped in order for the citizens of Lakewood and the Lakewood community to obtain a fair and reasonable value for real property, service contracts, and goods being sold. Finally, the legal prohibition on inpatient medical services given to CCF is void as against public policy and must be removed to preserve Lakewood Hospital's highest and best use to its citizens, which need inpatient care as much as residents of Avon, Ohio.

B. Illegal Restrictive Covenant Against Ohio Public Policy

The Master Agreement also contains a restrictive covenant against having any other health care system providers beside CCF provide any health care services on the Lakewood Hospital site. This restrictive covenant is illegal and violates long-standing Ohio law and Ohio public policy to protect citizens' public health, safety, and welfare.

The Ohio Supreme Court in *Cincinnati City School District Board of Education v. Commers* held that a deed restriction on real estate sold to a private party by a city school board, disallowing the opening and operation of a public charter school, was unenforceable and against public policy. *Commers*, 132 Ohio St.3d 468, 974 N.E.2d 78 (2012). “Public policy is the community common sense and common conscience extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like. Again, public policy is that principle of law which holds that no one can lawfully do that which has a tendency to be injurious to the public or against the public good.” *Id.* at ¶ 17 (internal citations and quotes omitted). The *Commers* court provided that the deed restriction on the property upon which a charter school was to be opened sought “to thwart competition,” just like in this case involving Lakewood Hospital. *Id.* at ¶ 21. In *Commers*, “involving a contract between a private party and a political subdivision, there [wa]s a compelling reason to support the application of the [public policy] doctrine,” just like in Plaintiffs’ case here. *Id.* at ¶ 24. Similarly, in *Orwell Natural Gas Company, Inc. v. Fredon Corporation*, the 11th District Court of Appeals held a utility restriction, which mandated that one utility company be the only supplier of natural gas to a customer, was unenforceable and against Ohio’s public policy. *Orwell Natural Gas Co., Inc.*, 2015-Ohio-1212, 30 N.E.3d 977 (11th Dist.). Thus, the City's continuing actions demonstrate the abuse of corporate powers and establishes new claims and causes of action by the taxpayers. Further, the

Plaintiffs have already sent a taxpayers lawsuit demand and the City's law director has failed to properly respond. (See Exhibits 1 and 2).

C. Mayor Summers' Deposition

Further, Plaintiffs took the deposition of Mayor Summers on January 20, 2016. It has only recently been transcribed and reviewed by counsel. Mayor Summers admitted that the restrictive covenant in the Master Agreement was for the sole benefit of CCF and not the City. (Summers Depo., pp. 231-233). Mayor Summers also testified that he was unaware of the Vision for Tomorrow plan prior to his appointment in the fall of 2010 to the LHA Board of Trustees and that he was unaware of prior plans for a new bed tower at the Lakewood Hospital facilities. (Summers Depo., p. 30 & 21, respectively). Mayor Summers testified that there had been no measurements to verify that the Centers of Excellence promised under CCF's Vision for Tomorrow plan had been implemented. (Summers Depo., p. 45). Mayor Summers also testified that while he was a member of City Council, there had not been any oversight as to verifying compliance of the Lakewood Hospital lease terms and that City Council did not have a committee related to the operation of Lakewood Hospital. (Summers Depo., pp. 21-22). Through the course of Mayor Summers' deposition, he testified that CCF had presented eight (8) different versions of their proposal for outpatient care at Lakewood Hospital and that the original version was presented as early as 2013. (Summers Depo., pp. 154-159). However, the City, LHA, and CCF have refused to produce these prior versions to Plaintiffs.

II. Law and Argument

Civ. R. 15(A) provides that "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court shall freely give leave when justice so requires." Civ. R. 15(B) further provides that "[s]uch amendment of the pleadings as may be

necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time.”

The determination of whether a Civ. R. 15 motion for leave to amend a pleading should be granted or denied is ordinarily a matter within the sound discretion of the trial court. *Wilmington Steel Products, Inc. v. Cleveland Elec. Illum. Co.*, 60 Ohio St.3d 120, 122, 573 N.E.2d 622 (1991); *Hoover v. Sumlin*, 12 Ohio St.3d 1, 5, 465 N.E.2d 377 (1984). The Eighth District has opined that “once an answer to a complaint is served..., a party may amend his complaint only with leave of court, which grant of leave is discretionary.” *Solowitch v. Bennett*, 8 Ohio App.3d 115, 116, 456 N.E.2d 562 (8th Dist.1982). In this matter, no answer has been filed by any of the Defendants.

“Since this rule is to be liberally construed in favor of the movant in order to save his cause of action..., the grant of leave to amend should not be withheld without ‘good reason.’” *Solowitch* at p. 116. The Ohio Supreme Court elaborates: “Civ. R. 1(B) requires that the Civil Rules shall be applied ‘to effect just results.’ Pleadings are simply an end to that objective. The mandate of Civ. R. 15(A) as to amendments requiring leave of court, is that leave ‘shall be freely given when justice so requires.’ Although the grant or denial of leave to amend a pleading is discretionary, where it is possible that the plaintiff, by an amended complaint, may set forth a claim upon which relief can be granted, and it is tendered timely and in good faith and no reason is apparent or disclosed for denying leave, the denial of leave to file such amended complaint is an abuse of discretion.” *Peterson v. Teodosio*, 34 Ohio St.2d 161, 175, 297 N.E.2d 113 (1973).

In order to receive leave of court to amend a complaint, a plaintiff must make a *prima facie* showing that evidence can be produced in support of the new matters sought to be pleaded, that the amendment is not being sought for purposes of delay, and that the amendment would not

result in prejudice to the defendant. *Turner v. Cent. Local School Dist.*, 85 Ohio St.3d 95, 706 N.E.2d 1261 (1999).

Plaintiffs' Proposed Second Amended Complaint would not work any prejudice to Defendants. Defendants have not filed an answer to Plaintiffs' First Amended Complaint, but rather filed two separate Motions to Dismiss under Civ. R. 12(B)(1) and (6), which are still pending in this Court. No trial date has been set by the Court. Further, Defendants opened the door for Plaintiffs to file this Motion through their actions and when they admitted in their Reply in Support of Defendants' Civ. R. 12(B)(1) Motion to Dismiss that they are "left to wonder what new causes of action spring from these [Master Agreement] terms" and that "[n]ew causes of action that post-date the Amended Complaint do not create subject matter jurisdiction over causes of action that have been resolved." (Defendants' Reply in Support of Civ. R. 12(B)(1) Motion to Dismiss, p. 7).

In this case, Plaintiffs are timely submitting a Motion for Leave to File Amended Complaint within a reasonable time after Plaintiffs conducted additional, meaningful discovery, after new facts and events arose giving rise to new claims for relief, and after Defendants made new arguments in their motion practice in filing a Civ. R. 12(B)(1) Motion to Dismiss. Additionally, the newly acquired affidavit of Surgical Development Partners demonstrates the sham bidding process and steering of the public contracts to CCF, instead of an open and competitive process to ensure the maximum value and services to the citizens of Lakewood. (Sossi Affidavit). The amendment is not being sought for purposes of delay, but rather to uphold the public trust of Lakewood Hospital and preserve the public health, welfare, and safety. Discovery is ongoing and no discovery deadlines nor trial date has been set by the Court.

III. Conclusion

For the foregoing reasons, Plaintiffs respectfully request that their Motion for Leave to File Amended Complaint be granted so that newly discovered evidence may be incorporated under new claims for relief and supplement existing causes of action with the newly disclosed evidence. Allowing the Proposed Second Amended Complaint will not prejudice Defendants, will not delay the proceedings, and should be freely granted in the interest of justice, judicial economy, and the public health, welfare, and safety of the citizens of the City of Lakewood.

Respectfully submitted,

/s/ Christopher M. DeVito

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

A copy of the foregoing **Plaintiffs' Motion for Leave to File Amended Complaint** has been filed through the Court's electronic case management system ("ECM"), is available for review on-line by counsel and parties, will be provided notice of filing by the Court's ECM system, and a courtesy pdf copy is also being sent via email only on this 14th day of March, 2016, to the following:

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and Mayor Michael Summers*

-and-

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and Thomas Gable*

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The Ohio Attorney General
Mike DeWine*

/s/ Christopher M. DeVito
Christopher M. DeVito (0047118)
Morganstern, MacAdams & DeVito Co., L.P.A.
One of the Attorneys for Plaintiffs

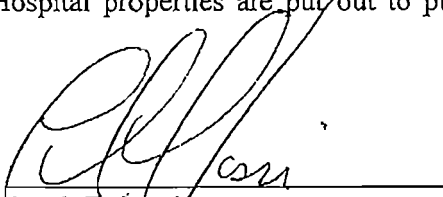
STATE OF OHIO)
) SS: **AFFIDAVIT OF FRANK T. SOSSI**
COUNTY OF SUMMIT)

I, Frank T. Sossi having been first duly sworn, depose and state that I have personal knowledge of the facts and matters that follow:

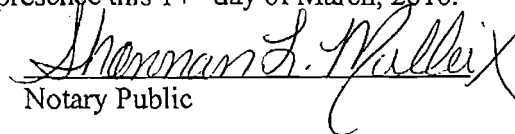
1. I am over the age of 18 and not laboring under any disabilities.
2. I am the Secretary, General Counsel and member of Surgical Development Partners, LLC (“SDP”). I have held these positions since 2003.
3. SDP partners with physicians and hospitals across the United States to deliver healthcare services, including the facilitation of hospital/physician joint ventures.
4. I am not aware of any bid specifications for the sale of the Lakewood Hospital ever being developed or advertised. Nor am I aware of the Lakewood Hospital ever being put out to bid.
 - a. For the purposes of this affidavit, I consider the “Lakewood Hospital” to include (1) the medical facilities located at the southeast and southwest corners of Belle Avenue and Detroit Road in downtown Lakewood, Ohio; and (2) the property located at 850 Columbia Road, Westlake, Ohio.
5. Although I was never aware of any advertisement for the Lakewood Hospital to be sold at competitive bid or of any request for proposals regarding an agreement to lease or operate the Lakewood Hospital, I did come to learn that the 850 Columbia Road property may have been available for purchase, and later that the City of Lakewood was considering the termination of inpatient services at Lakewood Hospital and selling some, or all, or the Lakewood Hospital’s property and assets.
6. On October 7, 2015, on behalf of SDP, I prepared the letter of intent submitted by SDP to the Lakewood Hospital Association (“LHA”), copying the City of Lakewood’s mayor, law director, and council president, with regard to SDP and its affiliates desire to purchase the Lakewood Hospital facility located at 850 Columbia Road, Westlake, Ohio. A true and accurate copy of the October 7, 2015 letter of intent that was submitted is attached hereto as Exhibit A.
7. On November 25, 2015, I submitted an email to the LHA, copying the City of Lakewood’s mayor, law director, and council president, at my direction. This email clarified the October 7, 2015 letter of intent, explaining that SDP was interested in developing the Lakewood Hospital campus in downtown Lakewood, Ohio and maintaining inpatient services. A true and accurate copy of this email is attached hereto at Exhibit B.

8. On November 30, 2015, on behalf of SDP, I prepared a supplement to the October 7, 2015 letter of intent referenced in Paragraph 6, above, submitted by SDP to the LHA, copying the City of Lakewood's mayor, law director, and council president. This supplement expressed SDP's interest in not only purchasing the Lakewood Hospital facility located at 850 Columbia Road, Westlake, Ohio, but also developing the Lakewood Hospital campus in downtown Lakewood, Ohio. In this letter, SDP requested that SDP be allowed to present its development plans for the Lakewood Hospital campus to Lakewood City Council at its December 7, 2015 meeting. A true and accurate copy of the November 30, 2015 supplement to the October 7, 2015 letter of intent is attached hereto as Exhibit C.
9. From December 4, 2015, through December 8, 2015, I exchanged emails with the City of Lakewood's Law Director, Kevin Butler, regarding SDP's desire to develop the Lakewood Hospital campus in downtown Lakewood, Ohio, and maintain inpatient services. Ultimately, Mr. Butler rejected SDP's proposal and indicated that the City of Lakewood was in the process of entering into an agreement with the Cleveland Clinic Foundation with regard to the closure of Lakewood Hospital and the delivery of healthcare in Lakewood. A true and accurate copy of my December 4, 2015, through December 8, 2015 email exchange with Law Director Butler is attached hereto as Exhibit D.
10. SDP was never afforded the opportunity to present its plans for the development of the Lakewood Hospital to the Lakewood City Council.
11. SDP was never afforded the opportunity to participate in a competitive bidding process with regard to the Lakewood Hospital.
12. So long as there is a real opportunity to operate a short term acute care hospital in Lakewood, SDP affirms that it will submit a bid to purchase the property located at 850 Columbia to bid on the opportunity to operate the Lakewood Hospital as an inpatient facility if the Lakewood Hospital properties are put out to public bid within the next year.

FURTHER AFFIANT SAYETH NAUGHT.


Frank T. Sossi

SWORN TO BEFORE ME and subscribed in my presence this 14th day of March, 2016.


Notary Public



Shannan L. Mullenix
Resident Portage County
Notary Public, State of Ohio
My Commission Expires: 12/18/2018



G. Edward Alexander, CEO
Direct Telephone Number: 615-550-2600 Ext. 12
Cell Phone Number: 615-289-9896
Direct Telefax Number: 615- 550-2601
E-Mail: calexander@surgicaldevelopmentpartners.com

VIA FED-EX – October 7, 2015

Mr. Thomas Gable
Chair, Board of Directors
Lakewood Hospital Association
c/o CT Corporation System
1300 East 9th. Street
Cleveland Ohio 44114

And

8787 E. Asplin Drive
Rocky, River, OH 44116-3003

**RE: Non-Binding Letter of Intent for the Purchase of the MOB and ASC at 805 and 850
Columbia Road, known as the “Westlake Medical Campus”**

Dear Mr. Gable:

Thank you and the Board of Directors of the Lakewood Hospital Association (hereinafter “Lakewood”) for your time in considering this proposal by Surgical Development Partners, LLC and its affiliates (collectively “SDP”) to purchase the Medical Office Building and Ambulatory Surgery Center at 805 and 850 Columbia Road, the Westlake Medical Campus. Based on our investigations to date we are pleased to submit this Non-Binding Letter of Intent (this “Letter”) from SDP to Lakewood (each a “Party” and collectively the “Parties”) setting forth the intent to work in good faith together to negotiate a sale of the Westlake Medical Campus from Lakewood to SDP (the “Project”).

This Letter is not intended to be a binding agreement between the Parties, except for the contents of Sections 3 through 7, and 8.4 through 8.6 (collectively, the “Binding Provisions”). A binding agreement with respect to the Project and the transactions described herein will not exist unless and until the Parties (or their respective affiliates) have executed and delivered definitive agreements (the “Definitive Agreements”), as needed to complete the Project.

1. **Discussions and Negotiations Regarding the Project.** Upon the execution of this Letter the Parties will promptly enter into discussions and negotiations during the Term, as defined in Section 5 of this Letter, which may be extended by the mutual agreement of the Parties, with regards to evaluating and implementing the proposed Project with one another as well as with any third party, as agreed to by the Parties. The structuring of the various transactions comprising the Project will be made in consultation with the respective legal, financial and accounting advisors of the Parties. Commencing upon the execution of this Letter, Lakewood will permit SDP and/or their representatives access to the Westlake Medical Campus and the right to inspect the equipment, properties, intellectual property rights, licenses, contracts and other items which comprise the assets and the books and records of the Westlake Medical Campus at all reasonable times, as SDP and/or their representatives may reasonably request without undue hindrance to Lakewood.
2. **The Proposed Outline of the Terms of the Project.** The Parties will work together to negotiate a fair market value price and terms for the purchase of the Westlake Medical Campus estimated to be in the \$9,000,000 range. In addition the Parties agree to work diligently to obtain all required approvals for the closure of the transaction within One Hundred and Eighty (180) days of this Letter.
3. **Required Approvals for the Project.** The above indicated terms in Section 2 will be subject to the following conditions: (i) full and formal approval by the Board of Lakewood the Board of SDP; (ii) any required approvals from the City of Lakewood as may apply, and (iii) the mutual development and execution of Definitive Agreements that fully reflect the intention of the Parties expressed in this Letter or which are otherwise agreed to by the Parties. The Parties agree to use their respective reasonable efforts to satisfy each of the foregoing conditions as soon as reasonably practicable, subject to the other terms of this Letter.
4. **Term.** This Letter will remain open for acceptance until October 31, 2015 at 5:00 PM Eastern time.
5. **Fees and Expenses.** Each Party will bear its own expenses associated with the development of the overall strategy and the interaction of the Parties in developing the definitive terms for the agreements contemplated by this Letter.
6. **Relationship Between the Parties.** None of the provisions of this Letter are intended to create, nor shall be deemed or construed to create, any relationship between the Parties and any of the Parties' vendors or agents and any of the Parties, other than that of independent entities contracting with each other hereunder solely for the purpose of accomplishing the transactions described in this Letter as independent contractors, and otherwise maintaining and carrying out the provisions of this Letter. None of the Parties or any of their respective agents or employees shall be construed to be the agent,

employer, employee, partner, joint venturer, or the representative of the other parties hereto, for any purpose of any kind or nature whatsoever. The Parties agree to hold the other Parties harmless from third-party liability resulting from acts of any Party which are contrary to the contents of this Letter.

7. **Confidentiality.** The Parties desire to assure the mutual confidential status of any information which may be disclosed to or from any Party in the evaluation of this Project and the indicated approach to the Project:
 - 7.1. **Proprietary Information.** Except as provided in Subsection 7.7., below, all information disclosed by any Party or its Representatives at any time to any other Party or its Representatives in connection with the Project in any manner shall be deemed "Proprietary Information." The term "Representative(s)" means, in the case of any of the Parties, any director, officer, employee, member, shareholder, or agent of the Party engaged in the evaluation of the Project.
 - 7.2. **Permissible Use.** Each Party that receives Proprietary Information (referred to as the "Receiving Party") shall use the Proprietary Information received from any other Party (referred to as the "Disclosing Party") solely to evaluate the feasibility of the Project or similar transactions between the Parties. No other rights are implied or granted under this Letter.
 - 7.3. **Reproduction.** Proprietary Information received shall not be reproduced in any form except for internal use of the Receiving Party and its Representatives and only for the express purpose of evaluating the Project.
 - 7.4. **Nondisclosure.** The Receiving Party shall use all reasonable efforts to protect the Proprietary Information received with the same degree of care used to protect its own Proprietary Information from unauthorized use or disclosure, except that such Proprietary Information may be used or disclosed to the Receiving Party's Representatives as may be reasonably required to evaluate the Project.
 - 7.5. **Ownership of Information.** All Proprietary Information, unless otherwise specified in writing, shall remain the property of the Disclosing Party and promptly upon request of either Party shall be returned to the Disclosing Party (including all whole or partial copies thereof and any written notes made regarding the Proprietary Information).
 - 7.6. **No License or Interest.** No rights or obligations other than those expressly recited herein are to be implied. No license is granted to the Receiving Party or otherwise implied, by estoppel or otherwise, with respect to any property or right of Disclosing Party, presently existing or acquired in the future, or for any use of or interest in the Proprietary Information except such use expressly contemplated by

this Letter.

7.7. Exclusions. It is understood that the term "Proprietary Information" does not include Information which:

- (a.) is now or hereafter in the public domain through no fault of the Receiving Party;
- (b.) prior to disclosure hereunder, is properly within the rightful possession of the Receiving Party;
- (c.) is lawfully received from a third party with no restriction on further disclosure; or
- (d.) is obligated to be produced under applicable law or order of a court of competent jurisdiction, unless made the subject of a confidentiality agreement or protective order.

8. Miscellaneous.

8.1. Remedies. Based on the subject matter of this Letter and the mutual obligations and duties indicated herein material and irreparable harm shall be presumed, if any Party to this Letter breaches any provision of this Letter. The Parties agree, that in the case of the breach of any of the confidentiality provisions of this Letter, the non-breaching Party will have the right to request that any court of competent jurisdiction shall immediately enjoin the Party in breach in addition to that Party being entitled to all other rights and remedies which the Party may have at law or in equity. The prevailing party in any action or proceeding brought to enforce the provisions of this Agreement shall be entitled to recover its reasonable legal costs and expenses incurred in such action or proceeding, including but not limited to, any legal costs and expenses incurred to enforce any judgments rendered on this Agreement. The provision regarding recovery of legal costs shall not be merged into any judgment on this Agreement.

8.2. Compelled Disclosure. In the event a Party, any of its Representatives, or anyone to whom any Party transmits the Proprietary Information, becomes legally compelled to disclose any of the Proprietary Information, prior to such disclosure such Party will provide the owner of the Proprietary Information with advance written notice and a copy of the documents and information relevant to such legal action, so the owner of the Proprietary Information may seek a protective order or other appropriate remedy to protect its interests in the Proprietary Information, and the compelled Party shall furnish only that portion of the requested Proprietary Information that the compelled Party is advised by a written opinion of counsel is

legally required.

- 8.3. Entire Agreement. There are no other understandings, agreements, or representations, express or implied, between the Parties, not herein specified until such time as Definitive Agreements are executed by the Parties for relating to the Project. This Letter may not be amended except in a writing executed by all Parties.
 - 8.4. Assignment. This Letter of Intent may not be assigned without the express written consent of all of the other Parties.
 - 8.5. Termination. Termination of this Letter shall not relieve any of the Parties from the Binding Provisions.
 - 8.6. Governing Law. This Letter of Intent and all transactions contemplated by this Letter shall be governed by the laws of the State of Ohio.
 - 8.7. Counterparts. This Letter of Intent may be executed in any number of copies and by the different Parties hereto on separate counterparts. Each counterpart shall be deemed an original, but all counterparts together shall constitute one and the same instrument. The persons executing this Letter personally represent and warrant that they have been duly authorized to do so by their respective Party and that, upon full execution hereof, this Letter of Intent shall be a binding obligation of said Party.
9. **ACCEPTANCE** - If Lakewood is in agreement with the objectives indicated in Section 2 and the conditions indicated in Section 3 of this Letter and the terms and conditions contained herein, please sign the RETURN COPY of this Letter and return it to SDP. The terms of this Proposal are valid until 5:00 PM, Eastern Time, October 31 2015 and may be accepted as indicated above.

ALL SIGNATURES APPEAR ON THE FOLLOWING PAGE 6 OF 6

We look forward to our future meetings and the success of the Project which we can accomplish through our mutual efforts, and, if the Lakewood Hospital Association has an interest, a discussion of potential structures, plans or uses for the Lakewood Hospital main campus.

Sincerely,

SURGICAL DEVELOPMENT PARTNERS, LLC



G. Edward Alexander, President and CEO

Date: 10/6/15

**Mr. Thomas Gable
Chair, Board Of Directors
Lakewood Hospital Association**

CC:

Mayor, City of Lakewood

Mr. Michael Summers
Mayor
City of Lakewood
Lakewood City Hall
12650 Detroit Avenue
Lakewood, Ohio 44107

Law Director, City of Lakewood

Kevin Butler, Esq.
Law Director
City of Lakewood
Lakewood City Hall
12650 Detroit Avenue
Lakewood, Ohio 44107

President, City Council

Ms. Mary Louise Madigan
President, City Council
City of Lakewood
Lakewood City Hall
12650 Detroit Avenue
Lakewood, Ohio 44107

Attorney General, State of Ohio

Michel DeWine, Esq.
Attorney General
State of Ohio
301 E. Broad Street
Columbus, Ohio 43215

From: Frank T. Sossi

Sent: Wednesday, November 25, 2015 10:46 AM

To: fourgablemgmt@aol.com; Mike.Summers@lakewoodoh.net; kevin.butler@lakewoodoh.net; mary.madigan@lakewoodoh.net

Cc: Alexander, Ed (ealexander@surgicaldevelopmentpartners.com)

<ealexander@surgicaldevelopmentpartners.com>; Frank T. Sossi <ftsossi@bmdllc.com>

Subject: Surgical Development Partners - Letter of Intent

SDP – LHA – Letter of Intent
November 25, 2015

Mr. Gable et al:

It has come to our attention that there has been some confusion related to the Surgical Development Partners, LLC (“SDP”) Letter of Intent of October 7, 2015 (the “LOI”). In drafting the LOI we worked from the Clinic website and the Tax Records on the County GIS system. Both of these sources included both the 805 and 850 Columbia Road addresses.

I was able to get back up here this week and physically observe the property and want to clarify that the SDP LOI proposed Terms of the Project estimated at \$9,000,000 is for the 850 Columbia Road Building, the property on the north west corner of the intersection of Columbia Road and Interstate 90, ONLY. I apologize for any confusion on this matter and hope that you will consider the LOI as applying to that building at the \$9,000,000 estimate.

As indicated in the LOI there is also an interest in discussing with LHA and the City other plans or uses for the Lakewood Hospital main campus.

Please consider this email as NOTICE that SDP has extended the reply date for the LOI to December 31, 2015 and that we would be pleased to discuss the LOI by phone or in person as may meet your needs.

We appreciate the opportunity to work with you and to assist you in providing healthcare for your communities.

Thanks,

Frank

Exhibit B

Frank T. Sossi

Brennan, Manna & Diamond, LLC - Partner
The Carnegie Building
75 E. Market St.
Akron, Ohio 44308
Email: ftsossi@bmdllc.com - Fax: 330-253-1813
Direct Dial: (330) 253-5060 - Cell: 330-805-5812

BRENNAN, MANNA & DIAMOND

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G. Edward Alexander, CEO
Direct Telephone Number: 615-550-2600 Ext. 12
Cell Phone Number: 615-289-9896
Direct Telefax Number: 615- 550-2601
E-Mail: ealexander@surgicaldevelopmentpartners.com

VIA FED-EX – November 30, 2015

Mr. Thomas Gable
Chair, Board of Directors
Lakewood Hospital Association
c/o CT Corporation System
1300 East 9th. Street
Cleveland Ohio 44114

And

8787 E. Asplin Drive
Rocky, River, OH 44116-3003

RE: Supplement to the Non-Binding Letter of Intent for the Purchase of the MOB and ASC at 850 Columbia Road, known as the “Westlake Medical Campus” – October 7, 2015

Dear Mr. Gable:

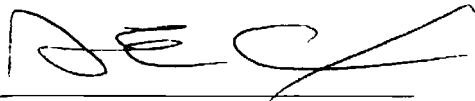
Further to our other expressions of interest including the Letter of Intent sent on October 7th, Surgical Development Partners desires to make it clear and avoid any confusion by stating again that that it remains extremely interested in purchasing the 850 Columbia Road property at a competitive fair market value and also in developing the Lakewood Hospital campus to continue medical and emergency services to the community.

Our intent is to develop a long term financially viable and sustainable healthcare campus that includes services to support the medical and emergency care needs of the City as well as the community economic development interests of the City. We are eager and stand ready to discuss our plans with all pertinent City representatives. Our company has a long resume of hospital, emergency room and out-patient surgery center development projects which showcase our abilities. Our previous communications regarding our plans have not received the interest we expected from the City, and we write again to ask for the opportunity to present to LHA, City Council and the Mayor.

We firmly believe that we present a solid option for development of the Lakewood Hospital campus that needs to be considered by City Council in its fiduciary capacity and as good stewards of these community assets. Toward that end, please allow this letter to serve as our request to be placed on the agenda for the City Council meeting of Monday December 7th to discuss our development plans with City leadership. We look forward to hearing from you regarding the same.

Sincerely,

SURGICAL DEVELOPMENT PARTNERS, LLC



G. Edward Alexander, President and CEO

CC:

Mayor, City of Lakewood

Mr. Michael Summers
Mayor
City of Lakewood
Lakewood City Hall
12650 Detroit Avenue
Lakewood, Ohio 44107

President, City Council

Ms. Mary Louise Madigan
President, City Council
City of Lakewood
Lakewood City Hall
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Law Director, City of Lakewood

Kevin Butler, Esq.
Law Director
City of Lakewood
Lakewood City Hall
12650 Detroit Avenue
Lakewood, Ohio 44107

Attorney General, State of Ohio

Michel DeWine, Esq.
Attorney General
State of Ohio
301 E. Broad Street
Columbus, Ohio 43215

From: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>
To: "Frank T. Sossi" <ftsossi@bmdllc.com>
Cc: "Summers, Mike" <Mike.Summers@lakewoodoh.net>, "Madigan, Mary" <Mary.Madigan@lakewoodoh.net>
Date: Tue, 8 Dec 2015 21:31:26 +0000
Subject: RE: Surgical Development Partners - Letter of Intent - REPLY of 12-04-2015

Thank you , Mr. Sossi. We appreciate your efforts to fill in the blanks in your client's initial correspondence.

Over the last eleven months of due diligence and negotiation, we have moved well beyond most of the issues you outline and are confident that the plan put forth in our negotiations with the Cleveland Clinic best serves the citizens of Lakewood. Lakewood is an innovative community that supports growth and prosperity. We have been working for many months on a health care delivery plan that does that. Most importantly, we are ensuring that there will be no disruption in the continuity or quality of care available to our community as we move forward in this outpatient model to improve health and wellness among our residents.

Last night, City Council introduced legislation that, if adopted, would result in a new master agreement between the city, the Cleveland Clinic and the Lakewood Hospital Association involving the full hospital site and the creation of a new wellness foundation. The legislation is expected to be read next Monday and again on December 21. The plan that has been negotiated would not prevent the provision of health care services in Lakewood from independent physician practices, like the one you say your client represents (but would prevent certain kinds of services from being provided on the hospital site).

In the future, I'm certain Mayor Summers would be happy to meet with the leadership of those independent physicians as we continue to build a new health care delivery model throughout the City of Lakewood.

Best wishes,

Kevin

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

From: Frank T. Sossi [<mailto:ftsossi@bmdllc.com>]

Sent: Friday, December 04, 2015 5:49 PM

To: Butler, Kevin; Alexander, Ed (ealexander@surgicaldevelopmentpartners.com)

Cc: Summers, Mike; Madigan, Mary; Frank T. Sossi; Jack T. Diamond

Subject: RE: Surgical Development Partners - Letter of Intent - REPLY of 12-04-2015

Electronically Filed 03/14/2016 14:13 / MOTION / CV 15 846212 / Confirmation Nbr. 696202 / BATCH

Exhibit D

SDP – LHA Letter of Intent

December 4, 2015

Mr. Butler:

Please see my reply in Red *italics below your comments.*

Please let us know if you would like to discuss the LOI or our responses.

Thanks,

Frank

<p>Frank T. Sossi Brennan, Manna & Diamond, LLC - Partner The Carnegie Building 75 E. Market St. Akron, Ohio 44308 Email: ftsossi@bmdllc.com - Fax: 330-253-1813 Direct Dial: (330) 253-5060 - Cell: 330-805-5812</p> <p>BRENNAN, MANNA & DIAMOND</p>	<p style="text-align: center;">Notice</p> <p>This email along with any attachments may be confidential or protected by the attorney-client privilege. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this message in error, please (i) do not read it, (ii) reply to the sender that you received the message in error, and (iii) erase or destroy the message. Legal advice contained in the preceding message is solely for the benefit of the Brennan, Manna & Diamond client(s) represented by the Firm in the particular matter that is the subject of this message, and may not be relied upon by any other party.</p>
---	--

From: Butler, Kevin [<mailto:Kevin.Butler@lakewoodoh.net>]

Sent: Friday, December 04, 2015 4:06 PM

To: Frank T. Sossi <ftsossi@bmdllc.com>

Cc: Summers, Mike <Mike.Summers@lakewoodoh.net>; Madigan, Mary

<Mary.Madigan@lakewoodoh.net>

Subject: RE: Surgical Development Partners - Letter of Intent

Dear Mr. Sossi:

I and other city officials received your client's letter, dated November 30 and attached to your email below, regarding its stated interest in healthcare investments in Lakewood and Westlake. This letter responds on behalf of the city, its mayor and city council.

To begin, we find the timing of your client's letter alarming. After all, the city has been working on the future of healthcare in Lakewood for more than 11 months, undertaking hundreds of hours in due diligence, hosting dozens of community meetings, gathering the facts and hearing from our constituents and experts on the plan recommended to the city in January 2015.

We apologize for the timing. Our LOI for the Westlake Campus closely followed our becoming aware of the opportunity to acquire that facility on a separate basis. We also wanted to indicate in the LOI that if there was an interest by LHA or the City on potential alternatives for the main Campus in Lakewood remaining as a functioning hospital that we would also be available to discuss the possibilities.

In September, Lakewood City Council publicly voted to have me begin negotiations in earnest with the Lakewood Hospital Association and the Cleveland Clinic — and serious discussions among those parties have ensued. These negotiations and the instability at Lakewood Hospital do not permit us to, and we will not, delay any decisions we reach on how to maintain critical services and improve the health of our community.

In the interest of being responsive to this email can you please indicate to us the critical services and health improvement plans that are being proposed to be maintained for the community. It was our understanding that you were discussing the closure of the hospital with the Clinic. Our view is that a hospital could be maintained, which would appear to be an approach that is not being considered in the indicated negotiations .

Furthermore, given the timing of your client's letter, the lack of substance and details in that letter are especially concerning. If your client has an offer or some specific ideas for a proposal that would meet the healthcare needs of our residents in Lakewood, and is economically viable for the long term, your client must share that offer or those ideas immediately.

Please see points below – in addition if there is information related to the prior RFP – status of the facility – proposed plans for alternatives – we would appreciate seeing such materials so that we can begin a due diligence process. As indicated in our Letter of Intent, if it were executed, such materials would be treated as confidential and we would have structure for negotiations.

Thus, if your client has a specific offer for the provision of healthcare in Lakewood, the time is now to make it and to be precise. Here are some of those essential details that would need to be explained beyond a mere statement of general interest:

1. A critical component of viable healthcare delivery is the commitment and availability of physicians. What is your client's strategy and commitment to provide physicians?

We are currently working with at least 90 local independent physicians related to a potential hospital project in Lakewood. We would expect that the project would be structured in a similar manner to our other projects where the affiliated physicians would have meaningful input into the day-to-day activities of the hospital.

2. A critical component of meeting the healthcare needs of the citizens of Lakewood is the scope of services and service model expected to be provided. What are the services we can expect to receive from your client and what populations will it serve? What is the service model? For example:

a. Is your client expecting to provide inpatient care, and if so, how many beds would be available?

Yes we would expect to provide inpatient and outpatient care. Our preliminary impression is that we would want to start with 60 to 100 inpatient beds and preserve the licensing on the remainder. Our focus would be on the healthcare needs of the community, as seen by our affiliated physicians. On a preliminary basis we believe that programs for wellness, chronic disease and appropriate ED services would be included.

b. What medical needs would these beds serve?

General Acute Care Hospital services, based on the new Budget Bill that was enacted November 2, 2015 it is imperative to retain Hospital status on the site to allow for HOPD status for any outpatient or medical office activities on the site.

c. Would your client provide emergency room service? If so, who would operate this service?

Yes there would be an ED operated by the hospital

3. The existing hospital facility is in need of significant investment to maintain clinical viability. It has been estimated that this investment is in the neighborhood of \$90 million. What are your client's plans to upgrade this facility, if any? How will your client finance such investments? Does your client expect to purchase the existing facility? Lease it?

As you are aware we have not toured the facility or reviewed the blueprints or the current conditions. In order not to interrupt services we would anticipate that we would use portions of the existing facility and determine the more cost effective and clinically appropriate approach to either rehabilitating the existing facility, adding on or new construction. We could work with LHA on a lease and lease funding arrangement or we could discuss a sale to a 3rd party landlord.

Of course, there are numerous other questions that would need to be addressed in order for the city to fully understand your client's interest. These are only a few among them.

The city received and considered your October 7 letter about the property at 850 Columbia Road in Westlake, and the Mayor had a subsequent phone conversation with Mr. Alexander two days later. We expected that your client would have explained its interest in greater detail soon afterward. Those details still have not arrived.

I spoke to Mr. Alexander a few minutes ago and it would appear that this is NOT his understanding of the conversation with the Mayor. His understanding was that the Mayor would be getting back to SDP on the Westlake Campus opportunity as it related to the City's willingness to sell that campus as a separate transaction. To date our only reply has come from you, today.

Very truly yours,

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

State of Ohio,)
) SS:
 County of Cuyahoga.)

 IN THE COURT OF COMMON PLEAS

 Edward Graham, et al.,)
 Plaintiffs,)
 vs.) Case No. CV-15-846212
 City of Lakewood, et al.,)
 Defendants.)

 VIDEOTAPED DEPOSITION OF
 MAYOR MICHAEL SUMMERS
 WEDNESDAY, JANUARY 20, 2016

The videotaped deposition of MAYOR MICHAEL SUMMERS, called by the Plaintiffs for examination under the Ohio Rules of Civil Procedure, taken before me, Ivy J. Gantverg, Registered Professional Reporter and Notary Public in and for the State of Ohio, by agreement of counsel and without further notice or other legal formalities, at Lakewood City Hall, 12650 Detroit Avenue, Lakewood, Ohio, commencing at 2:09 p.m., on the day and date above set forth.

1 APPEARANCES (Continued):
 2 On Behalf of Defendants Lakewood Hospital Association and
 Thomas Gable:
 3
 4 Jennifer Dowdell Armstrong, Esq.
 McDonald Hopkins
 5 600 Superior Avenue, East
 Suite 2100
 6 Cleveland, Ohio 44114
 7 On Behalf of Defendants Lakewood Hospital Foundation, Inc.
 and Kenneth Haber:
 8 Walter F. Ehrnfelt, Esq.
 Waldheger Coyne
 9 1991 Crocker Road - Suite 550
 Westlake, Ohio 44145
 10
 11 On Behalf of Defendant The Ohio Attorney General Mike
 DeWine:
 12
 13 Joseph E. Schmansky, Esq.
 150 East Gay Street
 23rd Floor
 14 Columbus, Ohio 43215
 15 Also Present:
 16 Edward Graham
 Barry Hersch, Videographer
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 APPEARANCES:
 2 On Behalf of the Plaintiff:
 3 Christopher M. DeVito, Esq.
 Morganstern, MacAdams & DeVito
 4 623 West St. Clair Avenue
 Cleveland, Ohio 44113
 5
 6 A. Steven Dever, Esq.
 13363 Madison Avenue
 Lakewood, Ohio 44107
 7
 8 On Behalf of Defendants City of Lakewood, Ohio and Mayor
 Michael Summers:
 9 Robert E. Cahill, Esq.
 Sutter O'Connell
 10 3600 Erieview Tower
 1301 East Ninth Street
 Cleveland, Ohio 44114
 11 Kevin M. Butler, Esq.
 City of Lakewood Law Director
 12 12650 Detroit Avenue
 Lakewood, Ohio 44107
 13
 14 On Behalf of Defendants The Cleveland Clinic Foundation
 and Dr. Delos Cosgrove:
 15 Tracy K. Stratford, Esq.
 Jones Day
 16 North Point
 901 Lakeside Avenue
 Cleveland, Ohio 44114
 17 Stephanie N. Switzer, Esq.
 Senior Counsel
 Cleveland Clinic Foundation
 18 Legal Department AC3
 3050 Science Park Drive
 Beachwood, Ohio 44122
 19
 20 Michael J. Meehan, Esq.
 General Counsel - Regional Hospitals
 Cleveland Clinic Foundation
 21 Legal Department AC3
 3050 Science Park Drive
 Beachwood, Ohio 44122
 22
 23
 24
 25

1 THE VIDEOGRAPHER: We are on the record. You
 2 may swear in the witness.
 3 MAYOR MICHAEL SUMMERS
 4 the deponent herein, called for examination under the
 5 Rules, having been first duly sworn, as hereinafter
 6 certified, was deposed and said as follows:
 7 MR. DEVER: Good afternoon. For the record,
 8 this is the deposition of Mayor Michael Summers in
 9 the case captioned Edward Graham versus City of
 10 Lakewood.
 11 For the record, my name is Steve Dever, I
 12 represent one of the plaintiffs in this case. If
 13 we could go around the room and have everybody
 14 just introduce themselves.
 15 MR. DeVITO: Chris DeVito, for the
 16 plaintiffs.
 17 MR. GRAHAM: Edward Graham, a plaintiff.
 18 MR. EHRENFELT: Walter Ehrnfelt, for Lakewood
 19 Hospital Foundation and Ken Haber.
 20 MR. MEEHAN: Michael Meehan, in-house counsel
 21 with Cleveland Clinic.
 22 MR. SCHMANSKY: Joseph Schmansky, Ohio
 23 Attorney General's Office.
 24 MS. STRATFORD: Tracy Stratford from Jones
 25 Day for the Cleveland Clinic Foundation and

1 Dr. Cosgrove.

2 MS. SWITZER: Stephanie Switzer from the
3 Cleveland Clinic.

4 MS. ARMSTRONG: Jennifer Armstrong for
5 Lakewood Hospital Association and Tom Gable.

6 MR. BUTLER: Kevin Butler, City of Lakewood,
7 for the Mayor and the City.

8 MR. CAHILL: Rob Cahill for the City of
9 Lakewood and Mayor Summers.

10 CROSS EXAMINATION

11 BY MR. DEVER:

12 **Q Good afternoon, Mayor. Again, we're taking your**
13 **deposition here today.**

14 **Have you ever been deposed before?**

15 **A I have.**

16 **Q So you understand basically that the court reporter**
17 **is here to take down all of your verbal responses. She's**
18 **not -- even though we have a videographer, the court**
19 **reporter is not able to take down nods of the head or any**
20 **kind of body language.**

21 **A Like this (indicating).**

22 **Q Right. Exactly.**

23 **So I would ask that if you listen to my questions,**
24 **let me complete my question, and then go ahead and answer**
25 **it as best as you can.**

1 **A And also on the county's Workforce policy Board.**

2 **Q All right.**

3 **You became a member of the Board of Trustees of**
4 **Lakewood Hospital when?**

5 **A I think it was the fall of 2010, replacing the seat**
6 **of Nickie Antonio, who had just been elected to the Ohio**
7 **General Assembly.**

8 **Q Okay.**

9 **A I served one meeting as a Councilman, and then**
10 **became Mayor and served as a Mayor from that point on.**

11 **Q When Mr. Fitzgerald went to become County**
12 **Executive; is that correct?**

13 **A That's correct.**

14 **Q Okay. Just for some background here, as well, at**
15 **the time that you became an ex officio member of the**
16 **Lakewood Hospital Association, to the Board of Trustees,**
17 **did you receive any type of training or written directions**
18 **from either the Lakewood Law Department or some legal**
19 **counsel representing the City of Lakewood?**

20 **A I don't recall, in terms of the City of Lakewood.**
21 **Certainly the Cleveland Clinic, I think, gave us an**
22 **orientation in terms of our duties.**

23 **Q Okay. And as far as on the City side, okay, we'll**
24 **put aside the Cleveland Clinic.**

25 **A I don't recall any such thing.**

1 **We'll begin. For the record, it's 10 minutes after**
2 **2:00.**

3 **We've rescheduled this deposition on a number of**
4 **occasions; is that correct, Mayor?**

5 **A That's correct.**

6 **Q Okay. Would you, just for opening, tell us how**
7 **long you've been the Mayor of the City of Lakewood, and**
8 **give me a little bit of background as far as your public**
9 **service.**

10 **A I became Mayor January 1st, 2011, and I've been**
11 **Mayor since that date, so a little over five years. I**
12 **served on Lakewood City Council for three years prior to**
13 **that, and I served on the Lakewood School Board for eight**
14 **years.**

15 **Q Okay. And have you ever served on a nonprofit as a**
16 **Board of Directors or a Trustee?**

17 **A Well, sure. Let's see, WIRE-Net, which is a west**
18 **side industrial retention network.**

19 **Q Sure.**

20 **A Oh, gosh. I'm trying to think of any of the big**
21 **ones.**

22 **Well, I guess it's quasi-judicial, the workforce**
23 **industrial -- Workforce policy Board, appointment by**
24 **Governor Taft. That should be a public service, as well.**

25 **Q Okay.**

1 **Q So no written directions, or policies, or any**
2 **information as to how you should conduct yourself as an**
3 **ex officio Board Member for the Lakewood Hospital**
4 **Association?**

5 MR. CAHILL: Objection to the extent it calls
6 for attorney - client privilege.

7 **A Well, the only other thought that comes to mind is**
8 **general ethics training that we reviewed as elected**
9 **officials.**

10 **Q Okay. And that would be -- the ethics training**
11 **that you received was from where, the State Ethics**
12 **Commission, the Bar Associations, what do you recall?**

13 **A I think I went to -- or got some pamphlets from**
14 **the -- probably -- I don't recall who it was from.**

15 **Q Okay. So at the time that you were appointed to**
16 **the Board, that was -- the appointment came from -- by**
17 **virtue of you being a member, elected official, Lakewood**
18 **City Council; is that correct?**

19 **A That's correct.**

20 **Q Okay. And then just before I move on, then, so as**
21 **far as at the time that you took the appointment, did you**
22 **have any opportunity to receive any instruction from**
23 **either fellow colleagues who were Lakewood City**
24 **Councilmen, or anyone within the City of Lakewood, namely**
25 **Law Director or --**

1 A I don't recall --

2 Q Okay.

3 A -- any specifics.

4 Q All right. What about as far as training through
5 either the Secretary of State's office or the Ohio
6 Attorney General?

7 A To serve on this particular Board?

8 Q Yes, sir.

9 A Yeah, no training.

10 Q Okay. All right.

11 As far as your duties and responsibilities as a
12 member of the Lakewood Hospital Association, can you just
13 give us briefly what your responsibilities as an elected
14 official, serving on the Lakewood Hospital Association,
15 what you viewed your duties and responsibilities to be?

16 A Well, primarily to look out for the interests of
17 the City of Lakewood. And in addition to that, and
18 hopefully in conjunction with it, then there was -- I
19 remember a sense of a duty of care for the patients of the
20 hospital and the employees of the hospital.

21 Q Okay. Did you -- does the Lakewood Charter reflect
22 any language that either created or indicated what the
23 purpose of Lakewood Hospital -- of the founding of
24 Lakewood Hospital was for?

25 MR. CAHILL: Objection to the form of the

1 fall of 2010, did you maintain -- first of all, what was
2 your attendance like, as far as attending the Board
3 meetings of Lakewood Hospital Association?

4 A I might have missed a meeting in the past six
5 years. I think it was rare.

6 Q Okay. And did you serve on any type of
7 subcommittees or Boards or task forces while in the
8 capacity on the Lakewood Hospital Association?

9 A I did.

10 Q Okay, can you tell us about which ones.

11 A There are many formal committees. I was not on one
12 of the formal committees. There's a Quality Committee,
13 there's an Executive Committee, there's a Finance
14 Committee. I did not serve on those committees.

15 In 2011, there was sort of a Select Committee on
16 sort of the strategic implications of the future of health
17 care in Lakewood. I served on that group.

18 Q Okay, and in what capacity did you serve on that
19 group?

20 A As a Trustee, and as a Mayor.

21 Q Okay. And did you chair that group?

22 A I did not, at that point.

23 Q Okay. Did there come a point in time that you did
24 serve as a Chair for one of those type of committees?

25 A There was a -- subsequent to that conversation,

1 question.

2 Q If you know.

3 A The Lakewood Charter?

4 Q Yeah, the City Charter.

5 A I don't specifically recall any language about
6 the -- Charter language about Lakewood Hospital
7 Association.

8 Q Okay.

9 No, Lakewood Hospital, not Lakewood Hospital
10 Association. Lakewood Hospital.

11 A Oh, I am aware there's a reference to health care
12 in Lakewood.

13 Q Okay. And who are the beneficiaries of that health
14 care?

15 MR. CAHILL: Objection to the form of the
16 question.

17 MS. STRATFORD: I join in that objection.

18 Q As you understand it.

19 A The community.

20 Q Would that include the patients of the hospital?

21 A Patients, citizens, any prospective patient.

22 Q Okay, would that include the employees of the
23 hospital?

24 A It does.

25 Q Okay. From the time that you were appointed in the

1 there was a group that was assigned to pick an advisor,
2 external advisor, and I chaired that group.

3 Q And what was the name of that group?

4 A That was the Select Committee.

5 Q All right. And when was the Select Committee
6 formed?

7 A Probably late 2012, early 2013.

8 Q And who initiated or who suggested, of your Board
9 members, the creation of a Select Committee?

10 A Oh, I think there was a general sense that the
11 issues of health care in general, and in this region, and
12 in Lakewood, were very complex, and that we needed to have
13 independent advisors, as Trustees, to guide us through the
14 implications of the current hospital in its performance,
15 and any future strategic choices that may be appropriate.

16 Q Okay.

17 A And so I think it was a consensus-driven approach.
18 And there was a smaller group hired -- or appointed to
19 find that advisor.

20 Q Okay. Who else served on that Select Committee
21 with you?

22 A Well, jeez. I can't remember all the names, but I
23 think Dr. Tabbaa, Ken Haber, I think Curt Broski was on
24 that group. Who else? Tom Gable.

25 Jeez, I would have to refer to my notes to be more

1 precise.

2 Q Okay.

3 A But I think there were nine of us.

4 Q All right. Refer to your notes, what do you mean
5 by, refer to your notes?

6 A Well, I would have to look at some of the
7 meeting -- Minutes of the meetings, as to who was there.

8 Q Okay. Yeah, let's --

9 A That was 2013, by the way.

10 Q 2013, the Select Committee was established?

11 A Yeah, that's when we did most of our work. We
12 selected Subsidiary as a result of that, I believe.

13 Q So the purpose of many of my questions today will
14 be to go through the process as to how you came about to
15 arrive at the Master Agreement that was passed in December
16 of last year, okay?

17 So I would like to begin at the beginning, and
18 first of all, let's start with, when you became appointed
19 to the Lakewood Hospital Association as a Trustee, you
20 first indicated that you had received some training from
21 the Cleveland Clinic?

22 A I think it was a binder, or something to that
23 effect, that talked about our responsibilities --

24 Q Okay.

25 A -- of serving that Board.

1 Q Okay, and what votes recently did you recuse
2 yourself from?

3 A Well, one vote, the Trustees vote to cast their
4 opinion on the merits of the revised Master Agreement.

5 Q Okay.

6 A I had a duty, as a signatory on the City side, and
7 I couldn't sign and shouldn't have signed for both
8 Trustees and City.

9 Q Right.

10 But going back to 2014 when the Letter of Intent
11 was being discussed, you did, in fact, cast a vote at that
12 time --

13 A I did.

14 Q -- right; is that correct?

15 A For the non-binding Letter of Intent.

16 Q Letter of Intent, okay.

17 A Non-binding.

18 Q Right.

19 Did you -- was that -- other than up to recently,
20 when you say, recently, in the past year or so; is that
21 what you're indicating?

22 MR. CAHILL: Objection to the form of the
23 question.

24 MS. STRATFORD: I join that.

25 A I'm trying to think back of the various votes cast.

1 Q All right. And did -- those responsibilities, as
2 recited in the binder, that came from the Cleveland
3 Clinic, or did that come from Lakewood Hospital? Where
4 did it come from?

5 A It's my understanding it came from the Cleveland
6 Clinic.

7 Q Okay. And did you review that entire binder?

8 A I looked through it, yes, I did.

9 Q Did you have any questions or concerns about the
10 information that was contained in the binder?

11 A I didn't have concerns. You know, it's a solemn
12 duty, to be taken seriously.

13 Q Okay. Did you view that, as far as the information
14 that was contained in the binder, to be somewhat in
15 conflict with your responsibilities as an elected
16 official, a City Council member for the City of Lakewood?

17 A No.

18 Q Did you ever, at any time, through your course of
19 being a member of the Lakewood Hospital Association, view
20 that you had a conflict?

21 MS. STRATFORD: Object to form.

22 A Up to this moment?

23 Q Up to this moment.

24 A There were some votes recently that I recused
25 myself from.

1 I think the only exception was the one about the
2 Master Agreement that I referred to. There were some
3 conversations that might have ended up that way, but
4 issues never came forth.

5 Q Okay. So if you look at the Minutes of all of the
6 meetings that are maintained by the Lakewood Hospital
7 Association, they would show that you abstained from this
8 most recent vote concerning the Master Agreement; is that
9 correct?

10 MR. CAHILL: Objection to the form of the
11 question.

12 MS. STRATFORD: I join that.

13 Q Is that correct?

14 A That's correct.

15 Q Okay. All right.

16 Now, going back to that time that you first took
17 the position on the Lakewood Hospital Association in the
18 fall of 2010, did you maintain or keep notes of the
19 various meetings and conversations that you had?

20 A Only that's been shared publicly.

21 Q So only the records that you've turned over to --
22 either by public records request or through the discovery
23 process, that's all of the records you have?

24 A Yeah, the primary records were, yeah, produced by
25 Subsidiary, and I think those all have been published.

1 Q Okay. Well, we know you were kind enough to
2 provide your calendar to us, as far as on a public
3 information request, I believe. And it appears that in
4 the year of 2014, that there were basically weekly calls
5 that took place involving Subsidium --

6 A Correct.

7 Q -- is that correct?

8 A Updates.

9 Q Okay. Did you maintain notes of those weekly
10 calls?

11 A Generally, no. No.

12 Q Okay. Did you keep any kind of records to be able
13 to follow up as to what are the issues that you were
14 dealing with at various points in time during those
15 conference calls?

16 A The purpose of those calls were to advise
17 Subsidium, in the context of the direction of information
18 needed, sharing information that we might have
19 collectively, and help Subsidium to do their work.

20 Q Okay. And when they had those conference calls, as
21 it appears on your calendar, a group of you would meet
22 from time to time for the conference calls here in City
23 Hall?

24 A Occasionally Ken Haber would come here, but
25 generally, others would participate by phone.

1 Q Okay. I've got some meeting notes here, I'll share
2 them with you in a second. I'm just trying to get a
3 general overview before we get into the details of how
4 this plan evolved.

5 When did you formulate an opinion or belief that
6 Lakewood Hospital was not sustainable?

7 MR. CAHILL: Objection to the form of the
8 question.

9 MS. STRATFORD: I join that.

10 A Well, I didn't -- there's several elements to your
11 question.

12 Q Okay.

13 A When did I form an opinion that Lakewood Hospital
14 was in distress? The first meeting I attended.

15 Q Okay. And that was in the fall of 2010 --

16 A Yeah.

17 Q -- right?

18 Now, prior to the fall of 2010, you were a member
19 of Lakewood City Council; isn't that correct?

20 A Correct.

21 Q And there had been a request by Lakewood Hospital
22 Association and the Cleveland Clinic to remove services
23 from Lakewood Hospital; is that correct?

24 A That's correct.

25 Q Okay, what do you recall about those discussions?

1 Q Okay. And Ken Haber was a member of this Select
2 Committee, as well?

3 A Well, there was a subsequent group, a smaller
4 group, to help Subsidium to do their job, and that was
5 Dr. Tabbaa, Ken Haber, Tom Gable, Bill Gordon and me.

6 Q Okay. How did that group get formulated, who
7 selected who to serve on that?

8 A The Trustees.

9 Q Okay, so the Trustees.

10 Was it volunteers, or were they nominations, was
11 there votes? How did it come about?

12 A I think it was, everybody take one step backward,
13 and the four of us were slow to react.

14 Q Okay, fair enough.

15 All right, so at that point in time that you became
16 a member of the Select Committee, you ultimately became
17 the Chair of the committee; is that correct?

18 A Yeah, that small group was called the Step 2
19 Committee.

20 Q Step 2, all right.

21 So first you have Select Committee that starts up
22 at least authorization of funding in 2011; is that
23 correct?

24 A No. No, that's not correct. I think the Select
25 Committee started in 2013 or late 2012.

1 A Well, that was my first introduction to the
2 complexity of the relationships, all the parties that were
3 there, the expectation of various agreements.

4 And there was a recognition that health care then
5 was changing, and that two services in particular were
6 very expensive and very modestly subscribed and used,
7 trauma, about 26 cases a year, it cost a million bucks,
8 and inpatient pediatrics, I think an average of 2.5
9 patients per night, with an exorbitant cost to serve that,
10 whether there were patients there or not.

11 And therefore, those two services, which were
12 originally included in the Lease Agreement between the
13 City and the Trustees, were asked to be discontinued and
14 replaced by sort of an outpatient-driven strategy called
15 the Centers of Excellence.

16 (Thereupon, Ms. Armstrong left the room.)

17 Q Okay. And the Centers of Excellence, when did --
18 the terminology of Centers of Excellence, when did you
19 first become aware of that?

20 A About that same time.

21 Q Okay. Well, Centers of Excellence and Vision for
22 Tomorrow, can you tell me what you knew about those?

23 A One and the same.

24 Q One and the same, okay.

25 As a Council member since 2008, were you aware, in

1 2008 - 2009, of the announcement of the Vision for
 2 Tomorrow plan for Lakewood Hospital?
 3 A No, I was not.
 4 Q Did you attend any public meetings about that?
 5 A There were -- no, no, I don't recall.
 6 Q Okay. So you really didn't have -- while you were
 7 a member of Council, you didn't really have any
 8 knowledge -- prior to your appointment to the LHA, you
 9 really didn't have any knowledge or involvement as to the
 10 functioning of Lakewood Hospital?
 11 A Well, other than what was introduced through the
 12 proposed changes to the Lease Agreement.
 13 Q Okay.
 14 A Which I'm not sure specifically when that started.
 15 Q Spring of 2010, does that sound about right?
 16 A I would have to take your word for it.
 17 Q Well, we'll go through those, as well.
 18 So what about as far as Lakewood City Council, the
 19 way that it was structured, did you have a standing
 20 committee which was a hospital committee to report whether
 21 or not LHA was in compliance with the Lease?
 22 A We did not.
 23 Q Okay. Throughout the whole time, has there -- is
 24 there a committee today?
 25 A No.

1 Mayor.
 2 A I think that responsibility rested here in the
 3 Mayor's office.
 4 Q Okay. And did you provide proper oversight of the
 5 activities as far as compliance of the Lease?
 6 A When I arrived in 2010, and then subsequently when
 7 I became Mayor, you know, roughly a couple months later, I
 8 recognized that the hospital and its performance was in
 9 jeopardy, and therefore serious thought had to be taken by
 10 the Trustees, and ultimately by the City, in terms of
 11 performance and sustainability of that model. So yes, I
 12 believe I did take appropriate responsibility.
 13 Q Okay. So when you first became the Mayor, then,
 14 was it a matter of weeks, months, that you had recognized
 15 that the hospital had serious problems?
 16 A Yes.
 17 (Thereupon, Ms. Armstrong reentered the room.)
 18 Q And what were the problems of the hospital, then,
 19 back in 2010 - 2011?
 20 A The hospital had lost in, I think, 2007, '08 and
 21 '09, something like 14 million, eight million and nine
 22 million dollars, numbers in that range, and the patient --
 23 inpatient volume had dropped, was dropping considerably,
 24 10 percent, and had dropped several years.
 25 I mean, I spent 32 years in manufacturing, guiding

1 Q Okay. And why not?
 2 A Well, you'll have to ask the current City Council.
 3 Q Okay. Well, what about when you were on there?
 4 A My three years that I was there? I could only
 5 speculate.
 6 Q Okay. So what, it was not -- let me -- I don't
 7 want you to speculate.
 8 Did you get reports from the individuals -- there
 9 were two Council members who were appointed to that Board,
 10 right?
 11 A Correct.
 12 Q Okay. Did you get, on an annual basis, a report
 13 from those Board members, Council, your colleagues, as to
 14 the status of Lakewood Hospital?
 15 A I don't recall any specific.
 16 Q So who on the City side was policing or providing
 17 some oversight as to whether or not the requirements of
 18 the Lease were being complied with?
 19 MR. CAHILL: Objection to the form of the
 20 question.
 21 MS. STRATFORD: I join that.
 22 A Yeah, I can't -- I don't know then.
 23 Q Okay.
 24 A I would say I could answer today.
 25 Q All right. Well, let's go from when you became

1 a company through four major downturns, and I learned,
 2 just from my training and my experiences, when you see the
 3 performance in an operation like that, it's a serious,
 4 serious problem.
 5 Q Okay.
 6 A Something has to change.
 7 Q All right. So once you became aware of the serious
 8 problems when you first became Mayor -- which would be
 9 2011, is that right --
 10 A That's correct.
 11 Q -- you decided that there were serious problems.
 12 Did you communicate that to any of the members of
 13 Lakewood City Council?
 14 A I'm sure there were plenty of, yeah, conversations,
 15 I remember certainly to the two colleagues, Brian Powers
 16 and Mary Louise Madigan, who were there. Yeah, I think
 17 there were informal conversations, and there had been
 18 throughout the five years I've been Mayor.
 19 Q Okay. And then when you became concerned, did you
 20 have an opportunity at that time to review or consult with
 21 administrators at Lakewood Hospital as to the causes as to
 22 nonperformance or lack of viability?
 23 A In 2011, and fortunately, another Trustee showed up
 24 about the same time I did, Ken Haber, who spent the better
 25 part of 35 years as a Chief Financial Officer of various

1 sizable companies. So he, too, recognized the dire
2 position.

3 And I think the two of us recognized our
4 responsibility, in my case, as Mayor, and he, as a
5 Trustee, that we've got to engage with some serious
6 thinking here of what the causes of the performance are,
7 what the alternatives to solving those problems are, and
8 how we can make sure that health care is viable in
9 Lakewood.

10 Q All right. So, now, let's reverse back to 2010,
11 when Lakewood Hospital Association came before Lakewood
12 City Council asking for permission to remove those two
13 service lines, okay? You attended those meetings of
14 Council; is that correct?

15 A I did, I did.

16 Q And the Minutes of the meetings were accurately
17 kept, weren't they?

18 MR. CAHILL: Objection to the form.

19 A I mean, I haven't reviewed those meeting Minutes.

20 Q You've never looked at those Minutes?

21 A I would have at the time, but I haven't looked at
22 them since.

23 Q Okay.

24 A I have every reason to believe they were correct.

25 Q All right. And there were appearances before

1 A Well, I recall the numbers were pretty clear. And
2 I'm certainly not a health care expert, I certainly know a
3 lot more now than I did then, but not an expert. And
4 the -- yeah, I had no reason to doubt that the performance
5 of the hospital was dicey then.

6 Q Okay, well, at the time of their appearance before
7 Lakewood City Council, there was some correspondence that
8 went back and forth between Lakewood Hospital and City
9 Council, providing assurances as to replacement of
10 services at the hospital; isn't that correct?

11 A I can't talk about specifics.

12 Q We'll go through the documents, that will probably
13 be more efficient, to do it that way.

14 Well, let's start back, then, at 2008 - 2007, were
15 you aware of a plan called the right-size Lakewood
16 Hospital, to make significant capital improvements into
17 the hospital?

18 A I subsequently became aware. I wasn't aware then.

19 Q Okay, when did you become aware that there was the
20 right-size, if that's a fair characterization, for the
21 hospital?

22 A I think in reviewing some documents from that era,
23 probably over the last several years.

24 Q Okay, when did you become aware of those documents,
25 before or after this lawsuit?

1 Lakewood City Council, as well as the committee of the
2 whole, by representatives of the Lakewood Hospital at
3 those -- back in the spring of 2010; is that correct?

4 A That's correct.

5 Q Okay. At that point in time, Fred DeGrandis was
6 the President of the hospital; is that correct?

7 A I believe so, yes.

8 Q And he had a long history as far as serving
9 Lakewood, and serving Lakewood Hospital; is that correct?

10 A I don't know what you mean by long.

11 Q Long history, well, since probably 1986, right?

12 A Okay.

13 Q Okay. Were there representations made by Jan
14 Murphy before Lakewood City Council concerning the
15 viability of the hospital?

16 A I recall that the context of 2010 -- and keep in
17 mind, I just mentioned that 2007, '08 and '09 were big
18 losing years, unsustainable losses -- that there was a
19 recognition that something had to be done then. And part
20 of their solution was to remove two very expensive, low
21 used, lowly utilized services, and replace them with
22 services that they thought would in fact generate more
23 revenue for the hospital.

24 Q Okay. And based upon those explanations, did you
25 accept them as being valid and reliable?

1 A Probably after.

2 Q Okay. And we have a package of them, and I'm not
3 going to go through all of these. But we'll move through
4 this a little bit for you. Sorry to get into your shot.

5 I'll show you Exhibit 2, all right? Can you see
6 that document in front of you, it's called Master Plan
7 Feasibility Study by Westlake Reed Leskosky, have you have
8 you seen that document before?

9 MR. CAHILL: Steve, as a point of order, will
10 there be exhibits marked other than Strauss'
11 exhibits?

12 MR. DEVER: Yes.

13 MR. CAHILL: Okay.

14 MR. DEVER: And just for everybody's
15 clarification, I'll go from -- my new exhibits
16 start at 26 and go forward, okay, so that we
17 don't get --

18 MR. CAHILL: Okay.

19 MR. DEVER: We'll use Strauss numbers for all
20 of our depositions, and then as these are added,
21 we'll use those numbers, as well. Is that fair
22 enough, so we can keep this all together?

23 MR. CAHILL: So by referring to the number, we
24 should be good?

25 MR. DEVER: Yes.

1 MR. CAHILL: Okay. Thank you.

2 MR. DEVER: And everybody, just for the
3 record, has gotten a copy of all of these that I'm
4 using at this point, right?

5 A I've looked at this report recently.

6 Q Okay, recently.

7 So at the time that you joined the hospital, you
8 were unaware that there was a plan, the right-size plan,
9 for upgrading the hospital?

10 A I was aware that there had been previous studies in
11 general. But not specifically.

12 Q All right. Okay.

13 And as far as the Vision for Tomorrow, when did you
14 become aware of the Vision for Tomorrow plan? Was that
15 before or after you joined the Lakewood Hospital Board?

16 A In 2010, when I was a City Council member.

17 Q Okay, that's when you became aware of it.

18 A Yes.

19 Q Okay.

20 Showing you Exhibit 3, take a look at that. It's
21 a news article from Crain's Cleveland Business, it's
22 captioned, Cleveland Clinic plans updating of Lakewood
23 Hospital.

24 And apparently the date on it is -- do you see it
25 there?

1 know the plans, no, that's correct.

2 Q Now, I'm going to show you what's been marked as
3 Plaintiff's Exhibit 5. Are you familiar with that
4 document?

5 A Yes, I remember seeing this early on.

6 Q And that's dated October 12th, 2009; is that
7 correct?

8 A I remember looking at this in the context of --
9 yeah, 2011, sort of a baseline.

10 Q So you did prepare some investigation or inquiry on
11 your own part, as far as looking at what had been done
12 prior to your arrival at the hospital Board?

13 A Yes.

14 Q Okay. So this document, and it's a report called
15 Strategic Assessment and Margin Improvement Study and
16 Supporting Analyses, did you evaluate that?

17 A I looked at it, yes.

18 MR. EHRENFELT: I want to clarify something.
19 On the exhibits I have, it does not go in numerical
20 order.

21 MR. DEVER: Yeah, I'm sorry, these are the
22 only exhibits that I'm going to use. But the
23 Strauss exhibits are -- if there's like not an
24 Exhibit Number 6, that was from Strauss.

25 MR. EHRENFELT: All right.

1 A I do.

2 Q Okay. Just for the record, indicate what the date
3 is.

4 A January 30th, 2009.

5 Q Okay. So is it possible that you were aware that
6 there was a great publicity -- or not great publicity --
7 some publicity concerning the Vision for Tomorrow plan for
8 Lakewood Hospital?

9 MR. CAHILL: Objection to the form.

10 MS. STRATFORD: I join that.

11 A Yeah, I don't know what you mean, is it possible I
12 was aware. Of course, it's possible.

13 Q Okay, well, did you participate in these public
14 announcements?

15 A No.

16 Q Did you go to -- are you a member, have you
17 attended functions of the group, Lakewood Alive?

18 A I was.

19 Q While you were a Councilman, as well?

20 A Yes.

21 Q Okay. So as far as the plans for the Vision for
22 Tomorrow, until you joined LHA, you did not know what the
23 plan was, or the strategy as to implement it; is that
24 correct?

25 A I did not know the strategy, correct. I didn't

1 MR. DEVER: I would have burned my secretary
2 out if we had made copies of all of that stuff.

3 BY MR. DEVER:

4 Q Okay, so you reviewed that. Did you have an
5 understanding as to how the Centers of Excellence were to
6 be created at Lakewood Hospital?

7 A Generally.

8 Q Okay, can you tell us what your general
9 understanding was.

10 A Well, they were designed to be a magnet to attract
11 non-traditional Lakewood patients into the hospital,
12 recognizing that, at that point -- remember, this study
13 dealt a lot with the demographics, the trends, and the
14 demand for specific services. And there was a recognition
15 that population loss was significant, and was probably
16 forecasted to be as significant in the future in its loss,
17 and therefore the traditional customer base of the
18 hospital was under distress.

19 Q Okay.

20 A And therefore, finding new customers, then, was a
21 reasonable goal.

22 Q And the Centers for Excellence called for four
23 specific centers to be established at Lakewood Hospital;
24 is that correct?

25 A That's correct.

1 Q And what were those centers?

2 A Well, endocrinology, diabetes. I think the brain
3 health and brain care, stroke care. I can't remember the
4 other two. They were generally designed to be outpatient
5 focused services.

6 Q And how was Lakewood Hospital to function within
7 the Cleveland Clinic system?

8 A I don't think I'm qualified to answer that.

9 Q What did you understand it to function as?

10 A Well, I think it was part of a very large system,
11 and how it interfaced at that point, in my understanding,
12 I was unclear.

13 Q Was it represented to you, or to your colleagues on
14 City Council, that it would serve as a hub for those
15 disciplines?

16 A The magnet. I used the term, magnet, the hub.

17 Q Magnet and hub, the same?

18 A That's what I meant by magnet.

19 Q All right. And a hub to attract patients from
20 other Cleveland Clinic hospitals to use Lakewood for those
21 four Centers of Excellence; is that correct?

22 A Well, I think other patients anywhere, not just
23 Clinic hospitals.

24 Q Right, okay.

25 Would it be fair to characterize that in 2010, City

1 A Well, I would have to read it carefully here.

2 Q If you look at Page 2, Positioning Lakewood
3 Hospital for the Future; do you see that?

4 A I do.

5 Q Okay. It says there, "Lakewood Hospital's Vision
6 for Tomorrow and the Plan positions and strengthens our
7 services around four centers of clinical excellence -
8 Neurosciences, Orthopedics, Diabetes and Geriatrics;
9 ensures the highest level of care for our patients;
10 creates improved coordination of care on the West Side;
11 and positions the Hospital for long-term stability."

12 Do you recall reviewing this matter back in 2010
13 while you were on City Council?

14 A Generally, I recall the whole subject matter. This
15 document, whether I saw it then or not, I can't recall.

16 Q Okay. Did you require, as far as -- you cast a
17 vote, didn't you --

18 A I did.

19 Q -- as far as -- okay.

20 To approve the transfer of the services; is that
21 correct?

22 A I did.

23 Q Okay. Did you raise any issues or concerns that
24 you have as to whether or not the transfer of these
25 services would be detrimental to the functioning of

1 Council was concerned as to whether or not the hospital
2 was functioning to be viable and to be productive --

3 MS. STRATFORD: Object to form.

4 Q -- is that fair?

5 A I think there was recognition that the hospital
6 then -- remember, I referred to 2008 -- '07, '08 and '09
7 financial performance was devastating.

8 Q Okay.

9 A Yeah.

10 Q So then at the time that Ms. Murphy -- Jan Murphy,
11 is that her name, right? Do you know who she is?

12 A I know who Jan Murphy is.

13 Q Who is she?

14 A At that point, she was President of Fairview
15 Hospital, and then joint President of Fairview and
16 Lakewood Hospital. So I'm not sure which date she became
17 President of both.

18 Q Okay. Showing you the letter, it's Exhibit 7,
19 dated April 6th, 2010, have you seen that letter before?

20 A I don't remember this specific letter, but I think
21 the context is consistent with the presentation of the
22 Centers for Excellence, Vision for Tomorrow.

23 Q Okay. And does that letter also make
24 representations concerning the creation of a hub at
25 Lakewood Hospital?

1 Lakewood Hospital?

2 A My recollection is, I think I stated earlier, was
3 these were services that were -- had very low demand.
4 Trauma was two cases a month, and pediatrics was less
5 than -- like 2.5 patients a night.

6 So in terms of patient care, I was probably
7 concerned about how you could be good at trauma with 24
8 cases a year. And if I -- as I am a parent, to have my
9 child be the only one in the hospital, it's something I
10 would be concerned about, it's not something I would want
11 my child to be admitted to.

12 So I wasn't as concerned about the patient demand,
13 because it was pretty low, unacceptably low, and remember
14 the devastating financial losses, cost had to be reduced,
15 and an attempt to raise revenues, and I think this plan
16 attempted to do both of those.

17 Q Okay. Now, going to the third page of that
18 Expansion of Services, now, this is a letter that's signed
19 by Mr. DeGrandis, Dr. Tabbaa and Janice Murphy; is that
20 correct?

21 A That's correct.

22 Q Okay.

23 And Janice Murphy actually attended the Council
24 meetings, as well, didn't she?

25 A She did, and there were others, as well.

1 Q Okay. And the others, did Dr. Bronson attend?
 2 A I don't recall one way or the other.
 3 Q Okay.
 4 A I believe Fred DeGrandis did.
 5 Q Okay, what about Mr. Meehan, did he attend?
 6 A I don't recall.
 7 Q Okay. He's here today, right?
 8 A He is.
 9 Q And did he represent Lakewood Hospital Association,
 10 did he represent the Cleveland Clinic? What was your
 11 understanding of Mr. Meehan's legal representation?
 12 MS. STRATFORD: Object to foundation.
 13 MR. CAHILL: Objection to form and foundation.
 14 A I don't recall his being there, I don't.
 15 Q Well, what did you understand, throughout the time
 16 that you've served on the Lakewood Hospital Association as
 17 a Trustee, as to Mr. Meehan's role?
 18 MS. STRATFORD: Object to form and foundation.
 19 A He's an attorney for the Cleveland Clinic.
 20 Q For the Clinic, okay.
 21 So did he provide legal advice to you, to the
 22 Lakewood Hospital Association?
 23 A In some forms, some circumstances, perhaps.
 24 Q Okay. Did you ever contemplate whether or not it
 25 would be necessary to get independent legal advice?

1 Q All right. What is this?
 2 A I think there were several strategic questions that
 3 came about from a variety of conversations. And in his
 4 capacity as President of Council, he articulated -- Kevin
 5 Butler articulated these questions to appropriate
 6 individuals to get answers.
 7 Q Okay, was there a concern at that point in time as
 8 to whether or not the hospital would continue to be viable
 9 with the removal of these services?
 10 A Actually, ultimately, I think quite the opposite,
 11 that if we didn't take these actions, the cost versus the
 12 patient yield was unsupportable, and that left to itself,
 13 the hospital would be in worse shape.
 14 Q Okay, well, was Council reluctant in authorizing
 15 the transfer of the services?
 16 A Oh, I think Council did its job to understand the
 17 issues as best they could and make the best decision they
 18 knew how.
 19 Q Was Council provided assurances from Lakewood
 20 Hospital Association and the Cleveland Clinic that the
 21 change in services and the Centers for Excellence to be
 22 created at Lakewood Hospital would prove to be
 23 guaranteeing future viability of the hospital?
 24 MS. STRATFORD: Object to form.
 25 A I don't recall ever a term, guarantee.

1 A I did not consider legal issues. I was very
 2 concerned with the strategic performance of the hospital.
 3 Q Okay.
 4 A And I was determined to get good, strategic advice,
 5 which we did.
 6 Q So did you view that there was any kind of
 7 conflict, as far as getting legal advice from Cleveland
 8 Clinic lawyers?
 9 A I did not, at that point.
 10 Q Okay, have you, at any time?
 11 A Well, we've subsequently got a lot of lawyers here
 12 representing a lot of interests, so I would say in the
 13 matters of litigation, yes.
 14 Q Okay. But as far as the planning for the future of
 15 Lakewood Hospital, you didn't have any lawyers?
 16 A I didn't consider this a legal question.
 17 Q Okay.
 18 A I considered this a marketplace strategic
 19 performance question.
 20 Q Okay. All right.
 21 Now, go to Exhibit 8. This time, this is a letter
 22 dated May 24th from 2010 from Janice Murphy to Kevin
 23 Butler, who was President of Lakewood City Council at that
 24 time. Do you recall looking at this?
 25 A I do.

1 Q Well, representations made that it would assure
 2 future viability of the hospital?
 3 MS. STRATFORD: Object to form.
 4 A I think it was a good faith effort to recognize
 5 marketplace changes, and the need to do things
 6 differently, and an expectation that this was a good plan,
 7 and that it should be adopted and worked hard to
 8 implement.
 9 Q Well, were those representations that were made to
 10 Council, either at the meetings, or in these letters from
 11 Janice Murphy and from David Bronson, did you feel that
 12 you had been misled by their assurances?
 13 MS. STRATFORD: Object to form.
 14 MR. CAHILL: Objection to form.
 15 A No, I did not.
 16 Q Okay. Now, looking at that letter that was
 17 addressed to Kevin Butler, and going to Page 3, it asked,
 18 "What guarantees does the City get that the services to be
 19 augmented will remain so?" Okay, do you see that?
 20 A I do.
 21 Q Okay. And take a moment to read that.
 22 Okay, now, taking a look at those -- these were
 23 Q and As that were -- questions that at least had been
 24 formulated by Council, and then sent over to Janice
 25 Murphy, and then she, in turn, responded; is that correct?

1 A Yeah.
 2 Q Is that correct?
 3 A That's my understanding, yeah.
 4 Q And then in looking at the documents, and just
 5 trying to understand the decision-making process of
 6 Council at that time, are you saying that you, as a member
 7 of City Council, and your colleagues, were not relying
 8 upon representations made by Janice Murphy and David
 9 Bronson that these changes would result in benefit to
 10 Lakewood Hospital?
 11 A Say the first part of your question.
 12 Q Are you saying that you did not rely upon comments
 13 that were made, or assurances that were made by Janice --
 14 A No, I'm not saying that.
 15 Q Okay. Well, what were the assurances or comments
 16 that got you to go ahead and approve this transfer?
 17 A Facts, trends, financial performance of the
 18 hospital. I think there were a variety of sources, not
 19 just the Clinic, but certainly they were part of it.
 20 Q Were the Centers of Excellence going to be the way
 21 to correct this negative decline of the hospital, or was
 22 this just a strategy that may or may not work?
 23 MS. STRATFORD: Object to form.
 24 A The latter. I mean, I think -- and I've engaged
 25 in almost 38 years of strategic thinking, planning,

1 A I can't speak to the breadth of all the details of
 2 the original implementation plans. Today, there exists
 3 significant endocrinology support, there were specialists
 4 brought in to deal with the diabetes question, which is a
 5 major concern for this community, by the way. And by the
 6 way, for the nation.
 7 And there remains a significant neurological focus.
 8 There is a Brain Center today, outpatient based, that
 9 deals with two of these four, which is geriatrics and
 10 brain health, including dementia and Alzheimer's. It's on
 11 the second floor of the community building.
 12 So that program, in some form or another, was
 13 implemented. There were other elements that may not have
 14 worked out.
 15 Q And which ones may have not worked out?
 16 A Well, geriatrics has taken on many forms, including
 17 brain health, which is still here. I think there's a
 18 recognition that brain health also includes other aspects
 19 of mental health, but I would say it's a national --
 20 Q Right.
 21 A -- concern, and that we are woefully under-serving
 22 and under-investing in mental and behavioral health in
 23 this nation, and this region mirrors that. That's
 24 nobody's fault. That's a recognition of merging trends
 25 that are just enormous.

1 implementation, and adjustments, in my capacity as a
 2 business owner, through a variety of marketships, a
 3 variety of expansion strategies for my company, and the
 4 reality is, not every strategy works. You put them
 5 together with the expectation that it will address a
 6 problem or capitalize on an opportunity, and it's an
 7 imperfect world, and not everything goes as hoped or
 8 planned, and you have to continue to make adjustments.
 9 Q Okay. So at that point in time, you had faith and
 10 confidence that the suggestions that had been presented as
 11 far as the Vision for Tomorrow was the most practical plan
 12 to create sustainability for the hospital?
 13 MR. CAHILL: Object to the form.
 14 MR. EHRENFELT: Objection.
 15 A I believed it was a good faith effort on the part
 16 of a lot of folks who were committed to health care in the
 17 region, and in Lakewood, to deliver health care to
 18 Lakewood long-term.
 19 Q Okay. And those visions for tomorrow, did those
 20 visions become a reality?
 21 A Some are still in existence today.
 22 Q Okay, well, let's talk about those hubs that you
 23 talked about, or magnets.
 24 The Vision for Tomorrow plan, was it fully
 25 implemented?

1 But the point is, there is services -- there are
 2 services, even today, that deal with that, but probably a
 3 lot more are needed.
 4 Q Well, let's go back to the Centers.
 5 A Well, let me finish.
 6 I mean, the other piece of the rehab was, in fact,
 7 implemented, that rehab services that were on the fourth
 8 floor, that was an updated service, and that is in
 9 existence at this moment, will cease to be soon. But that
 10 was implemented.
 11 Q Okay, well, we call it the Centers of Excellence,
 12 okay, the Cleveland Clinic used that term; is that
 13 correct?
 14 A That's correct.
 15 Q And the Centers of Excellence are -- the Cleveland
 16 Clinic has a criteria that they use as far as establishing
 17 a Centers for Excellence at a particular facility, don't
 18 they?
 19 MR. CAHILL: Objection to the form.
 20 MS. STRATFORD: Objection.
 21 A I'm not familiar with their criteria.
 22 Q Okay. Did the Institute Chairs for -- do you know
 23 what an Institute Chair is?
 24 A Generally.
 25 Q Okay, what is that?

1 A I think it's Clinic -- it's how the Clinic
2 organizes its delivery.

3 Q Okay. And as far as organizing --

4 A That's about all I know, by the way.

5 Q All right. So the Institute Chair for
6 neuroscience, orthopedics, diabetes and geriatrics, did
7 there be established, at Lakewood Hospital, Centers for
8 Excellence where these Institute Chairs established those
9 four disciplines at Lakewood Hospital?

10 MS. STRATFORD: Object to form and foundation.

11 MR. CAHILL: Objection to the form.

12 A To the best of my knowledge, I just explained that
13 those services are, in some form or another, many of them
14 there today. What the original scope was, I can't speak
15 to that, I don't have any direct knowledge.

16 Q Was there any kind of measurement done to determine
17 whether or not there had been compliance, or that the
18 representations that were being made to Lakewood City
19 Hospital were, in fact, implemented?

20 MS. STRATFORD: Object to form and foundation.

21 Q Lakewood City Council, I'm sorry.

22 A I don't recall specifics of criteria performance.

23 Q Okay.

24 A But I will say this, that one thing that's a very
25 compelling trend, that we're trying to address here in

1 would have been difficulty as far as the Institute
2 Chairs --

3 MS. STRATFORD: Object to form.

4 Q -- approving?

5 A I would say one of the major factors that we're
6 excluding from this conversation is that at that time
7 frame, we were coming off the Great Recession. All bets
8 were off in terms of the viability of a whole bunch of
9 institutions in this country, banks, hospitals,
10 manufacturing companies, everybody was in a very different
11 world.

12 And whatever you thought you could do in the
13 context of a reasonable stable -- reasonably stable
14 economy, we were in a very markedly different place in
15 the United States, really starting in 2009 and '10, and
16 remained, by and large, in a similar position, where a lot
17 of -- there's a lot of tentativeness, in my opinion.

18 Q Did the City Council prepare a resolution denying
19 or not authorizing the transfer of the services from
20 Lakewood Hospital?

21 A Which services?

22 Q The trauma and orthopedic -- or pediatrics.

23 A We did.

24 Q Okay. Why did you do that?

25 A I think we just explained this about three times,

1 Lakewood, is the migration of services from inpatient to
2 outpatient.

3 And these four centers, which are very important in
4 the concept of geriatrics, diabetes care, and -- those two
5 in particular, which are critical to us, are being
6 delivered on an outpatient basis, but in terms of its
7 financial impact on a hospital, it's not so good, because
8 outpatient services do not yield the margins that high
9 tech inpatient services do.

10 So while it addresses community health needs in a
11 very profound way, in my opinion, it didn't necessarily
12 help the financial performance of the hospital.

13 Q Was there -- as far as the members of the Lakewood
14 Hospital Association, the Trustees themselves, did you put
15 together a person who had the responsibility to make sure
16 that the plan had been implemented?

17 A Not a person that I'm aware of, no.

18 Q Okay. Now, when you arrived on the Board, then,
19 in 2010, in the fall of 2010, was there any discussion at
20 that point in time, at these meetings, as to whether or
21 not the Vision for Tomorrow was being implemented, had
22 gotten the proper buy-in from the Institute Chairs?

23 MS. STRATFORD: Objection to form.

24 A I don't recall that conversation.

25 Q Was there ever any expression or concern that there

1 have we not?

2 Q No, we haven't.

3 A Two trauma cases a month --

4 Q No, I'm asking, did you, at any time, as a Council
5 member, prepare a resolution denying or not giving
6 permission to Lakewood Hospital to move those services?

7 A I don't recall developing a negative option, no. I
8 think we grew to understand that the circumstances of the
9 hospital required strategic redirection.

10 And the basis for that, and the reasons for it, I
11 think became clear to us, in a variety of forms, this
12 being one, and there is an element of confidence and trust
13 that you place in your partners.

14 And I think, in the context of health care in
15 Lakewood, then, and now, you know, there remains -- I
16 think there has to be a level of confidence in partners
17 in good faith, and I think that allowed us to make the
18 decision to be made.

19 And by the way, I can't speak for the other six
20 members of City Council.

21 Q Were you aware that there was a draft of an
22 ordinance that rejected the request to move those service
23 lines?

24 A I don't recall that.

25 Q Okay. All right.

1 Now, going forward, then, to your arrival on the
 2 hospital Trust Board in the fall of 2010, was that the
 3 first time that you had any conversations with Dr. David
 4 Bronson?
 5 A Very likely.
 6 Q Okay.
 7 A I don't recall anything specific.
 8 I don't recall a specific conversation then,
 9 either.
 10 Q Okay.
 11 A Other than that I was a Trustee.
 12 Q So as far as the Minutes of the meetings going on
 13 that took place at Lakewood Hospital Association, did you
 14 ever become aware or was there ever any discussion
 15 concerning whether or not the Institute Chairs were
 16 supportive of the Vision for Tomorrow?
 17 A I'm not aware of that.
 18 Q Okay. All right.
 19 So then as far as the Vision for Tomorrow, where
 20 did it stand when you arrived in the fall of 2010?
 21 A Endocrinology still exists to this day, right now.
 22 Q No, I'm asking, as far as improving the bottom line
 23 for the hospital.
 24 A Well, there were a lot of factors. Remember, the
 25 Great Recession, that I talked about.

1 A I was there for one meeting.
 2 Q Okay.
 3 A One meeting. And I fully didn't understand any of
 4 this after one meeting.
 5 Q All right. So when did you realize that the Vision
 6 for Tomorrow implementation was not going to improve the
 7 financial viability of the hospital?
 8 MR. CAHILL: Objection to the form.
 9 MS. STRATFORD: Join in that.
 10 A I don't think any one variable is clear, even to
 11 this day, as to what drives the current performance.
 12 There are a variety of variables, and all of them
 13 compelling, by the way. And to lay this at the feet of
 14 one particular element of the broad strokes of what makes
 15 a hospital viable is not a reasonable statement.
 16 Q Okay, let's look at Exhibit 11. Do you have that
 17 in front of you?
 18 MR. DEVER: Five minutes now.
 19 MR. EHRENFELT: I'm sorry, what exhibit?
 20 MR. DEVER: 11.
 21 MR. EHRENFELT: Thank you.
 22 MR. DEVER: Take the break, or I've got five
 23 minutes to a break?
 24 THE VIDEOGRAPHER: You have five minutes to a
 25 break.

1 Q I understand that.
 2 A And you know, there was certainly, at that point,
 3 recognition of two other major trends, population loss, in
 4 Lakewood in particular, and poverty trends.
 5 Q Okay. Well, both of those --
 6 A So there were a whole lot of factors that were
 7 clouding what the world was.
 8 And I would also say, we were looking at the world
 9 of the Affordable Care Act.
 10 Q Okay.
 11 A And that was beginning to emerge as a strategic
 12 component of a new day.
 13 Q So when you arrived there in 2011, and became aware
 14 of all of these changes that had been taking place, did
 15 you communicate back to your colleagues on City Council
 16 and tell them that perhaps the Vision for Tomorrow, as
 17 represented to Council, that caused them to vote and
 18 approve these changes and transfer of services, may not be
 19 realistic?
 20 MR. EHRENFELT: Objection.
 21 MS. STRATFORD: Objection.
 22 A First of all, City Council are not my colleagues
 23 when I'm Mayor.
 24 Q I'm asking, in November of 2010, you weren't Mayor
 25 yet, were you?

1 MR. DEVER: All right.
 2 BY MR. DEVER:
 3 Q Exhibit 11, if you would take a look at that. I
 4 thought we had a copy for you.
 5 This is dated June 2nd, 2010. It's a Crain's
 6 Cleveland Business news article, City officials, Cleveland
 7 Clinic tussle over proposed changes at Lakewood Hospital.
 8 Okay, have you had an opportunity to read it all?
 9 A (Witness nods).
 10 Q Does this help your recollection as far as this
 11 matter that was before City Council in June of 2010?
 12 A Well, I do remember the 60 days, and I do recall
 13 that if we did nothing, then these changes would become
 14 effective, if I'm not mistaken. And there was some
 15 question, I guess, what action City Council could take.
 16 This is an enormous amount of public policy between
 17 then and now, during my view of all of these issues, so I
 18 appreciate having a chance to reread this, and I'll have
 19 to -- give me a moment to sort of reconstruct, the best
 20 that I'm able, something that happened almost six years
 21 ago.
 22 MR. DEVER: Why don't you take a moment to
 23 read it. Let's change the tape.
 24 THE VIDEOGRAPHER: Sure. Off the record. End
 25 of Tape 1. It's 3:08.

1 (Thereupon, a discussion was had off the
2 record.)
3 THE VIDEOGRAPHER: Back on the record. Tape
4 2.
5 BY MR. DEVER:
6 Q Okay, looking at Exhibit 11, does that refresh your
7 memory as far as the events surrounding Council's action
8 in June of 2010 concerning the proposed transfer --
9 A I had still -- I don't have specific recollection
10 of conversations, meetings, no, I don't.
11 Q Okay. And you don't have any notes or any records
12 from that point in time; is that correct?
13 A That's correct.
14 Q All right. Now, you say that when you moved over
15 to become Mayor of the City of Lakewood, that was in
16 January of 2011; is that correct?
17 A Correct.
18 Q Was there any kind of transition between you and
19 Ed Fitzgerald, as far as providing you some updates or
20 information concerning his view of the operation of
21 Lakewood Hospital?
22 A He had just been elected County Executive. His
23 mind was clearly on his next job.
24 Q Okay.
25 A So while we had a very cordial hand-off, there was

1 piece of the whole puzzle of my responsibility. So I
2 didn't spend a lot of time looking through those old past
3 meeting Minutes, no.
4 Q Did you have the records at that time, back in --
5 A I don't know which records, I don't know whether
6 they were complete. There were some years, some not.
7 Some dating back to Mayor Cain's administration, you know,
8 back to 2000.
9 Q All right. So now let's take us forward, then. So
10 you become Mayor in 2011. Who replaces you as the Council
11 appointee to the Board?
12 A Tom Bullock.
13 Q Okay. And he's remained on there throughout that
14 whole time; is that correct?
15 A That's correct.
16 Q Okay. And who was the other colleague that you
17 had, as far as --
18 A Mary Louise Madigan.
19 Q Okay, when did she become appointed?
20 A Actually, initially, it was Brian Powers, I think
21 for a couple years, and then Mary Louise.
22 Q Okay. And when Mr. Powers left City Council, then
23 Mary Louise was appointed --
24 A That's correct.
25 Q -- is that correct?

1 not a lot of specifics to it.
2 Q Right. So there was no transition --
3 A Not on this matter especially.
4 Q Okay. And as far as what we had talked about, as
5 far as the right-sizing of the hospital and the Vision for
6 Tomorrow announcements that occurred in 2008 - 2009, you
7 and the Mayor, or former Mayor Fitzgerald, didn't really
8 have any discussions or pass any information to one
9 another?
10 A No.
11 Q Did he give you any kind of records, or documents,
12 or meeting Minutes, or anything?
13 A There are some past meeting Minutes in folders
14 here.
15 Q Okay, those were given to you by --
16 A They were here in the office.
17 Q -- Ed Fitzgerald?
18 They were just left here in a file cabinet; is that
19 correct?
20 A Correct.
21 Q And did you -- when you assumed the duties of
22 Mayor, did you have a chance to go through and review
23 those, as well?
24 A There was a lot of information to review that the
25 Mayor of Lakewood has to consider, and this was one small

1 All right. And can you give me basically what's
2 your understanding of the Lease between the City of
3 Lakewood and Lakewood Hospital Association, what are the
4 responsibilities as far as to the City of Lakewood by LHA?
5 MR. CAHILL: Objection to the form.
6 A That's a pretty vague question.
7 Q Well, as you understand it, as far as operating the
8 hospital.
9 Well, the way this works, with all due respect,
10 Mayor, I get to ask the questions, okay? And some of
11 them --
12 A I understand.
13 Q -- you might not like, but that's --
14 A Well, but the point is, a question like, what's my
15 understanding of a very complex document --
16 Q Well, as far as --
17 A -- where do we want to begin?
18 Q Well, let's begin with operating the hospital and
19 making it sustainable for the term of the Lease.
20 When does the Lease end?
21 A December 2026.
22 Q Okay. All right, so you come in, in January of
23 2011. So there's roughly 15 years left on that Lease; is
24 that correct?
25 A Roughly, yeah.

1 Q Okay. When was the first time that you had
2 conversations with either administrators of the hospital
3 or with the President of the Cleveland Clinic concerning
4 the viability of Lakewood Hospital?
5 A Probably, I'm guessing, I'm beginning to recognize
6 the distress in clear form in the first, second quarter of
7 2011.
8 Q Okay. So that's when it became obvious to you; is
9 that correct?
10 A Yeah, I think there's background here that there
11 were problems, there were strategies. When I arrived as
12 Mayor, there was a recognition that wherever we were, and
13 however and whatever reasons put us there, needed to be
14 rethought, and they needed to be rethought right now.
15 Q Okay. Were the improvements and upgrades being
16 carried forward in 2011 as far as for the Vision for
17 Tomorrow and the Centers for Excellence?
18 A Orthopedics had been significantly upgraded. The
19 brain health piece was moved across the street. I'm not
20 sure when they did that, I'm not sure what upgrades were
21 necessary there. The rehab unit had been upgraded
22 significantly.
23 Q Had there been capital improvements in 2011, your
24 first year?
25 A I can't recall specifically what monies were spent

1 that term, decanting.
2 Q Okay.
3 A That was the first I had heard it.
4 Q Have you familiarized yourself with it since then?
5 A Not in any detail, no.
6 Q Okay.
7 A Although I remember he handed it to me at the
8 moment, and I saw that it was published by an
9 architectural firm.
10 Q Right.
11 A And that it had Lakewood Hospital on one side of
12 the page, and Fairview on the other side of the page.
13 Q Okay. Do you know Phil LiBassi from Westlake Reed?
14 A I think I met him in the past. I don't know him.
15 Q Okay, do you know any of the staff at Westlake
16 Reed?
17 A None. Not by any even professional acquaintance.
18 Q And looking at these documents -- 16, take a look
19 at that for a moment.
20 Okay, you see, on the front of it, it's apparently
21 on Westlake Reed letterhead. The date of the meeting --
22 or meeting notes purports to have been June 21st, 2012.
23 A I see it.
24 Q And the client is Fairview Hospital, and this is a
25 Master Plan, at least that's what the document says; is

1 in what year, but I can be confident to say the orthopedic
2 ward received, you know, a million dollars of upgrades,
3 and the rehab unit did, as well. So you know, which
4 years, I would have to familiarize myself more
5 specifically.
6 Q Did you ever become familiar or aware of a proposed
7 decanting plan for Lakewood Hospital?
8 A I did.
9 Q When did you become aware of that?
10 A When a retired Police Sergeant, Ed Favre, thrust
11 the documents in my face in the midst of a Fraternal Order
12 of Police endorsement interview.
13 Q When was that?
14 A That was August 2015.
15 Q Okay. And that was the first that you --
16 A I'm being a little dramatic there.
17 Q Well, that would be over there at the Westlake
18 Lodge 25?
19 A That's correct.
20 Q That's probably a lot of pressure for you, for
21 that.
22 So that's when you became aware of a decanting
23 plan; is that correct?
24 A I remember, he said, are you familiar with this
25 decanting plan, and I responded, I'm not familiar with

1 that correct?
2 A That's what it says.
3 Q Okay, looking at the names on the front of that, do
4 you see the -- for Fairview Hospital, do you know any of
5 those individuals?
6 A I know Ankit Chhabra.
7 Q Okay, and who is Ankit?
8 A He is a Director of Finance.
9 Q For Lakewood Hospital, as well?
10 A He is now. I don't know whether he is at Fairview
11 or not still.
12 Q All right. And this is June 21st, 2012. If you go
13 to the second page -- first of all, have you seen this
14 document before?
15 A No.
16 Q Okay, so this wasn't one of the documents that was
17 thrust in front of you by --
18 A No.
19 Q -- retired Police Officer --
20 A No, in fact I didn't get a chance --
21 Q -- Detective Edward Favre?
22 A I didn't get a chance to study that document, but I
23 remembered it was a fairly detailed graph. I don't
24 recognize these pages.
25 Q All right. So assuming, for purposes of these

1 questions, on June 21st, 2012, that there had been a
2 kick-off meeting for discussing decanting of Lakewood
3 Hospital and a Master Plan for Fairview Hospital, were you
4 aware at that time that there had been planning activities
5 underway?

6 MS. STRATFORD: Object to form and foundation.

7 A No.

8 Q You did not.

9 When you first found out about this after Mr. Favre
10 gave this to you, did you have an opportunity to have
11 discussions with representatives of Lakewood Hospital
12 administration or Cleveland Clinic concerning this
13 decanting plan?

14 MR. EHRENFELT: Objection.

15 A I did not have that conversation.

16 Q Okay, why not?

17 A I'm under litigation here. I'm being sued.

18 Q Okay. Were you offended when you first found out
19 that there had been planning activities underway to decant
20 Lakewood Hospital?

21 A No.

22 Q Why not?

23 A I think by June 2012, it was clear to the Trustees,
24 and certainly to me, that the Cleveland Clinic's view of
25 long-term health care for Lakewood would and should move

1 Q Well, when you determined that the Cleveland Clinic
2 did not, at that point in time, in 2012, have an interest
3 in operating Lakewood Hospital as an inpatient facility,
4 did you view or feel that they had a legal obligation to
5 honor the terms of this Lease that Lakewood had with LHA?

6 MR. CAHILL: Objection to the form.

7 MS. STRATFORD: Object to form and foundation.

8 A I don't think -- I was less interested in legal
9 obligations at that point, than strategic implications of
10 markets, and demand, and customer needs.

11 And I would also say that one of the things that
12 was compelling, that we've not even mentioned here, is it
13 became clear early on in my capacity as Mayor that
14 Lakewood Hospital needed a very significant investment,
15 one way or the other.

16 Q Right.

17 A We needed to invest in health care.

18 Q Well, wasn't that what the right-size was talking
19 about in 2008?

20 A I don't believe that was what -- we're talking
21 about in 2011, '12 and '13. And the real question was, if
22 you're going to make an investment that would be -- that
23 would do two things, serve the needs of the community, and
24 be financially viable, what's the nature of that
25 investment?

1 to an outpatient delivery position.

2 Q What was their view of long-term health care in
3 Lakewood?

4 MS. STRATFORD: Object to foundation.

5 Q As you understood it.

6 A The community needs were more chronic in their
7 nature, and that -- and by then, I would also say, there
8 was a recognition strategically as a country that we
9 needed to move more towards prevention and early
10 detection, and that the continuing decline of patient
11 volume of Lakewood Hospital, coupled with the fact that
12 our needs needed to move to prevention and early
13 detection, warranted probably a different delivery system.
14 An updated one, as well.

15 Q Okay.

16 A And therefore, I think I did note, when Sergeant
17 Favre showed this to me -- I think we must have had a
18 conversation about the date -- that by 2012, I think the
19 Clinic had made it clear, to many of us, that, you know,
20 the viability of this hospital needed a massive investment
21 that would move towards outpatient delivery.

22 Q Okay.

23 A So to answer your question, in that context, it
24 would be a responsible move to anticipate what we do with
25 our existing inpatient volume.

1 And with declining inpatient volumes already
2 experienced, going back several years, which we've well
3 documented here, and with the fact that advancements in
4 medical technology allowed a lot of historically inpatient
5 delivery services to be delivered outpatient, coupled with
6 a dramatic and seismic change in reimbursement strategies
7 by Medicare, Medicaid, and even private insurers, all of
8 which discouraged inpatient volume, or, at the very
9 minimum, wanted it to be as short as possible, the
10 question then became, in the context of all that, what's
11 the best way to invest in the future, the old model going
12 backwards, or something different.

13 Q Right.

14 Well, but the Cleveland Clinic's best way to invest
15 in the future, in looking at that exhibit that you have
16 there, was to decant Lakewood Hospital and remove those
17 services to Fairview; is that right?

18 MS. STRATFORD: Object to form and foundation.

19 MR. CAHILL: Objection to form.

20 A That's only one piece -- in fact, that's not their
21 strategy. Their strategy was to make a sizable
22 investment, which ultimately was affirmed here, and you
23 know, many millions of dollars of new service capacity --

24 Q Well --

25 A -- that was their strategy.

1 **Q** How much of an investment is the Cleveland Clinic
2 making into Fairview Hospital?

3 **A** I don't know.

4 **Q** You haven't looked at that?

5 **A** Not recently, no.

6 **Q** Okay. And through that whole time of this lawsuit,
7 you don't know what kind of investment is planned for
8 there?

9 **A** Well, they just upgraded their ICU unit, and their
10 emergency room capacity. I don't know how many millions
11 that is.

12 **Q** Have you looked at the documents that have been
13 gathered through the course of discovery in this case, and
14 looked at those?

15 **A** No, I have not.

16 **Q** All right. Showing you now Exhibit 17.

17 MS. ARMSTRONG: I would note that this doesn't
18 appear to be a complete copy. I noticed there are
19 some pages that were missing.

20 MR. DEVER: Yeah, I think we went through that
21 before, when we had Mr. Strauss deposed, as well.
22 They go to the Westlake Reed documents, is what
23 they are.

24 Looking at -- does that clarify it for
25 everybody?

1 MR. EHRENFELT: Now you've lost me. This is
2 not the identical --

3 MR. DeVITO: It's identical. It is identical.

4 MR. EHRENFELT: Okay.

5 MS. ARMSTRONG: It's identical, but they're
6 both incomplete, correct?

7 MR. DEVER: Yes.

8 MR. DeVITO: They are both selected pages
9 here.

10 MR. EHRENFELT: Okay.

11 BY MR. DEVER:

12 **Q** Okay, showing you what's marked as Exhibit 17,
13 captioned Fairview Hospital Master Plan Steering Meeting
14 Number 1 dated July 16th, 2012, in the various pages that
15 are attached to it, first of all, Mr. Summers, have you
16 seen this before?

17 **A** I have not.

18 **Q** Okay, take a moment to look at it. Going to the
19 second page, it says, Impact of Lakewood Program, Key
20 Considerations for Fairview.

21 And then it goes, the next slide is, Beds in
22 Transition, it's a chart or a graph that shows Lakewood
23 Hospital and Fairview Hospital, as well as outside
24 Cleveland Clinic system and Lutheran Hospital; do you see
25 that?

1 MR. CAHILL: Who wrote in the numbers, the
2 Bates numbers?

3 MR. DEVER: I wrote those on there. They come
4 from the Westlake Reed documents that were
5 provided.

6 MR. EHRENFELT: What I don't understand, is
7 this the same --

8 MR. DeVITO: It is the same.

9 MR. EHRENFELT: -- document that was --

10 MR. DEVER: Strauss.

11 MR. EHRENFELT: -- introduced at Strauss, at
12 his depo?

13 MR. DEVER: Yes.

14 MR. DeVITO: Exactly the same document.

15 MR. DEVER: Yeah.

16 MR. DeVITO: And at that deposition, for the
17 record, it was said it was reduced, because of the
18 size of it. So these are selected pages from this
19 exhibit, and the Bates stamp numbers are on there.

20 The reason why some of them are handwritten is
21 because if you try to make a copy of them, it's
22 tough to read them. So if you reprint it directly
23 from a PDF, instead of what was produced from the
24 paper copy, then you get to see more of the text
25 clearer.

1 **A** I do.

2 **Q** Do you understand what the chart represents?

3 MR. CAHILL: Objection to the form.

4 MS. STRATFORD: I join.

5 **A** I don't understand versus what.

6 **Q** Okay. I guess my point is that in 2012, did you,
7 at that point in time that the decanting plan was
8 underway, or at least had been formulated, did you ever
9 indicate to anybody at Lakewood Hospital Association or
10 the Cleveland Clinic that you would be favorable to
11 closing the hospital?

12 MR. EHRENFELT: Objection.

13 MS. STRATFORD: Objection.

14 **A** Not at that point.

15 **Q** Okay. When did you -- did you ever indicate to
16 either representatives of the Cleveland Clinic, or to
17 administrative staff at Lakewood Hospital, or to your
18 colleagues on Lakewood Hospital Association, that you
19 would be in favor of closing Lakewood Hospital?

20 **A** I would say in the late fall 2014 --

21 **Q** Okay.

22 **A** -- it became clear to me that that was the only
23 option that had viability long-term.

24 **Q** Okay.

25 **A** That met two objectives.

1 Q So going back, then, to 2012, and these charts that
2 are showing the planning activity, does this offend you,
3 that the Clinic was going forward on planning for closing
4 of Lakewood Hospital?

5 MR. CAHILL: Objection to the form.

6 MS. STRATFORD: I join.

7 A I don't know that the plan says that. This is --
8 it's not --

9 Q This is part of the Westlake Reed package, I have
10 shown to you first, which is the Minutes, 16, Exhibit 16.

11 A But I don't think Westlake Reed -- if this were a
12 Cleveland Clinic plan -- this is Westlake Reed's proposal,
13 I presume.

14 Q Well, let's go back to Exhibit 16, okay?

15 You were aware that Westlake Reed was retained by
16 the Cleveland Clinic to prepare a Master Plan for Fairview
17 Hospital.

18 MR. CAHILL: Objection to form and foundation.

19 A That's not true.

20 Q Well, as it sits before you today --

21 A As it sits before me --

22 Q -- today, you've learned that, right?

23 A I learned it today.

24 Q Okay. So then going to Exhibit 17, I'll represent
25 to you that we've taken the deposition of Joseph Strauss,

1 if there was, in fact, this work product created in 2012,
2 would that surprise you, that these details were being
3 formulated, or plans were being formulated without your
4 participation?

5 MS. STRATFORD: Object to foundation.

6 A This appears to be a study, a recommendation, not
7 an adopted plan by the Cleveland Clinic. I don't see the
8 Clinic saying, yes, let's do it --

9 Q All right.

10 A -- in this document that you're showing me.

11 But I would also say that it would be responsible
12 on the part of the Clinic -- and actually, what surprises
13 me, what does surprise me is, on Page -- no page number
14 here -- Beds in Transition, that they anticipate only 30
15 to 45 patient beds would be needed to move. That's a
16 pretty small number.

17 Q Okay, so let's keep on going then, all right?

18 So in 2012 -- just for clarification, I don't want
19 to keep on going on this -- in 2012, you were unaware of
20 any planning activity going on within the Cleveland Clinic
21 system, as far as decanting of Lakewood Hospital.

22 A No. No, that's correct.

23 Q Okay. Now, did there ever come a point in time, in
24 your conversations with Dr. Bronson, or with Jan Murphy,
25 that they indicated to you that Lakewood Hospital was not

1 who works for -- do you know Mr. Strauss --

2 A No.

3 Q -- who works for the Cleveland Clinic Foundation?

4 A (Witness shakes head).

5 Q You do not know him?

6 A No.

7 Q You never met him?

8 A I don't recall.

9 Q Have you ever met anybody who is a facility planner
10 for the Cleveland Clinic?

11 A Planner?

12 Q Yeah.

13 A Frank Aucremanne.

14 Q Okay. And how long have you known Mr. Aucremanne?

15 A I think I met Mr. Aucremanne maybe last year.

16 Q Okay. Prior to that time, you did not know him?

17 A No.

18 Q Okay. All right.

19 So then getting back to the Exhibit 17, and taking
20 a look at the chart, I'll make a representation to you
21 that this is some of the work product that was created by
22 Westlake Reed pursuant to a contract with Cleveland
23 Clinic, okay?

24 A I mean, if you say so.

25 Q Right. And for purposes of my question, does it --

1 viable in 2012?

2 A I believe, in a variety of context -- remember,
3 the declining patient volume, ultimately a third of the
4 patient volume, inpatient volume, especially by 2014, was
5 gone.

6 And my strategic question, throughout many of these
7 meetings and conversations, is where are we going to get
8 5,000 more patients a year to replace the ones we don't
9 have today, where are they going to come from?

10 And I also learned that, strategically, the real
11 customer of hospitals are doctors. Patients get to
12 hospitals through doctors. And if you don't have a
13 physician base that's referring doctors [sic] to your
14 hospital, you know, you've got a problem.

15 And that was reinforced in a variety of
16 conversations I had, with Sister Judith Karem of
17 St. Vincent's, Paul Tait, Senior Vice-President and
18 Strategic Officer for University Hospitals, ultimately,
19 Dr. Acaputrose. And the question is, where are you going
20 to get physicians in a world that's fairly bound up in
21 Northeast Ohio.

22 I mean, this is one small part of a major matrix
23 of variables to determine how health care can and will be
24 delivered anywhere. And so to say, one piece or another
25 has, you know, specific importance, is a misleading

1 statement.

2 So there was a recognition on my part, throughout
3 this strategic review, that there were a lot of variables
4 that had to be contemplated. And we've talked about many
5 of them, but not all of them.

6 Q Okay. Now, looking at Exhibit 20, jump through
7 here.

8 A I have 18 and 20.

9 Q Look at 20, please. Do you see that?

10 A I do.

11 Q Okay. And what is this called?

12 A Fairview Hospital Master Plan Report.

13 Q Okay. And it's dated November 30th of 2012; is
14 that correct?

15 A Correct.

16 Q And you didn't find out about this until Ed Favre
17 told you about it at a --

18 A Yeah, this is what I saw.

19 Q That's what you saw? Okay. All right.

20 And did you read this document?

21 MR. CAHILL: For the record, Mayor, can you
22 identify which page you saw.

23 A Well, let me see. It looked like that page. Let
24 me see if that was it.

25 (Thereupon, Mr. Graham left the room.)

1 So as far as, then, participation of decanting plan
2 and review of preparing strategies, to your knowledge,
3 there was no one from Lakewood Hospital Association that
4 was participating with this group as far as devising plans
5 for Fairview Hospital that included decanting of Lakewood;
6 is that correct?

7 MR. CAHILL: Objection.

8 MR. EHRENFELT: Objection.

9 MS. STRATFORD: Objection.

10 A To my knowledge, who?

11 Q Anybody who was affiliated with Lakewood Hospital
12 or Lakewood Hospital Association.

13 A I have no knowledge one way or the other.

14 Q Okay. Now, Jan Murphy, during 2012, she continued
15 to have dual status; is that correct?

16 A She had dual status. I don't recall the specific
17 dates.

18 Q Okay. And did you ever have conversations with Jan
19 Murphy concerning the decanting plan for Lakewood?

20 A I did not know about the decanting plan, so no.

21 Q Well, even up until when you found out in August of
22 2015, did you talk to her at that time?

23 A After that date?

24 Q Yes.

25 A Actually, I think she was in Dubai.

1 MS. ARMSTRONG: Also, for the record, I wanted
2 to note that this appears to be an incomplete copy,
3 as well.

4 MR. DeVITO: Same explanation.

5 A I think it was something similar to -- these pages
6 aren't numbered -- this (indicating), but there was a
7 front and back of Lakewood Hospital and Fairview. It
8 looked similar to this. It was a very complex document
9 that I was handed.

10 MR. CAHILL: And for the written record,
11 you're identifying the last page of Exhibit 20?

12 THE WITNESS: That's correct.

13 MR. EHRENFELT: Which is Bates number what?
14 Just so that I --

15 MR. CAHILL: WRL -736.

16 MR. EHRENFELT: Thank you.

17 BY MR. DEVER:

18 Q Okay, and again, you did not see those until Ed
19 Favre provided them to you during a -- sometime last year,
20 during the campaign; is that correct? August of 2015, I
21 believe you testified to earlier?

22 A Yes.

23 Q Is that correct?

24 A That's correct.

25 Q Okay. All right.

1 Q Okay.

2 A So no, I did not talk to her.

3 Q But she's back now, right?

4 A She is. I haven't talked to her.

5 Q Have you had a conversation with her --

6 A No.

7 Q -- about the decanting plan?

8 A No.

9 Q Anybody from the Cleveland Clinic that you had a
10 conversation about the decanting plan?

11 A No.

12 Q Okay. Did you share the information with the
13 Lakewood Hospital Association Trustees that you had become
14 aware that there was a decanting plan that was being
15 formulated in 2012?

16 MR. CAHILL: Objection to the form.

17 A No, I did not.

18 Q And the members who were on your Select Committee,
19 that would have been --

20 A That was long over -- that ceased to exist, whoo,
21 probably in December 2014.

22 Q December of 2014?

23 A Correct.

24 Q So once you made the determination for the Letter
25 of Intent, that's when you terminated that?

1 A Actually, the Select Committee ended long before
2 that. There was the Step 2 group that was advising
3 Subsidiium, which primarily existed in 2014, that ceased to
4 function in December 2014.
5 Q Okay. So at first you had the Select Committee,
6 and then you went to Step 2; is that correct?
7 A The Select Committee's job was to pick the advisor.
8 Q Right. And the advisor that you picked was?
9 A Subsidiium Healthcare.
10 Q And that was that initial allocation of \$200,000;
11 is that correct?
12 A Correct.
13 Q And how did you find Subsidiium? Was that a Request
14 for Qualifications that was issued?
15 A It was an RFQ, it was a national RFQ.
16 Q And who sent that out, Lakewood Hospital
17 Association, or Cleveland Clinic? Who was it?
18 A That's a good question. Who did the mechanics of
19 it?
20 Q Yes.
21 A I think we drafted it as a group together, and it
22 was -- who actually sent it out? I can't recall. I
23 didn't take responsibility for that.
24 Q All right. And when did you formulate the belief
25 that you needed to retain an expert or consultant to

1 make a recommendation to the citizens of Lakewood. And
2 that that would be an appropriate starting point for them
3 to consider the long-term implications for health care in
4 Lakewood.
5 Q Okay.
6 A It was a duty to do significant enough work to make
7 conversations and community constructive. To present it
8 as a blanket slate of, oh, my gosh, we've got a problem,
9 what are we going to do, I thought was less effective and
10 appropriate than if we could put some structure to the
11 conversation.
12 Q Okay. Did you, at any time in 2012 - 2013, when
13 you were going about the process of hiring Subsidiium, did
14 there have any conversations with Lakewood Hospital
15 Association concerning whether or not Cleveland Clinic was
16 in compliance with the Definitive Agreement?
17 MR. CAHILL: Objection to form.
18 A There were numerous conversations. In fact, I made
19 it personally clear to my colleagues and to the Clinic, in
20 probably late 2011 and '10, that one of the options that
21 we should and must consider is whether Cleveland Clinic is
22 the best long-term partner for the City of Lakewood.
23 Q Okay.
24 A So included in all the conversations was not only
25 what do we need, but who is the partner that can deliver

1 provide you advice as to the future of Lakewood Hospital?
2 A In 2012.
3 Q All right. Did you communicate, then, to City
4 Council that you -- Lakewood Hospital Association was
5 engaging an expert to evaluate the hospital?
6 A I'm sure there were many conversations with City
7 Council --
8 Q Okay.
9 A -- on basically the need and the strategy approach.
10 Q Okay. So you advised Council of that? They were
11 not in the dark about this?
12 A To the best of my ability, I communicated with
13 Council.
14 (Thereupon, Mr. Graham reentered the room.)
15 Q Okay. All right.
16 Did you formulate a Citizens Advisory Committee, or
17 any type of group from the public, to at least provide you
18 advice and direction as far as how to navigate through
19 this problem with Lakewood Hospital?
20 A No.
21 Q Why not?
22 A I believed that it was my responsibility as a
23 Mayor, participating with the Trustees, to shape, the best
24 that we're able to, the issues facing the hospital, the
25 alternatives that we're able to consider, and ultimately,

1 that need.
2 Q Did you have a question at that point in time as to
3 whether or not the Clinic was honoring the terms of the
4 Definitive Agreement?
5 MR. CAHILL: Objection to the form.
6 A Yeah, I did not believe this was a legal problem.
7 Q Okay.
8 A This was a marketplace-driven strategic problem, in
9 my opinion. And if you're going to solve this -- remember
10 the two objectives, meet the needs of the community, and
11 be financially viable long-term -- you have to address
12 marketplace changes and issues, and only by doing so would
13 it be viable long-term. You can't sue your way, you can't
14 cut your way to success here. That's my opinion.
15 Q Okay. All right.
16 Well, did you discuss that view with the members of
17 City Council?
18 A I did.
19 Q Okay. And did they share or indicate to you that
20 they were appropriate?
21 A They didn't say otherwise.
22 Q All right. Did you communicate with your Law
23 Director and indicate that you did not believe that a
24 legal cause of action against the Cleveland Clinic would
25 be appropriate?

1 MR. CAHILL: Objection to the extent it calls
2 for attorney - client privilege.

3 **A** I would say we've had a variety of conversations on
4 a variety of issues.

5 **Q** Back at that time, is what I'm trying to
6 understand, Mayor, okay?

7 **A** Yeah. I did not then and I do not know believe
8 this is a legal problem.

9 **Q** Okay.

10 **A** This is a marketplace and customer service
11 requirement.

12 **Q** Okay, talking about a marketplace and customer
13 based problem, you would agree that there is a hospital,
14 the Fairview Hospital is what, three miles from Lakewood
15 Hospital?

16 **A** Would I agree, are they three --

17 **Q** Or something like that. They are close in
18 proximity, right?

19 **A** I agree.

20 **Q** They compete with one another, don't they?

21 **A** They do.

22 **Q** Right.

23 And from these plans and what's being shown here,
24 it appears that Lakewood Hospital's loss is Fairview
25 Hospital's gain; is that correct?

1 pay the operating losses? And there were going to be
2 considerable operating losses.

3 **Q** Right. And does the Definitive Agreement describe
4 as to who would be paying those operating losses?

5 MR. EHRENFELT: Objection.

6 MR. CAHILL: Objection to form.

7 MS. STRATFORD: Objection.

8 **Q** Do you know?

9 **A** It describes who will not pay them.

10 **Q** Okay. And what about as far as the one to one
11 ratio, as far as cash on hand to handle the debt?

12 MR. CAHILL: Objection to the form.

13 MS. STRATFORD: Objection.

14 **A** Debt is the operative word there. And of course,
15 debt that the hospital, Lakewood Trustees, hospital
16 Trustees, had, was paid off, I think, early part of 2015,
17 so there was no debt.

18 **Q** So again, my question is, is that you did not at
19 any time, in 2011 - 2012, and even up to today,
20 contemplate that a lawsuit should be brought against the
21 Cleveland Clinic for breach of the Definitive Agreement.

22 **A** That's correct.

23 MS. STRATFORD: Objection.

24 MR. EHRENFELT: Objection.

25 MR. CAHILL: Objection, calls for attorney -

1 MR. CAHILL: Objection to the form, lacks
2 foundation.

3 **A** Actually, Lakewood is -- even the Huron Consulting
4 report affirmed -- a hyper-competitive local market. In
5 its best day, Lakewood Hospital had, at most, 46 percent
6 of the patient care marketplace. Twenty percent of the
7 market goes to Metro, it has forever. There's another
8 significant percentage, 25, 30 percent, that goes to
9 University Hospitals. There are patients of Kaiser, the
10 old Kaiser. There are patients that go to Southwest
11 General and Parma Hospital from Lakewood. There are --
12 there were then St. Vincent Charity customers here in
13 Lakewood.

14 So patients in Lakewood actually exercise a wide
15 variety of choices, for a wide variety of reasons, as to
16 where they get their health care. That's been the case
17 for really probably decades.

18 **Q** So going back to my question concerning 2011 -
19 2012, did you contemplate, at any time, that the Cleveland
20 Clinic was in breach of the Definitive Agreement to
21 operate the hospital?

22 MS. STRATFORD: Object to foundation.

23 **A** I did not contemplate a breach. The question that
24 was pondered then was, if you were going to force the
25 existing Lease to be taken to its end in 2026, who would

1 client privilege.

2 MR. DEVER: Well, remember, I'm not the
3 advice. I'm just asking if he formulated, himself.

4 **A** No, I did not. I did not believe we could sue our
5 way to success here for long-term health care in Lakewood.

6 **Q** Okay. Fair enough.

7 All right. So now, then, in 2012 is when Subsidium
8 becomes involved; is that correct?

9 **A** I don't think they were selected by then. I can't
10 recall the exact date they showed up. 2012. It might
11 have been.

12 **Q** So the Select Committee, at that time, is the four
13 of you --

14 **A** Yeah.

15 **Q** -- Gable, Haber, Michael Summers, Dr. Tabbaa?

16 **A** No, there were -- well, there were seven or nine
17 who were involved to select Subsidium.

18 **Q** Okay. But the Select Committee was the four of
19 you; is that correct?

20 MR. EHRENFELT: Object.

21 **A** No, that was the Step 2.

22 **Q** Step 2 Committee, okay. The Select Committee --

23 **A** Our job was to support Subsidium's request for
24 information, and give them background information, the
25 best that we were able, to help them formulate the best

1 understanding of the local market, strategic partners.

2 And I would say it was a fairly dynamic time, in
3 the last two or three years, in terms of University
4 Hospital purchasing partners. There was a lot of movement
5 in this marketplace, a very dynamic period.

6 Q Now, let's talk about the Lakewood Hospital
7 Association, the Trustees. Every year, as part of their
8 governance, they have you folks fill out conflict of
9 interest questionnaires; is that correct?

10 A Correct.

11 Q Okay, when those conflict of interest
12 questionnaires are filled out, are they shared with the
13 members, the fellow Trustees?

14 A I've never seen anyone else's.

15 Q Okay, so you don't know whether or not anyone
16 filled out a questionnaire and indicated whether or not
17 they had any business relationship with Lakewood, with the
18 Cleveland Clinic, or did business with Lakewood Hospital,
19 or any of that; is that correct?

20 A That's correct, I did not know.

21 Q Okay. All right.

22 And then going through the people that were on the
23 Step 2 Committee that eventually had met was you,
24 Mr. Haber, Mr. Gable --

25 A Bill Gordon.

1 Q Okay, who was that?

2 A In a storage unit.

3 Q Okay. All right.

4 Dr. Tabbaa, he is a tenant over there at the
5 Columbia Road facility, isn't he?

6 A He is an independent physician, correct.

7 Q Right, okay. Mr. Gable, can you tell me?

8 A I think he's a real estate investor, retired.

9 Q Okay. His company, does it do any kind of business
10 with Lakewood Hospital?

11 A I do not know.

12 Q Does his company do any business with the Cleveland
13 Clinic Foundation?

14 A I do not know.

15 Q Or the City of Lakewood?

16 A I do not know. Not the City -- city government of
17 Lakewood?

18 Q Yes.

19 A I don't believe he does any business with the City
20 of Lakewood.

21 Q Okay. And then Mr. Haber, how long have you known
22 Mr. Haber?

23 A Probably casually, ten years. More professionally,
24 like five.

25 Q And Mr. Haber, what does he do for a living?

1 Q And Gordon.

2 A And Dr. Tabbaa.

3 Q Okay. All right.

4 And of those individuals, do you know what they do
5 for a living, or how they -- whether or not they had
6 specific conflicts or perceived conflicts?

7 MR. EHRENFELT: Objection.

8 MR. CAHILL: Objection, compound.

9 MS. STRATFORD: Objection.

10 A I generally know what they do for a living. I do
11 not know whether they have conflicts.

12 Q Okay. All right.

13 Well, let's start with Mr. Gordon. What does he do
14 for a living?

15 A I believe he's a retired insurance broker.

16 Q Okay. And in his capacity in the past, had he done
17 business with either Lakewood Hospital or with the
18 Cleveland Clinic Foundation?

19 A I do not know.

20 Q All right. Did you know who he was a broker for?

21 A I do not know.

22 Q Okay. Did you ever have any discussions with him
23 as far as what his business interests are?

24 A Actually, there was an awareness that he was a
25 partner with one of the principals of Metro Hospital.

1 A He is a CPA by training. He has been a senior
2 executive in finance at both Sherwin Williams and -- oh,
3 heck, the company he retired from. I can't recall. He
4 was Chief Financial Officer, and retired three or four
5 years ago.

6 Q Okay. Any conflicts that you're aware of involving
7 Mr. Haber, either with Lakewood Hospital or Cleveland
8 Clinic Foundation?

9 MR. EHRENFELT: Objection.

10 A I'm not aware of any.

11 Q Okay. All right.

12 And of the other individuals that participated with
13 you on Lakewood Hospital Association, were you aware of
14 any type of conflicts or perceived conflicts?

15 A I was not aware.

16 Q Okay. All right.

17 Okay, now let's go forward from when the --
18 Subsidiary was selected. Is that the first step that took
19 place?

20 A First step of what?

21 Q Of your process of going forward to reach the
22 conclusion that you were going to close Lakewood Hospital.

23 A Well, I think there was some strategic work ahead
24 of time informally, that we realized, as Trustees, we're
25 way over our head, as volunteers, part-timers, in a world

1 that was seismically shifting under our feet. Affordable
2 Care Act, advancement of technology, demographic shifts
3 with baby boomer retirements, government approach to
4 Medicare reimbursements, financial viability of Medicare
5 and Medicaid trends, compensated care issues, all those
6 factors were obviously swirling about, and we realized
7 that we needed to get somebody to help us put them in the
8 proper context of the marketplace that we're in, the
9 health care delivery viability of various segments of
10 strategies, and ultimately, potential partnership
11 suitability. So the first step was to become aware that
12 we needed a serious player.

13 Q Okay.

14 A So we sought to find that player.

15 Q And the serious player was Subsidium; is that
16 correct?

17 A Ultimately.

18 Q Okay. And when you first met with Subsidium, did
19 you indicate to them, at that point in time, that you had
20 a belief that the hospital was no longer viable as an
21 inpatient facility?

22 A No, it was not clear what our strategic outcome
23 would be.

24 Q Okay. So Subsidium's purpose was to do what for
25 Lakewood Hospital Association?

1 MS. ARMSTRONG: Objection.

2 A They believed that the future investment that made
3 sense would be to move to an outpatient delivered system
4 that focused on prevention, and early detection, and more
5 primary care.

6 Q Okay.

7 A That matched up services to address chronic care,
8 issues which are the primary health care requirement of
9 our community.

10 Q Okay. And so their strategy or their vision for
11 Lakewood Hospital was the outpatient model; is that
12 correct?

13 A It would be ultimately delivered through an
14 outpatient model.

15 Q Okay.

16 A It was prevention, early detection, chronic care.

17 Q All right. So if that was to occur, then that
18 would require the change in the defined services pursuant
19 to the -- first of all, the Lease between City of Lakewood
20 and Lakewood Hospital Association, as well as alteration
21 of the Definitive Agreement --

22 MR. CAHILL: Objection.

23 Q -- is that correct?

24 MR. CAHILL: Objection to form.

25 Q If you know.

1 A Help us understand what would be the best long-term
2 strategy to meet the needs of our citizens and be
3 financially viable long-term.

4 Q Okay. All right.

5 Through the course of engaging Subsidium, did you
6 come up with a value for Lakewood Hospital?

7 A You mean the physical property?

8 Q Yes, sir.

9 A No.

10 Q Why not?

11 A Our goal was to find the investment that would make
12 sense to deliver health care to the citizens of Lakewood.
13 This was not a financial deal, this was a health care
14 strategy.

15 And what that context would be, who that partner
16 would be, what that investment needs to look like, and
17 what the needs of the community are, and how those all
18 would match up, that was the primary focus.

19 Q I think you told us earlier that it was at least
20 your opinion, from your participation on the Board, that
21 Cleveland Clinic really was not -- did not have an
22 appetite of continuing to operate the hospital as an
23 inpatient facility; is that right?

24 MR. CAHILL: Objection.

25 MS. STRATFORD: Objection.

1 A I mean, ultimately, I think, again, we weren't
2 focused on agreements, we were focused on --

3 Q Yeah.

4 A -- marketplaces, needs.

5 Q I understand that.

6 A So the form of all that stuff should match what the
7 ultimate recommendation would be.

8 Q Right. Well, we're talking about the mechanics of
9 getting it done, okay? You told us --

10 A We had to figure out what it is we wanted to get
11 done first.

12 Q Right. But I'm asking you --

13 A And by the way, who was going to be the partner to
14 help us get it done. Those are big strategic decisions.

15 Q They sure are.

16 But you already indicated to me that the first
17 thing that you had known was that the Cleveland Clinic did
18 not view Lakewood Hospital as viable as an inpatient
19 facility --

20 MR. EHRENFELT: Objection.

21 MS. STRATFORD: Objection.

22 MR. CAHILL: Objection.

23 MS. ARMSTRONG: Objection, mischaracterizes
24 his testimony.

25 Q -- as far as what you understood going forward.

1 A The question was, what kind of investment would
2 make sense --

3 Q Okay.

4 A -- from the Clinic standpoint. Remember, I said --
5 I believe I told you that the Clinic understood it could
6 invest forward, not backward?

7 And I would say, in the context of all of the
8 considerations, in 2012, '13, '14 and '15, there remains
9 today overwhelming evidence of just very compelling trends
10 about the need for inpatient beds, and they're less.

11 We're also in a marketplace that has twice the
12 national average of beds per thousand in the roughly ten
13 mile radius of this community.

14 Q Mayor, all I'm just asking is, is that in 2012, you
15 formulated the belief that the Cleveland Clinic did not
16 have an interest in operating the hospital as an inpatient
17 facility. Whether or not that's true or not, your belief
18 was that they didn't want to make the investment to go
19 forward --

20 MR. CAHILL: Objection.

21 MS. STRATFORD: Objection.

22 Q -- is that correct?

23 A They didn't want to spend the 93 million on
24 Lakewood Hospital in its current form.

25 Q Fair enough. All right.

1 Q Right.

2 A So to evaluate it as a sale, when in fact there
3 might not be a sale, would be premature.

4 Q Okay. Well, do you know what the value of the
5 asset is today?

6 A I know what the book values of the Hospital
7 Association is.

8 Q And what's that?

9 A Roughly 128 million.

10 Q Okay.

11 A That includes, by the way, 33 million dollars of
12 Lakewood Hospital Foundation, cash.

13 Q Okay, that remains on the books, right?

14 MR. EHRENFELT: Objection.

15 A And remains intact, too.

16 Q Right, okay.

17 So the physical plant, the structure, the real
18 estate, what's that worth?

19 A Oh, let's see. I don't know, 24, 30 million,
20 something in that range.

21 Q Thirty million dollars.

22 And that includes the Columbia Road?

23 A No, let's see. Columbia Road was ultimately
24 appraised at 6.8 million. So 8.2. Parking garage, you
25 know, its on the books as an asset, it's a liability.

1 So once you realize that, did you contemplate that
2 perhaps you may need to go find another partner?

3 A I think I mentioned --

4 Q Okay.

5 A -- that adding who the best partner is long-term
6 was definitely one of the strategic questions for us to
7 ask and answer.

8 Q Okay. So again, my question is, did you determine,
9 then, what was the value of this asset that you had
10 responsibility for?

11 A I said the answer is no.

12 Q Okay, why didn't you do that?

13 A When you're trying to solve the needs of a
14 customer, you've got to figure out what those needs are,
15 and what the solution is that's going to meet those needs,
16 and then you figure out how to finance it.

17 Q Okay.

18 A So to put -- to worry about financial performance
19 of assets in front of what the strategies you're going to
20 invest in, would be a serious waste of time.

21 Q Okay.

22 A Because one of the options could have emerged that
23 you wouldn't sell the hospital, or it wouldn't go away,
24 that maybe there was a partner out there who may choose to
25 run it as an inpatient model, as is.

1 Medical office building was on the books as an asset, it's
2 a liability.

3 So when you look at the nature of the book value of
4 assets versus the marketplace reality, that's part of the
5 strategic assessment of, what do we have, how can we
6 redeploy it to deliver two objectives, health care that
7 meets our citizens' needs, and remains financially viable.

8 Q So when did you determine the value of those
9 assets?

10 A Well, we always knew the book value.

11 Q Well, not the book value. What you'd say the real
12 value is.

13 A Which assets in particular?

14 Q Well, let's start with Columbia Road.

15 A Well, we had a broker's opinion of value, 8.2
16 million.

17 Q When was that?

18 A Probably 2013 or '14.

19 Q Okay. And when did you get an appraisal of it?

20 A In 2015.

21 Q Okay, before or after -- after the Letter of
22 Intent; is that correct?

23 A After.

24 Q Okay. What about an appraisal for the value of the
25 hospital itself?

1 A We still own that hospital, and you know, what its
2 future plans are remain undecided. So, you know, the idea
3 of selling it is not -- it's not clear what's going to
4 happen to that.
5 Q Well, did you determine what the value is? I'm not
6 asking if you're going to sell it.
7 A The marketplace value?
8 Q Yes, sir.
9 A We had a sense that, in a very distressed
10 situation, it could yield, I remember numbers of like
11 10 million, 15 million, 20 million.
12 Q Did you ask Subsidium to come up with some values
13 for the hospital?
14 A No. No, we did not.
15 Q Did you ask Subsidium to come up with a strategy of
16 possibly selling the entire hospital?
17 A No.
18 Q Okay, why not?
19 A Now, remember, the question we had was, how are we
20 going to deliver health care, not, how are we going to
21 dispose of -- liquidate assets.
22 Q Okay.
23 A That was not the concern. The concern is, how are
24 we going to invest -- who is going to invest, and what is
25 the nature of that investment to deliver health care.

1 That's the primary mission of the Trustees of the
2 hospital.
3 Q When did you come up with the determination that an
4 inpatient hospital would not be proper for Lakewood?
5 A I don't accept the word --
6 Q Appropriate for Lakewood.
7 A Viable?
8 Q Viable, yeah.
9 A Viable.
10 Probably in the fall of 2014.
11 Q Okay. And how did you come to ascertain that it
12 was no longer viable in the fall of 2014?
13 A Because the only interest we had in operating an
14 inpatient model, and it was a very modest interest and a
15 very weakened interest, was from Metro Hospital.
16 Q And we'll cover that in a minute, all right?
17 Okay, so at that point in time, you determined, in
18 2014, in the fall of '14, that it was no longer a viable
19 inpatient facility; is that correct?
20 A Around about October 10th.
21 Q Okay. All right.
22 A And the reason I can be specific is that's when
23 Metro withdrew its interest.
24 MR. DEVER: Right, right. Okay.
25 Do you guys want to take a break?

1 MR. SCHMANSKY: The staff attorney e-mailed us
2 to say the judge is going to be engaged in
3 pre-trial tomorrow.
4 MR. DeVITO: Are we on or off the record?
5 MR. SCHMANSKY: Off.
6 MR. DeVITO: Let's go off the record. We were
7 still on.
8 (Thereupon, a discussion was had off the
9 record.)
10 (Short recess had.)
11 THE VIDEOGRAPHER: We are back on the record.
12 Tape Number 3.
13 MR. DEVER: The record will reflect it's a
14 quarter after 4:00, continuing the deposition of
15 Mayor Michael Summers.
16 BY MR. DEVER:
17 Q Showing you Exhibit Number 22, take a look at that,
18 sir. Tell me if you recognize the document.
19 A I do.
20 Q What is this?
21 A This is a letter I drafted and delivered to
22 Dr. Donley.
23 Q And the date of July 3rd, 2014?
24 A Correct.
25 Q Okay. Why did you write the letter?

1 A In July of 2014, the strategic options that we had
2 before us as a city were disappointing and weak. We had
3 two clear options at that point, we thought. One was the
4 outpatient delivered strategy from the Cleveland Clinic,
5 and the other was sort of a modified inpatient strategy
6 from Metro Hospital. Both of them had serious challenges
7 in terms of meeting the needs of our citizens and the
8 financial viability. And I would also say, sort of
9 fairness to the financial implications.
10 And the hospital was continuing to be under
11 distress, and by that point, Avon Hospital had been
12 announced, which was a blow to Lakewood. And this was an
13 additional piece of the service that was important from a
14 revenue side to this hospital, that looked like it was
15 about to leave, as well. And I was disappointed, and I
16 was mad, and I was very concerned.
17 Q Did you view it as to be a violation of the
18 Definitive Agreement?
19 MS. ARMSTRONG: Objection.
20 A I viewed it as a violation of the spirit of, I
21 think, what we were trying to do as partners, Trustees,
22 Clinic, community. And I did not, at that point, really
23 spend much time thinking about the specifics of the
24 complex agreement, but I felt that the path we were on, or
25 the position we were in, and maybe the trends we were

1 seeing from our strategic options, were not in a good
2 place for Lakewood.

3 Q Okay, when you wrote this letter, were you writing
4 this on behalf of the Lakewood Hospital Association, or
5 were you writing this as the Mayor of the City of
6 Lakewood?

7 A This was on my letterhead, and I don't know
8 whatever happened to the original.

9 Q Okay.

10 A But this was one that I had in my files. And it
11 was on my letterhead as Mayor.

12 Q Okay. And if you look at the final sentence of the
13 letter, it says, "I believe the service losses are in
14 violation of the letter and spirit of the definitive
15 agreement between the Lakewood Hospital board of trustees
16 and The Cleveland Clinic Foundation," okay?

17 So you, at least at that time, contemplated that
18 this -- that you viewed this to be a breach of the
19 Definitive Agreement; is that correct?

20 MR. EHRENFELT: Objection.

21 A I would say my concerns were, we were in a very bad
22 place, and it did not look like it was going to get any
23 better. And I wanted the Cleveland Clinic to understand
24 that, one way or the other, they're going to have to step
25 up their game --

1 continuation of the Cleveland Clinic's unilateral
2 strategic approach to seemingly disregarding the impact on
3 Lakewood Hospital to the benefit of the Clinic system as a
4 whole."

5 Okay, what did you mean by that?

6 A Well, I think I knew by then that one of the key
7 service losses that was not part of the Definitive
8 Agreement -- I mean, the Lease obligations, was cardiac
9 surgery. And I've subsequently learned, although
10 throughout this process, when, I couldn't tell you, that
11 one of the key economic engines of a hospital are the
12 technical procedures, of which hearts and heart surgery is
13 sort of the golden goose.

14 And I can look back, I think, with a fair amount
15 of confidence at this point, that sort of the seeds of
16 Lakewood Hospital's economic challenges were a result of
17 the diminishing volume of cardiac surgery, which I think
18 left in 2007. At that point, Lakewood Hospital performed
19 about 70 surgeries a year, way below the roughly 200 you
20 need to be considered to be proficient.

21 Q Okay.

22 A And so it was -- while it was a rational decision,
23 even in terms of patient quality, it was a rational
24 decision, it certainly hurt the viability of Lakewood
25 Hospital.

1 Q Okay.

2 A -- if they expected to be a partner.

3 Q All right. Well, did you have a concern at that
4 point in time that they were not being faithful to the
5 commitments that they had made in the Definitive Agreement
6 to Lakewood Hospital?

7 A I thought there was a violation of certainly the
8 spirit. Whether there was a letter violation, you know,
9 I'm not a lawyer, I didn't spend time on that whole 90 or
10 however many pages of agreement. But I thought that the
11 path and these decisions were detrimental to the community
12 of Lakewood.

13 Q Were you angry?

14 A I was angry.

15 Q Okay. Did you communicate your anger to others,
16 than just Dr. Donley?

17 A Certainly to members of -- certainly the Step 2
18 team.

19 Q Okay.

20 A Yeah, I think we all felt this way. I think we
21 felt we had two lousy options in front of us, maybe three.

22 Q All right.

23 A The third was worse than the previous two.

24 Q It also indicates, in your fourth paragraph, that
25 "This decision, and others similar to it, is a

1 Q Okay.

2 A Whether it was intended or not, whether it was a
3 consequence or not, those are certainly items for
4 consideration. But it was, you know, part of a major
5 shift of the financial viability of the hospital.

6 Q What other unilateral strategic approaches did
7 they -- did Cleveland Clinic implement that seemingly
8 disregarded the impact on Lakewood?

9 A I think that was the one I had in mind.

10 Q Okay. So it was the 2007.

11 A You know, the loss of inpatient cardiac surgery.
12 Again, their lives were low, they were unsustainable. It
13 was a perfectly rational decision, but it really hurt
14 Lakewood Hospital.

15 Q Well, did you view that type of procedures or those
16 type of services would be normally offered in a hospital
17 similarly situated to Lakewood Hospital?

18 MR. CAHILL: Objection to the form.

19 MS. STRATFORD: Same objection.

20 A Yeah, I don't think I -- I'm not knowledgeable of
21 other hospitals, other systems, I can't tell you.

22 Q Well, you felt that that was -- I think that you're
23 trying to indicate to us, that was one of the -- or the
24 genesis of the viability of Lakewood Hospital degrading,
25 isn't it?

1 A Well, I think, to be fair, there's a whole variety
2 of factors at play here.

3 But hospitals make money on technical things, like
4 surgery. You know, they don't make much money, and even
5 less today, I believe, on sort of medical treatment, like
6 pneumonia. Especially a Medicare patient, lying in a bed,
7 being given intravenous antibiotics, those kinds of
8 services are not how hospitals -- and this is not unique
9 to the Clinic, it's not unique to Lakewood. It's
10 hospitals anywhere. They need the technical stuff to
11 compensate for the other stuff. And Lakewood was losing
12 its volume.

13 And I would also say, I've grown to understand that
14 one of the dramas and reasons for the lack of health care
15 for cardiac surgery is -- and this is good for patients,
16 bad for hospitals -- is advancing technology radically
17 lessens the need for open heart surgery. That's good news
18 for us geezers around the table here.

19 I mean, stents, angioplasty, and pharmacology. I
20 mean, I have high cholesterol, I take statins, it's a
21 miracle drug.

22 Q Let me ask you about, then, the degradation in
23 services, or, as you were referring to it in your letter
24 here, the "unilateral strategic approach to seemingly
25 disregarding the impact on Lakewood Hospital to the

1 A Well, it wasn't one of the specified services in
2 the Lease. And therefore, they didn't -- they did have
3 the capacity to unilaterally make a decision like that.

4 Q Okay, so that was based upon your reading of the
5 Lease, that that did not have to require approval; is that
6 correct?

7 A I think the required services, remarkably, in my
8 opinion, do not include cardiac care and surgery in the
9 1996 agreement Lease.

10 Q Well --

11 A Why they missed that, I don't know.

12 Q Well, doesn't the Lease, in itself, indicate that
13 it is providing services for a full service hospital in a
14 community similar in size of Lakewood --

15 MR. EHRENFELT: Objection.

16 MS. STRATFORD: Objection.

17 Q -- that would normally be offered?

18 MR. CAHILL: Objection to form.

19 A And you tell me what that means.

20 Q Okay. Well, did you make an inquiry or try to find
21 out what that means?

22 A And I did. And you asked the question, what is a
23 full service hospital, and where are they around here?
24 There's probably only two of them.

25 Q Uh-huh.

1 benefit of the Clinic system as a whole," when those
2 cardiac services left Lakewood Hospital, they did benefit
3 the Cleveland Clinic somewhere else in their system; is
4 that correct?

5 MS. STRATFORD: Object to foundation.

6 A Actually, I've grown to understand that's not
7 necessarily the case, and here's a good example:

8 In 2007, Lakewood did about 70 of those surgeries.
9 At that point in time, Fairview did about 300, I've
10 subsequently learned. Today, the combined two hospitals
11 do less than 180.

12 So, I mean, the change of technology, and delivery
13 of other options, have taken even that from -- I think,
14 ultimately, Fairview will not be doing open heart surgery,
15 as well.

16 Q Okay. Well, what about the cardiac cath lab, tell
17 us about that.

18 A Well --

19 Q Is that a service that had been removed from
20 Lakewood?

21 A That was removed in 2015.

22 Q Okay. And would that -- did that require the
23 approval of the City of Lakewood, to remove that service?

24 A It did not.

25 Q Why not?

1 A Downtown Clinic and downtown University Hospitals.

2 Because all these regional hospitals have varying
3 degrees of services, of one form or another, but hardly
4 any of them, if any of them, have all of them. So, you
5 know, what it is that reflects a local market need and
6 viability is circumstantial, it's local.

7 Q Okay. Can we talk about some other service lines.
8 Lakewood Anesthesiologists group, tell me about what
9 happened with those folks.

10 A Well, what I do understand is that it used to be
11 outsourced to a private anesthesiology group, and the
12 Clinic chose to use their own physicians.

13 Q Were you aware, or did you -- was that decision
14 detrimental to the livelihood of Lakewood Hospital?

15 A I don't think that had any impact.

16 Q Did you receive or the Board receive any
17 communication from Lakewood Anesthesiologists indicating
18 that they viewed this to be a hostile takeover by the
19 Cleveland Clinic?

20 A You mean, from the independent guys?

21 Q Yes.

22 A I recall there was some expression from the
23 physician members of the Lakewood Hospital Association
24 expressing concern and questioning as to what was going on
25 and why, and answers were given.

1 Q And did that provide benefit to Lakewood Hospital,
2 to no longer do business with Lakewood Anesthesiologists?

3 A It's not clear to me. I don't know.

4 Q All right.

5 A That's an in-house service, sort of a -- I think
6 the real question would be, if anesthesiologists were in
7 fact the ones referring patients to the hospital, then
8 there might be a conversation there. But generally,
9 hardly anybody meets their anesthesiologist. You know,
10 they're sort of there or not there.

11 Q Okay. What about as far as removal of equipment
12 from the hospital. Are you familiar, over the past few
13 years, of certain items of equipment that have value that
14 have been removed from Lakewood Hospital?

15 A I don't know any specifics, but certainly there has
16 been significant investment of equipment, too.

17 Q Okay. So do you have a -- as far as the Master
18 Agreement that has been formulated here, do you have an
19 itemization as to all of the property that's located
20 within Lakewood Hospital, the equipment and the value of
21 it?

22 MR. CAHILL: Objection to the form.

23 A Not at the specific item level.

24 Q Okay. And how much equipment has been put into the
25 hospital over the past couple of years, that has a value?

1 Agreement or the Letter of Intent was drafted; is that
2 correct?

3 A That's correct.

4 Q Okay. Why didn't you just go ahead and sell the
5 Columbia Road facility to the highest bidder, as opposed
6 to putting that into this Master Agreement?

7 MR. CAHILL: Objection, assumes facts, lacks
8 foundation.

9 A The negotiations of all facets of this agreement
10 had many pieces and parts.

11 Q Sure.

12 A And there were ebbs and flows -- there were ebbs
13 and flows of each of the components. And in the
14 conversation of one item versus another, over the course
15 of what was fundamentally probably a year and a half,
16 because negotiations, I think, began in earnest once Metro
17 Hospital pulled out, and so from -- that's roughly October
18 of 2014, really until the Agreement was adopted in
19 December of 2015, so, you know, maybe 14 months, there was
20 a lot of pushing and shoving, screaming and hollering,
21 about all kinds of valuations and approaches to each of
22 them.

23 Q But Mayor, you had -- if the window was October of
24 2014, you're in a press conference in January of 2015 with
25 this Letter of Intent that specifies and talks about the

1 A I can't answer that directly.

2 Q So you don't know?

3 A The financial numbers show sort of a book value,
4 and a depreciated value. But in terms of the itemization
5 of what's gone in and what's come out, I can't tell you
6 that.

7 Q All right. Well, what about that cath lab, wasn't
8 there a significant expense in order to put the lab into
9 Lakewood Hospital?

10 A And I'm not familiar whether that equipment is
11 still there or not.

12 Q Okay, so you don't know; is that correct?

13 A I don't know.

14 Q So as far as constructing a deal or an agreement
15 with the Cleveland Clinic, this Master Agreement, you, as
16 you sit here today, do not have an understanding as to the
17 value of the property that is housed within Lakewood
18 Hospital?

19 A I do. I mean, I have a global understanding.

20 Q Okay. And what is that value?

21 A I think it was probably about six million dollars
22 in book value.

23 Q Okay. And then just jumping back over to the
24 Columbia Road facility, you had an appraisal for that,
25 that you took -- that you had done after the Definitive

1 financial scenario going forward. I mean, you've got
2 values on these things, you've laid out -- basically a
3 Letter of Intent is an indication of how you intend to
4 move forward for a formal contract, isn't it?

5 MS. STRATFORD: Objection.

6 MR. CAHILL: Objection to the form.

7 MR. EHRENFELT: Objection.

8 A That was non-binding, by the way, remember. And
9 that was the beginning of a very complex and serious, as
10 it should be, public conversation about the future of
11 health care in Lakewood.

12 And I think I referred earlier to my view that as a
13 Mayor and a Trustee, we had an obligation to define the
14 problems the best that we were able, and provide a
15 description of the review of analysis of the future, and a
16 recommendation, which we did, non-binding, and that the --
17 it was delivered to City Council, in a non-binding
18 fashion, and their obligation was to take that as a
19 recommendation, and consider whether or not it had merit,
20 and whether or not it should be acted upon.

21 Q Okay. Well, you call it non-binding, and I
22 understand that, but you had -- the Lakewood Hospital
23 Association voted for the submission of a Letter of Intent
24 with the Cleveland Clinic; is that correct?

25 A That's correct.

- 1 Q And the Lakewood Hospital Foundation; is that
2 correct?
- 3 A That's correct.
- 4 Q And you cast the vote on that, as well, didn't you?
- 5 A As a Trustee.
- 6 Q As a Trustee.
- 7 Well, you cast the vote -- you're Mayor 24 hours a
8 day, seven days a week throughout your term; is that
9 correct?
- 10 A But the City of Lakewood was not a signatory to
11 that agreement.
- 12 Q Well, we'll talk about that in a minute, okay?
- 13 So you signed it, and approved it, at that point in
14 time. And one of the terms that was contained in the
15 Letter of Intent that you agreed to was that requirement
16 that the Mayor would only talk favorably about this
17 proposal.
- 18 MR. CAHILL: Objection, lacks foundation,
19 assumes facts.
- 20 A And I don't think that's what it says.
- 21 Q Well, what does it say?
- 22 A I think, that the Mayor would support this plan.
- 23 Q Support.
- 24 A Which I did.
- 25 Q All right. And how did you support the plan?

- 1 A Well, I worked hard over the previous three and a
2 half years to understand it, and help shape it, and make
3 sure that all the options were vigorously considered. And
4 my reminder to the Trustees, at every step along the way,
5 was an expectation that we would stand before the citizens
6 of Lakewood, who are very thoughtful and concerned, and
7 that we should be able to answer any -- any question, any
8 reasonable question, forthright question, with the best
9 answer we knew how.
- 10 And one of the things that was important was the
11 wide range of, did you consider this versus that versus
12 something else, and we ought to be able to say, yes, we
13 did, and here, in fact, is how we viewed it, and
14 ultimately how we and why we decided the recommendation as
15 we did.
- 16 Q Okay.
- 17 A And I think -- I think the 1985 citizen vote that
18 created Lakewood Hospital Association, and placed three
19 elected officials on there, did so at the expectation we
20 would be vigorously engaged and represent the interests of
21 the community and health care together, and I don't see
22 those in conflict at all.
- 23 Q Okay. So you advocated support for the terms that
24 were specified in the Letter of Intent; is that correct?
- 25 A Yeah, with an understanding, it was non-binding,

- 1 and I think it was very clear to me, and I remember
2 conversations specifically with Ken Haber, that there was
3 more opportunity to negotiate on behalf of the deal, but
4 it was time to present this to the community.
- 5 Q And who was the dealmaker on behalf of the Lakewood
6 Hospital Association?
- 7 A The negotiator?
- 8 Q Yeah.
- 9 A Primarily, it was Subsidium, at that point.
- 10 Q Subsidium.
- 11 So that was Lisa Fry; is that correct?
- 12 A And --
- 13 Q And who was part of her deal team, I guess you
14 would call it?
- 15 A Yeah. Oh, heck. I'm trying to think of the chief
16 principal, whose name escapes me for the moment. But she
17 was one of three. There were three from Subsidium.
- 18 Q And then how did you fit into --
- 19 A Brad Guest.
- 20 Pardon?
- 21 Q How did you fit into this negotiations?
- 22 A I was not a negotiator.
- 23 Q Okay, so you did not participate, other than these
24 calls that you were doing on a weekly basis with
25 Subsidium?

- 1 A Throughout the process of consideration of many of
2 these strategic items, the Trustees met without the
3 Cleveland Clinic representatives, as an arms length
4 relationship.
- 5 Q Okay.
- 6 A Because we understood that one of the options may
7 emerge that that partner would not be the Clinic.
- 8 Q Sure, okay.
- 9 Did you have legal counsel while you were doing
10 that?
- 11 A No, it was not a legal agreement at that point.
- 12 Q All right.
- 13 A This was a strategic agreement.
- 14 Q So again, and we talked about this earlier, there
15 was never any contemplation, up to that point in time that
16 you've led to the Letter of Intent in December of 2014,
17 where there was any review of possible breach or
18 violations by the Cleveland Clinic to the Definitive
19 Agreement, other than your letter of July 3rd, 2014?
- 20 MR. CAHILL: Objection to the form.
- 21 MS. STRATFORD: Objection.
- 22 A Wait, I'm not sure I heard all the pieces and parts
23 because of the objections. Say again your question.
- 24 Q Other than the letter that you wrote, that you were
25 angry at the time that you authored, where you have

1 indicated that you believe these service losses are a
 2 violation of the letter and the spirit of the Definitive
 3 Agreement between the Lakewood Hospital Board of Trustees
 4 and the Cleveland Clinic Foundation, never expressed to
 5 the Clinic that you felt that they -- yeah, that you felt
 6 that they were in violation of the terms of the Definitive
 7 Agreement?
 8 A We communicated primarily through Subsidium, as our
 9 chief negotiators.
 10 Q Sure.
 11 A And the context was about future health care
 12 delivery, and what it would look like, and what investment
 13 it would take, and who would make that investment.
 14 Q Right.
 15 A And it was against a backdrop of doing nothing,
 16 which means you let the Lease run out, which means you run
 17 a hospital, which we felt --
 18 Q What about the other option?
 19 A The Metro option?
 20 Q No, the other option is holding the Clinic's feet
 21 to the fire and making them perform --
 22 A That's what I was about to allude to.
 23 Q -- until 2026.
 24 A That was the other option.
 25 Q Okay.

1 A Yeah, that was the -- you know, the question was,
 2 if we cannot strike an agreement that makes sense, and is
 3 fair to the City and the community, then we're left with
 4 the existing agreement. And that agreement has lots of
 5 performance issues.
 6 And especially, it would leave us in a depleted
 7 fashion in 2026. And the 50 million of the Trustees'
 8 money would be long gone; what shape the hospital would be
 9 in from a performance standpoint was unknown and
 10 uncertain.
 11 But I will tell you this, there was a growing sense
 12 that the hospital, as an attractive place for folks to
 13 elect to take their procedures, was less and less.
 14 And so you looked at a world where, if that were
 15 the option, you may have a shell of a hospital, it may
 16 meet some statutory definition of the Lease Agreement, but
 17 it's not the kind of health care that would certainly meet
 18 the needs of the community, be financially viable, and
 19 one, would leave us in far worse shape.
 20 Q What about the ability --
 21 A So it was a very bad option.
 22 Q Okay. Well -- but you didn't have any legal advice
 23 as to tell you that it was a bad option.
 24 A We believed, actually, at the time, that we could
 25 try and enforce that agreement.

1 Q Okay, you believed that you could try to enforce
 2 that agreement?
 3 A We believed it. Fortunately, we didn't know how
 4 wrong we were.
 5 Q Okay. When you say, we believed that --
 6 A I think the strategic side, Subsidium.
 7 Q So did you contemplate that if you were to enforce
 8 the terms of the agreement, sue the Cleveland Clinic and
 9 go after them for damages for breach of the Definitive
 10 Agreement, did you think that that was a viable option?
 11 MR. CAHILL: Objection to the form.
 12 Q Or not even that. Not a viable option.
 13 Did you consider that as an option?
 14 A Yes, we did.
 15 Q Okay. And how did you go about considering it?
 16 A Well, we tried to understand what the performance
 17 implications would be for the hospital, what those losses
 18 would look like, who would pay them, and what the service
 19 delivery and the quality would be.
 20 And ultimately, we learned that you could not
 21 force an operator to hold services or a hospital open,
 22 if, in fact, they didn't have the confidence they could
 23 protect -- make patients safe. And so we looked at -- I
 24 mean, that was an option. It was a very, very desperate
 25 option.

1 Q So did you have a belief, then, that you didn't
 2 have faith in the Clinic that they would be able to
 3 operate that hospital for the safety and benefit of the
 4 patients?
 5 A I didn't have faith in the marketplace.
 6 Q Okay.
 7 A I didn't have faith in the marketplace.
 8 Q How did you react when you learned that the
 9 Cleveland Clinic was going forward with the construction
 10 of Avon Hospital?
 11 A That was a pivot point. And the reason it was a
 12 major pivot point was, in 2009, the Clinic brought
 13 forward, from Lorain County, a significant amount of
 14 orthopedic business from the Lorain Institute. And that
 15 business, ultimately I think it was 15 million dollars in
 16 2014 or so, that was very profitable business. Remember,
 17 the technical stuff, orthopedic surgery is one of the more
 18 profitable pieces.
 19 And I think we realized, as Trustees, that that
 20 Lorain County customer base would be less inclined to come
 21 to Lakewood for that service when they could get it in
 22 Lorain County, in their back yard.
 23 Q Well, did you ask the Cleveland Clinic, since they
 24 were going to be constructing this beautiful hospital over
 25 there in Avon, how they were going to figure out replacing

1 services at Lakewood Hospital that would be heading to
 2 Avon?
 3 A Well, by then, we already knew what they felt we
 4 should do --
 5 Q Okay.
 6 A -- was the outpatient piece.
 7 Q All right. So when you say you already knew --
 8 A They had already given --
 9 Q Okay, who gave --
 10 A -- the rudiments of their proposal.
 11 Dr. Bronson and his staff.
 12 Q Okay. So they were already telling you that, that
 13 we want to go outpatient, as far as --
 14 A Yeah, I think we had concepts at that point.
 15 Q All right.
 16 A In fact, we had concepts from them early on of what
 17 the rudiments of that would look like, and you know,
 18 through the RFQ process, we wanted to know more specifics
 19 of how they would --
 20 Q Okay.
 21 A -- one, deliver that strategy, and what the
 22 transition would be, and who would pay for it.
 23 Q Tell me about, now, when you sent this letter, do
 24 you hand deliver this to Dr. Donley?
 25 A I did.

1 Q And where did you find him?
 2 A In his office in downtown Cleveland.
 3 Q Over on Euclid Avenue there?
 4 A Yeah.
 5 Q Okay. And tell us about your conversation with
 6 Dr. Donley about -- I mean, you wrote this in anger. Were
 7 you still angry when you went to see him?
 8 A Well, what I learned was that the Cleveland Clinic
 9 was no longer -- this was not -- this decision was not
 10 unique to Lakewood, the rehab shift, that they were
 11 getting out of the rehab business in a Clinic-wide way,
 12 that they anticipated ultimately it would be outsourced to
 13 two service providers, one on the east side and one on the
 14 west side, and that it was not reflective of their view of
 15 Lakewood Hospital, but again, the broad context of how
 16 they were going to deliver services in the future about
 17 this particular segment.
 18 Q Well, did you tell him, or did you indicate or
 19 express that it was not the Clinic's service to move away,
 20 that they didn't have the authority to do that?
 21 A They actually did, in this case.
 22 Q Okay. Is that what Donley told you?
 23 A Yeah. This piece, you know, this was not specified
 24 in the Lease.
 25 Q Okay. And again, tell me what Donley said to you

1 when you went over there angry with this letter?
 2 A Well, I think we exchanged, you know, views on the
 3 vulnerability of Lakewood Hospital.
 4 Q Okay.
 5 A My concern about, if it's death by a thousand
 6 cuts, or in this case, 10, or 15, or 30 cuts, it's still
 7 death, and that in no way serves the interests of the
 8 community, and that the proposal we had from them on the
 9 outpatient was unacceptable, it was very weak, it was
 10 undefined, and it put too much risk on the Trustees, on
 11 the Association, and ultimately, the taxpayers, in terms
 12 of the wind-down costs. Because when you wind down an old
 13 facility like Lakewood Hospital, there's a lot of costs
 14 that go with that, and there's a lot of uncertainty of the
 15 cost.
 16 The biggest one is, what's the demand for the care
 17 going to be up to the moment you ultimately close it. And
 18 the big question was, who can best manage that demand, and
 19 make sure that those losses, which could be five million,
 20 ten million, or 50 million, are not 50 million, but ten.
 21 And the answer was, the Trustees can't manage it,
 22 only the Clinic could, that there had to be greater
 23 recognition of the authority they had, the responsibility,
 24 and ultimately, the implications of it.
 25 Q Anybody else --

1 A And we were not anywhere close in our conversations
 2 then.
 3 Q Anybody else with you, when you were talking to
 4 Donley?
 5 A No, no.
 6 Q Okay. So when you walked out of there, what became
 7 of your anger, and your assertion in the letter that this
 8 violates the letter and spirit of the Definitive
 9 Agreement?
 10 MR. EHRENFELT: Objection.
 11 A Well, it became -- we were still negotiating --
 12 Q Okay.
 13 A -- or contemplating negotiating with either party,
 14 either Metro or the Clinic.
 15 Q Well, did you threaten him, and say, we're getting
 16 the lawyers involved now, or, you know, I'm not going to
 17 allow Lakewood Hospital to be killed by a thousand cuts?
 18 What did you get from him, as far as your meeting?
 19 A I think I made it clear that where we stood with
 20 the Clinic was unacceptable.
 21 Q Okay.
 22 A And I don't threaten lawsuits. If I thought we
 23 needed to do that, we would file them.
 24 Q Okay.
 25 A We don't threaten them.

1 Q Well, what was the purpose of this letter? Is this
2 a threat?

3 A Well, it was a -- yeah, I wanted him to understand
4 that I thought the Clinic had to do better.

5 Q Okay. And what did he respond, as far as, was he
6 going to do better? What was he going to do for the
7 citizens of Lakewood at that time?

8 A I think he understood the spirit of my comments.
9 He was new to his job, at that point.

10 Q Okay.

11 A Dr. Bronson was about to retire at the end of 2014.
12 He was the new head of regional hospitals. Actually, he
13 was in the process of becoming Chief of Staff, although I
14 don't think anybody knew it at that point.

15 So I think he was learning the job, and his
16 responsibilities, and I wanted to make sure he understood
17 how I viewed it.

18 Q Well, what about Dr. Cosgrove, did you go and find
19 him while you were over there on Euclid Avenue, and let
20 him know what your -- your anger, as well?

21 MR. CAHILL: Objection as to his testimony.

22 A Not in this meeting. Dr. Donley was the head of
23 regional hospitals.

24 Q Okay.

25 A And he was the appropriate guy to deliver this

1 A And he took it as such. I wanted him to think
2 about the implications of that.

3 Because at that point, Twinsburg was about to come
4 online. What else? Brunswick. These were all sort of
5 exurb investments, and we were -- you know, we don't fit
6 that criteria.

7 Q What's your view? Are they responding to sprawl,
8 or are they creating it?

9 A I think it's some of each.

10 Q Yeah.

11 A I think they're affirming -- I think, generally,
12 they're responding to it. And I would say they're not
13 unique here. You see University Hospitals chasing what we
14 know as payer mix. All of them are seeking -- you know,
15 unfortunately, they need to do this to remain financially
16 viable.

17 Q Okay.

18 A So you've seen Metro opening up facilities in --

19 Q Brecksville.

20 A -- Broadview Heights, and Middleburg Heights,
21 they're all going after the fully insured patient.

22 Q So let me ask you, then, when you met with
23 Dr. Cosgrove, were you aware or did he indicate to you
24 that he had signed off on this Vision for Tomorrow plan in
25 2008?

1 message to.

2 Q Did you ever have a conversation with Dr. Cosgrove
3 about this?

4 A About this letter?

5 Q No, about Lakewood Hospital.

6 A I've had two or three.

7 Q Okay, when was the first one?

8 A Probably in 2011.

9 Q Okay. And at the time that you had that
10 conversation, was that over at the main campus, or was it
11 at Lakewood Hospital?

12 A It was at the main campus.

13 Q Okay. And what was the purpose of your meeting
14 with Dr. Cosgrove at that time?

15 A Well, the first one, I think, was to introduce
16 ourselves.

17 Q Okay.

18 A And I wanted him to understand my concern about, I
19 think the broad strategic approach the Clinic had -- I
20 remember specifically asking him, are you responding to
21 sprawl, or are you creating it?

22 Q Good question.

23 A It is. And he didn't answer it. It's actually a
24 profound question.

25 Q Yeah.

1 A We did not talk about that, at that point.

2 Q Okay. So the Vision for Tomorrow was, at that
3 point in time, not a reality, in your view?

4 A My opinion is, it wasn't producing the kind of
5 financial results that we needed.

6 Q Okay.

7 A Whether we kept that and did something else
8 remained to be seen.

9 Q All right.

10 A It wasn't saving the hospital in its financial
11 performance.

12 Q And the productivity, or saving the hospital, did
13 you ever reach a conclusion or opinion as to why the
14 Vision for Tomorrow was not saving the hospital, as you
15 say? Was that because of Cleveland Clinic's failure to
16 abide by the commitments for the Vision for Tomorrow, or
17 do you give some other explanation?

18 MS. STRATFORD: Objection.

19 Q As an opinion of your own.

20 A I mean, my honest view is the kind of services that
21 the Vision for Tomorrow delivers are not unique to
22 Lakewood, and therefore, they can and should be offered
23 almost everywhere. So the idea that you could create a
24 magnet didn't work, because they could and should be
25 provided in a whole bunch of local markets.

1 Q So Centers for Excellence was just --
 2 A It was probably an aspirational idea that they
 3 tried to create a market, and couldn't.
 4 Q Okay.
 5 A It didn't happen.
 6 Q All right, fair enough. Okay.
 7 So did you discuss the fact that you had sent this
 8 letter to Dr. Donley with your colleagues over there at
 9 the Lakewood Hospital Association?
 10 A I think I did, yeah.
 11 Q Okay. And did there get any kind of response or
 12 favorable indication from the Cleveland Clinic, first of
 13 all, that they acknowledged that the removal of the
 14 services was going to cost the three million dollars a
 15 year to the performance of Lakewood Hospital, that that's
 16 significant?
 17 A I think there was ultimately an explanation given
 18 to the Trustees about, this decision, and its financial
 19 implications, and the lack of financial return and
 20 viability of this type of service to full service
 21 hospitals like the Clinic, the national trends indicated
 22 folks were going out of this business.
 23 I would also say, we subsequently learned that
 24 local providers, such as EnnisCourt, which is a skilled
 25 nursing facility, Crestmont, and O'Neill Healthcare,

1 relating to the Letter of Intent that had been approved by
 2 the Lakewood Hospital Association, Lakewood Hospital
 3 Foundation, and the Cleveland Clinic; is that correct?
 4 A That's correct.
 5 Q And you were communicating to Council of that -- of
 6 the plan going forward; is that correct?
 7 A That's correct.
 8 Q And you call it a non-binding Letter of Intent; is
 9 that correct?
 10 A It is.
 11 Q What does that mean to you, non-binding Letter of
 12 Intent?
 13 A Well -- and I'm familiar with Letters of Intent, I
 14 owned a manufacturing company, I sold that business. We
 15 negotiated vigorously a binding Letter of Intent. And
 16 that binding Letter of Intent obligated parties to do
 17 certain things, under certain time frames, and there would
 18 be an expectation of consequences if somebody did or did
 19 not meet those, and that it had the authority of a
 20 contract.
 21 This was more in line with a proposed -- a
 22 proposal. We probably should have viewed it as such. But
 23 it did, in a legal context, show a strategic direction, of
 24 which parties often do come together to say, this is what
 25 we intend to do.

1 provide these services, and that there's a dramatic shift
 2 from, you know, full service hospitals doing this work, to
 3 non-hospitals doing this work, of which SelectCare is one.
 4 Q But SelectCare is a joint venture with Cleveland
 5 Clinic, isn't it?
 6 A And I'm not sure what the relationship is
 7 financially. But I think, you know, the provision for
 8 services, the personnel, are part of --
 9 Q They're on the Avon campus, as well, right?
 10 A They are.
 11 Q Okay.
 12 A Yeah.
 13 Q So what was formerly offered at Lakewood Hospital,
 14 now ends up on the campus at Avon Hospital, right?
 15 A Well, 60 beds. Remember, we only had 20.
 16 Q All right.
 17 A So I think that's a regional approach, as well.
 18 Q Okay. Let's go now to -- this is 25, okay?
 19 Exhibit 25, Mayor. Do you recognize this letter?
 20 A Yes, I do.
 21 Q Okay, and what is this?
 22 A This is my formal notice to City Council, I think
 23 it was a Wednesday night, written about 9:00 or 9:30 p.m.,
 24 of the action of the Hospital Association.
 25 Q Okay. And this was the communication from you

1 Q Okay.
 2 A In this case, it was very clear that no party was
 3 bound to it. Any party, at any moment, could say, you
 4 know, we're not doing this anymore.
 5 Q Okay. And at that time, you were an advocate to
 6 support the Letter of Intent?
 7 A Yes. I think it reflected a strategic direction --
 8 Q Okay.
 9 A -- and improved terms. And I would say, what's --
 10 whether that was a consequence of my conversation with
 11 Dr. Donley in July, I can't be certain, but things got
 12 better and much more vigorous through the fourth quarter
 13 of 2014.
 14 Q Okay.
 15 A So the agreement that this embodied was probably
 16 85 percent acceptable, to me.
 17 Q All right.
 18 A The other 15 percent would have to come through a
 19 public process.
 20 Q Okay. Now showing you Exhibit 26, do you see that
 21 in front of you?
 22 A Yes.
 23 Q Can you identify it for the record.
 24 A This appears to be the Letter of Intent, that was
 25 signed, right, by the three parties.

1 **Q** Go to the last page.
 2 **A** (Witness complies).
 3 **Q** Who drafted the document?
 4 **A** You mean, this exhibit?
 5 **Q** Yes.
 6 **A** Who drafted this --
 7 **Q** No, Exhibit 26, who drafted it?
 8 MR. EHRENFELT: Objection. I'm not sure --
 9 MR. CAHILL: Yeah, Steve, you told him to look
 10 at the last page, which is Exhibit --
 11 MR. DEVER: I'm sorry.
 12 MR. CAHILL: On Page 9?
 13 MR. DEVER: No, I'm going to 26, the Letter of
 14 Intent.
 15 BY MR. DEVER:
 16 **Q** Who wrote this up?
 17 MR. CAHILL: Which page do you want him to
 18 look at?
 19 MR. DEVER: The front page, first. I'm sorry.
 20 Then I'm turning my attention to -- his attention
 21 to the back page, 8, for the signatures, okay?
 22 Sorry, I didn't mean to confuse you.
 23 **A** Yeah, who actually drafted --
 24 **Q** Who prepared the document?
 25 **A** Who did the actual words?

1 **A** And you know, the words and the phrases were
 2 parsed. This was not a legal document, it was a strategic
 3 document, again, that reflected, you know, the direction
 4 that we felt we needed to have.
 5 **Q** Okay.
 6 **A** So I think it was, you know, reviewed by Subsidium,
 7 of which Brad Guest was one of the principals, he is an
 8 attorney.
 9 **Q** Okay. So Subsidium was providing legal advice?
 10 **A** They were providing some. But I think their -- but
 11 the document itself was not meant to be -- since it's
 12 non-binding, and it's not a legal document, it's a
 13 strategic direction document. It's a Letter of Intent.
 14 It is what it was meant to be, which is, this is the
 15 recommendation, it's a proposal that we believe the
 16 community should head towards to address its two primary
 17 goals.
 18 **Q** Okay. Now, going to Page 8, you see four squares
 19 there for signatures. Okay, do you see that? We have the
 20 Cleveland Clinic signature, it's the Chief Executive
 21 Officer. Who was that, if you know?
 22 And then you have Mr. Gable, who is for Lakewood
 23 Hospital Association. And then Lakewood Hospital
 24 Foundation is Ken Haber; is that correct?
 25 **A** That's correct.

1 **Q** Yeah. Who drafted it up for you?
 2 **A** I think Mike Meehan reflected the principles of it.
 3 Actually, you know, that's a good question. I
 4 can't recall who was involved with that.
 5 **Q** Any other lawyers involved in this, other than
 6 Mr. Meehan?
 7 **A** You know, honestly, I don't recall.
 8 **Q** And who did Mr. Meehan represent at that time, when
 9 the Letter of Intent was getting written up?
 10 **A** The Cleveland Clinic.
 11 **Q** Okay. So Lakewood Hospital --
 12 **A** And I would also say, you know, he was an advisor
 13 to the Trustees, as well.
 14 **Q** Okay.
 15 **A** But his principal role was to represent the Clinic.
 16 **Q** All right. So he represented -- as an advisor,
 17 what do you mean, advisor? A legal advisor, right?
 18 MR. EHRENFELT: Objection.
 19 **A** Yeah, I mean, that's his primary responsibility.
 20 **Q** Who represented Lakewood Hospital Foundation?
 21 MR. EHRENFELT: Objection.
 22 **Q** If you know.
 23 **A** You know, I think that there were a variety of
 24 versions of this that were passed around.
 25 **Q** Okay.

1 **Q** Okay. And then you've got the stamp from the
 2 Cleveland Clinic Law Department over there, that they
 3 approved this as to form; do you see that?
 4 **A** Right, I do.
 5 **Q** Okay. And then there's an empty square there; do
 6 you see that?
 7 **A** Right, I do.
 8 **Q** Was there, in earlier formulations or drafts of
 9 this agreement, or this Letter of Intent, was there a
 10 place for the City of Lakewood to sign off on this?
 11 **A** Some initial drafts, I think it contemplated that.
 12 **Q** Tell me about that.
 13 **A** Well, the spirit of the strategy was a reflection
 14 of moving to a prevention-based delivery system.
 15 **Q** Okay.
 16 **A** In order to do that, you would need the
 17 engagement -- in fact, ultimately, you would want the
 18 Board of Education involved, because they represent --
 19 they can deliver students, that this was meant to be a
 20 community-based strategy, and that the partnerships would
 21 be multifaceted.
 22 But as it moved down the funnel of a proposal, it
 23 was pretty clear that the City would have a different role
 24 here, and that it would be a conflict, I believe, for the
 25 City to be a signatory here, and then be a recipient of

1 that signatory. So the City was not a signatory.
 2 Q Okay. And how did you determine that it would be a
 3 conflict for you to sign on behalf of the City?
 4 A I think it was the recommendation of the Law
 5 Director, Kevin Butler.
 6 Q Okay. So this was shared with the Law Director
 7 prior to --
 8 A Correct.
 9 Q Okay. So at one point in time, it had been
 10 contemplated on drafts that the City would sign off, you
 11 would sign off in your capacity as the Mayor for City of
 12 Lakewood?
 13 A Which I can't -- well, in a non-binding capacity, I
 14 might have been able to. But as you probably well know, I
 15 can only sign an agreement with the approval of City
 16 Council.
 17 Q Okay. All right. Now let's go to Exhibit 27.
 18 Okay, showing you what's been marked as Exhibit 27,
 19 it's dated March 27th, 2015, this is a letter from a few
 20 Council members, Cindy Marx and Sam O'Leary, to the Ohio
 21 Ethics Commission, asking for guidance related to this
 22 hospital transaction, okay?
 23 Have you seen this document before?
 24 A I have.
 25 Q Okay. Were you aware that they were writing a

1 letter to the Ethics Commission?
 2 A I can't recall a specific date. I think there was
 3 another letter drafted by the Law Director to the
 4 Commission asking similar issues.
 5 Q Well, the letter by the Law Director to the Ethics
 6 Commission, did that take place after you learned that the
 7 Council members, Marx and O'Leary, had contacted the
 8 Ethics Commission?
 9 A I can't recall the exact sequence. They were
 10 pretty close in proximity, as I recall.
 11 Q Did you, during your participation in this Letter
 12 of Intent, and part of the Step 2 Committee, and looking
 13 at the formulation of health care going forward in the
 14 future in Lakewood, did you contemplate that you may have
 15 ethical issues that would put you in peril of violation of
 16 the Ohio Revised Code?
 17 MR. CAHILL: Objection to the form of the
 18 question.
 19 A I thought it was my duty, as Mayor, duly elected,
 20 to represent the interests of the community on this Board,
 21 and that the intention of the 1985 decisions and the
 22 subsequent agreements contemplated that very action.
 23 Q Okay.
 24 A And that there were actual questions of ethics
 25 then, that were reaffirmed now, that, in fact, that is my

1 letter to the Ethics Commission?
 2 A Not at the time they wrote it, no.
 3 Q Okay. When did you come to learn that they had
 4 wrote a letter to the Ethics Commission?
 5 A After they had sent it.
 6 Q Okay. And did you have a conversation with
 7 Ms. Marx or Mr. O'Leary about this letter?
 8 A At this point, no.
 9 Q Have you had a conversation with them since you --
 10 A I have.
 11 Q -- since you found out about it? Okay.
 12 Did you indicate to them that -- what did you
 13 indicate to them about the letter?
 14 A I think I was disappointed they didn't tell me that
 15 they had sent it.
 16 Q Okay. Why would that have been disappointing to
 17 you?
 18 A They had every right to do this, by the way. I
 19 didn't question that. But I think it would have been
 20 really a matter of etiquette that they would say, just to
 21 let you know, Mayor, we're seeking advice. It's a
 22 reasonable question.
 23 Q All right. Did you pause, or think at any time up
 24 until -- up until -- strike that.
 25 When did you find out that they had wrote the

1 duty, to be an informed and engaged member of this group.
 2 Q You would recognize that the Letter of Intent, or
 3 what is called for in the Letter of Intent, had it been
 4 followed through, would in fact be a public contract,
 5 wouldn't it?
 6 A It was non-binding.
 7 MR. CAHILL: Objection to the form.
 8 A It was a Letter of Intent. It was not a contract.
 9 Q Well, I'm asking you, if the Letter of Intent had
 10 been approved and reduced to writing, that would be a
 11 public contract, wouldn't it?
 12 MR. EHRENFELT: Objection.
 13 MS. STRATFORD: Objection.
 14 MR. CAHILL: Object to the form, calls for a
 15 legal conclusion.
 16 A Yeah, that's not -- that's not the spirit of what
 17 was offered there.
 18 Q I'm not talking about the spirit. I'm talking
 19 about the law, okay?
 20 MR. CAHILL: Objection.
 21 A I'm not a lawyer.
 22 Q Let me ask you this:
 23 The property located on Belle and Detroit Avenue,
 24 who owns that property?
 25 A The City of Lakewood.

1 Q Okay. All right.
 2 And as far as your appointment onto the Board of
 3 Lakewood Hospital Association, that is as an ex officio on
 4 behalf of the City of Lakewood; is that correct?
 5 A Correct.
 6 Q Okay. Your wife had served on the Lakewood
 7 Hospital Foundation?
 8 A Correct.
 9 Q Okay, when did she get appointed to the Lakewood
 10 Hospital Foundation?
 11 A Jeez, I don't know. 2008, 2006, somewhere in
 12 there.
 13 Q Did she serve as any kind of officer of the
 14 Foundation?
 15 A No, she did not.
 16 Q Okay, when did she resign from the Foundation?
 17 A I think in probably around this time frame, there
 18 was a recognition that -- first of all, if there was a
 19 perception of a conflict, then it should be resolved, she
 20 should leave, or one of the two of us leaves our position.
 21 Q Okay.
 22 A And since I was elected, she was the one.
 23 Q When did she leave her position on the Lakewood
 24 Hospital Foundation?
 25 A I don't know whether it was April, May, 2015.

1 with the Lakewood Hospital Association, your appearance
 2 before the public, your letters to City Council, did you
 3 feel that you had -- with your wife being in the capacity
 4 of serving on the Lakewood Hospital Foundation, did you
 5 view it that you had an unlawful interest in a public
 6 contract?
 7 MR. EHRENFELT: Objection.
 8 MR. CAHILL: Objection to the form, calls for
 9 a legal conclusion.
 10 A No, I did not.
 11 Q You did not?
 12 A No.
 13 Q Do you know what an unlawful interest in a public
 14 contract is?
 15 A Probably not as well as you, no.
 16 Q All right.
 17 A I mean, I don't recognize that I had a contract.
 18 Q Okay. Well, let's go to the next exhibit.
 19 Exhibit 28.
 20 Okay, this is a letter from the Ohio Ethics
 21 Commission, Paul Nick. Have you ever met Mr. Nick?
 22 A No.
 23 Q Have you ever had any conversation with him?
 24 A I have not.
 25 Q Okay. And what about the staff attorney at the

1 Q '15, okay.
 2 So it was after you got -- the Ethics Commission
 3 had sent some response to the Lakewood Law Department; is
 4 that correct?
 5 A That's correct.
 6 Q You had an opportunity to review those; is that
 7 correct?
 8 A I did.
 9 Q Okay. And of the Advisory Opinions from the Ethics
 10 Commission, they can only go forward, as far as giving
 11 advice to public officials concerning conflicts; is that
 12 correct?
 13 MR. CAHILL: Objection to the form.
 14 MR. BUTLER: Objection.
 15 A I don't know what you mean by going forward.
 16 Q They can only give the Advisory Opinions as far as
 17 going forward, they will not make determinations
 18 concerning past conduct --
 19 MR. CAHILL: Objection to the form.
 20 MR. BUTLER: Objection.
 21 Q -- is that correct?
 22 A I don't know that specifically.
 23 Q Okay. As of the time that you were engaged and
 24 involved in the Letter of Intent, and negotiating this
 25 agreement or the proposal with the Cleveland Clinic and

1 Ethics Commission who wrote this, John Rawski, did you
 2 ever talk with him?
 3 A I have not.
 4 Q Okay, this is dated April 3rd, 2015. Did you read
 5 this?
 6 A I must have. I don't know. This was to them, not
 7 me. I can't recall whether it was ever shared with me or
 8 not. It might have been.
 9 Q Okay. So how did you find out about it? Did they
 10 share it with you, or did somebody else --
 11 A What I am familiar with is the separate inquiry on
 12 similar lines by Law Director Butler. Those, I did
 13 review.
 14 Q Okay. If you look to the second page of that,
 15 Definition of a Public Contract, did you read those terms,
 16 as to what a public contract is?
 17 MR. CAHILL: Objection, asked and answered.
 18 MR. DEVER: If you know.
 19 A Did I read it?
 20 Q Yes.
 21 A I'm reading it now.
 22 Q Okay. No, did you read it back in April of 2015?
 23 A I'm certain that I read it, yeah. I'm sure I did.
 24 Q All right.
 25 A I don't recall this particular letter.

1 Q Okay.

2 A I recall if it was something similar in the letter

3 to Law Director Butler, then I would have read it.

4 Q All right, let's to go 29.

5 Okay, this is dated April 24th, 2015, okay? And

6 it's from the Law Department, Office of Prosecution for

7 the City of Lakewood, okay? And it's addressed to Paul

8 Nick, who is the Executive Director of the Ohio Ethics

9 Commission. It's a Request for Advisory Opinion for City

10 of Lakewood, Ohio, okay?

11 Did you ever have an opportunity to read this

12 letter?

13 A I did.

14 Q Okay. And can you tell us whether or not -- did

15 you have any involvement in the decision to make a request

16 for an opinion to the Ethics Commission?

17 A I think there was -- you know, if ethics questions

18 were being raised, then sure, I was interested in

19 understanding what the questions are that we should be

20 aware of, and how we can best understand how to reconcile

21 them, eliminate them, any conflict, sure.

22 I mean, this was an interesting development as a

23 result of a fairly adversarial position, which leads us

24 here. I'm sure this was a precursor to why we're here.

25 And it was also -- I think a lot of this was in a

1 that be fair?

2 A Correct.

3 Q Okay. All right.

4 Now, there's questions concerning -- there's all

5 issues concerning about conflicts of interest or ethical

6 violations with certain members of Council, and whether or

7 not their law partners are a part of Lakewood Hospital

8 Foundation, or Association, or whatever, so those were

9 addressed in this letter, as well.

10 But then it comes down to you and your wife's

11 situation; do you see that --

12 A I do.

13 Q -- it's on Page 2?

14 A Page 3.

15 Q Or Page 3, all right.

16 So did you have an opportunity to review that?

17 A I did.

18 Q Okay. And so I guess the question, again, is,

19 based upon the information that you were getting reading

20 from the Advisory Opinion from the Ethics Commission, did

21 you view that your conduct that you had undertaken from

22 December, with the vote for the Letter of Intent, and then

23 your formal participation in the announcement, and the

24 presentation at the Beck Center, and the advocacy roles

25 that you had taken on behalf of this proposal before City

1 political context.

2 Q Okay. So that you view that the questions that are

3 raised to the Ohio Ethics Commission as being political?

4 A I think it was in the context of a lot of variables

5 here, and so be it. And so let's get them on the table,

6 and let's understand them.

7 Q Okay. And you understand that regardless if it

8 was, as you perceived it to be, political efforts to harm

9 you, or your reputation, or your wife's reputation, you're

10 still required to abide by the laws of the State of

11 Ohio --

12 A Absolutely.

13 MR. EHRENFELT: Objection.

14 Q -- is that correct?

15 A Absolutely.

16 Q Okay. All right.

17 So the Advisory Opinion goes out, Mr. Butler sends

18 it on April 24th, right? Okay. Let's go to 30.

19 Okay, now this one is dated May 1st of 2015, and

20 this is from the Ethics Commission, I think Paul Nick

21 wrote this -- or John. John Rawski wrote this. And it

22 provides information concerning the questions that are

23 raised in Mr. Butler's April 27th letter; do you see that?

24 A Say that again. I was reading this.

25 Q This is a response to Mr. Butler's letter; would

1 Council to implement or come to an agreement based upon

2 the Letter of Intent, did you view that you were in

3 violation of the ethics laws?

4 MR. CAHILL: Objection to the form.

5 A I did not.

6 Q Okay, so next one.

7 Now, on the same day that you received that -- this

8 would be 31.

9 On the same day of the transmittal of the letter,

10 or the date of the letter, May 1st, from the Ethics

11 Commission, a letter was drafted, what appears to have

12 been from Mr. Butler back to John Rawski, who was the

13 Staff Attorney at the Ethics Commission; do you see

14 that --

15 A I do.

16 Q -- as Exhibit 31?

17 A I do.

18 Q Okay. And there are a couple of questions that

19 Mr. Butler is asking at that time, and it goes to Item

20 (b), "If the Mayor's wife resigns from Lakewood Hospital

21 Foundation board of trustees, would the conflict

22 identified in your summary paragraph Number 3 cease at the

23 moment she resigns." Do you see that?

24 A I do.

25 Q Okay. So what is your understanding of what

1 **Mr. Butler has said in that letter? Has he indicated in**
2 **the letter that there is a conflict up until your wife**
3 **resigns?**

4 MR. CAHILL: Objection to form.

5 MS. STRATFORD: Objection.

6 MR. EHRENFELT: Objection.

7 **A No, actually, I see a context of two letters.**

8 **Q Okay.**

9 **A "If the proposed agreement with the Cleveland**
10 **Clinic would result in the dissolution or alteration of**
11 **the foundation from its present form, the mayor cannot**
12 **participate."**

13 **Well, the proposed agreement, at that point, was**
14 **non-binding. I was not a signatory to it.**

15 **Q Okay. So that's what you're saying, is that you do**
16 **not have --**

17 **A I had not signed an agreement at that point.**

18 **Q Okay.**

19 **A And at that point, there was serious consideration**
20 **by the community of whether or not the Letter of Intent,**
21 **as presented a strategic direction, was where we were**
22 **going to head. No agreements were made. And as we all**
23 **know, subsequently, the Letter of Intent expired.**

24 **So the question was, had I signed an agreement, I**
25 **suppose, and my wife was a Director, that could have been**

1 **did not benefit, would not in any way.**

2 **Q Okay.**

3 **A Nor have I, through this process.**

4 **Q Exhibit 32.**

5 **Okay, this is a letter from the Ethics Commission,**
6 **it's dated May 8th, 2015. It's addressed to Kevin Butler,**
7 **okay? Did you read this letter?**

8 **A I did, yeah.**

9 **Q If you go to Additional Questions and Brief Answers**
10 **on Page 2.**

11 **A Correct.**

12 **(Thereupon, Mr. Graham left the room.)**

13 **Q "Can the mayor participate in decisions regarding**
14 **the closing of Lakewood Hospital if his wife resigns from**
15 **the foundation board?"**

16 **The answer is, "As explained below, the mayor can**
17 **participate in the decisions because the resignation of**
18 **his wife from the foundation's board would, immediately**
19 **upon her resignation, negate any possibility of a family**
20 **member having a fiduciary interest in a public contract,"**
21 **okay?**

22 **So would it be fair to conclude, in your reading of**
23 **this, or your understanding of this -- and I know you're**
24 **not a lawyer, Mayor -- is that up until your wife resigns**
25 **from the Lakewood Hospital Foundation Board, there**

1 **a conflict, but none of that happened.**

2 **Q Okay. All right.**

3 **A And ultimately, in the new Master Agreement, the**
4 **Cleveland -- Lakewood Hospital Foundation was not even a**
5 **signatory to it anyway.**

6 **Q My points are, what your conduct was prior to the**
7 **Ethics Commission, prior to your wife leaving and**
8 **resigning from Lakewood Hospital Foundation, you believe**
9 **or view your conduct prior to that was not a conflict of**
10 **interest?**

11 **A I believe my duty was to make sure that the**
12 **interests of the community were represented at every step**
13 **of the direction.**

14 **Q Well, I guess the question is, how can your duty be**
15 **faithfully executed, if you have a family member who is on**
16 **a Board that will be directly affected by the issues that**
17 **you're advocating Lakewood City Council to pass?**

18 MR. EHRENFELT: Objection.

19 MS. STRATFORD: Objection.

20 MR. CAHILL: Objection to the form of the
21 question.

22 MR. BUTLER: Objection to the question.

23 **A First of all, she had no interest, and there was no**
24 **benefit to her. In fact, she was trying to raise money**
25 **from others, it was a lot of work. So there was -- she**

1 **continues to be a conflict?**

2 MR. EHRENFELT: Objection.

3 MS. ARMSTRONG: Objection.

4 MR. CAHILL: Objection to the form.

5 **A I don't agree with that.**

6 **Q Okay. So you disagree with Item 2?**

7 **A No, no, I don't disagree -- I agree with their**
8 **explanation. But I don't agree there was a conflict prior**
9 **to that.**

10 **Q Okay. All right.**

11 **A First of all, we didn't have an agreement. We had**
12 **a proposal.**

13 **Q Okay, let's go to the third page, then.**

14 **How much time have you got? One minute? Okay.**
15 **Third page. Okay.**

16 **Last paragraph -- second last paragraph,**
17 **"Therefore, the mayor can participate in the decisions**
18 **regarding the closing of Lakewood Hospital because the**
19 **resignation of his wife from the foundation's board would,**
20 **immediately upon her resignation, negate any possibility**
21 **of a family member having a fiduciary interest in a public**
22 **contract. In addition, the council --" we'll leave that**
23 **alone there, as well.**

24 **But do you see what I'm asking you is, is that --**
25 **up until your wife resigns from that Board, she continues**

1 to have a fiduciary interest in the public contract.
 2 MR. CAHILL: Objection.
 3 MS. STRATFORD: Objection.
 4 MS. ARMSTRONG: Objection.
 5 MR. EHRENFELT: Objection.
 6 **A** Well, I think the operative word there is
 7 possibility.
 8 **Q** Okay. All right.
 9 **A** There's no allegation of anything direct here.
 10 MR. DEVER: Let's take a break.
 11 THE VIDEOGRAPHER: Off the record. End of
 12 Tape 3. 5:13.
 13 (Short recess had.)
 14 (Thereupon, Mr. Graham reentered the room.)
 15 THE VIDEOGRAPHER: We are back on the record.
 16 Tape Number 4. It's 5:17.
 17 MR. DEVER: Okay, thank you.
 18 BY MR. DEVER:
 19 **Q** Mayor, showing you now what's been marked for
 20 identification purposes as Exhibit 33, it's called
 21 Lakewood Hospital Data Book. Have you seen this before?
 22 **A** I have.
 23 **Q** What is this?
 24 **A** This is sort of the foundational data that -- I'm
 25 not sure what the date of this particular version of it

1 **A** And then the question was, if this was their
 2 outpatient delivered system, would there be a partner who
 3 would be willing to invest in an inpatient model.
 4 **Q** Okay.
 5 **A** And a letter went out to a variety of partners,
 6 both locally and nationally, and it said, if you're
 7 interested in finding out more. It makes sense this is
 8 probably what they got.
 9 **Q** Did you hire a broker, or anybody who was
 10 experienced in marketing of hospitals, or for looking for
 11 partners in the health care industry, did you use one of
 12 that, or was just Subsidiary the only resource that you
 13 had?
 14 **A** We weren't selling this hospital.
 15 **Q** I don't mean, selling, but looking for another
 16 operator, or evaluating your options for another operator.
 17 **A** Well, we were very interested in, one, finding, is
 18 there an operator, and beginning the discussions of what
 19 that operator would look like, and what their proposals
 20 would like look.
 21 I think, had we proceeded to some more detailed
 22 levels with other partners, it would have been appropriate
 23 to bring in more of an investment bank approach. But we
 24 didn't get that far.
 25 **Q** Let's go to Page 6 of this, the Affiliation

1 is -- of sort of the current position of the hospital at
 2 probably 2013, I'm guessing.
 3 And it was the first of many editions, about trying
 4 to get a baseline of facts, facts of market position,
 5 facts of financial performance, facts of health care
 6 competition, facts of the physical facility, facts of who
 7 the physicians are, you know, a baseline of where you go.
 8 You launch your strategic review from this basis of core
 9 knowledge.
 10 **Q** Well, this document was used -- if you see the
 11 front of it, was this used to provide to prospective
 12 health care operators for response to Request for
 13 Proposal?
 14 **A** It very well could have been part of that, yeah. I
 15 mean, there were elements of this that went to the
 16 Trustees first thing, you know, here's our view of the
 17 facts, and then -- that makes sense.
 18 **Q** Okay.
 19 (Thereupon, Mr. Meehan left the room.)
 20 **A** I think the RFQ basically said -- by the way, and
 21 there were two, there were two views of this. One is, we
 22 solicited the Clinic's view, we got their view, which
 23 you're about to talk about here in Exhibit 34
 24 (indicating).
 25 **Q** Right.

1 Rationale, okay, and the second paragraph. Do you see
 2 that, 6 of 23? Everybody there?
 3 "The Cleveland Clinic Foundation is aware of the
 4 City's interest in potentially seeking a new partner and
 5 does not oppose this effort." Is that correct?
 6 **A** That's correct.
 7 **Q** Okay. And how did you get -- how did you get that
 8 assurance from the Cleveland Clinic, that they would not
 9 be -- come back on you if you were talking to another
 10 competitor, as far as tortious interference, or some legal
 11 claim that the third party would be interfering with the
 12 relationship that the Cleveland Clinic had with Lakewood
 13 Hospital?
 14 **A** I think we had assurances from Dr. Bronson --
 15 **Q** Okay.
 16 **A** -- that this was a perfectly reasonable strategic
 17 option to explore.
 18 **Q** Okay. Now, you say, or it says in here, at
 19 least -- this is Lisa Fry and her group -- that says, in
 20 the remainder of the paragraph, "the City is only
 21 interested in proposals which include, but are not
 22 necessarily limited to, operating Lakewood Hospital as an
 23 inpatient facility with substantially similar services as
 24 those currently offered today and for a period of no less
 25 than 20 years."

1 Okay, so that was the wish list at that time; is
2 that correct?

3 A Well, in the context of, you had an outpatient
4 proposal, which -- and outpatient services, by the way --

5 Q So this already had come to you, before that
6 (indicating)?

7 A Yeah. We understood the context of --

8 Q Walk me through, then, that sequence, if you can,
9 briefly.

10 MR. CAHILL: Just for the record, you were
11 pointing to Exhibit --

12 MR. DEVER: 34.

13 MR. CAHILL: -- 34, which is the Lakewood
14 HealthCare Partners.

15 THE WITNESS: And I'm not sure which version
16 this is. Version 8.

17 MR. EHRENFELT: That's "this"? That's what
18 you mean by "this"?

19 MR. DEVER: Yes.

20 Why don't you pass that one out, too, so we
21 use them in context.

22 BY MR. DEVER:

23 Q Exhibit 34, what is that, that's in front of you,
24 as well?

25 A Well, this was, I think, the Clinic, as espoused by

1 far as --

2 A I don't think it changed in terms of substance. I
3 think there was some refinement of details.

4 Q So would have this all been 2014 that these
5 versions were coming together?

6 A No, I believe they started -- we saw the first ones
7 in 2013.

8 Q '13, okay.

9 A In a broad concept.

10 And Page 9 reflects, I think, the broad-based
11 approach that was contemplated here, where you had some
12 leading organizations --

13 MR. EHRENFELT: I'm sorry, which exhibit are
14 we on?

15 THE WITNESS: Exhibit 34, Page 9.

16 MR. EHRENFELT: Thank you.

17 A That in order to achieve true community-based
18 engagement, you would need the four at the top, City of
19 Lakewood, Hospital Association, the Foundation, Cleveland
20 Clinic. In addition, you would need the engagement of
21 other partners, such as, but not necessarily specifically,
22 the YMCA, the City Schools, the Rec Department, the
23 Community West Foundation, perhaps others.

24 Q Okay. And is this the genesis, then, of the
25 discussions concerning Rec Center, or the use of the

1 Dr. Bronson, with his community-based approach to
2 improving the health of the citizens of Lakewood, the
3 community of Lakewood.

4 Q All right. Now, the date on that appears to be May
5 15th, 2004.

6 A There were several iterations prior to this.

7 Q 2014, right?

8 A 2014.

9 Q Correct. I'm sorry.

10 A Yeah, there were a couple iterations before this.

11 This is Version 8. This was sort of a living strategic
12 document --

13 Q Okay.

14 A -- that reflected, I think, the Clinic's,
15 particularly Dr. Bronson's, view of the evolving nature of
16 both need in the community and some community-based
17 approaches to address those needs.

18 Q Okay.

19 A So we understood this particular proposal, and it
20 meant closing the hospital as we knew it as an inpatient
21 facility.

22 Q Can you back up, now, on that exhibit there, 34,
23 that you have in front of you. Version 8, can you take me
24 through the sequence, you know, the time frame from
25 Version 1 to Version 8, what are we looking at here, as

1 property for something other than for health care?

2 A This was the Cleveland Clinic's view of, to take a
3 community to higher levels of wellness, and to do it on a
4 preventative basis, or early detection, that there had to
5 be a significant engagement of active living.

6 Q I understand that.

7 So you had established an Active Living Task Force;
8 is that correct?

9 A Subsequently. Yeah, subsequently.

10 Q So that was after 2014, that Active Living started
11 up, or after the first version?

12 A Probably during 2014.

13 Q 2014.

14 A Yeah.

15 Q Did you ever indicate to either the members of
16 Lakewood Hospital Association Board, or to the
17 administrators of the Cleveland Clinic, a preference of
18 creating a community center or athletic facilities on the
19 hospital property?

20 A No, not in any detail. I think there was a
21 recognition in Lakewood that, one, we don't have a lot of
22 land to do any of these types of things well; and
23 secondly, we already had a lot of pieces and parts here;
24 and thirdly, that kind of approach would have to take a
25 significant amount of community engagement.

1 So this was Dr. Bronson's view --
 2 Q Okay.
 3 A -- it was not necessarily my view. Although I
 4 agreed with many pieces and parts of this. But it was
 5 never -- this was never a City-based plan.
 6 Q Did you have the Active Living Task Force -- who
 7 was that, Jay Foran, that was the Chair of that?
 8 A There were several members.
 9 Q Okay. Jay was very involved in it?
 10 A He was, yeah.
 11 Q Okay. Were there discussions between you and
 12 Mr. Foran concerning the creation of a recreation or
 13 community center at the hospital?
 14 A No, I think there were questions of, what do we
 15 have, what do we need, what's missing, and how might we,
 16 as a community, if we're going to re-engage in our second
 17 century, which is a pretty common conversation around
 18 here, that how can we reconfigure or reuse or adapt our
 19 parks, our schools -- which we don't control the City
 20 side -- and any piece that would allow us to take -- to
 21 increase the opportunity for a citizen to become more
 22 physically active, and therefore improve their health.
 23 Q Okay.
 24 A So it was a wide open conversation, and remains so.
 25 Q All right. So 2013, one of the versions, as what

1 Did the Cleveland Clinic get this, 33?
 2 A I don't know, because we already knew they were not
 3 interested in the inpatient. You know, you mentioned this
 4 clause, you know, of inpatient requirements. And we knew
 5 their views --
 6 Q Okay.
 7 A -- were reflected elsewhere.
 8 MR. DEVER: All right. Let's go to Metro,
 9 then, okay? 36.
 10 MR. EHRENFELT: Is there a 35?
 11 MR. DEVER: There's a 35, but we're not using
 12 it.
 13 MR. EHRENFELT: Okay.
 14 BY MR. DEVER:
 15 Q When did the RFP -- I guess it would be Request for
 16 Proposal, right, not a Request for Qualification.
 17 Request for Proposal is what Subsidium sent out?
 18 A I'm trying to figure out what I'm looking at here.
 19 Q Okay.
 20 A Whose document is this?
 21 Q This is a Metro document.
 22 A Oh, okay. You mean, came from Metro Hospital?
 23 Q Uh-huh.
 24 A Okay. I don't think I've ever seen this before.
 25 Q Okay. Well, maybe I'll jump to 37, and then maybe

1 you've indicated for Exhibit Number 34, and this was
 2 initiated by Dr. Bronson; is that correct?
 3 A That's correct.
 4 Q All right. And you didn't have to -- you did not
 5 encourage him or indicate to him that you thought that
 6 that would be an outpatient -- the elimination of an
 7 inpatient facility of Lakewood Hospital would be okay with
 8 you.
 9 MR. CAHILL: Objection to form.
 10 A No, no, I did not indicate it would be okay.
 11 Q Okay.
 12 A We were halfway or two thirds through a strategic
 13 review of options.
 14 Subsequently, we needed to know, was there somebody
 15 who could provide another delivery.
 16 Q So on the sequence, then, you had nine versions of
 17 Exhibit 34 that were the Cleveland Clinic proposals, and
 18 then at some point in time, then, an RFP was sent out to
 19 see if there were other interested parties, and that is
 20 what Exhibit Number 33 was part of; is that correct?
 21 MR. CAHILL: Objection to the extent it
 22 misstates facts.
 23 A This was the -- should a party indicate interest,
 24 they would have gotten this.
 25 Q Okay. All right.

1 you can put them in the context, okay? Look at 37, as
 2 well.
 3 A Okay.
 4 Q First of all, 37, what is that?
 5 A This was a PowerPoint that was delivered by Metro,
 6 at Metro, to the Subsidium and Step 2 group. This was
 7 probably in September of 2014.
 8 Q Okay.
 9 A After -- this was the follow-up document of their
 10 original proposal submitted in April or May of 2014.
 11 Q Okay. So let's follow the sequence, then. April
 12 or --
 13 A So there's a document in front of this.
 14 Q Yes, I'm going to get you that in a minute. I'm
 15 sorry, they're kind of a little out of order.
 16 At the time that you received the Metro proposal,
 17 that was in response to Subsidium -- just to walk you
 18 through this, okay -- was in response to Subsidium's
 19 Request for Proposals that they had sent out; is that
 20 correct?
 21 A There were several conversations with Metro
 22 particularly, and initially, Metro offered an outpatient
 23 model, as well.
 24 Q Was that before or after the RFP went out?
 25 A Before.

1 Q Okay. All right.
 2 A And they were -- their outpatient model was
 3 similar, because they were building -- they were thinking
 4 of these outpatient -- they subsequently built one in
 5 Middleburg Heights, and they're building one in Broadview
 6 Heights, so they were thinking of those types of family
 7 health centers, and that they would do that here.
 8 We also knew -- I also knew that Metro had been
 9 interested in doing something similar to that on the old
 10 Fairchild, now the Rockport site, and could not make a
 11 decision to make that investment over a period of years.
 12 So there was latent interest on the part of Metro to do
 13 something in Lakewood.
 14 Q And who was expressing that interest to you, or was
 15 it to --
 16 A You know, that's an interesting question. I'm
 17 trying to think where that outpatient approach initially
 18 came from.
 19 Q Did you have an actual proposal? Did you get a
 20 document like --
 21 A I don't think --
 22 Q -- Exhibit 37?
 23 A -- we did. I think it was more a conversation.
 24 Q Okay.
 25 A And at that point, it was vague, and it rivaled the

1 A Subsidiary would have solicited -- gotten the
 2 response --
 3 Q Right.
 4 A -- sort of done an analysis, and somewhere in all
 5 the documentations, there's a comparative position between
 6 the two strategies.
 7 And we met as Trustees on this -- at that point, we
 8 really had two complete proposals, one from the Clinic,
 9 and we had this one.
 10 Q Right.
 11 A And we met several times through the summer of
 12 2014, in a variety of contexts, to understand these two
 13 proposals.
 14 Q Okay. Now, the distinction --
 15 A All of us, by the way.
 16 Q Okay. All right.
 17 And then what about the committee, the Step 2
 18 Committee, what role did they have?
 19 A Well, at the point where we had two complete
 20 proposals, that role was sort of diminished.
 21 Q Okay.
 22 A You know, it really was in the hands of all the
 23 Trustees at this point.
 24 Q All right. And who was the quarterback of the
 25 Trustees, to be at least defining the discussions, and to

1 Clinic's, which was much more robust.
 2 And then subsequently, in roughly May, when the RFQ
 3 was submitted, probably April, they submitted the written
 4 proposal, which we've yet to see.
 5 Q Okay. And at the time that you got the written
 6 proposal, who was part of your team?
 7 That would be 38?
 8 A Right.
 9 Well, at this point, all the Trustees --
 10 Q First of all -- well, we'll stop. Before you go
 11 through and answer the question, showing you what's been
 12 marked for identification purposes as Plaintiff's Exhibit
 13 38, can you tell me if you recognize the document.
 14 A I do. I do, yes.
 15 Q We're not going to go through the whole thing, I
 16 promise.
 17 A That's fine.
 18 Q Exhibit 38, what is it?
 19 A This was the written response to the RFQ for the
 20 inpatient model --
 21 Q Okay.
 22 A -- at Lakewood Hospital.
 23 Q All right. When you received that, was this the
 24 Step 2 Committee that was reviewing these proposals, or
 25 who -- I'm trying to understand the decision-making now.

1 move forward on the decision-making process as to where
 2 you were going with this thing?
 3 A We met in what we called the caucus, which is with
 4 the non-Cleveland Clinic employees.
 5 Q Okay.
 6 A We viewed this as, they would be competitors to
 7 this.
 8 Q All right.
 9 A And Tom Gable was the Chair, and Lisa Fry, in
 10 particular, I think led the presentation of the material.
 11 Q Okay.
 12 A And you know, it was a group that had been working
 13 very hard together for a period of years now. So its
 14 leadership was really not required, because everybody
 15 had -- you know, was engaged.
 16 Q Okay. So at the time that you were doing these
 17 caucus scenarios, that was for the purposes of evaluating
 18 the Metro proposal and evaluating Dr. Bronson's plan, as
 19 well; is that correct?
 20 A Correct.
 21 Q And the last plan that I showed to you, Version 8,
 22 did that end up being the final version, or are there
 23 more?
 24 A I don't think this included sort of the financial
 25 implications.

1 Q Here, I'm sorry. Going way back to this thing
 2 (indicating). Sorry.
 3 A No, that's not -- I know what you're looking for
 4 here.
 5 Q Exhibit 34, Lakewood HealthCare Partners. Here you
 6 go.
 7 Is that the final?
 8 A No, I think this -- ultimately, it was their
 9 proposal, which -- there's a proposal, a response, a
 10 formal response, that puts flesh on the bones financially,
 11 and that's the piece that --
 12 Q I see.
 13 A You know, looking at these two options, in July of
 14 2014, that's where we had two crappy proposals.
 15 Q Okay. Now, let's talk about why the Metro proposal
 16 was --
 17 A That's a clinical word, by the way.
 18 Q Using that clinical term -- you learn something new
 19 every day -- what was crappy about MetroHealth's proposal?
 20 A Well, initially, it was very exciting.
 21 Q Okay. Why is that? What was exciting?
 22 A Well, Metro is a good company. They -- I think in
 23 terms of their culture, it would be a welcome addition to
 24 our community. There was a market base of their customers
 25 already here. They had proven that they could do well

1 MR. CAHILL: Mayor, for the record, "in here"
 2 is which exhibit?
 3 A This is Exhibit 38.
 4 You know, we grew to understand, you know, Metro
 5 has a very thin management staff. They had no experience
 6 whatsoever in taking over another hospital.
 7 We grew to understand it was a very high execution
 8 risk of their being able to pull this off. One, they
 9 didn't have the money. Two, they wanted all the assets,
 10 return control of all the real estate over to the county,
 11 so Lakewood would lose control of all the houses, the
 12 physical property on Belle, the medical office building,
 13 the garage, 850 Columbia Road, they wanted the Hospital
 14 Foundation assets, 33 million dollars. All those chips
 15 would get pushed into the center, and they would become
 16 the property of Cuyahoga County.
 17 Q All right.
 18 A At that point in time, the City of Lakewood, as a
 19 community, would lose total control over those assets, and
 20 get nothing in return. There was no compensation, there
 21 was no offer to buy. There was about -- we'll take it for
 22 free, you give us everything, and we'll run a very modest
 23 inpatient model that would provide scaled down services
 24 for ten years.
 25 (Thereupon, Mr. Meehan reentered the room.)

1 with Medicaid reimbursement level customers, and Medicare,
 2 as well. They had a lower cost platform.
 3 Q So they could fit the market.
 4 A They could address the market. And they -- and
 5 committed to providing inpatient health care for ten
 6 years. But no more than that.
 7 And in fairness to Metro, and the Clinic, and
 8 St. Vincent's, and University Hospitals, all of them
 9 consistently said, our vision is very cloudy ten years
 10 out. We're not betting on anything at that point.
 11 So the ten years, I think we'd grown to understand,
 12 was a problem, it was disappointing, because it wasn't any
 13 better than what we already had in terms of the 2026
 14 lease.
 15 The problem with the Metro proposal was in the
 16 context of their execution capacity. They didn't have any
 17 money.
 18 You know, somewhere in here, it asks the question
 19 of, how are you going to finance the capital improvements
 20 necessary to make the hospital clinically viable for the
 21 next ten years.
 22 Their response in here is, well, we're going to
 23 shake about 45 million out of the Clinic on their way out
 24 of town.
 25 Q Well, what about, as far as --

1 Q Is that what you understood the terms to be?
 2 A That's generally what we understood the terms to
 3 be.
 4 Q Now, isn't it true that they had indicated -- that
 5 Metro indicated that they only needed 60 percent of the
 6 facility to operate as a hospital?
 7 A That's right. I mean, it's a scaled down version.
 8 Q Right. Right-sizing, right?
 9 A They would run somewhere between 50 and a hundred
 10 beds.
 11 Q Okay.
 12 A So remember, our major goals to meet the needs of
 13 the community of Lakewood, and be financially viable
 14 long-term, we had a hard time understanding how 50 beds
 15 would serve the community as well as we needed it to be
 16 served, especially understanding that the major health
 17 concerns were on the chronic care basis.
 18 Q Okay, 39.
 19 MR. BUTLER: Thank you, Chris.
 20 MR. DeVITO: You're welcome.
 21 A All right, this was a response -- this probably was
 22 maybe in June of 2014, where we'd received this proposal,
 23 38, and there were subsequent questions we needed further
 24 clarification from.
 25 Q Right. Now, did you participate in all of these

1 discussions and negotiations with Metro?

2 A Negotiations, no. Metro -- this sort of question
3 and answer was managed by Subsidium. Subsidium got this
4 information back, shared it with all the Trustees.

5 Q All right, how many times did you sit down with the
6 folks from Metro Hospital and talk about this, either the
7 President, or the Planning Officer, or whoever was
8 involved in making this proposal to Lakewood Hospital?

9 A I think at that point in the summer, two, two
10 times.

11 Q Two times? Okay.

12 So in May is when you get the first proposal,
13 you've asked questions again that necessitates them
14 responding with that written Q and A; is that correct?

15 A Right. And then we went back in September to
16 Metro.

17 Q Okay. And that's when they left that behind, the
18 slide show, right?

19 A Well, they didn't actually give us that. We had
20 to -- actually, it took a lot of work to get that from
21 Metro.

22 Q You didn't get that from them?

23 A No. They showed it to us, but we did not get
24 copies of it at that moment in time.

25 (Thereupon, Ms. Armstrong left the room.)

1 Q Well, what did you do from May or June, when you
2 got the first proposal, and then you sent out the
3 questions, what did you do June, July, August?

4 A We met as a caucus on numerous occasions to digest
5 these options.

6 Q But during that time frame, you were caucusing with
7 the Cleveland Clinic as far as their --

8 A No --

9 Q -- proposals?

10 A -- we understood their model probably better than
11 we understood Metro, so we were seeking understanding.
12 Remember, that was June, July, August, and September, so
13 four months.

14 Q Yeah.

15 I looked at the Subsidium slides that Lisa Fry
16 prepared, and there's a graph on one of the slides that
17 shows all of the series of meetings that took place
18 involving Lakewood Hospital Association and the Cleveland
19 Clinic concerning this proposal that they had in 2014, and
20 then you look at the Metro graph, and essentially you had
21 two meetings with Metro; isn't that correct?

22 A Well, there were probably three -- you asked me how
23 many I participated in.

24 Q Yes, sir.

25 A There were probably more meetings that I didn't

1 Q Did they leave you with any kind of information?

2 A No, I think we were still working off the two
3 primary versions (indicating).

4 Q Okay. All right, so tell me, then, about -- these
5 were proposals. Did you actually sit down and have
6 negotiations with Metro Hospital about what their proposal
7 was, and what you wanted to see as realistic for Lakewood
8 Hospital?

9 A During the summer months of 2014 -- first of all,
10 I've got 23 Trustees all taking vacation. Getting
11 everybody together was no small thing.

12 We were digesting the two approaches, all against a
13 backdrop of a ton of marketplace information we received
14 from a variety of sources, for instance, the hospital, the
15 service needs of the community, health care needs. All
16 that context, against these two proposals, we're absorbing
17 it, trying to understand which direction made sense.

18 And we had not picked a strategy at that point. We
19 were still contemplating which direction. I mean, the
20 Metro proposal, you know, had significant attraction to
21 it, but it had a lot of problems.

22 Q Well, did you prepare a written response as to what
23 their problems were, then go back with them?

24 A Well, we communicated concerns during the September
25 meeting, and then --

1 participate in.

2 Q But who would be the most important person to be
3 involved in those meetings, on behalf of the City of
4 Lakewood?

5 A That's not an appropriate question.

6 Q Well, again, we can go through this again.

7 A We were --

8 Q You, as Mayor, you're concerned --

9 A I was one of 23.

10 Q Yeah. But you're the Mayor of the City of
11 Lakewood. Aren't you concerned that you're going to be --
12 you're going to get a bad deal here?

13 MS. STRATFORD: Objection.

14 MR. EHRENFELT: Objection.

15 MR. CAHILL: Objection to form.

16 A We had two deals in the summer of 2014 that were
17 fraught with frailty --

18 Q Right.

19 A -- and vulnerability.

20 Q So where is the proposal or the response to Metro
21 as to, this deal's not good enough, this is what we have
22 to have, these are what your terms are, these are the
23 delivery of services we've got to have?

24 A Well, I hope you're going to produce the letter
25 from Dr. Boutros where he withdrew.

1 (Thereupon, Ms. Armstrong reentered the room.)
 2 Q Yeah, we'll talk about that in a minute. But let's
 3 go from when he withdrew.
 4 He withdrew --
 5 A October 4th?
 6 Q Yeah. But look at the letter that he wrote to you.
 7 Exhibit 40, okay?
 8 Do you see that penmanship or handwriting on that,
 9 Received 10-10-14?
 10 A That's my writing.
 11 Q Okay. All right.
 12 So did you write that on October 10th of 2014?
 13 A I presume I did.
 14 Q Okay. So it says, Dear -- and this is from
 15 Dr. Boutros, he is the Chief Executive Officer for Metro;
 16 is that correct?
 17 A Yes.
 18 Q Okay.
 19 Dear Mayor Summers:
 20 On behalf of The Metro System, I would like to
 21 thank you and your committee for the opportunity to work
 22 with the city of Lakewood and Lakewood Hospital
 23 Association in response to the RFP for strategic
 24 positioning of Lakewood Hospital. As we discussed in late
 25 September during our last meeting, MetroHealth has spent

1 A It was a very laborious, time-consuming, complex
 2 process.
 3 And by the way, Metro was very late in submitting
 4 their proposal. Did we ignore it or knock it out? No.
 5 We accommodated them.
 6 Q Well, let's talk about it, then.
 7 You got the proposal in May, you sent them
 8 questions, they answered that. They apparently spent some
 9 time and effort to address what you were looking for, for
 10 Lakewood Hospital.
 11 You met with them in September. You have that
 12 chart that you got, right?
 13 A Right.
 14 Q The take-away -- I'm sorry -- the video chart. The
 15 slide show.
 16 A Right.
 17 Q Okay?
 18 A Which didn't tell us anything particularly
 19 different --
 20 Q Okay.
 21 A -- than what we already could understand.
 22 Q Where are the letters, proposals, documents,
 23 something from Lakewood Hospital Association, or from you,
 24 as the Mayor of Lakewood, responding to Metro's proposal,
 25 and telling them that we have to have this, this and this?

1 considerable time and effort in response to the RFP and
 2 has set a deadline of October 1st for conclusion. Since
 3 this date has passed, please accept this as confirmation
 4 of our withdrawal from the selection process.
 5 It has been a pleasure to get to know you and the
 6 other members of the team, and I wish you all the best.
 7 Okay?
 8 So when Dr. Boutros communicated to you, or your
 9 team at Lakewood Hospital Association, at that September
 10 meeting -- you were there, weren't you?
 11 A I was.
 12 Q Okay. And he told you, or somebody told you, hey,
 13 we've got to get -- we need to get a response from you by
 14 the 1st of October, right? Is this letter accurate?
 15 A I think he was expressing concern, when are you
 16 going to make a decision.
 17 Q Well, did he give you a deadline?
 18 A I don't recall a specific deadline.
 19 Q Well, do you have any notes, or anything like that,
 20 that would indicate that we've got a deadline?
 21 A Well, I think the original RFP was that we would
 22 take action in 90 days.
 23 I've got to tell you, there was not a deadline we
 24 met through this whole process.
 25 Q All right. But I'm --

1 I don't see any written evidence of negotiation.
 2 A We met with them in September. I think our next
 3 scheduled meeting, as a Trustee Association, was in mid
 4 October. And by then, they'd withdrawn.
 5 Q But he says that he told you, as we discussed.
 6 You're saying that's not true?
 7 A And I've got to tell you --
 8 Q Is that not true, sir? At your meeting --
 9 A Is what not true?
 10 Q -- in September, did Mr. Boutros, or somebody on
 11 behalf of MetroHealth, tell you folks, we've got to have a
 12 response by you by October 1st?
 13 A I don't remember it as that clear a directive.
 14 Q Okay. All right. So --
 15 A I think he would express concern that we spent a
 16 lot of time, we want you to make a decision.
 17 Q All right, so when you got the letter that they
 18 were withdrawing the proposal, were you delighted? What
 19 was your reaction to, Metro's getting out of this?
 20 A I was very disappointed. I was very disappointed.
 21 Q All right.
 22 A And I also -- frankly, you know, if they were this
 23 thinly committed (indicating), then I was disappointed,
 24 but if they didn't want to be here, they're not our guys.
 25 Q Well, tell me how they were thinly committed.

1 MR. EHRENFELT: Objection.
 2 A Why would you withdraw?
 3 Q Well, did you call them up and ask them to
 4 reconsider?
 5 A Why wouldn't he call me up?
 6 Q Okay.
 7 A Why wouldn't he call me up and say, look, we're
 8 very interested in this deal, we've got some concerns
 9 here, we need to hear from you.
 10 Q Well, the fact is --
 11 A He didn't do that.
 12 Q -- you weren't interested in MetroHealth. You had
 13 already committed to the Cleveland Clinic.
 14 A Not at that point. No, not at that point. We did
 15 after this (indicating).
 16 Q You continued to caucus --
 17 A We committed to negotiate in good faith.
 18 Q You had caucused throughout the entire summer with
 19 the Cleveland Clinic, as far as an outpatient facility,
 20 and you had in front of you --
 21 A No, no.
 22 Q Let me finish my question, sir.
 23 A That's incorrect.
 24 Q And you had in front of you a proposal where they
 25 had answered your questions, they had sent you further

1 that it got, that it became weaker?
 2 A We became clear on their lack of financial capacity
 3 to invest, that they were depending upon the Clinic to be
 4 an investor, which we thought was a ridiculous assumption,
 5 they wanted all the assets, including the Foundation
 6 money, we were going to have to turn all the real estate
 7 over to the county, and there was no significant
 8 guarantee, and it was a stripped down hospital,
 9 ultimately, we think, that was designed to address swing
 10 space requirements while they rebuilt their 25th, so their
 11 commitment to Lakewood, as we grew to understand, was less
 12 than we initially believed when we first saw it.
 13 Q Mayor, did you read those proposals?
 14 A Absolutely, I read them.
 15 Q All right. And did you read the questions and
 16 answers?
 17 A I did read them.
 18 Q Okay. And the meeting that you had with Metro?
 19 A Did I read them? I was there.
 20 Q Did you review the slides and take notes?
 21 A Remember, we didn't get the slides.
 22 Q Okay. So they were holding those back on you?
 23 A Apparently.
 24 Q All right. Did you take notes of that meeting?
 25 A I don't recall what we got. If I did, you got

1 information, they invited you down to the hospital to meet
 2 and discuss their proposal, and you just let it wither on
 3 the vine --
 4 A That's not correct.
 5 Q -- you never proceeded.
 6 A That's not correct.
 7 MR. EHRENFELT: Objection.
 8 A That's not correct.
 9 Q Okay, so what was it, then? What's incorrect about
 10 my statement?
 11 A We did put serious consideration to this.
 12 Q Where are the documents that's your serious
 13 consideration?
 14 A Well, somewhere in here is a Subsidium
 15 comparison -- not in here, what you have, but in all the
 16 documents that are on the website, that compares the
 17 Clinic versus the strategic objectives, the ten options we
 18 had, it does the same thing with Metro, compares the two
 19 together, gives the advantages and disadvantages of each,
 20 and contemplates sort of the vulnerability of the
 21 execution questions of Metro.
 22 And I think the challenge with the Metro option is
 23 that, you know, the more scrutiny it got, the weaker it
 24 got, and then they withdrew.
 25 Q And how did it get weaker? What was the scrutiny

1 them.
 2 Q Well, when you were there to have these
 3 conferences, as you've indicated, with Dr. Bronson, you
 4 had like nine different versions of the Lakewood
 5 HealthCare Partners, okay?
 6 So apparently, there had been some back and forth
 7 between you and Dr. Bronson, or Lakewood Hospital
 8 Association and Dr. Bronson, as to what the plan was for
 9 the Cleveland Clinic, over a year period of time; is that
 10 correct?
 11 A Well, I would say, over five years, over 20 years.
 12 Q Okay.
 13 A They're the current operator of the hospital.
 14 You're meeting with them on a variety of issues.
 15 Q Yet you cannot produce a single piece of paper, or
 16 any document indicating that you responded to the Metro
 17 proposal with alternate terms --
 18 A What does this say (indicating)?
 19 Q That's a letter from Dr. Boutros to you.
 20 Where is your response saying, Item Number 1 is not
 21 good enough, Item Number 2 is not good enough, you're
 22 going to have to have access to capital, where are you
 23 going to get it, where are all of those responses? How do
 24 you negotiate a deal if you don't -- if you remain silent?
 25 MS. ARMSTRONG: Objection.

1 MS. STRATFORD: Objection.

2 MR. EHRENFELT: Objection.

3 MR. CAHILL: Objection to the form,
4 argumentative, compound.

5 **Q** How do you do that, Mayor? Huh?

6 **A** I don't know what your question is.

7 **Q** How do you negotiate a deal if you remain silent
8 and do not give response back to the prospective operator
9 of the hospital, that these are the things that you need
10 in the deal?

11 MR. CAHILL: Objection.

12 MR. EHRENFELT: Objection.

13 MS. ARMSTRONG: Objection.

14 MS. STRATFORD: Objection.

15 **A** We're going to negotiate a deal with somebody who
16 withdraws? I don't get it.

17 **Q** They withdrew because you neglected to respond.

18 MR. CAHILL: Objection.

19 MS. STRATFORD: Objection.

20 MR. EHRENFELT: Objection.

21 MS. ARMSTRONG: Objection.

22 MR. EHRENFELT: There's no question.

23 **Q** That's a statement. Do you agree with that?

24 **A** No, I don't agree with anything you said there in
25 the last five minutes.

1 To move things along, Mr. Summers, this is dated --
2 this is Lakewood Hospital Association Board of Trustees
3 Minutes, July 18th, 2008. I know you were not on the
4 Board at that time, so I'm turning your attention to the
5 third paragraph, okay, and the comments made by Fred
6 DeGrandis at that point in time, okay? Do you see that?

7 **A** I'm reading it.

8 **Q** Okay.

9 **A** You're talking about the third paragraph, right?

10 **Q** Yes, sir.

11 **A** Okay.

12 **Q** Okay, going to the last sentence of that paragraph,
13 or second last, "The Lease and City Charter were then
14 briefly reviewed including those services required by the
15 lease and Lakewood Hospital's obligation to return the
16 hospital to the City at the end of the Lease term as a
17 going concern able to stand on its own. Both
18 Mr. DeGrandis and Gustin also commented on research from
19 the Advisory Board related to lease conversations across
20 the country." Okay, do you see that?

21 **A** I do.

22 **Q** Do you agree with that representation made by
23 Mr. DeGrandis of Lakewood Hospital's obligation to return
24 the hospital to the City at the end of the Lease term as a
25 going concern able to stand on its own?

1 **Q** Okay. All right. Let's keep on going.

2 Okay, so the withdrawal occurs, you get it on
3 October 10th of 2014, you never made a call or contacted
4 Dr. Boutros, or anybody at MetroHealth, to say -- ask them
5 to reconsider or to try to get them to continue to
6 negotiate.

7 MR. CAHILL: Objection.

8 **Q** Is that correct?

9 **A** I took the statement at its face value, he was not
10 interested in Lakewood.

11 **Q** Okay. When did the Letter of Intent, the first
12 draft of that, come about?

13 **A** I'm guessing November or December. November,
14 probably.

15 **Q** And the Letter of Intent, you did not, during the
16 summertime, with Subsidiary, and you're caucusing with the
17 Cleveland Clinic, ever use a working document as a Letter
18 of Intent?

19 **A** Somewhere missing here was their original
20 proposal --

21 **Q** Okay.

22 **A** -- with the financial implications of it, which was
23 unacceptable at that point. So that was the working
24 document we would have had in the summer of 2014.

25 **Q** Okay. Let's go to -- let's go to 41.

1 MR. CAHILL: Objection to the form of the
2 question.

3 MS. ARMSTRONG: Objection.

4 MS. STRATFORD: Objection.

5 MR. EHRENFELT: Objection.

6 **A** I don't -- I think the context -- this refers to a
7 variety of conversations that I wasn't --

8 **Q** I'm asking you, do you agree with that term?

9 MR. CAHILL: Same objection.

10 MS. ARMSTRONG: Same objection.

11 MS. STRATFORD: Objection.

12 MR. EHRENFELT: Objection.

13 **A** The term you're referring to is, to return the
14 hospital.

15 **Q** Yes.

16 **A** I think that is somewhere mentioned in the Lease
17 Agreement, but I don't know the context of this
18 conversation.

19 **Q** Okay. And what about as far as, a going concern
20 able to stand on its own?

21 MS. STRATFORD: Objection.

22 **Q** Do you agree with that, whether that's the
23 obligation?

24 MR. CAHILL: Objection.

25 **A** Whether the Lease says it?

1 Q Yes.
 2 MR. EHRENFELT: Objection.
 3 A I would have to review the Lease.
 4 Q All right. Have you ever reviewed the Lease?
 5 A I have reviewed the Lease.
 6 Q Okay. Going to the second page --
 7 A I don't remember it in great detail.
 8 Q Okay.
 9 A I'd have to read it.
 10 Q That's why you have lawyers here.
 11 A That's right.
 12 Q Going to the last -- second last paragraph, where
 13 it starts out, Mr. DeGrandis reviewed strategic options;
 14 do you see that?
 15 A Yes.
 16 Q With the preferred option being resizing of the
 17 hospital, the restructuring of beds from primarily
 18 semi-private rooms to private rooms and decreasing the
 19 available beds from 275 to approximately 194 with a
 20 capital investment in the approximate range of 50 million,
 21 okay, do you see that?
 22 A I do.
 23 Q Were you aware of those discussions taking place in
 24 2008, when you joined the Board and became involved?
 25 A I did not join the Board in 2008.

1 the community is that we are committed to the appropriate
 2 number of beds needed to service the community. The
 3 Vision 2010 plan was reviewed with Mayor Fitzgerald and
 4 Mr. Kelley --" that's Nate Kelley, isn't it --
 5 A Correct.
 6 Q -- right? "-- who provided their full support."
 7 Okay?
 8 And that's in November of 2008, that that was --
 9 apparently that the records or the notes of the meeting
 10 Minutes indicate that there is this Vision of 2010 plan,
 11 and to right-size the hospital.
 12 MR. EHRENFELT: Objection.
 13 MS. STRATFORD: Objection.
 14 MS. ARMSTRONG: Objection.
 15 A We're talking about the Executive Committee.
 16 Q Yes, sir.
 17 A Okay.
 18 Q Okay.
 19 A And I wasn't there. I'm not familiar with these
 20 descriptions.
 21 Q Have you talked to Ed Fitzgerald since the Letter
 22 of Intent was announced in January of last year?
 23 A He was County Executive when, I think -- no, was
 24 he --
 25 Q He was out by then.

1 Q I'm not saying that. When you joined the Board in
 2 20 -- the fall of 2010, were you aware that there had been
 3 planning activities going on in 2008 to resize the
 4 hospital?
 5 MR. EHRENFELT: Objection.
 6 MS. STRATFORD: Objection.
 7 A I subsequently learned over the period of the last
 8 several years about many of these plans.
 9 Q Okay. All right. Okay, Number 42.
 10 Okay, again, this is November 13th, 2008 Minutes of
 11 Lakewood Hospital Association Board of Trustees.
 12 Going to the second paragraph, "Discussion ensued
 13 regarding components of the plan including the lack of
 14 commitment by trauma physicians to the program and the
 15 consideration of reorganizing from a Level II to Level III
 16 trauma program as well as right-sizing of the hospital.
 17 The Cleveland Clinic is fully committed to the community
 18 hospitals and has a strategic capital plan to support
 19 them."
 20 Okay, did you see that?
 21 A I see it's plural.
 22 Q Okay.
 23 A Hospitals is plural.
 24 Q Right.
 25 So to go on to the next paragraph, "The message to

1 A He was out by then.
 2 Q He was running for Governor a couple years ago.
 3 A Yeah, right.
 4 Yeah, I did talk to him about the context of the
 5 hospital.
 6 Q Okay. And have you shared with him any materials
 7 or information about the proposal going forward, the
 8 Letter of Intent or the Master Agreement?
 9 A No.
 10 Q Has he attended any meetings with you and other
 11 people associated with --
 12 A Not that I'm aware of.
 13 Q Has he been over there at any of the strategy
 14 meetings involving going forward?
 15 A No.
 16 Q Okay. 43.
 17 Were you familiar with Noblis?
 18 A I was aware they did sort of a marketplace review.
 19 Q Okay, and what did you understand from that
 20 marketplace review?
 21 A Well, my recollection of it -- and this is just two
 22 pages of a fairly complex document, so this is incomplete.
 23 Q Right, these are pieces of it. I'm sorry, I'm not
 24 intending to mislead you, but it's multiple, multiple
 25 pages, okay?

1 My attention is drawn to these two slides, as
2 Exhibit 43. These were provided to us through discovery.
3 They are known as Pages 53 and 51 in that report.

4 And I'll even speed it up a little bit. Go to the
5 second page, which they are out of order. 51, okay?

6 A Okay.

7 Q All right. So there apparently -- by this
8 consultant, Noblis -- did you read this report?

9 A I looked at it, I think, back in 2011 or '12.
10 And what's the date of this report?

11 Q I believe that this is --

12 A I think it's 2009 or '10.

13 Q Hold on. I believe this is 2009.

14 Okay, look at the second page, where you see this
15 Key Themes from Leadership Interviews.

16 Were you ever interviewed as a community leader by
17 consultants for Lakewood Hospital?

18 A No. In 2009, I was a member of City Council.

19 Q Okay. Were you interviewed as a member of City
20 Council at that time?

21 A I don't recall that, no.

22 Q Looking at this, it says, The greatest diversity of
23 opinion seems to be around Lakewood Hospital's role in the
24 Cleveland Clinic Health Systems, okay?

25 The first item is, There was a stronger sense at

1 great physicians that are worth people to leave their home
2 market to go to your market.

3 And the question is, what markets would those be,
4 and where would these physicians come from? Because it's
5 a highly risky strategy to implement, and you have to
6 launch it from a position of great internal medical
7 delivery strength. Lakewood Hospital, as we grew to
8 understand, didn't have that strength.

9 So it was a desirable option, we'd love to have
10 been able to pull it off, but as we grew to understand our
11 ability to do that, with the vulnerability which I just
12 identified, it was not viewed as a likely success.

13 Q Okay.

14 A And the other problem with especially a hospital
15 is, it doesn't meet the needs of the local community. It
16 meets the needs of those who need specialized care. They
17 may come from wide and far, that's great, but it doesn't
18 meet the community needs. Again, our two focuses were,
19 meet the needs of the community, and remain financially
20 viable long-term.

21 So some of these strategies might have -- might
22 have, although I doubt it, and we agreed that they would
23 have preserved some rudiment of an inpatient hospital, but
24 it wouldn't have served our community.

25 Q Okay. Now let's go forward. I'm almost there.

1 the hospital level that Lakewood Hospital should
2 strengthen its role as a niche hospital for the system and
3 serve as a strong regional resource for selected niche
4 programs with more system support to steer both local
5 general cases and regional niche cases.

6 At the system and regional level, Lakewood Hospital
7 was viewed more as a community hospital that would serve
8 as a "feeder" to the hub hospital in the region and to
9 the main campus downtown. The two recognized regional
10 programs for Lakewood Hospital were Neurology and
11 Rehabilitation. Okay?

12 So I guess my question about that is, when you came
13 on the Board at Lakewood Hospital Association, was there a
14 difference of view as far as what the administrators were
15 telling you on behalf of the Cleveland Clinic as to the
16 role of Lakewood Hospital, and what the expectations were
17 from the community as to the role of the hospital?

18 A I don't think we were concerned whether there was a
19 difference, although that's why we elected to get
20 independent advice from a firm like Subsidium. And in
21 fact, the niche hospital or specialty hospital was one of
22 ten strategic options.

23 And the question of, if you're going to behave as a
24 strategic specialty hospital, one of the key components is
25 significant competence of physicians, you have to have

1 Okay. This is 45.

2 MR. EHRENFELT: No 44?

3 MR. DEVER: No 44.

4 Q Again, Lakewood Hospital Association Minutes of the
5 Special Meeting of the Finance & Audit Committee dated
6 November 30th, 2010.

7 So this is close in time to when you were on the
8 Board or about to join the Board; is that right?

9 A I probably had attended one meeting at this point.

10 Q Okay. All right.

11 Now, Mr. Haber is quoted in here. He called the
12 meeting to order for the Special Committee.

13 In looking at his -- at the last paragraph, okay --

14 A On Page 1?

15 Q Page 1, yes, sir.

16 And of course, these Minutes are being prepared
17 by -- I think this is Mr. Meehan, is doing this? Yes,
18 okay. He's serving as Secretary for the meeting.

19 It indicates, the last paragraph, halfway through
20 it, "He also indicated --" when I'm referring to he, it
21 must be that they're referring to Mr. Haber "-- indicated
22 that there were fundamental issues that needed --"

23 MR. EHRENFELT: Wait, I can't see where you
24 are.

25 MR. DEVER: First --

1 MR. EHRENFELT: I'm sorry, which page?
 2 MR. DEVER: Page 1, third paragraph, about
 3 halfway through, it says, "He also." Do you see it
 4 there?
 5 MR. EHRENFELT: I've got you. Thank you, yes.
 6 MR. DEVER: All right.
 7 BY MR. DEVER:
 8 **Q** "He also indicated that there were fundamental
 9 issues that needed to be reviewed regarding the long-term
 10 sustainability of the Hospital, particularly in light of
 11 the responsibility of the Trustees to provide oversight
 12 for an important city asset. He called upon the members
 13 of the Committee to offer their initial reflections, and
 14 each member of the Committee, as well as Mr. Baker,
 15 thereupon expressed his views and potential concerns
 16 regarding the Hospital's financial situation." Okay?
 17 Then go to the second page, all right, where
 18 there's even some further comments that are being made,
 19 all right, do you see the second -- the second paragraph,
 20 I'm going to Dr. Bronson's comments --
 21 **A** Okay.
 22 **Q** -- do you see them there?
 23 **A** I do.
 24 (Thereupon, Mr. Graham left the room.)
 25 MR. EHRENFELT: Sorry, I got distracted. I

1 Were you aware, in either conversations with your
 2 colleagues on City Council, or with Mayor Fitzgerald, or
 3 with Mr. Haber, or any of your soon to be colleagues on
 4 the Lakewood Hospital Association, that Dr. Bronson
 5 apparently was not convinced that the Vision for Tomorrow
 6 plan that had been presented four months ago, four months
 7 ago to Lakewood City Council as a viable plan to make the
 8 hospital sustainable, that Bronson, at this point in time,
 9 is not convinced that this is going to work?
 10 MR. CAHILL: Objection to the form of the
 11 question.
 12 MS. STRATFORD: Objection.
 13 **Q** Were you aware of that?
 14 **A** I was not aware of that.
 15 **Q** Okay. So when did you first become -- did you ever
 16 have a conversation with Dr. Bronson where he said to you
 17 that he didn't think the Vision for Tomorrow was going to
 18 be a viable, sustainable plan?
 19 **A** I remember a conversation, probably early on in
 20 2011, the first half, where I think I recognized, from my
 21 experiences, looking at the performance of the hospital,
 22 and in the context probably of similar comments like
 23 these, that where we're headed, if we do nothing, we'll
 24 end up in the dissolution of the hospital.
 25 **Q** Okay.

1 don't know how.
 2 MR. CAHILL: Walter, how could you be
 3 distracted by that?
 4 MR. DEVER: Second paragraph.
 5 MR. EHRENFELT: Okay. On the second page?
 6 MR. DEVER: Second page.
 7 MR. EHRENFELT: Okay.
 8 BY MR. DEVER:
 9 **Q** Almost that second last sentence, He said he had
 10 spoken with City leadership --
 11 MR. EHRENFELT: I'm with you.
 12 MR. DEVER: Okay, are we all together?
 13 MR. EHRENFELT: Thank you.
 14 **Q** -- regarding the fundamentals of the relationship
 15 between the Hospital and the Cleveland Clinic, and he
 16 encouraged further dialog involving the Trustees as well.
 17 He said that he was not convinced that the Revised Vision
 18 for Tomorrow Plan would achieve sustainability, and he
 19 expressed support to work with the Trustees and City
 20 leadership to achieve an appropriate long-term vision and
 21 relationship. Okay?
 22 My question to you, Mr. Summers, at that point in
 23 time, you are on City Council, you may or may not have
 24 been appointed at that point in time to the Lakewood
 25 Hospital Association Board.

1 **A** And that was the beginning of my -- what I
 2 recognized as my duty as Mayor of Lakewood, to step in and
 3 say, I've got to find out more about health care, I've got
 4 to find out more about this hospital, I have to find out
 5 which partners might be appropriate for us.
 6 I independently met with Sister Judith Karem in
 7 that year, probably June or July. I independently called
 8 Tom Zenty, who I knew as one of my classmates from
 9 Leadership Cleveland, Class of 2004, and I indicated that
 10 I'm a new Mayor, we've got a problem over here in Lakewood
 11 with our hospital, would he be willing to sit down and
 12 meet with me to help me understand what strategic options
 13 I might have and might University Hospital be interested
 14 in.
 15 And at that point, he referred me to his Chief
 16 Strategy Officer, Paul Tait. So I never met personally
 17 with Tom, but I did meet with his number two guy.
 18 **Q** So let me ask you, then, these comments that
 19 Dr. Bronson is making in November of 2010 to one of the
 20 committees of the Lakewood Hospital Association, should
 21 this have been information that should have been presented
 22 to the Lakewood City Council in June of 2010 when they
 23 were weighing this important decision?
 24 MR. CAHILL: Objection to the form of the
 25 question.

1 MS. STRATFORD: Objection.
 2 **Q** You, as a Councilman, would you have appreciated
 3 that kind of candor from Dr. Bronson?
 4 **A** I think we had already made the decision by then,
 5 had we not?
 6 **Q** In June of 2010. You voted on that on June 10th of
 7 2010?
 8 **A** Yeah, right.
 9 Yeah, it would have been helpful.
 10 I will tell you, I think the market was shifting
 11 radically. The Affordable Care Act, you know, was
 12 becoming --
 13 **Q** I understand that. I'm just -- access to straight
 14 talk, to straight information, is what I'm talking about.
 15 MS. STRATFORD: Objection.
 16 MR. EHRENFELT: Objection.
 17 **A** No, first of all, we don't know, when he says he
 18 talked to City leadership somewhere along the line --
 19 **Q** I'm just asking you, as a member of City Council,
 20 when you were weighing this decision --
 21 **A** We had already weighed it.
 22 **Q** -- in June of 2010.
 23 **A** Dr. Bronson, I believe, was also new to his job.
 24 **Q** Okay. My question is whether or not there's an
 25 explanation as to why Dr. Bronson did not share these

1 MS. STRATFORD: Objection.
 2 **A** You know, I can't speak to any specifics.
 3 **Q** Well, my question is, would you, as a Council
 4 member, in making one of the most important decisions that
 5 you made as serving on Lakewood City Council -- you'd
 6 agree with that, wouldn't you?
 7 MR. CAHILL: Objection.
 8 **A** As a Council member, I'd like perfect information
 9 on every issue that I contemplated.
 10 **Q** Right.
 11 But if the chief of the hospital is telling the
 12 Lakewood Hospital Association he's not convinced that the
 13 Vision for Tomorrow is going to make the hospital
 14 sustainable, it should have been shared with you folks, as
 15 well; isn't that right?
 16 **A** Well, I think that's his opinion, he's not
 17 convinced. It doesn't mean he's not unconvinced. In the
 18 context of strategy, and evolution of performance, there
 19 are so many nuances.
 20 MR. DEVER: Tape?
 21 THE VIDEOGRAPHER: Yes.
 22 MR. DEVER: Okay.
 23 BY MR. DEVER:
 24 **Q** So you don't think that the failure to disclose
 25 this information left City Council with a false impression

1 opinions with you back in June of 2010, it would have been
 2 beneficial had he given that information to you.
 3 MS. STRATFORD: Objection.
 4 **A** You know, I'm not sure how to respond to that.
 5 **Q** Well, you had a huge calamity, you had -- there was
 6 a great debate going on within City Council as to
 7 whether -- what the intentions of Cleveland Clinic were
 8 with Lakewood Hospital, they wanted to remove these
 9 services.
 10 **A** Yeah, I understand that.
 11 **Q** And were telling -- or at least making
 12 representations that the Vision for Tomorrow would put you
 13 on the path to sustainability.
 14 Don't you think that had Dr. Bronson knew at that
 15 time that he was not convinced that this would make the
 16 hospital sustainable, that he should have shared that with
 17 the people of Lakewood?
 18 MS. STRATFORD: Objection.
 19 MR. CAHILL: Objection to the form of the
 20 question.
 21 **A** I think we should clarify when Dr. Bronson showed
 22 up as the head of regional hospitals.
 23 **Q** He was there in January of 2010. Mr. DeGrandis was
 24 replaced in April of 2010. So Bronson's all in this.
 25 MR. EHRENFELT: Objection.

1 or a false belief that the Vision for Tomorrow was going
 2 to put them on the path to sustainability?
 3 **A** I can't comment on this -- on these notes in that
 4 conversation.
 5 **Q** Okay.
 6 **A** I wasn't there.
 7 MR. DEVER: Do you want to change?
 8 THE VIDEOGRAPHER: Sure.
 9 MR. DEVER: I'm almost there, folks.
 10 THE VIDEOGRAPHER: Off the record, 6:13.
 11 (Thereupon, a discussion was had off the
 12 record.)
 13 (Thereupon, Mr. Graham reentered the room.)
 14 THE VIDEOGRAPHER: We are back on the record.
 15 Tape Number 5. 6:15.
 16 BY MR. DEVER:
 17 **Q** Okay, Mr. Summers, showing you what's been marked
 18 as Exhibit Number 46, Minutes of meeting for Lakewood
 19 Hospital Association Board of Trustees dated October 21st,
 20 2011. Going to the first page, the Shared Services
 21 Overview; do you see that?
 22 **A** I do.
 23 **Q** Okay. And then the last paragraph there, let's
 24 talk about administrative services. There has been some
 25 contention through the course of public debate about the

1 fidelity of the Cleveland Clinic to honor the terms of the
2 Definitive Agreement, that there were unreasonable
3 administrative costs that were saddled onto the balance
4 sheet of Lakewood Hospital, okay, you've heard those
5 criticisms?

6 MR. CAHILL: Steve, to quickly interrupt, for
7 the record, this is Minutes of a Special Meeting of
8 the Finance Committee.

9 MR. DEVER: Yes.

10 MR. CAHILL: I think you stated it was a
11 meeting of the whole Board.

12 MR. DEVER: I'm sorry, I don't want to mislead
13 anybody.

14 BY MR. DEVER:

15 **Q** Mr. Summers, you weren't at this meeting, either.
16 But I'm just trying to get your understanding as to the
17 context of the administrative services, the charges that
18 the Cleveland Clinic was placing on the balance sheet of
19 Lakewood Hospital, as to whether or not they were
20 reasonable, whether they were properly incurred, or
21 whether their methodology was fair to accurately reflect
22 value of services given.

23 MS. STRATFORD: Objection.

24 **Q** Do you understand what I'm trying to talk about?

25 **A** I understand.

1 And the idea is, you get a lower cost, more focus,
2 theoretically more talent. You lose some local autonomy.
3 Some things are gained, some things are lost.

4 Normally, there's a lot of pushing and shoving
5 between the formula and the operating unit. That's not
6 uncommon, with Ford, GM.

7 At Summers Rubber, we did the same thing. We had
8 eight operating units, and we allocated our overhead --
9 our headquarters operation against those units by a
10 formula consistently, and that's what they did here.

11 And we learned from Huron Consulting that the kind
12 of cost and the scope of the services were in the normal
13 range, on the high end of the normal range, but not
14 unreasonable, given the nature of the services delivered.

15 I would also say what's important in the context
16 of these administrative costs, that you look at the total
17 cost of Lakewood Hospital over the last five years in
18 particular. Total costs have dropped.

19 So shared costs have gone up, total costs have
20 dropped, which is a good goal when you're losing revenue,
21 and you've got to shift, then, to a variable cost model
22 from a fixed cost model.

23 In the days of old, Lakewood did a lot of these
24 services on their own. They employed people locally who
25 provided these services.

1 **Q** Okay, can you just walk me through, very briefly,
2 the administrative services and how those were charged to
3 Lakewood Hospital by the Cleveland Clinic.

4 **A** Well, I didn't spend much time, ever, on this
5 question. Others did. Others such as Ken Haber, Gary
6 Pritts, Dennis Roche, Curt Brosky, Tom Coury, very, very
7 effective businessmen, understand complex organizations
8 very well, we were very fortunate to have these folks
9 serve in this capacity. So they brought enormous amount
10 of expertise to it.

11 And I would say, in the context of the whole
12 conversation over the last several years, the
13 administrative services are classic headquarters operation
14 allocated over some formula, which I grew to understand
15 was a consistent formula applied to every operation of the
16 Clinic, no different than Ford does, and General Motors
17 does, and University Hospitals does, everybody takes their
18 overhead piece and applies it to their operating units.
19 And the Cleveland Clinic has done that.

20 They oftentimes, in the attempt to provide a lower
21 cost of these services, consolidate them. Rather than
22 have 50 different hospitals providing legal services,
23 they combine it into one. They don't have 50 different
24 marketing departments, you've got one. And so on, and so
25 forth.

1 So those were fixed costs, those costs were there
2 whether you made a hundred million in revenue, or 80
3 million in revenue. And as revenues dropped, it was a
4 responsible decision to shift as much as you can to a
5 variable cost basis, you only incur them when you need
6 them, they're not fixed, and therefore drag the
7 performance of operation down.

8 So here, you have a complex list of services, a
9 very complex list, reflecting, I think, the complexity of
10 a health care delivery model, and the result was, Lakewood
11 Hospital, in particular, was able to lower its total
12 operating costs pretty dramatically, by about 15 million
13 dollars over the last four years in particular, even
14 though administrative costs went up as a percentage.

15 **Q** Well, did you ever -- did the Board or at any time
16 did you employ the assistance of accountants to actually
17 go back and verify and audit the charges that the
18 Cleveland Clinic was charging back to Lakewood Hospital?
19 **A** Well, ultimately, Huron Consulting was given that
20 charge.

21 **Q** Okay, but that was after you had had a Letter of
22 Intent and everything else.

23 **A** But I think the Finance Committee, given the nature
24 of these representatives here, are very capable of doing
25 that review, and they did.

1 Q Well, let's just take a for instance now.
 2 Cleveland Clinic operates these call centers, where you
 3 can -- if you want a doctor, or to get an appointment.
 4 Those call centers, is a portion of that cost for
 5 operating those call centers charged back to Lakewood
 6 Hospital?
 7 MS. STRATFORD: Objection.
 8 A I can't answer that question specifically. I don't
 9 know.
 10 Q Did you ever ask that question?
 11 A Not that specific question.
 12 Q Okay, what about as far as referrals to other
 13 facilities other than Lakewood Hospital by the Cleveland
 14 Clinic, were there charge-backs for those services to
 15 Lakewood Hospital?
 16 A I don't know. I don't have direct knowledge of
 17 that.
 18 Q Okay. Have you ever asked that question, or
 19 anybody on the Lakewood Hospital Association?
 20 A Not that particular question.
 21 Q Okay. The Columbia Road, the closing down of the
 22 CT scanning and the imaging center at Columbia Road, there
 23 was a vote that the Lakewood Hospital Association took to
 24 approve that closing. Were you aware of that?
 25 A You mean as a result of our new Master Agreement?

1 Q No, prior to that.
 2 A I'm not.
 3 Q 2014, I believe, is when they agreed to close down.
 4 There was a joint venture between Fairview Hospital and
 5 Lakewood Hospital.
 6 A There still is imaging there, so I'm not sure
 7 specifically what you mean.
 8 Q Okay. So let me ask you:
 9 Do you know, have they appointed a representative
 10 of the Cleveland Clinic to wind down the operations of
 11 that business venture?
 12 A I'm not familiar with that particular piece.
 13 Q Those operations over at the Columbia Road
 14 facility, do they pay fair market rent to Lakewood
 15 Hospital for the use of that space?
 16 A It's my understanding that they pay rent. How long
 17 those leases have been in place and what fair market is
 18 today --
 19 Q And who is responsible for the rent calculation?
 20 Is that the Trustees, or is that the administration at
 21 Lakewood Hospital?
 22 A Well, the Clinic is a tenant there, as are several
 23 independent physicians. So Lakewood Hospital Association,
 24 I think, owns the facility, but it was operated and
 25 overseen by the Cleveland Clinic, who employed a third

1 party, I think, rental manager.
 2 Q Okay, so the rents are established through the
 3 Cleveland Clinic's operation -- management; is that
 4 correct?
 5 A That's correct.
 6 Q Okay. How much charity care did Lakewood Hospital
 7 provide to patients?
 8 A In which year?
 9 Q Last year, or the most recent year.
 10 A Well, fortunately, with the Medicaid voucher,
 11 that's been dropping. But that's recent.
 12 Q Right.
 13 A I remember numbers of 10 million, 12 million, 14
 14 million, somewhere in that range.
 15 Q Okay. And over that time period, did you identify
 16 who that charity care was going to?
 17 MR. CAHILL: Objection to the form of the
 18 question.
 19 A Not specifically. But intuitively, it's pretty
 20 clear that you've got a city whose poverty rate has gone
 21 from four percent to 17 percent. You're surrounded by a
 22 couple zip codes that dwarf that in terms of their
 23 poverty. 44102, 44111, those are Cleveland neighborhoods,
 24 significant poverty levels there. I mean, it mirrors the
 25 community.

1 Q Well, where is -- with the removal of these
 2 services, as far as inpatient charity care provided at
 3 Lakewood Hospital, where is that going to go in the
 4 future?
 5 A I imagine Metro will get a piece, Fairview will get
 6 a piece, Lutheran will get a piece.
 7 Q Okay.
 8 A But part of the goal, ultimately, in a lot of that
 9 charity care --
 10 Q I understand.
 11 A -- is primary care delivered through the emergency
 12 room.
 13 Q Well, you still recognize that from time to time,
 14 you will require inpatient stay for an illness --
 15 A That's correct.
 16 Q -- or ailment, right?
 17 A Right.
 18 Q Okay.
 19 A We're surrounded by five hospitals in probably
 20 seven miles or less.
 21 Q In your planning activities in putting together the
 22 Letter of Intent, did you quantify or calculate where that
 23 charity care would go or how those needs to the community
 24 would be met?
 25 A I imagine a substantial amount of that care will go

1 to the family health center.

2 Q Okay, so that's how you sized that family health

3 center, was to be able to absorb that?

4 A I didn't -- I didn't size that hospital --

5 Q Okay.

6 A -- or the family health center. That's a Clinic

7 experiential factor here.

8 Q But did you raise those questions --

9 A Sure.

10 Q -- as far as looking out for the interest of the

11 indigent?

12 A Remember, the goal is to serve the needs of the

13 community of Lakewood, which includes all of the community

14 of Lakewood, every one of them.

15 Q Let's talk about the emergency room then, okay?

16 Average patient visits at the emergency room averaged,

17 what, around 32,000, something like that, per year; is

18 that correct?

19 A 32,000 visits? That seems very high to me.

20 Q Okay, well, what do you understand it to be?

21 A I don't remember any -- visits?

22 Q Yes.

23 A I would have to look at the numbers. Total -- my

24 recollection is, the total hospital service capacity was

25 like 26,000.

1 that exist at Jacobs Center and Brunswick, and they're

2 probably the same size. Same size, roughly.

3 Q Well, the Brunswick facility and the Jacobs Center

4 out in Avon, they don't have the population density that

5 you have, do they?

6 A Well, you can look at the whole market. I mean,

7 the Jacob Center draws from five counties.

8 Q Well, we're talking your 50,000 citizens who live

9 here in Lakewood.

10 A Well, if you take Bay Village, Westlake --

11 Q Rocky River.

12 A -- North Olmsted, you take Avon Lake, and you add

13 it all, that exceeds Lakewood Hospital.

14 Q So my question is, in contemplating protecting the

15 interests of the citizens of Lakewood, is there a current

16 plan in place where you can tell us today, under oath, as

17 to what the size, patient size load will be for the

18 Lakewood Emergency Room?

19 A I'm not aware of a specific plan of the size. But

20 I am aware of the commitment to serve it, whatever it

21 takes.

22 Q Well, when do you think that you're going to have

23 that plan?

24 A I suspect you'll see that plan in two or three

25 months.

1 Q Okay. So is the --

2 A So it wouldn't be higher than that.

3 Q You don't agree with that number that I asked you?

4 A I'd have to -- I can't accept it at face value. I

5 would have to --

6 Q Okay. All right.

7 A I mean, if you showed me a document --

8 MR. DEVER: Get that slide show there, one of

9 those slides from Strauss' depo.

10 BY MR. DEVER:

11 Q Okay, as to going forward with the emergency room,

12 as the plan has been formulated and the Master Agreement

13 calls for, the emergency room will be sized substantially

14 smaller than currently exists.

15 A I don't think that's known yet.

16 MR. CAHILL: Objection to form.

17 Q Pardon me?

18 A I don't think that's clear at all. I don't think

19 that's known.

20 Q Okay. So you, in putting this Master Agreement

21 together, have no idea what size of an emergency room

22 you're going to have?

23 MR. CAHILL: Objection to form.

24 MS. STRATFORD: Objection.

25 A What I do know, it will be comparable to the ones

1 Q Okay. And then let me ask you, how is it that if

2 you find that the plan is not sufficient for what you

3 perceive to be the need, how do you go about, as Mayor of

4 Lakewood, convincing Cleveland Clinic that they need to

5 change their plans?

6 (Thereupon, Mr. Graham left the room for the

7 remainder of the deposition.)

8 A First of all, I don't consider myself, or probably

9 anybody in this room, an expert of how to deliver

10 emergency care through an emergency room. So we would

11 rely on others who do.

12 Q Okay.

13 A And you know, today, no matter what the operation,

14 you would look at not necessarily the size of the

15 operation, but its ability to deliver services and turn

16 over those services.

17 So one of the questions we would want to explore is

18 not the scope -- not the physical size, but the delivery

19 construct. And I believe emergency care is the type of

20 care that keeps evolving.

21 And remember, one of the ultimate goals is to have

22 fewer people show up at the emergency room for primary

23 care.

24 Q Sure, yeah. Those are goals.

25 A Yeah. They're important goals.

1 **Q** Showing you back at Exhibit -- Plaintiff's
2 Deposition Exhibit 17, this is from the Westlake Reed
3 documents, if you take a look at the last page, it's
4 Westlake Reed 1204, ED in Transition, okay?

5 You have Lakewood Hospital showing 10,000 visits
6 going to Lakewood Family Health Center/Ambulatory Surgery
7 Center, 10,000 visits going -- 10,000 or 11,000 visits
8 going to outside the Cleveland Clinic system, and then
9 7,000 or 8,000 visits going over to Fairview Hospital.

10 So I wasn't a math major in college, but if you
11 take those 8,000, plus 10,000, 18,000, plus 17,000, we're
12 around 34,000, 35,000 patient visits; do you see that?

13 MR. CAHILL: Objection to the form, lacks
14 foundation.

15 MS. STRATFORD: I'm also going to object to
16 the use of these documents, incomplete documents,
17 for this particular question.

18 MR. DEVER: Sure, you can. Right.

19 **A** And I don't know whose numbers these are.

20 **Q** Well, these are -- I'll represent to you that these
21 were provided by Westlake Reed Architects, who prepared
22 the Master Plan and the decanting plan for Fairview
23 Hospital, okay?

24 MS. STRATFORD: Objection.

25 **Q** And the report itself.

1 community of Lakewood, showing up at about the same time I
2 did was Ken Haber. And Ken was very clear in his reading
3 of the context strategically and the financial
4 implications, and I was able to rely on him with great
5 confidence of his affirmation or concerns about where the
6 hospital is today, was then, where it's headed. So I did
7 rely on Ken.

8 **Q** A lot, right?

9 **A** Yes.

10 **Q** Okay. And just going to the second page, then, of
11 that document, speaking of Mr. Haber, Mr. Haber indicated
12 that if the Committee members begin to feel that the
13 current model was not --

14 MR. EHRENFELT: Where are you?

15 MR. DEVER: Last paragraph before Mr. Meehan's
16 conclusion there.

17 MR. EHRENFELT: Thank you.

18 MR. DEVER: Do you see it?

19 MR. EHRENFELT: Got it. Thank you.

20 BY MR. DEVER:

21 **Q** While it was not sustainable, "the Committee would
22 be able to move forward sooner in its deliberations. He
23 noted that the Hospital was losing approximately one
24 million per month and that the anticipated budget for 2012
25 would not provide relief. Mr. Haber expressed his thanks

1 They can go ahead and object all they want. I'm
2 still asking the question, okay?

3 **A** Yeah.

4 **Q** All right, so again, do you have an understanding
5 as to how many average patient visits, rolling over the
6 past three, four years, have taken place at Lakewood
7 Hospital?

8 MR. CAHILL: Objection, asked and answered.

9 **A** Inpatient and outpatient?

10 **Q** Just visits to the emergency room, sir.

11 **A** I don't recall that number.

12 MR. EHRENFELT: Objection.

13 **A** I don't recall that number.

14 **Q** You don't? Okay.

15 Can I ask you a few questions about -- or one more.
16 I'm almost there.

17 Okay, this is 47. Lakewood Hospital Association
18 Board of Trustees, Minutes of Special Meeting of the
19 Finance Committee, August 30th, 2011, and I have for the
20 record that you do not appear on these meeting Minutes.

21 Did you talk to the people who serve on the Special
22 Meeting of the Finance Committee to get updates as to what
23 they were -- what their strategies were, what they were
24 thinking and doing?

25 **A** You know, fortunately for the City of Lakewood, the

1 to those coming to the meeting, and encouraged all present
2 to attend the next meeting as well." Okay?

3 Were you -- at that point in time, in August of
4 2011, did you share the beliefs, as far as the hospital
5 not being sustainable in its current model?

6 MR. EHRENFELT: Objection.

7 MS. STRATFORD: Objection.

8 **A** Absolutely.

9 **Q** All right, let's go to the Master Agreement, okay?

10 And first of all, let's talk about, as far as negotiating
11 the agreement, or the contract, or the understanding
12 between the parties -- and let me see if I understand who
13 all the parties are.

14 The Cleveland Clinic Foundation, the Lakewood
15 Hospital Association, and then the Lakewood Hospital
16 Foundation is also; is that correct?

17 MR. EHRENFELT: Objection. That's not --

18 **A** They are not a party to --

19 MR. DEVER: I asked him the question, that's
20 all.

21 **A** Lakewood Hospital Foundation is not a party.

22 **Q** Okay. So this is an agreement between Lakewood
23 Hospital Association, Cleveland Clinic, and the City of
24 Lakewood; is that correct?

25 **A** That's correct.

1 Q Okay. All right.
 2 Did there come a point in time, over -- following
 3 the announcement of the Letter of Intent in December -- or
 4 January of 2015, where there was another proposal that was
 5 presented, or some discussions by operators from
 6 Tennessee? What was the name of that?
 7 A Surgical Development Partners.
 8 (Thereupon, Ms. Switzer left the room.
 9 Q Okay, tell us about Surgical Development Partners,
 10 and whether or not you ever had any conversations with
 11 those folks, or whether or not you ever received a
 12 proposal.
 13 MS. STRATFORD: Objection.
 14 A There was a proposal, non-binding, Letter of
 15 Intent --
 16 Q All right.
 17 A -- submitted in regard to 850 Columbia Road and
 18 other parcels.
 19 Q Okay. And what was the proposal as far as Surgical
 20 Development Partners? Were they --
 21 A Well, it was non-binding, fairly unspecific, that
 22 they might be interested in paying somewhere in the
 23 neighborhood of nine million dollars for certain pieces of
 24 real estate listed.
 25 Q Okay, so that was for the Columbia Road property,

1 Q Okay, so you were done with Subsidium, right?
 2 A They were long gone.
 3 Q Okay. What about the Trustees, as far as trying to
 4 at least evaluate this, as to whether or not it was
 5 realistic, or whether this was just something that would
 6 never have any type of reality to it?
 7 A There was recognition that there was a proposal --
 8 well, a non-binding Letter of Intent, it was not a
 9 proposal. It was not, certainly, an offer that was
 10 available, and did anybody understand who these guys were,
 11 and had they expressed any commitment to come and
 12 understand this market.
 13 And frankly, I never really -- I think there was
 14 a couple of exchanges of e-mails, but in fact, my
 15 expectation is, if they were really interested, I would
 16 expect them to show up here on the west side.
 17 Q Okay.
 18 A I have no evidence that they ever did.
 19 Q All right. Did you invite them to get in contact
 20 with people at the Lakewood Hospital Association to at
 21 least explore these opportunities?
 22 A When I talked to Eddie -- and by the way, I grew to
 23 understand that they are really a real estate model, they
 24 are not a health care delivery company, that they need to
 25 partner with physicians. And I asked him if he had

1 right?
 2 A Columbia Road.
 3 Q Why didn't you just -- that was a higher bid than
 4 the 8.2 that you were getting from the Cleveland Clinic.
 5 Why didn't you take that?
 6 A It was not a formal offer.
 7 Q Okay. Well, did you engage with those folks, or
 8 start the process of negotiations?
 9 A I called Eddie Alexander, the CEO. We had a
 10 lengthy conversation, trying to understand who they were,
 11 what their approach was, what their interests were, how
 12 they were financed, what experiences they had, had he been
 13 to this area, which he had not, how familiar he was with
 14 our particular situation or market, which was
 15 non-existent.
 16 And I said, well, you know, the proposal didn't
 17 come to me, it came to the Trustees, I'm interested in
 18 understanding your interest, and we'll see where this
 19 goes.
 20 Q Did you forward over to him, or to somebody to
 21 contact Subsidium, and have them send the Request for
 22 Proposals, the invitation, as well, asking them to, you
 23 know, put together a formal response?
 24 A No, I don't think Subsidium was involved at this
 25 point.

1 identified physicians who he was partnering with, and he
 2 was very vague on that point.
 3 And honestly, I didn't think his offer had a lot of
 4 strength to it, since he really frankly didn't pursue it
 5 with any vigor, that I'm aware of.
 6 (Thereupon, Ms. Switzer reentered the room.)
 7 Q Okay. All right.
 8 So you had, what, perhaps one or two telephone
 9 conversations?
 10 A One conversation.
 11 Q All right. And never any kind of meeting, or
 12 anything like that?
 13 A He never expressed an interest in it.
 14 Q And did you -- any kind of written response either
 15 from you or from Lakewood Hospital?
 16 A I can't speak to Lakewood Hospital Foundation.
 17 Q Okay.
 18 A I did not give him a written response.
 19 Q I mean, Lakewood Hospital Association, not
 20 Foundation.
 21 A Yeah, right. Sorry.
 22 Q Mr. Gable, did you ever have any conversations with
 23 Mr. Gable about the possibility that there may be another
 24 option to the hospital closing?
 25 MR. CAHILL: Objection to the form of the

1 question.

2 A We're talking 850 Columbia Road here.

3 Q No, I'm talking about the entire communication that

4 Surgical Development Partners gave to you.

5 A I never saw anything in writing that said they were

6 interested in Lakewood Hospital.

7 Q Okay. So those letters that had been sent did not

8 indicate that they --

9 A They were interested in 850 Columbia Road.

10 Q So there was no discussion whatsoever about

11 operating facilities at City of Lakewood?

12 A I was not aware of any.

13 Q You were unaware of that.

14 A Yeah.

15 Q Okay. All right.

16 Did you ever have a conversation with Mr. Gable

17 about Surgical Partners?

18 A I think there was a conversation with the entire

19 Trustees, recognizing that this was an interest of a group

20 from out of the state, that they had no presence here, and

21 nobody knew much about them, and frankly, didn't know how

22 serious they were.

23 Q Okay. Let's talk about, now, the Master Agreement,

24 okay?

25 You hired Huron -- or City Council hired Huron

1 A Well, presuming that partner was not any of the

2 ones we've talked about here today, I mean, a fifth party,

3 and not the Clinic, not UH, not Metro --

4 Q Right.

5 A -- is that the question?

6 Q No, my question is, did you ever view, at any time

7 throughout this whole episode of you being involved in

8 deciding what the future of health care in Lakewood is

9 going to be, did you ever consider at any time that you

10 had not, or that the City had not been fairly treated as

11 far as the obligations of the Cleveland Clinic to operate

12 Lakewood Hospital?

13 (Thereupon, Mr. Schmansky left the room)

14 A There were -- throughout the three or four years,

15 there were serious concerns about whether or not the

16 unique marketplace of Lakewood could be served in the

17 traditional way, and what that implication of change would

18 mean.

19 And I would say that concern was ultimately a

20 concern of Metro's model, because they were interested in

21 serving a very small population, primarily from their core

22 community of West 25th, and their recognition of serving

23 Lakewood as a community was also a concern. And

24 St. Vincent's and UH never had a concern, they were never

25 interested.

1 Consulting; is that correct?

2 A That's correct.

3 Q And they issued a report; is that correct?

4 A They did.

5 Q They had made some observations concerning the

6 proper marketing of the hospital to other potential or

7 possible health care providers; did you read that?

8 A I did.

9 Q Okay. And as far as questions concerning the

10 viability or the market of Lakewood itself being able to

11 sustain a hospital; do you recall reading those comments?

12 A Not only reading them, but listening to the oral

13 presentation of it.

14 Q And did you have any view that Lakewood Hospital

15 could continue to be sustained?

16 A Not from that report. Because their report was

17 very clear, and subsequent conversation with them

18 clarified that a marketplace with 52,000 people could

19 support a hospital if you had all the business.

20 So if you were a rural city, Mansfield, Ohio, or

21 the middle of Idaho, and you had 52,000 people, you

22 probably could support a hospital. That's not the

23 marketplace of Lakewood.

24 Q What about if you had a partner that would strive

25 to make it work, is that a key consideration?

1 Q Sure.

2 A So of course, I was concerned at every step of the

3 way.

4 Q You, as Mayor, do you feel, as you sit here today,

5 that you have done everything, exhausted every opportunity

6 to save Lakewood Hospital as an inpatient facility?

7 MR. EHRENFELT: Objection.

8 MR. CAHILL: Objection to form.

9 MS. STRATFORD: Objection.

10 A It's a fair question, and I have certainly thought

11 about that. And I would say the lengthy and thorough

12 approach, expecting to stand before this community and

13 ask, did you consider X, Y and Z, and be able to

14 affirmatively respond yes, and here's our view, I believe

15 that objective was met.

16 There's fraught with judgments anytime you assess

17 the future, especially in one that's as seismically

18 changing as this is in terms of capacity.

19 And I would say there's a couple things that Huron

20 affirmed, one of which, the approach that was taken by

21 Subsidiary -- while they objected to some concerns as an

22 investment bank, which is what they are, and therefore

23 their lens is an investment banker, Subsidiary is not an

24 investment banker, they're a strategic health care

25 advisory firm, two different approaches to the ultimate

1 same question. One is more financial in its implications,
2 one is more strategically marketplace driven than the
3 other. Obviously, I favor the marketplace view.

4 But Huron did confirm, in their opinion, that even
5 if they felt they could have changed the process, it
6 likely would not have resulted in any different outcome.

7 Q Okay. Did you have any view that the Cleveland
8 Clinic unfairly influenced the decision by the Lakewood
9 Hospital Association, as far as narrowing down the options
10 for going forward with the hospital, as far as influencing
11 Subsidium and how you were crafting your Request for
12 Proposals?

13 A No, I don't believe that.

14 Q Okay.

15 A Subsidium was very, very firm in their
16 independence. In fact, one of the major criteria that we
17 sought was somebody who had no previous connections to the
18 Cleveland Clinic, and didn't depend on their livelihood
19 that they likely would have it again in the future.

20 And there were other major consulting firms, which
21 were very talented, who we could not be as confident of
22 that. So I believe Subsidium's role was very independent.
23 It served us well.

24 Q Okay, Master Agreement. Let's walk through that in
25 the brief amount of time that we have left here.

1 providing services.

2 In terms of service model, let's put it this way,
3 if they don't meet the needs of their customers, like any
4 business, they're going out of business. So there's every
5 incentive in the world to do a good job of serving this
6 community.

7 And I think the opportunity we have is to work in a
8 more community-based approach, of which the Wellness
9 Foundation was a very integral aspect of that, to provide
10 resources and gain and garner community engagement to make
11 sure we do align ourselves better than we have in the
12 past.

13 Q Why does your agreement, or your Master Agreement,
14 specify that there's a restrictive covenant forbidding any
15 competitor of the Cleveland Clinic to operate medical
16 services on that property?

17 MR. CAHILL: Objection to the form.

18 A Well, that's not true in its form. There are many
19 health care services that are permitted there.

20 Q Okay. Competitors of the Cleveland Clinic that
21 could move into the hospital site?

22 A For some services, yes, I suspect. Some no.

23 Q Okay. So there is no restrictive covenant?

24 MR. EHRENFELT: Objection.

25 A Yes, there is a restrictive covenant, but it

1 Okay, you have said that there are various parts
2 to the agreement that has been structured as far as
3 transitioning Lakewood Hospital from an inpatient to an
4 outpatient medical facility.

5 First of all, are there specified services that
6 have been agreed to between the Lakewood Hospital
7 Association, the City of Lakewood, and the Cleveland
8 Clinic, that will be provided at the Lakewood outpatient
9 facility?

10 MR. EHRENFELT: Objection.

11 A Yes, and I believe they're listed in the exhibit
12 there, as a starting point.

13 Q What do you mean, as a starting point?

14 A I think, if we've learned nothing, looking five
15 years back, and knowing the seismic changes that are upon
16 the marketplace, service changed, both in terms of need,
17 and capacity to deliver, are going to continue to evolve.
18 And our opportunity is to create a nimble, flexible
19 platform that can make that evolution not only a more
20 effective delivery basis, but also a lower cost basis.

21 Q And what guarantee do you have that the services
22 will continue to be provided into the future?

23 (Thereupon, Mr. Schmansky reentered the room.)

24 A Well, we know that the emergency department is
25 going to be there as long as the family health center is

1 doesn't say --

2 Q What do you understand it to mean?

3 A What I understand it to mean is that upon the 5.7
4 acres, and only the 5.7 acres, that a system that would be
5 a competitor to the Cleveland Clinic would not be
6 permitted. Many independent physician models, however,
7 providing health care services in a variety of forms, are,
8 in fact, permitted.

9 Q So you would let Premier come in there?

10 A Premier could come in.

11 Q What about Metro, if they wanted to open up?

12 A They probably wouldn't. They're a system.

13 Q Okay. Why is it important that they be restricted
14 from occupying that parcel of land?

15 A Well, the Clinic is about to spend 34 million
16 dollars of their own cash, plus they're going to -- we
17 think they're on the hook for another 10 to 20 million of
18 the wind-down costs, so let's say they're in for 44 or
19 54 million dollars of their own cash, and to put a
20 competitor within yards of their door diminishes their
21 capacity to be financially viable.

22 And remember, that is a major goal here, is to
23 invest in a service that not only meets our needs, but is
24 financially viable.

25 There are, in fact, investments going on right now

1 in Lakewood that provide competitive services to the
2 Cleveland Clinic. There's a physician investment on West
3 117th and Detroit that's going to provide primary care,
4 there's another one through Premier, George Khuri, M.D.,
5 providing a four or five physician clinic. We encourage
6 those.

7 Q My question to you is, why would the City of
8 Lakewood allow a restrictive covenant? What interest does
9 the City of Lakewood have as to the Cleveland Clinic's
10 outpatient facility being successful?

11 MR. EHRENFELT: Objection.

12 Q Isn't the market better served by competitors,
13 whether -- open it up for University Hospital to come over
14 here, and open it up for Metro, isn't that better served?

15 A They could come over here today.

16 Q But they can't come on that property.

17 A No, they can't.

18 Q Right?

19 A That would be true.

20 Q Don't you think that that is a restraint of trade,
21 a restraint of opportunities?

22 MS. ARMSTRONG: Objection.

23 MR. EHRENFELT: Objection.

24 A This is a hypercompetitive local market.

25 Q Okay.

1 A The medical office building --

2 Q Yes, sir.

3 A -- and the parking garage.

4 (Thereupon, Ms. Armstrong left the room.)

5 Q And who is paying for the cost of bringing those
6 two buildings down?

7 A I would say, you know, there's a complex sort of
8 what they call waterfall of costs.

9 Q Okay. Take me over the falls, then.

10 A Well, the Trustees show up with certain assets.

11 Q Okay.

12 A About 67 million dollars worth of viable assets to
13 redeploy.

14 Q Okay. Now, this does not include the Foundation,
15 correct?

16 A Yeah, that's --

17 Q The Foundation is --

18 A That's already taken out. You start with 128,
19 you've got the real estate that still stands on the
20 5.7 acres, take that away, because that's still there.

21 Take 850 Columbia out, because that's a separate deal.
22 And then you've got roughly 67 million dollars available
23 to reinvest on the Trustees' side.

24 Q Okay, so let's walk through, first of all, the
25 Clinic side.

1 A You've got -- I mean, UH is already here, they've
2 got significant services not too far from where we speak.
3 You've got Metro here. I mean, you've got five hospitals
4 in less than seven miles. I don't think anybody would say
5 that's an underserved market.

6 Q Well, let's talk about wind-down costs. Walk me
7 through what the wind-down costs are.

8 You were at the -- once the Cleveland Clinic
9 vacates and constructs their new facility that they're
10 going to take the office building there on the west --
11 southwest corner of Belle and Detroit; is that correct?

12 A That's correct. And the garage, parking garage.
13 It's about 1.8 acres.

14 Q Okay. And that building is being taken down; is
15 that correct?

16 A Yes.

17 Q The tenants, as far as them being relocated, who
18 absorbs the cost of paying for those tenants to move out
19 of there, and to cancel their leases, and all of those
20 associated costs?

21 A The Cleveland Clinic ultimately has that
22 responsibility.

23 Q They have the responsibility, okay.

24 And then the building is being taken down, right,
25 on the southwest corner?

1 The building's coming down. Who is absorbing the
2 cost to take those buildings down, make the site ready for
3 new construction?

4 A So the Trustees' 67 million goes into the pot.

5 Q Okay.

6 A Of which 24 million comes out for the new Wellness
7 Foundation, seven million comes out for the rehab fund.

8 Q Okay, so of the 60-some million, 24 million is
9 going, then, to be transferred over to help construct the
10 Cleveland Clinic Family Health Center?

11 A No, no. No, that's not true.

12 Q Okay.

13 A 24.2 million is going to create the new Wellness
14 Foundation.

15 Q Okay, so this is a new entity that will exist --

16 A That's correct.

17 Q -- as a foundation.

18 A That's correct.

19 Q A nonprofit, okay. So that's being created.

20 A So 67 less 24.2.

21 Q Okay. And the Wellness Foundation will be created,
22 or has been created?

23 A It's got to be created, yeah.

24 Q Okay. All right.

25 And then the Trustees of the Wellness Foundation

1 are going to be?
 2 A We've got to figure that out.
 3 Q All right. Now, as far as Lakewood Hospital
 4 Foundation, where do those funds go?
 5 A That's yet to be determined.
 6 Q Okay. So you have that out there, the 50-some
 7 million that the Foundation has, and then this new
 8 Wellness Foundation that has received a portion of the
 9 60-some million, okay.
 10 MR. CAHILL: Objection to the form of the
 11 question.
 12 MR. DEVER: I'm just trying to walk through
 13 the math here. I'm sorry.
 14 MR. CAHILL: I think you misstated the
 15 numbers, is the basis of the objection.
 16 BY MR. DEVER:
 17 Q And correct me -- you've been pretty good doing it
 18 all afternoon, but correct me if I'm wrong about any of
 19 these numbers.
 20 A This is sort of a complex conversation.
 21 (Thereupon, Ms. Armstrong reentered the room.)
 22 Q The day is late.
 23 So who is paying for the construction of -- we've
 24 talked about the wind-down costs to take down the building
 25 on the southwest corner and the garage, that's coming out

1 pays for what, and then they will pay fair market value of
 2 that 1.7 acres. And that value is going to be determined
 3 by mutually agreed upon appraisals.
 4 Q Okay. But that's the cleared site --
 5 A It's the cleared site.
 6 Q -- not the value of the properties -- not the value
 7 of the improvements, right?
 8 A Right.
 9 And I think the value of the land cleared is much
 10 greater than if you were to say, take these buildings in
 11 their current state and have to demolish them.
 12 Q Sure. But it's the cost of demolishing them to get
 13 that site cleared, right?
 14 A It's about three million bucks.
 15 Q Okay. Did you have an appraisal done of the
 16 southwest corner?
 17 A We had evaluations of the buildings.
 18 Q What's the difference between appraisal and
 19 evaluation?
 20 A Well, one is their fitness for use. You want to
 21 determine, if you're going to keep them, what would it
 22 take to make them be long-term in their viability as use.
 23 Q Right.
 24 A The garage is old, and requires probably an
 25 estimated five million to hold it, to get it back to

1 of Lakewood Hospital Association money.
 2 Then who is paying for the construction --
 3 A You know, honestly, it's not -- it depends on how
 4 you want to view these. If you take the 67 million of
 5 assets, of which some of it is real estate, which is
 6 worthless, such as the medical office building, and you
 7 start funding this agreement, 24 million goes into the new
 8 foundation yet to be formed, seven million comes to the
 9 City for cash, basically 2.88 million comes to the City
 10 for lease payments. The -- let me think of all the pieces
 11 and parts.
 12 There's losses to be funded. And there are
 13 malpractice insurance tails to be bought, 2.5 million.
 14 There's equipment to be written down.
 15 You take it all in its entirety, the Trustees are
 16 investing 67 million of their funds, and there will be
 17 about an additional 10 million dollars the Clinic will
 18 have to contribute, under the best scenario, possibly 20
 19 more, to get to the new.
 20 So when you say, who is paying for what, you know,
 21 you could argue that it's left pocket/right pocket.
 22 But in the end, what the Clinic will have available
 23 to them is 1.8 acres of demolished buildings, which they
 24 may, in fact, have contributed to out of their 10 million
 25 into the wind-down, or not, it may be the timing of who

1 decent shape. It would require significant investments
 2 every year thereafter.
 3 The medical office building, a 1960 style, is sort
 4 of an obsolete building in its structure. So even if you
 5 were to improve it, and invest in it, you would still have
 6 a 1960 style obsolete building.
 7 Q Okay. So the construction, then, of the new family
 8 health center is going on at the southwest corner; is that
 9 correct?
 10 A Correct.
 11 Q All right. And then where is the money coming from
 12 to construct that family health center?
 13 A The Cleveland Clinic.
 14 Q Okay. So that's their investment.
 15 And as far as south there, the other small building
 16 across --
 17 A Community center, health center.
 18 Q Community center. What becomes of that?
 19 A Well, that will be owned by the City, and it's a
 20 building that actually has sufficient design and integrity
 21 that we think it has some very creative opportunities for
 22 reuse.
 23 Q Okay. And will that continue to function as far as
 24 providing health care services?
 25 A Well, I think the question is, right now, parts of

1 it are a day-care on the ground floor.
 2 **Q** Right.
 3 **A** Parts of it include the outpatient brain health we
 4 alluded to earlier on today. Parts of it could include
 5 additional outpatient services. There's some very
 6 creative opportunities.
 7 **Q** What is the value of that; do you know?
 8 **A** The financial value?
 9 **Q** Yeah, the fair market value.
 10 **A** I don't recall offhand. But we're not selling it.
 11 **Q** Okay. Now, jump across the street to the old
 12 hospital itself. The Clinic is going to turn that over to
 13 the City of Lakewood; is that correct?
 14 **A** In June of 2018.
 15 **Q** Okay. Have you got an appraisal as to what the
 16 value of the structures, the buildings, the improvements
 17 are of the parcel right now?
 18 **A** No, because we're not sure what we're going to do
 19 with it.
 20 **Q** Okay. Well, as far as being able to ascertain
 21 whether or not this is a good deal or a bad deal, usually
 22 you want to get an understanding of what the value is.
 23 MR. EHRENFELT: Objection.
 24 **A** Well, but we're not losing that building, we're not
 25 giving it to anybody. We own it. So its value is what it

1 appraisal for that, an estimate?
 2 **A** Yeah, we have estimates, yes.
 3 **Q** So you got contractors, Independence Excavating,
 4 something like that?
 5 **A** Yeah, we have a lot of experience in terms of --
 6 yeah, we have experience in -- that estimate showed up
 7 early on, from others who have been in similar situations.
 8 **Q** So the seven million, where is that coming from?
 9 **A** That is coming from the wind-down costs. Remember
 10 the 67 --
 11 **Q** So it's coming out of the pool, okay.
 12 **A** Yeah.
 13 **Q** So that's going to pay for future development -- if
 14 you choose not to take the buildings down, and to find
 15 some alternative use other than a health care facility,
 16 you still are retaining the seven million?
 17 **A** We have it in cash to do whatever we see fit.
 18 **Q** Okay. So there's no restrictions on the use of --
 19 **A** That's correct.
 20 **Q** -- the seven million, or the property, other than
 21 the covenant to restrict use of a competitor; is that
 22 correct?
 23 **A** From systems.
 24 **Q** Okay. Now, as far as all of the houses that are
 25 there, those are going to be retained by the City of

1 is.
 2 **Q** But its value, would you agree, is different when
 3 its an ongoing operating hospital, than as opposed to a
 4 derelict series of buildings that are unoccupied and
 5 boarded up, right?
 6 MS. STRATFORD: Objection.
 7 MR. EHRENFELT: Objection.
 8 MS. ARMSTRONG: Objection.
 9 **A** Well, I think there's some serious question as what
 10 you mean, is it an ongoing operation, because it's
 11 hemorrhaging money, it needs 93 million dollars worth of
 12 investment.
 13 **Q** It's got a sign on the front right now that it's
 14 open, and it's Lakewood Hospital, okay?
 15 When it closes, what is the value of those
 16 structures?
 17 **A** I don't know yet.
 18 **Q** Okay. So you haven't done that.
 19 **A** No.
 20 **Q** Have you ascertained what the cost is to demolish
 21 and abate all of the environmental hazards that are on the
 22 site to get it ready for redevelopment should you choose
 23 to proceed with a clean ground?
 24 **A** We think that's about seven million bucks.
 25 **Q** Okay. That seven million -- did you get an

1 Lakewood, referred back to the City?
 2 **A** Some are currently owned, some are owned by the
 3 Trustees. They will all ultimately be owned by the City.
 4 **Q** Okay. And have you done any appraisals or values
 5 of those?
 6 **A** We're beginning to do evaluations of their current
 7 physical condition. The goal would be to reposition them
 8 to private ownership.
 9 **Q** Okay. So again, it's something that has -- at this
 10 point in time, you don't know what the values are,
 11 correct?
 12 **A** We think it's -- for all of them? Somewhere around
 13 900,000.
 14 **Q** Okay. And then the Curtis block there, the corner
 15 buildings, do you have a value on those?
 16 **A** Well, we just toured the building with our internal
 17 staff, including a commercial architect, to try and
 18 determine what it would take to get the building into
 19 occupiable condition. Our goal would be to keep that
 20 building in its historical context, and put it to --
 21 reposition it to good use.
 22 **Q** But you have no idea what the value is. Okay.
 23 **A** Well, again, we're not interested in selling it.
 24 **Q** I understand that. All right.
 25 Now, let me ask you, then, as far as -- we talked

1 earlier about all of the fixtures, equipment, and things
 2 that are inside of Lakewood Hospital. Those will all
 3 revert to the Cleveland Clinic, as their property?
 4 A Well, and of course, the City owned the property in
 5 1985, when it turned the keys over --
 6 Q Right.
 7 A -- to the Hospital Association. So the likelihood
 8 of any of that equipment, 30 years later, being there --
 9 Q Well, I'm talking about like the upgrades, and
 10 things that, as you've looked through these Minutes of
 11 meetings of these capital expenditures, cath labs, things
 12 of that --
 13 A And the City didn't pay for any of that.
 14 Q I understand. But the hospital paid for them.
 15 A The Trustees did.
 16 Q Yes.
 17 A Or the Clinic.
 18 Q Right.
 19 A Or both.
 20 Q As required by the terms of the agreements.
 21 A Right.
 22 Q Did you -- all of that will go to the Cleveland
 23 Clinic; is that correct?
 24 A Or -- yeah, probably.
 25 Q Okay. Now, what about the obligations, as far as

1 significant amount of jobs move from Lakewood Hospital to
 2 Avon, there was an agreement that Lakewood did not sign in
 3 2007.
 4 Q Years ago, yes.
 5 A Had that agreement been signed, and had there been
 6 that connection of certain jobs moving from here to there,
 7 we had a shot.
 8 Q Right.
 9 But there's no expectation that you're going to
 10 have any type of revenue-sharing, as far as payroll taxes
 11 in Avon; is that correct?
 12 A I haven't totally given up on it, but it's very
 13 remote.
 14 Q Yeah, okay. Well, who came up with the idea, and
 15 why was it put into the Letter of Intent --
 16 A Well, I think --
 17 Q -- if it's all baloney?
 18 MR. EHRENFELT: Objection.
 19 MR. CAHILL: Objection to form.
 20 A Well, no, actually -- had Lakewood signed that
 21 agreement in 2007 --
 22 Q Yeah.
 23 A -- and had the timing of the wind-down been
 24 coincident with Lakewood Hospital closes, Avon opens up,
 25 and a group of employees move from here to there, we'd

1 to make payments to the year 2026 on the Lease, how does
 2 that work? Are you canceling the terms of the Lease all
 3 together, walk away?
 4 A The Lease has been modified.
 5 Q Okay. And those payments that were to be made to
 6 the City of Lakewood, are they going to be paid?
 7 A No.
 8 You're talking about the Lease payments?
 9 Q Yes, sir.
 10 A Those payments will be made through June 2018, and
 11 then they will cease to exist then.
 12 Q Okay. So the remaining seven or eight years of the
 13 Lease term will not be paid out; is that correct?
 14 A The Lease has been changed.
 15 Q Okay. Now, you had also indicated in the Master
 16 Agreement, and it also popped up on the Letter of Intent,
 17 is that there is some claim that you're going to be able
 18 to engage in a revenue-sharing agreement with the City of
 19 Avon?
 20 A Well, that was aspirational.
 21 Q Right, right.
 22 That's impossible, isn't it?
 23 A Well, probably.
 24 Q Yeah.
 25 A In fact, in the original scenario, should a

1 have some serious enforcement capacity. But Lakewood
 2 didn't sign it, and the timing's way away.
 3 Q And the agreement also had -- it's been a while
 4 since I looked at it -- it also had some limitations as
 5 far as how many employees Cleveland Clinic -- I mean,
 6 there was a carve-out on it.
 7 A There was a minimum.
 8 Q There was a carve-out in it, right?
 9 MR. CAHILL: Objection to form. What
 10 agreement?
 11 A Well, my recollection, yeah, there was a --
 12 Q The revenue-sharing agreement with the City of Avon
 13 and the City of Cleveland.
 14 A It was an economic development agreement --
 15 Q Yeah.
 16 A -- as a result of a new interchange being built.
 17 Q Right.
 18 A And Lakewood didn't participate.
 19 Q Because it was necessary that NOACA approve that
 20 interchange, and the only way to get that vote was for
 21 Cuyahoga County to support it, right?
 22 A Right.
 23 Q Okay. All right, let's talk about the employees of
 24 Lakewood Hospital, okay?
 25 Currently -- one year ago, how many people were

1 working there --

2 A Well, I think --

3 Q -- full and part-time?

4 A -- we've identified about 850 full-time
5 equivalents.

6 Q Okay. And then what efforts are being made to
7 place those folks in other jobs?

8 A Well, as of yesterday, 830 of 845 have been offered
9 jobs of comparable skill and pay within the Cleveland
10 Clinic system. Fifteen are still pending.

11 Q And of those 800-some, how many of them have agreed
12 or accepted those offers of employment?

13 A I don't know.

14 Q Are you going to --

15 A Not all of them.

16 Q Is it your intention to continue to monitor, to
17 ascertain whether or not all of those folks get properly
18 placed?

19 A Well, I think there's a lot of personal decisions
20 that are at play here, whether -- some might choose to
21 retire, some might choose to work in a different health
22 care system, some might choose to go out of the health
23 care business. The most important thing is that they had
24 a choice.

25 Q Okay. Let me ask you this question, then:

1 Q Okay. The patients, all right? You have a service
2 delivery area that includes not only Lakewood, but the
3 west side of Cleveland, over to Rocky River, Bay Village.
4 Many of those individuals who have become patients at
5 Lakewood Hospital arrive at Lakewood Hospital by way of
6 the emergency room, right?

7 A Correct, yeah.

8 Q Okay. And how is Lakewood Hospital Association and
9 the City of Lakewood geared up to meet that change so that
10 those patients receive adequate and proper and prompt
11 medical care?

12 MR. EHRENFELT: Objection.

13 A How are we going to assure that they get --

14 Q What steps have you made in your planning of
15 making -- of all the activities that you've been doing
16 over these past couple of years, looking out for the
17 welfare of the patients?

18 Have you done some studies or put together
19 formalized plans as far as how health care is going to be
20 provided to these patients who no longer will have
21 Lakewood Hospital?

22 MR. CAHILL: Objection, form of the question.

23 A Well, they're going to have an emergency room.

24 Q Okay.

25 A So I guess I'm not sure I understand the question.

1 As far as the private physicians who are not part
2 of the Cleveland Clinic Health System, that have used the
3 Lakewood Hospital for delivery of services, have there
4 been any efforts made or any incentives created to assist
5 those doctors in finding appropriate alternative
6 facilities to continue to practice medicine?

7 A In fact, that question was brought forward by the
8 physicians on the Trustees Board, and all those who desire
9 it will be invited to be credentialed wherever they
10 choose, and the credentialing process would be expedited
11 to the best that they're able, to make sure that they are
12 able to continue.

13 Q So there would be reciprocity similar, that if you
14 were credentialed at Lakewood, you would be admitted to
15 other Clinic facilities?

16 A Apparently, according to state law, you cannot do
17 that.

18 Q Okay.

19 A Each independent hospital has to credential its own
20 staff.

21 Q Have you received assurances from the Cleveland
22 Clinic leadership that they're going to go ahead and do
23 that?

24 A I just said, it was reported by Dr. Jones, that, in
25 fact, that process is underway.

1 Q But they're not going to have a hospital.

2 A That's correct.

3 Q Right.

4 A But 90 percent of the current services that are
5 provided at Lakewood Hospital are done on an outpatient
6 basis. So there's every reason to expect that 90 percent
7 of the current services being delivered will be delivered
8 as currently, if not better.

9 Q And of the 10 percent that are going to require
10 inpatient care, have there been any plans made as far as
11 ascertaining where those folks are going to go?

12 A That's up to the circumstance at the time they need
13 that care.

14 Q Uh-huh.

15 A Remember, the primary customer of a hospital are
16 physicians. So the real question is, who are the
17 physicians of these people? Some are Metro doctors, so
18 where do you think they're going to have them go? Some
19 are independent physicians, so they have choices to make.

20 Q Okay.

21 A And some are Clinic doctors, and they're going to
22 have choices to make.

23 Q And as far as those who receive these services,
24 medical services, by way of transport through EMS, has the
25 City of Lakewood properly sized their EMS staff to be able

1 to deliver emergency medical services to other facilities
2 other than this proposed emergency room that you're going
3 to build?

4 A That's an active conversation review. Whatever
5 adjustments we need to make, we will.

6 Part of our opportunity is to take the roughly 18
7 million dollars we're getting in cash from this deal as a
8 city. We also have the prospects of redevelopment of the
9 5.7 acres, it could be a 20 to 40 million dollar
10 development that comes out of there, with significant
11 increase in property tax and income tax, so that's going
12 to take a while.

13 We are -- actually, the good news is, we just
14 attracted 47 new jobs to Lakewood, from Westlake, and
15 Cleveland Clinic is moving roughly 30 jobs to Lakewood
16 from elsewhere. And we think there's a lot more to come.

17 So whatever financial implications are necessary to
18 make sure we protect the City, we're going to do it.

19 Q Do you have a concern that the closing of Lakewood
20 Hospital will have an adverse effect on patient safety
21 because of the additional times to receive medical care
22 either at Fairview, or Metro, or other hospitals, since
23 Lakewood will not be there anymore?

24 A I think equally as great a concern is a mediocre to
25 poor and dying hospital, in terms of patient care there,

1 A Well, it was led by our counsel, Thompson Hine.
2 And our Law Director Butler was a key member of sort of
3 discussing and working with them to help them to do their
4 job. And members of City Council, and me.

5 Q Okay. And as far as the members of City Council,
6 and from time to time, you, would have these Committee of
7 the Whole meetings, and go into Executive Session, is that
8 when you would have these conversations with Council, as
9 far as the status of the --

10 A Well, first of all, you know, Council --
11 MR. CAHILL: Objection.

12 A -- controls those. I don't call those meetings,
13 I'm a guest.

14 Q Have you participated in those?

15 A Most of them, I've been invited in.

16 And by the way, the purpose of those has been a
17 question that's been, I think, addressed and resolved, to
18 be of legal nature, the purposes of those Executive
19 Sessions.

20 Q Oh, okay. All right, fair enough.

21 The conversations that you've had with Council
22 members, you've taken us through this entire episode as
23 far as when you formulated a belief that the hospital
24 wasn't sustainable, we've gone through Subsidiary, we've
25 talked about Huron, we've talked about the two proposals

1 and that's the circumstance we had. You know, we would
2 all have loved the good old days, but that's not the
3 reality we're addressing here.

4 Q Okay.

5 A You know, we're going to do whatever it takes on
6 the City side, we're going to certainly expect health care
7 providers to do what they need to do to make sure patients
8 are well served.

9 MR. DEVER: Can I go through my notes very
10 briefly and look. I only have maybe a few more
11 questions, and then we'll wind this down.

12 THE WITNESS: Sure.

13 MR. DEVER: How's five minutes, folks? Are we
14 all right with that?

15 THE WITNESS: Nobody has a better offer here,
16 do they?

17 THE VIDEOGRAPHER: Off the record.
18 (Short recess had.)

19 THE VIDEOGRAPHER: Back on the record.

20 MR. DEVER: Mr. Summers, just a couple more
21 questions, and I think we'll be done.

22 BY MR. DEVER:

23 Q Who, on the part of the -- representing the City of
24 Lakewood, was involved in the negotiations for the Master
25 Agreement?

1 that were submitted.

2 Throughout that time frame that you were doing
3 this, did the medical office building or the southwest
4 corner property, did that come about as an afterthought,
5 as far as moving the family health center over to that
6 side of the street, or how did that come about?

7 A It was not an afterthought. It was actually a very
8 clever awareness on the part of our Director of Planning,
9 Dru Siley.

10 THE NOTARY: I'm sorry, on the part of?

11 A Our Director of Planning, Dru, D-R-U, Siley,
12 S-I-L-E-Y.

13 He looked at the whole cloth redevelopment and
14 transformation, and in his capacity as Planning Director,
15 was able to understand that what we once hoped were
16 assets, the garage, parking garage, and the medical office
17 building, were in fact not assets, they were in poor
18 condition in terms of design, and really, alternative
19 reuse, and therefore, if we could eliminate those, what we
20 grew to understand were liabilities, and reinvest there,
21 leaving the 5.7 with a potential for the most creative
22 outcome, whatever that is, it's the biggest piece of land,
23 it's downtown, which parts of the building might stay or
24 not is an open question.

25 But to have one big plot is certainly an exciting

1 opportunity for the City and the community to consider,
 2 and especially if we can take out what were liabilities,
 3 and get the best of both worlds, a new family health
 4 center that's viable from a physical plant layout, and
 5 then have the option to reconsider the current hospital
 6 site, including the potential for other health care
 7 delivery options.
 8 **Q** If the garage was in such a deplorable condition as
 9 you've described it, that the only option that's available
 10 for moving forward on that garage is to knock it down, to
 11 demolish it and make that a clear site, wouldn't
 12 maintenance or upkeep of that garage have been the
 13 responsibility of the Lakewood Hospital Association over
 14 those years, to make the capital improvements to make sure
 15 that it was functioning in a proper order?
 16 MS. STRATFORD: Objection.
 17 MR. EHRENFELT: Objection.
 18 MR. CAHILL: Objection to the extent it
 19 misstates testimony, and to form.
 20 **A** My understanding is that there were significant
 21 investments made. And I've grown to understand that
 22 parking garages by themselves are sinkholes, they are very
 23 expensive. And as time and salt erodes, you know, the
 24 infrastructure of the building, the cement and the steel,
 25 that ultimately, there's a big redo, and it's expensive.

1 MR. DEVER: Yeah, go ahead and change it. I'm
 2 there, but I don't want to get stuck.
 3 **A** I can't recall. I think --
 4 MR. DEVER: Hold on.
 5 THE VIDEOGRAPHER: Off the record.
 6 (Thereupon, a discussion was had off the
 7 record.)
 8 THE VIDEOGRAPHER: Back on the record. Tape
 9 Number 6.
 10 BY MR. DEVER:
 11 **Q** How many parking spots on the existing hospital
 12 site are going to continue?
 13 **A** I can't remember exactly, but my recollection, it's
 14 in the 40 to 50 range.
 15 **Q** And are those permanent spaces that have to be made
 16 available?
 17 **A** During the day, to Clinic operations, ultimately.
 18 But the location of them, upon a redesign of the 5.7
 19 acres, could move. And ultimately, if there's other
 20 options, they can be provided to address that. That's a
 21 subject of conversation in the future.
 22 **Q** All right. Are there going to be lease payments or
 23 anything made for those?
 24 **A** Yes. They are going to be leased at fair market
 25 value.

1 And this building has been around for 30-plus years, and
 2 it needs that kind of care.
 3 If, in fact, it was at a different spot, where we
 4 could, in fact, justify keeping that particular
 5 location -- and we could always use more parking here in
 6 Lakewood -- it might have been a different view of that
 7 asset. It might have been worth the five million.
 8 But it turns out, you know, the best 1.8 acres
 9 includes where that sits. So you've got a variety of
 10 views of it.
 11 You can take away a liability, and then get a new
 12 investment of a 34 million dollar facility, preserving the
 13 redevelopment we just talked about on the other side of
 14 the street, and probably consider that the best long-term
 15 financial outcome.
 16 **Q** But you still have parking demands for that new
 17 facility, don't you?
 18 **A** And that new facility will require a certain number
 19 of spaces. I think there's going to be a two tiered level
 20 on that facility, and they'll take additional spaces from
 21 the parking lot -- parking garage across the street north
 22 of Belle. And there will be some spaces maintained on the
 23 current site, on the 5.7 acres.
 24 **Q** Okay, and how many spaces are maintained on the
 25 current site?

1 **Q** To be determined later?
 2 **A** That's correct.
 3 **Q** All right. Okay, Mayor, I'm almost there. So let
 4 me ask you --
 5 **A** I think we've heard that before.
 6 **Q** As I wind down.
 7 When you look back on this entire episode, and your
 8 involvement in serving on the Lakewood Hospital
 9 Association from 2011 up to today, and also in your
 10 capacity as an elected official, not only as a Council
 11 member, then later on, to become Mayor, the Mayor of the
 12 City of Lakewood, did you think that it would have been
 13 more prudent or more proper on your part to have been
 14 straightforward with your colleagues on Council, and with
 15 the citizens of Lakewood, as to your opinions in 2011 -
 16 2012 that the hospital was not sustainable?
 17 MR. CAHILL: Objection.
 18 MS. ARMSTRONG: Objection.
 19 MS. STRATFORD: Objection.
 20 MR. EHRENFELT: Objection.
 21 **A** I don't accept the word, straightforward.
 22 **Q** Well -- or, I mean, candid.
 23 MS. STRATFORD: Objection.
 24 MR. CAHILL: Objection.
 25 **A** I spoke about the future of Lakewood Hospital at

1 every State of the City address I made, and I expressed
2 concern about its future in each one of those addresses,
3 2011, '12, '13, '14, and of course, '15 was in the context
4 of what the future could look like.

5 So I do have a duty to communicate, and I did
6 address that question through the State of the City
7 address on four occasions prior to any proposal.

8 Clearly, one could look backward on all of the
9 misunderstandings, and the angst, and say, could we have
10 done a better job? Of course. You couldn't help but feel
11 that way.

12 How I might have done it differently, in the
13 context of negotiations, uncertainty, drama,
14 misunderstanding of health care, comprehension, it's not
15 clear to me how I would have done it. But you couldn't
16 help -- I could not help but say, jeez, looking backward,
17 we certainly could have done some things differently, and
18 should have.

19 Q Now, when --

20 A I mean, me.

21 Q All right. What about as far as the Lakewood
22 Hospital Association, could they have done things
23 differently --

24 MS. ARMSTRONG: Objection.

25 MR. EHRENFELT: Objection.

1 Q And what was the name of the nonprofit?

2 A I can't remember. No on 64? I can't remember the
3 name of it.

4 Q And who was the treasurer of that nonprofit?

5 A Ron Petrie.

6 Q Okay. And was that -- were those filed with the
7 Board of Elections?

8 A I assume so.

9 Q When you say -- nonprofit, or political action
10 committee?

11 A Political action, probably.

12 Q Not a nonprofit.

13 A No.

14 Q What about, were you aware whether or not there
15 were advertising campaigns or public information
16 activities on the part of Lakewood Hospital Association to
17 attempt to influence the outcome of that election?

18 MS. STRATFORD: Objection.

19 A No, I think -- no, the Hospital Association did not
20 directly do that.

21 Q Okay, what about as far as direct mails to citizens
22 in Lakewood?

23 A I'm not aware of that.

24 Q Were there any authorizations that were made to
25 spend money to send mailers to Lakewood residents?

1 Q -- as far as you being a member?

2 A As far as me being a member? You mean, should I
3 have not been a member?

4 Q No. As far as your conversations with your fellow
5 colleagues on that Board.

6 MR. EHRENFELT: Objection.

7 MS. ARMSTRONG: Objection.

8 A I will tell you, from the time I showed up as
9 Mayor, and we earnestly began to address the vulnerability
10 of the hospital, the Trustees worked hard to understand
11 the future of health care.

12 Again, their concern was not the financial
13 implications alone, but the health care delivery needs of
14 the City, and its community, and the citizens. They're
15 very focused on that. And you know, they worked -- we all
16 worked very hard to address this question.

17 Q Well, let's talk about, then, when it became a big
18 controversy here in this town, and there was a Charter
19 Amendment that was put on the ballot last November.

20 Did the Lakewood Hospital Association expend any
21 funds to attempt to influence the outcome of that
22 election?

23 A They did.

24 Q Okay. And how did they expend funds?

25 A They made donations to a nonprofit.

1 A Not from the Association.

2 Q Okay. Were you aware of whether or not the
3 Cleveland Clinic was spending money to affect the outcome
4 of this election?

5 A I saw some advertisements.

6 Q Okay. And that advertisement that you saw was
7 generated by the Cleveland Clinic?

8 A I presume so, yeah.

9 Q Were you aware that they were spending money, or
10 notifying residents on this matter?

11 A I was hoping they would, yeah.

12 Q So you encouraged them to do that?

13 A Well, I think they had a duty to communicate the
14 future of health care.

15 Q Okay. Do you know whether or not there had been a
16 report made for the political or campaign activity by the
17 Cleveland Clinic, either with the Board of Elections or
18 the Secretary of State's office?

19 A I'm not aware of any, one way or the other.

20 Q Do you know how much money was spent in mailers
21 over the course of the campaign?

22 A By whom?

23 Q By the Cleveland Clinic.

24 MS. STRATFORD: Objection.

25 A I do not know.

1 **Q** By Lakewood Hospital?
 2 MS. ARMSTRONG: Objection.
 3 MS. STRATFORD: Objection.
 4 MR. EHRENFELT: Objection.
 5 **A** You mean the Association?
 6 **Q** Yes, sir.
 7 **A** I don't know specifically, no.
 8 **Q** And then what about this group, this political
 9 action committee group?
 10 **A** I have not looked at their reports. I don't know.
 11 **Q** All right. Did you, personally, donate to that
 12 group?
 13 **A** I did not.
 14 **Q** All right. A couple of more questions.
 15 There had been, through the course of the dialogue
 16 or dispute about this matter with the citizens of
 17 Lakewood, that there were certain police reports that were
 18 filed, or complaints that were made against a Brian Essi;
 19 were you aware of those?
 20 **A** Yes. I'm trying to remember the specifics, though.
 21 Oh, yes, right.
 22 **Q** Tell me, how did you become aware of those?
 23 **A** Some citizens viewed some comments he made on an
 24 online blog as physically threatening to them.
 25 **Q** And did you ever have any communication with your

1 formal complaint to the Lakewood Police Department, that
 2 they felt that they had been intimidated, or threatened,
 3 or -- you know, threatened by Mr. Essi's comments?
 4 MR. CAHILL: Objection to the relevance. I'm
 5 obviously giving you some latitude.
 6 MR. DEVER: Well, keep on going. Let's go.
 7 MR. CAHILL: What does this have to do with
 8 the suit?
 9 MR. DEVER: Okay.
 10 **A** I'm aware of, I think, a citizen who told me that
 11 she filed a complaint.
 12 **Q** And who was that?
 13 **A** Linda Beebe.
 14 **Q** All right. And you served on the Board of
 15 Education with her; is that correct?
 16 **A** Correct. A long time ago.
 17 **Q** Okay. Did you understand all of the questions I
 18 asked you here today?
 19 MR. CAHILL: Objection --
 20 MR. EHRENFELT: Objection.
 21 MR. CAHILL: -- overbroad, form.
 22 **A** I mean, I understood them as I interpreted them.
 23 **Q** Okay. Is your testimony here today the truth?
 24 **A** It is.
 25 **Q** Okay. Have I been fair with you?

1 officers at the Lakewood Police Department concerning
 2 Mr. Essi's comments?
 3 **A** No, not directly.
 4 **Q** Okay.
 5 **A** I worked through Chief Malley on those matters.
 6 **Q** Okay, so you did communicate with Chief Malley
 7 about that issue?
 8 **A** No, actually, on this point, I think he
 9 communicated with me.
 10 **Q** Okay, so he contacted you and said that there had
 11 been complaints made about Mr. Essi's comments?
 12 **A** He and I have routine updates all the time on
 13 issues regarding citizens.
 14 **Q** Do you know whether or not security or police with
 15 the Cleveland Clinic Foundation were involved in any kind
 16 of reports made concerning Mr. Essi's comments on the
 17 blogs?
 18 MS. STRATFORD: Objection.
 19 **A** I'm not aware. I don't know.
 20 **Q** Do you know whether or not the Cleveland Clinic
 21 police or security forces conducted any investigation of
 22 these allegations against Mr. Essi?
 23 **A** I do not know.
 24 **Q** Okay. All right.
 25 And so do you know of anyone who did make any

1 MR. CAHILL: Objection.
 2 MR. EHRENFELT: Objection.
 3 MS. STRATFORD: Objection.
 4 MS. ARMSTRONG: Objection.
 5 MS. STRATFORD: It's 7:29.
 6 **A** Well, it's been testy. I mean, honestly, I don't
 7 know what to expect under these circumstances.
 8 MR. DEVER: Okay. Mr. Summers, I'm going
 9 to -- I know your attorney is going to -- there
 10 will be another objection, but I'm going to reserve
 11 the right to recall you at another time --
 12 THE WITNESS: Fine.
 13 MR. DEVER: -- and we'll have to address that
 14 with the court.
 15 MR. CAHILL: What's the basis of that?
 16 MR. DEVER: With additional discovery that's
 17 to be provided.
 18 MR. CAHILL: Uh-uh. You've had a full
 19 opportunity, you've had five hours -- you've had
 20 five and a half hours.
 21 MR. DEVER: Rob, just make your record. I'm
 22 just telling you that I'm reserving the right to do
 23 that. Of course, with all due respect, we'll
 24 address that with the court.
 25 Thank you, Mr. Summers.

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1 MR. CAHILL: For the record, the City has
2 produced all of its discovery. There's no
3 outstanding requests to the City. You had a full
4 opportunity to question the Mayor.

5 We've gone two and a half hours more than what
6 you had communicated to me the length would take,
7 which was regularly three hours, it will be about
8 three hours. So you've had a full opportunity.

9 We will object to any further continuing
10 deposition.

11 MR. DEVER: Thank you.

12 THE VIDEOGRAPHER: We are off.

13 MR. CAHILL: Not quite yet. We're going to
14 ask that the Mayor will read the deposition.

15 THE WITNESS: Now?

16 MR. CAHILL: No, no. If it's ordered, to
17 verify the accuracy.

18 THE VIDEOGRAPHER: We are off.

19 ---

20 (DEPOSITION CONCLUDED)

21 ---

22 _____
MAYOR MICHAEL SUMMERS

23
24
25

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1 CERTIFICATE

2 State of Ohio,)

) SS:

3 County of Cuyahoga.)

4 I, Ivy J. Gantverg, Registered Professional
5 Reporter and Notary Public in and for the State of Ohio,
6 duly commissioned and qualified, do hereby certify that
7 the above-named MAYOR MICHAEL SUMMERS was by me first duly
8 sworn to testify to the truth, the whole truth, and
9 nothing but the truth in the cause aforesaid; that the
10 deposition as above set forth was reduced to writing by me
11 by means of stenotype, and was later transcribed into
12 typewriting under my direction by computer-aided
13 transcription; that I am not a relative or attorney of
14 either party or otherwise interested in the event of this
15 action.

16 IN WITNESS WHEREOF, I have hereunto set my hand and
17 seal of office at Cleveland, Ohio, this 12th day of
18 February, 2016.

19
20
21 _____
22 Ivy J. Gantverg, Notary Public
in and for the State of Ohio,
Registered Professional Reporter.
23 My Commission Expires November 5, 2018.
24
25