

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO: 07-22310-CIV-
JORDAN/TORRES

JOHN KEARNS, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

CITY OF CORAL GABLES,

Defendant.

_____ /

405 Biltmore Way
1st Floor Conference Room
Coral Gables, Florida
August 26th, 2008
1:42 p.m. - 3:20 p.m.

VIDEOTAPED DEPOSITION OF
ANDREW CLUTE

APPEARANCES:

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On Behalf of Plaintiffs

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On Behalf of City of Coral Gables

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On Behalf of City of Coral Gables

ROBERT S. GLAZIER, ESQ.
Law Office of Robert S. Glazier
540 Brickell Key Drive
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On behalf of the City of Coral Gables

Also Present:
Jeff Abbott, Videographer
Lowell Kuvin

The deposition of ANDREW CLUTE, a witness of lawful age, taken for the purpose of discovery and for use as evidence in the above-styled cause, pending in the United States District, Southern District of Florida, for Miami-Dade County, Florida, pursuant to notice, before Linda Fitzgerald, Shorthand Reporter and Notary Public in and for the State of Florida at Large, at the time and place aforesaid.

I N D E X

Witness Direct Cross Red. Rec.
ANDREW CLUTE 5 -- -- --

3	Article 4 - Zoning Districts	24
	Sections 4-411 and 4-412	
4	Photo	35
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14	Photo	42
15	Release of Liens, Lien	44
16	Notice of Lien/Andino	51
17	Notice of Lien/Perez	55
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21	Violation Notice	70

THE VIDEOGRAPHER: This is the 26th day of August 2008. The time is 1:45 p.m.
This is the videotape deposition of Andrew Clute in the matter of Kearns versus City of Coral Gables.
This deposition is being held at 405 Biltmore Way, Coral Gables, Florida.
My name is Jeff Abbott. I'm the videographer representing Visual Evidence, Incorporated.
Would the attorneys please announce their appearances for the record.
MR. KUVIN: Spencer Kuvin on behalf of the Plaintiffs, and with me observing is Lowell Kuvin.
MS. GLASSER: Jennifer Glasser on behalf of the City of Coral Gables.
MR. GLAZIER: Robert Glazier for the City of Coral Gables.
MS. RUIZ: Lourdes Alfonsin Ruiz, Assistant City Attorney.

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1
2 Thereupon,
3 ANDREW CLUTE
4 having been first duly sworn, was examined
5 and testified under oath as follows:
6 DIRECT EXAMINATION
7 Q. Good afternoon, sir.
8 A. Good afternoon.
9 Q. I haven't has a chance to introduce myself
10 formally, but my name is Spencer Kuvin.
11 I'm an attorney working on behalf the
12 Plaintiffs in this matter, and I'm here today to ask
13 you a number of questions.
14 First of all, have you ever given a deposition
15 before?
16 A. Yes.
17 Q. You've gone through this process?
18 A. Yes.
19 Q. You understand that I'm going to ask you a
20 whole bunch of questions. This nice young lady over
21 here may object to some of those questions. Let her
22 get that objection on the record, but unless she tells
23 you don't answer, then just wait for her to finish the
24 objection and then go ahead and respond. Okay?
25 A. Understood.

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1 Q. If you do not understand a question that I
2 ask, you please let me know. You're never required to
3 answer something you don't understand. Okay?
4 A. Correct.
5 Q. If you do answer the question that I ask, I'm
6 going to assume two things. Number one, you
7 understood, and number two, that you're telling the
8 truth. Fair enough?
9 A. Correct.
10 Q. I may correct you from time to time to make
11 sure that your responses are verbal, because nods of
12 the head, uh-uhs and uh-huhs kind of all look the same
13 when she types it up.
14 A. Yes.
15 Q. Could you give us your full name, please?
16 A. Andrew Clute, C-l-u-t-e.
17 Q. I started off wrong already. I had a K.
18 Do you have a middle name or middle initial?
19 A. A.
20 Q. What is your current address?
21 MS. GLASSER: Your business address. You're
22 not required to give your personal address.
23 MR. KUVIN: Well, if he leaves the City of
24 Coral Gables within the next six to eight months
25 before we were to get to trial in this matter, I

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1 would need some way to locate you.
2 If the City wants to accept that responsible
3 to locate you, then I've got no problem leaving
4 the personal address out.
5 Q. So where do you work?
6 A. City of Coral Gables building and zoning
7 department.
8 Q. And how long have you worked there?
9 A. Eighteen years.
10 Q. What is the phone number that you're reached
11 at during the day?
12 A. (305)460-5233.
13 Q. Is that a main line or is that a direct
14 cellphone issued to you?
15 A. Direct City phone.
16 Q. And you say direct City phone. Is that the
17 cellphone that you keep with you as a code enforcement
18 officer?
19 A. I have a cellphone also. (305)733-0243.
20 Q. Mr. Clute, you understand generally why we're
21 here today; in other words, that we're here to talk
22 about Sections 4-411 and 4-412?
23 A. Yes.
24 Q. First of all, when you first started with the
25 City 18 years ago, I believe the code section back then

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1 was eight 8-11 and 8-12?
2 A. Correct.
3 Q. Do you know if that particular code section
4 had ever been amended since you've been here with the
5 City, the content of it?
6 A. I'm not aware of that.
7 Q. So it was in place when you started here 18
8 years ago?
9 A. Correct.
10 Q. Do you know how long it had been in place
11 before you even got here?
12 A. I believe in the late 50s, early 60s maybe.
13 Q. Do you understand the history of those two
14 particular sections; in other words, when they were put
15 in place and why they were put in place?
16 A. No, sir.
17 Q. You understand that you're being produced here
18 today as the person who has the most knowledge with
19 respect to those two sections?
20 A. Yes.
21 Q. Is there anyone here at the City, that you're
22 aware of, that has more knowledge than you with respect
23 to those code sections?
24 A. I think that any one of the code enforcement
25 officers has as much knowledge of the codes as I would.

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1 Q. What about historically of those particular
 2 sections of the code, is there anyone here that works
 3 at the City currently that's worked here longer than
 4 you that has worked with those codes?
 5 A. Yes.
 6 Q. Who?
 7 A. Walter Lesser.
 8 Q. What is his job?
 9 A. Code enforcement officer.
 10 Q. Is he still a code enforcement officer?
 11 A. Yes.
 12 Q. And he was a code enforcement officer even
 13 before you started?
 14 A. Yes.
 15 Q. Do you know how long he's been here?
 16 A. Twenty years.
 17 Q. So he's just been here about two years more
 18 than you?
 19 A. Yes.
 20 Q. Anyone else with more experience than Walter
 21 in dealing with those particular sections of the code?
 22 MS. GLASSER: Object to form.
 23 Q. That you're aware of.
 24 A. Not that I'm aware of.
 25 Q. When you first started here 18 years ago, how

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1 were those sections of the code explained to you as a
 2 an enforcement officer?
 3 MS. GLASSER: Object to form.
 4 A. As any code that was enforced by code
 5 enforcement officers, it was a training process that
 6 each one of us went through from a senior officer as to
 7 how to enforce each particular code.
 8 Q. When understanding how to ticket under those
 9 particular sections, what was explained to you as to
 10 what was a truck?
 11 A. It was based on the actual definition of what
 12 the code read.
 13 Q. Definition of a truck?
 14 A. Yes.
 15 Q. So let's to go that. I had previously marked
 16 that definition as Exhibit 1 to the previous deposition
 17 of -- I believe it's your boss, Mr. Eli Gutierrez?
 18 A. Yes.
 19 Q. Let me show it to you, and he had compared it
 20 for me with the definition that is there in front of
 21 you, but I just want you to go ahead and do that
 22 independently to make sure that it's consistent.
 23 A. Yes.
 24 Q. Okay. Now, this definition -- and you have it
 25 there in front of you.

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1 A. Yes.
 2 Q. So you can read along with me, if you would.
 3 This talks about a truck as defined in the
 4 City code, correct?
 5 A. Correct.
 6 Q. Has this definition ever changed, as far as
 7 you know?
 8 A. No, not that I'm aware of.
 9 Q. What kind of car do you drive?
 10 MS. GLASSER: Object to form.
 11 A. I drive a 2000 GMC SUV.
 12 Q. SUV?
 13 A. Yes.
 14 Q. Truck?
 15 A. No.
 16 Q. That's not a truck?
 17 A. No.
 18 Q. Why not?
 19 MS. GLASSER: Object to form.
 20 A. It doesn't meet the guidelines as far as being
 21 a truck in my opinion.
 22 Q. Why, though?
 23 A. Because according to the definition of a truck
 24 in our codes, a truck is any motor vehicle designed,
 25 used or maintained for transporting or delivering

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1 property or material used in trade or commerce in
 2 general having space designed for and capable of
 3 carrying property, cargo or bulk material and which
 4 space is not occupied by passenger seating.
 5 Q. Okay. I appreciate that. You essentially
 6 just read to me what is in the code.
 7 A. Correct.
 8 Q. You drive, though -- it's a GMC. What year?
 9 A. 2000 Jimmy.
 10 Q. Jimmy?
 11 A. Correct.
 12 Q. And you park that outside your house?
 13 A. Yes.
 14 Q. Do you live in the City of Coral Gables?
 15 A. No.
 16 Q. And you don't think that under the definition
 17 at least according to the City of Coral Gables that
 18 that's a truck?
 19 A. No.
 20 Q. Would you agree with me -- and please refer to
 21 the definition.
 22 Would you agree with me that your GMC Jimmy is
 23 a motor vehicle?
 24 A. Yes.
 25 Q. Would you agree that it's used by you to

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1 transport or deliver property from time to time?
2 MS. GLASSER: Object to form.
3 A. I don't know what you would consider property.
4 Q. Use it to get groceries?
5 A. Groceries, yes.
6 Q. That's property, right?
7 A. Yes.
8 Q. You use it to go to Home Depot or Lowe's to
9 pick up stuff?
10 A. Yes.
11 Q. You consider whatever you get at Home Depot or
12 Lowe's property?
13 A. Yes.
14 Q. Cargo?
15 A. Sure.
16 Q. Material?
17 A. Yes.
18 Q. All right. Do you use that material -- let's
19 say, you go to Home Depot and having picked up some
20 wood at Home Depot -- using your GMC Jimmy?
21 A. Yes.
22 Q. Have you used that?
23 A. Yes.
24 Q. Now, the GMC Jimmy you own, it's got a space
25 behind the back seat position, correct?

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1 A. Correct.
2 Q. Would you agree with me that that space is
3 designed and capable of carrying property?
4 A. Yes.
5 MS. GLASSER: I'm going to object to this
6 whole line of questioning again.
7 Q. Would you agree with me that that area behind
8 the back seat of your Jimmy, that it is designed for
9 and capable of carrying cargo or bulk material?
10 MS. GLASSER: Object to form.
11 A. Yes.
12 Q. And would you agree with me that that space
13 behind your back seat in the GMC Jimmy doesn't have
14 passenger seating in it?
15 A. Correct.
16 Q. Why is your GMC Jimmy not a truck then under
17 the definition of the code?
18 MS. GLASSER: Object to form.
19 A. Based on the definition in the code, it's not
20 used for the trade or commerce in general.
21 Q. Okay. Good. Then let's go to that and talk
22 about that for a minute.
23 Now, other than that section of the
24 definition, is there anything else in this definition
25 in your mind as a code enforcement officer that

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1 distinguishes your GMC Jimmy from a truck under the
2 definition of the code?
3 MS. GLASSER: Object to form.
4 Q. In other words, is there anything else I'm
5 missing other than that trade or commerce in general
6 section?
7 MS. GLASSER: Object to form.
8 A. I don't believe so.
9 Q. That's pretty much it, right?
10 A. (No response.)
11 Q. Okay. All right.
12 The things that you pick up from Home Depot,
13 you don't think those things, whether it be wood or
14 products that are there, are used in trade or commerce
15 at all?
16 MS. GLASSER: Object to form.
17 A. No.
18 Q. Well, you're purchasing them, correct?
19 A. Yes. For personal use, yes.
20 Q. You're giving money to purchase those products
21 at Home Depot?
22 A. Yes.
23 Q. So they're trading those materials to you for
24 money, correct?
25 A. Correct.

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1 MS. GLASSER: Object to form.
2 Q. So the materials are in fact used in trade or
3 commerce, Home Depot or Lowe's is selling them to you,
4 correct?
5 A. Correct.
6 Q. So all those materials that you may purchase
7 are being used in trade or commerce?
8 MS. GLASSER: Objection.
9 A. I'm not in a business. I'm not in a trade.
10 Q. Have you ever seen anyone use an SUV for trade
11 or commerce?
12 MS. GLASSER: Object to form.
13 Q. In your employment capacity working at the
14 City, have you ever seen an SUV, let's say, a Yukon or
15 a Chevy Tahoe or any large SUV, used in what you would
16 consider to be trade or commerce?
17 A. Yes.
18 Q. Would you agree with me that some of those
19 vehicles are in fact designed to be used in trade or
20 commerce?
21 MS. GLASSER: Object to form.
22 A. I don't know. I don't know that that's what
23 their primary purpose would be.
24 Q. So is it important to know what the primary
25 purpose of a particular vehicle is as to whether or not

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1 it falls within this definition?
2 MS. GLASSER: Object to form.
3 A. Yes.
4 Q. What is the primarily purpose of a pickup
5 truck?
6 MS. GLASSER: Object to form.
7 A. To transport property, cargo, bulk material in
8 an area which isn't designed for passenger seating.
9 Q. Did you ever use a pickup truck before, ever
10 driven one?
11 A. No.
12 Q. Would you agree with me that some people don't
13 use it for anything other than passenger transport?
14 MS. GLASSER: Object to form.
15 A. Yes.
16 Q. And to some people that's their primary
17 function?
18 A. Yes.
19 MS. GLASSER: Same objection.
20 Q. Did you ever have occasion to question any of
21 your bosses here at the City of Coral Gables in the
22 last 18 years as to why the City was only ticketing
23 pickup trucks under this ordinance and not SUVs?
24 A. No.
25 Q. Did you ever have an occasion to ask for any

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1 clarification of these sections with respect to the
2 ticketing of pickup trucks?
3 A. No.
4 Q. Why is this particular ordinance in place?
5 MS. GLASSER: Object to form.
6 Q. And by the ordinances, I mean 4-411 and 4-412.
7 What's the purpose of those, if you know?
8 A. I don't know. It's part of our City code.
9 Q. Do you know why this ordinance is in place,
10 though? In other words, what is the function of the
11 ordinance?
12 A. It was an ordinance that was passed many, many
13 years ago by the City Commission at that time.
14 Q. Do you know why it was passed?
15 A. No, I don't.
16 Q. Do you know the purpose behind why it was
17 passed.
18 A. No, I don't.
19 Q. Do you think pickup trucks are ugly?
20 MS. GLASSER: Object to form.
21 A. No.
22 Q. Serious question.
23 A. No.
24 Q. With respect to pickup trucks in general, have
25 you ever had occasion to speak with any of the City

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1 Commissioners or hear any of the City Commissioners
2 speak about why this ordinance is important?
3 A. No.
4 Q. So if there was an ordinance that said it was
5 your job to ticket all Volkswagen Beetles, you would
6 just ticket them, not ask questions, correct?
7 MS. GLASSER: Object to form.
8 A. That's my job.
9 Q. I understand. Just following orders?
10 A. Correct.
11 Q. How many of these tickets under 4-411 and
12 4-412, formerly 8-11 and 8-12, do you think had been
13 issued to just pickup trucks in the last year? And you
14 can give me a range.
15 A. In the last year --
16 MR. GLAZIER: Clarify what you mean by last
17 year.
18 Q. Twelve months prior to today.
19 A. Not very many, because I believe the ordinance
20 was overturned.
21 Q. How about the year before?
22 A. Maybe hundreds.
23 Q. Has that been pretty much consistent since
24 you've been here, about 100 or so of these tickets a
25 year or more?

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1 A. More.
2 Q. Were there particular times where it was more
3 heavily enforced and, if so, when?
4 A. With regards to what?
5 Q. Is there a particular occasion or time back in
6 the history since you've been here that these code
7 sections have been more vigorously enforced?
8 A. No.
9 Q. In the last five or so years, if we take out
10 the timeframe from the appellate decision that
11 overturned the ordinance and look back five years
12 before that.
13 A. Yes.
14 Q. How many tickets do you think were issued in
15 that five-year period, thousands? To just pickup
16 trucks now under these ordinances.
17 A. Hundreds, hundreds. I don't know that
18 thousands is correct, but hundreds.
19 Q. What's the fine under these sections now?
20 A. \$50 fine.
21 Q. I had found online it appeared that that fine
22 had changed.
23 A. It changed, right.
24 Q. I thought it was \$50, too.
25 When did it change to \$100?

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1 A. I believe it changed when they did a rewrite
2 of the code to \$100.
3 Q. Right. When was that rewrite, do you know?
4 A. I'm not sure of that.
5 Q. Was it in '07?
6 A. Recently. Possibly in '06, '07.
7 Q. And it was changed from \$50 to \$100?
8 A. Yes.
9 Q. Before that, when it was \$50, do you know how
10 long it was \$50?
11 A. I believe it was always \$50 until the code
12 rewrite took place.
13 Q. Let me show you something we marked previously
14 in the prior deposition as Exhibit 2.
15 It's called A Citizens Guide to Code
16 Enforcement. Have you ever seen that before?
17 A. Yes.
18 Q. When was the first time you had occasion to
19 see that?
20 A. This is a packet that was made up by the
21 building and zoning department to hand out to the
22 residents of Coral Gables and new residents as they
23 moved in.
24 Q. Did you have any part in preparing this
25 particular document?

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1 A. No.
2 Q. Do you know who did prepare this or put this
3 together?
4 A. I believe our planning department put it
5 together.
6 Q. I've got a tab here to the page that talks
7 about the code sections that we're talking about, and I
8 think when this initially came out they with still 8-11
9 and 8-12.
10 If you see there and then you can also turn to
11 the next page. It talks about 8-12. Do you see that?
12 A. Yes.
13 Q. Anywhere within this packet to citizens, does
14 it explain the difference between a pickup truck and an
15 SUV at all?
16 A. No.
17 Q. Does it say anything in there about pickup
18 trucks in particular?
19 A. Only in the definition of trucks.
20 Q. The definition we already went through?
21 A. Right.
22 Q. Anywhere else?
23 A. Not that I'm aware of.
24 Q. Are you aware of anything else that's given to
25 citizens that move into the City to explain to them

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1 what new codes they may have to be aware of, other than
2 this packet?
3 A. No.
4 MR. KUVIN: I'll just mark this for clarity.
5 I'll mark it in order. So I'm going to mark this
6 as Exhibit 3. It's just a copy of 4-411 and
7 4-412.
8 (Thereupon, Plaintiffs' Exhibit No. 3 was
9 marked for Identification.)
10 Q. And I just want you, if you could, verify with
11 what you've got here that that's a correct citation of
12 the current code sections we're talking about.
13 A. Yes.
14 Q. Okay. Do you know whether or not these
15 sections changed at all during the rewrites of '06 or
16 '07?
17 A. I don't think the verbiage changed.
18 Q. No commas, periods, ands, ors, nothing?
19 A. I'd have to go through it word by word, but
20 basically I just think that the numbering system
21 changed. I don't think the verbiage changed.
22 Q. With respect to the change, the code change of
23 '06/'07, did anyone come to you and explain to you to
24 enforce it differently when the code was revised in
25 '06/'07?

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1 A. No.
2 Q. Were you given any retraining on these
3 sections of the code at any point in time since your 18
4 years of being here?
5 A. No.
6 Q. Have you ever had a citizen complain after
7 issuing a ticket for their pickup truck under these
8 sections of the code?
9 A. Yes.
10 Q. How do you explain this section to them?
11 What do you tell them is right or wrong about
12 parking a pickup truck in the City, according to the
13 code as you understand it?
14 MS. GLASSER: Object to form.
15 A. I explain the code to them as I best can,
16 relaying to them the information about parking of a
17 pickup truck or commercial type vehicle in the City,
18 what's required.
19 Normally when I would write my tickets, as
20 most of us would do, we would leave the definition of
21 the code with the ticket.
22 Q. You agree with me, though, that in the
23 definition there's nothing that says pickup truck,
24 correct, nothing specifically that says pickup?
25 A. On what?

1 Q. On definitions of a truck.
 2 MS. GLASSER: Object to form.
 3 A. It doesn't specify pickup. It does say truck.
 4 Q. And with respect -- and I think we've gone
 5 through this at least with your vehicle.
 6 With respect to large SUVs, which would
 7 include, say, a Yukon or those similar type vehicles,
 8 Expeditions, you don't think those are trucks?
 9 MS. GLASSER: Object to form.
 10 A. No.
 11 Q. If you were to put away the code for a second
 12 and just use common sense --
 13 MS. GLASSER: Object to form.
 14 A. Yes.
 15 Q. -- would you consider a Ford Expedition a
 16 truck?
 17 MS. GLASSER: Object to form.
 18 A. No.
 19 Q. Why? What is it?
 20 A. Based on our definition --
 21 Q. Stop for a second, if you would.
 22 I'm asking you to put away the definition for
 23 the City. I want you to use your common sense as a
 24 citizen now.
 25 Throwing that definition aside, when you look

1 at an Expedition drive down the street, would you
 2 consider that a truck?
 3 MS. GLASSER: Object to form.
 4 A. No.
 5 Q. Why not? I'm asking for your common sense.
 6 A. It doesn't have an open-bedded area. It's an
 7 enclosed vehicle.
 8 Q. So it's the enclosure that's make the
 9 difference?
 10 A. Yes.
 11 Q. What about pickups that have the topper on
 12 them, that's an enclosure, correct?
 13 A. Correct.
 14 Q. Does that change your mind as to whether or
 15 not it's a truck at that point?
 16 A. No.
 17 Q. What about if it's got a covered bed, does
 18 that make a difference to you?
 19 A. No.
 20 Q. In enforcing these sections of the code, does
 21 it make any difference if the person who owns the
 22 pickup has a covered bed, make any difference whether
 23 or not --
 24 A. No difference whatsoever.
 25 Q. Make any difference to you whether the person

1 has a topper on the back of the pickup truck?
 2 A. No difference.
 3 Q. Clearly it doesn't make any difference, the
 4 value of the vehicle, correct?
 5 MS. GLASSER: Object to form.
 6 Q. In other words, you don't not ticket expensive
 7 vehicles and just ticket the cheap ones, right?
 8 A. No.
 9 Q. You ticket a pickup regardless of how
 10 expensive or nice it may look?
 11 A. Correct.
 12 Q. So you would ticket a pickup that is rusted
 13 out and dented the same way you would ticket a spanking
 14 brand new pickup?
 15 A. Correct.
 16 Q. They both violate the code and you would
 17 ticket them?
 18 A. Correct.
 19 Q. Does it matter whether or not there's anything
 20 in the bed of the truck?
 21 In other words, if I have a pickup and it's
 22 got an empty bed and it's clean, you would still ticket
 23 that, correct?
 24 A. Yes.
 25 Q. Under this particular ordinance, does it

1 matter whether or not a citizen lives within the City
 2 of Coral Gables when you're ticketing the pickup truck?
 3 A. No.
 4 Q. So they can live in the City of Miami and
 5 you'd still ticket them under the ordinance if they
 6 were parked in violation of the code?
 7 A. Yes.
 8 Q. And if they lived in the City of Coral Gables,
 9 obviously you would ticket them the same way?
 10 A. Yes.
 11 Q. Does it matter under the code in your mind as
 12 an enforcement officer, as you've been trained as an
 13 enforcement officer, whether or not there's exigent
 14 circumstances as to why that vehicle may be parked
 15 there?
 16 A. No.
 17 Q. So if, for example, if a family member were
 18 having a medical emergency and that family member
 19 needed to stay there with him or her for that medical
 20 emergency and they parked their pickup truck in the
 21 driveway in violation of the code, you would still
 22 ticket them?
 23 A. Yes.
 24 Q. Because they violated the code?
 25 A. Well, based on circumstances, I've always

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1 tried to work with people in the past regarding
2 timeframes.
3 Q. Well, what if they said my parent, let's say,
4 using that example, is ill and I need to live with them
5 for the next coming months and the only vehicle I have
6 is a pickup?
7 A. I'd explain to them that they're in violation
8 of our particular pickup truck ordinance.
9 Q. And you'd have to ticket them?
10 A. Yes.
11 Q. Do you think -- these questions are going to
12 sound silly, but I've got to ask them. I apologize.
13 Do you think that pickup trucks somehow injure
14 the morals of the City of Coral Gables and citizens
15 within the City?
16 MS. GLASSER: Object to form.
17 A. I don't know.
18 Q. Do you think seeing pickups trucks parked in
19 driveways during the City after dark somehow hinders
20 the morals of our society?
21 MS. GLASSER: Object to form.
22 A. No.
23 Q. Do you think it somehow hinders the health of
24 the citizens of Coral Gables to have a pickup truck
25 parked in the driveway?

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1 MS. GLASSER: Object to form.
2 A. No.
3 Q. And I said these are silly, but I've got to
4 make sure I go through these.
5 Do you think it somehow affects the safety of
6 the citizens to have a pickup truck parked in the
7 driveway after dark?
8 A. No.
9 MS. GLASSER: Object to form.
10 Q. Do you think it somehow violates the welfare
11 or well being of the citizens to have pickup trucks
12 parked in the driveway after dark?
13 MS. GLASSER: Object to form.
14 A. No.
15 Q. Do you know how many trucks are actually
16 registered to citizens within the City of Coral Gables?
17 A. No, sir.
18 Q. Are there records kept within the City, that
19 you're aware of, that talk about the number of trucks,
20 pickups trucks registered in the City?
21 A. Not that I'm aware of.
22 Q. Before you all issue tickets under these code
23 sections, 4-411 and 4-412, do you check with the
24 department of vehicle registration to determine whether
25 the vehicle is being used for commercial or personal

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1 use?
2 A. No.
3 Q. Does it make a difference to you?
4 A. No.
5 Q. Now, you have been here 18 years at the City.
6 So I know that you're aware of some of the
7 houses that have been built back in the '40s and '50s
8 don't have garages.
9 A. Correct.
10 Q. You know there is an exception to this code
11 that allows someone to own a pickup truck and put it in
12 a garage, right?
13 A. Correct.
14 Q. What about people that don't have garages?
15 What happens if they own a pickup truck?
16 A. They have to comply with the code.
17 Q. What do they do?
18 MS. GLASSER: Object to form.
19 A. That's their decision.
20 Q. What options do they have?
21 MS. GLASSER: Object to form.
22 A. Whatever their options are, that's up to them
23 to make a decision to comply with the code.
24 Q. Then I'll give you an example.
25 Let's say somebody has a permanent residence

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1 here in the City of Coral Gables and owns a house that
2 does not have a garage --
3 A. Yes.
4 Q. -- and they own a pickup truck.
5 A. Yes.
6 Q. They don't own any other properties. They
7 just own their own home.
8 A. Yes.
9 Q. If they have a pickup truck, what can they do
10 in that circumstance?
11 MS. GLASSER: I object to form.
12 A. As the code states, between the hours of
13 7:00 p.m. and 7:00 a.m. they have to garage it or not
14 park it on residential property.
15 Q. Can't park it at their own house?
16 A. No.
17 Q. And if they've got nowhere else to park it --
18 MS. GLASSER: Object to form.
19 Q. -- what do they do?
20 MS. GLASSER: Object to form.
21 A. It's their decision.
22 Q. What options do they have?
23 MS. GLASSER: Object to form.
24 A. I don't know.
25 Q. Give me some potential options.

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1 MS. GLASSER: Asked and answered, objection;
2 and objection, it's not his pickup truck. So it's
3 not --
4 A. I don't know what their options could be.
5 MS. GLASSER: I'm making my objection for the
6 record.
7 It's been asked and answered multiple times
8 and, number two, I object to the form.
9 It's not his pickup truck, and he's not in a
10 position to say what somebody else's options are,
11 which could be numerous.
12 MR. KUVIN: Well, that's the longest objection
13 to form I think I've ever heard.
14 MS. GLASSER: Okay.
15 Q. One of the options obviously they would have
16 to consider is they might have to actually sell that
17 vehicle, correct?
18 MS. GLASSER: Object to form.
19 A. Yes.
20 Q. Get rid of their vehicle, the only vehicle
21 they own, because there's no way to comply with the
22 code if they don't have a garage?
23 MS. GLASSER: I object to form.
24 A. Yes.
25 Q. Had you in your job here at the City working

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1 as a code enforcement officer ever heard of a decision
2 by the name of Proctor versus City of Coral Springs?
3 A. No.
4 Q. No one ever gave you that to read, look at?
5 A. No.
6 Q. Do you know any code enforcement officers that
7 work in the City of Coral Springs?
8 A. No, sir.
9 Q. Has anyone ever made you aware that before the
10 decision had come out of the appellate court here last
11 year that there was a decision out of a court up in the
12 Coral Springs area?
13 A. I believe I might have heard talk about it,
14 but I don't recall what the decision was.
15 Q. I want to see and I want to make sure that
16 we're clear about some of this stuff, because we're
17 going to be probably showing this to the court later,
18 just so that we can understand what the definition is
19 and the enforcement of your particular code.
20 So we will mark these individually.
21 (Thereupon, Plaintiffs' Exhibit No. 4 was
22 marked for Identification.)
23 Q. Okay. Let's look at what I've marked as
24 Exhibit 4. Okay?
25 MR. KUVIN: Now, let me just hold this up for

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1 the camera real quick. If he'll let me know when
2 he's got it.
3 THE VIDEOGRAPHER: Okay.
4 Q. Does that particular vehicle violate the code?
5 A. No.
6 (Thereupon, Plaintiffs' Exhibit No. 5 was
7 marked for Identification.)
8 Q. Let's look at what I marked as Exhibit 5.
9 MS. GLASSER: Object to form. It violates
10 which section of the code?
11 MR. KUVIN: 4-411 or 4-412.
12 MR. GLAZIER: If it's parked in a residential
13 area?
14 MR. KUVIN: Yes.
15 Q. If parked in a residential area after
16 7:00 p.m.
17 A. No.
18 Q. Okay. Thank you.
19 Let's hold this one up for the camera.
20 THE VIDEOGRAPHER: Okay.
21 Q. Does that vehicle violate 4-411 or 4-412 if
22 it's parked in a residential area at someone's home
23 after 7:00 p.m.?
24 A. Yes.
25 Q. Why?

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1 A. It has an area that is not designed for
2 passenger seating and an area of space which is capable
3 of carrying property, cargo or bulk material.
4 (Thereupon, Plaintiffs' Exhibit No. 6 was
5 marked for Identification.)
6 Q. Let me show you Exhibit 6.
7 Take a look at Exhibit 6. Does that vehicle
8 violate 4-411 or 4-412 if parked in a residential area
9 after 7:00 p.m.?
10 A. No.
11 (Thereupon, Plaintiffs' Exhibit No. 7 was
12 marked for Identification.)
13 Q. These are all going to be the same question by
14 the way. I'll show this for the camera?
15 THE VIDEOGRAPHER: Okay.
16 Q. Does that vehicle violate the code as we
17 discussed?
18 A. Yes.
19 Q. Why?
20 A. Because of the open area to the rear of the
21 cab which is not designed for passenger seating.
22 Q. Let's mark 8.
23 (Thereupon, Plaintiffs' Exhibit No. 8 was
24 marked for Identification.)
25 Q. Let's take a look at 8. Okay?

1 THE VIDEOGRAPHER: Okay.
 2 Q. Does that one violate the code we've been
 3 talking about?
 4 A. No.
 5 (Thereupon, Plaintiffs' Exhibit No. 9 was
 6 marked for Identification.)
 7 Q. Let's take a look at 9.
 8 MS. GLASSER: Show it to me, please.
 9 MR. KUVIN: Sorry, sorry, sorry.
 10 Q. Okay. How about that one, does that violate
 11 the codes we've been talking about?
 12 A. Yes.
 13 (Thereupon, Plaintiffs' Exhibit No. 10 was
 14 marked for Identification.)
 15 Q. I show you Exhibit 10.
 16 MR. KUVIN: I'll show it to you guys in a
 17 second.
 18 THE VIDEOGRAPHER: Okay.
 19 MS. GLASSER: Is that yours?
 20 MR. KUVIN: Oh, no. Mine's coming up.
 21 Q. Okay. Take look at Exhibit 10.
 22 Does that vehicle violate 4-411 or 4-412 if
 23 parked in a residential area after 7:00 p.m.
 24 A. No.
 25 Q. All right. Take a look at that vehicle for

1 one second for me, if you would.
 2 Exhibit 10, if that vehicle was parked in a
 3 residential area after 7:00 p.m. is there any code,
 4 that you're aware of, that that vehicle would violate
 5 in the City code in the City of Coral Gables?
 6 A. No.
 7 Q. If I were to ask you to look at -- let's see.
 8 Let's take Exhibit 9 and compare it to Exhibit 10.
 9 Which vehicle is a nicer looking vehicle?
 10 MS. GLASSER: Object to form.
 11 Q. In your opinion.
 12 MS. GLASSER: Object to form.
 13 A. 9.
 14 Q. Personal opinion.
 15 A. 9.
 16 Q. Clearly it the looks better, right?
 17 A. Obviously.
 18 Q. More esthetically pleasing?
 19 MS. GLASSER: Object to form.
 20 A. Yes.
 21 Q. Good question. If we take a look at
 22 Exhibit 10 for a second, what if the seats were removed
 23 from the back of the vehicle, would it violates the
 24 sections of the code we've been talking about?
 25 A. No.

1 (Thereupon, Plaintiffs' Exhibit No. 11 was
 2 marked for Identification.)
 3 Q. Let's take a look at Exhibit 11.
 4 THE VIDEOGRAPHER: Okay.
 5 Q. Does that one violate 4-411 and 4-412?
 6 A. Yes.
 7 Q. If it's parked in a residential area after
 8 hours?
 9 A. Yes.
 10 MS. GLASSER: Oh, there's yours.
 11 MR. KUVIN: Told you it was coming.
 12 Q. Take a look at what we'll mark as Exhibit 12.
 13 (Thereupon, Plaintiffs' Exhibit No. 12 was
 14 marked for Identification.)
 15 THE VIDEOGRAPHER: Okay.
 16 Q. How about that one, Exhibit 12, does that
 17 violate 4-411 and 4-412?
 18 A. No.
 19 Q. Would that violate any codes that you're aware
 20 of for the City of Coral Gables if parked in a
 21 residential area after 7:00 p.m.?
 22 A. No.
 23 MR. KUVIN: Object to form. You can't see
 24 what is on the other side of that car or vehicle,
 25 rather.

1 Q. Okay. So if I were to have -- I just want to
 2 make sure I understand this and when the Court reviews
 3 this they can understand the code as well.
 4 And trust me, it's not you that I'm making fun
 5 of here but -- and I want the camera to get this. Hang
 6 on. Let me put this up here.
 7 If I had in my driveway the car in Exhibit 9
 8 and the car in Exhibit 12 --
 9 MR. KUVIN: You got that?
 10 THE VIDEOGRAPHER: Yes.
 11 Q. If I had these two cars parked in my driveway
 12 after 7:00 p.m. in the City of Coral Gables, you would
 13 ticket No. 9 and not No. 12?
 14 MS. GLASSER: Object to form.
 15 A. Yes.
 16 Q. Do you see any rhyme or reason to that?
 17 MS. GLASSER: Object to form.
 18 A. This doesn't meet the code.
 19 Q. Okay.
 20 A. Exhibit 9 does not meet the code.
 21 Q. Other than it does not meet the code, do you
 22 see any reason why the vehicle in Exhibit 9 should be
 23 ticketed and the vehicle in Exhibit 12 should not?
 24 MR. KUVIN: Object to form.
 25 A. Because it doesn't meet the code is the only

1 reason.

2 Q. Do you think the vehicle in Exhibit 9 is more
3 esthetically pleasing looking than the one in
4 Exhibit 12?

5 MR. KUVIN: Object to form.

6 A. It's the eye of the beholder.

7 Q. Okay. Fair enough.

8 Let's take a look -- I've got two more and
9 then we're done with this. All right. Two last ones
10 only and I'll stop with this.

11 (Thereupon, Plaintiffs' Exhibit No. 13 was
12 marked for Identification.)

13 (Thereupon, Plaintiffs' Exhibit No. 14 was
14 marked for Identification.)

15 Q. Take a look at what I marked as Exhibit 13.

16 THE VIDEOGRAPHER: Okay.

17 Q. Does that violate the code sections we've been
18 discussing at all?

19 A. No.

20 Q. Exhibit 14, but that does, correct?

21 A. Yes.

22 Q. Do you know why the code section is enforced
23 during nighttime hours and not daylight hours; in other
24 words, why it was written that a vehicle like the one
25 shown in Exhibit 14 cannot be parked after 7:00 p.m. or

1 before 7:00 a.m.?

2 A. No.

3 Q. You agree with me that's generally nighttime
4 hours?

5 A. Correct.

6 Q. At least most of those hours it's nighttime?

7 A. Correct.

8 Q. Dark out?

9 A. Correct.

10 Q. Now, I don't mean to be silly here, but at
11 night it's dark, right?

12 A. Correct.

13 Q. Harder to see things in the night?

14 A. Yes.

15 Q. Easier to see things in daylight hours
16 clearly?

17 A. Correct.

18 MS. GLASSER: I object to form.

19 Q. Did anyone give you the case that came out
20 last year, the appellate case to read as a code
21 enforcement officer to kind of educate you on why that
22 code was overturned by that court?

23 A. No.

24 Q. Did you ever read it?

25 A. No.

1 Q. Never curious about what they said?

2 A. No.

3 Q. Are there any weight or size restrictions with
4 respect to the pickup truck or truck ordinance?

5 A. No.

6 Q. So it doesn't matter if it's a small pickup or
7 a huge, you know, Ford F250, they both violate the
8 code?

9 A. Yes.

10 Q. And they would both be ticketed?

11 A. Correct.

12 Q. Would you agree with me that a pickup truck is
13 different than a camper?

14 A. Yes.

15 Q. Generally the two things are different?

16 A. Yes.

17 Q. People can use pickup trucks for purely
18 personal reasons if they choose, it could be a personal
19 transport vehicle?

20 A. Yes.

21 (Discussion off the record.)

22 Q. Take a look at what I'll mark as Exhibit 15.

23 (Thereupon, Plaintiffs' Exhibit No. 15 was
24 marked for Identification.)

25 MR. KUVIN: You're welcome to read it, but

1 these did come from you guys.

2 THE VIDEOGRAPHER: Off the record at 2:30.

3 (Discussion off the record.)

4 THE VIDEOGRAPHER: Back on the record at 2:38.

5 Q. I'm going to show you what we have marked as
6 Exhibit 15, and let me tag the page here.

7 It appears this is a particular ticket that
8 you issued. I tagged the page, but you're welcome to
9 flip back to the first page, if you want.

10 Is that your signature on the ticket?

11 A. Yes.

12 Q. That's a ticket that you issued?

13 A. Yes.

14 Q. Issued to a pickup truck, correct?

15 A. Correct.

16 Q. When was this ticket issued?

17 A. February the 9th of '07 6:10 in the morning.

18 Q. Were you aware at the time this ticket was
19 issued that the issue of whether or not that ordinance
20 was lawful or not was before the courts?

21 A. Yes.

22 Q. Someone explained that to you?

23 A. Yes.

24 Q. Has it ever been explained to you that tickets
25 should not be issued while the court cases were

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1 pending?
2 A. No.
3 Q. Was there a direction given to go ahead and
4 continue issuing tickets despite the court pending
5 case?
6 A. Yes.
7 Q. Who gave you that direction?
8 A. The supervisor of our unit at that particular
9 time.
10 Q. Which was?
11 A. Millicent Bain.
12 Q. Where is she now?
13 A. She's retired.
14 Q. Do you know why she left the City?
15 A. No.
16 Q. Had you heard rumours as to why she left?
17 A. No.
18 Q. Do you know where she lives now?
19 A. I believe she lives in Coconut Grove.
20 Q. Do you know how long she was your boss? Was
21 it the entire 18 years?
22 A. No. Probably 12 to 15 years.
23 Q. Who was the person before her?
24 A. Allen Richmond.
25 Q. Do you know where is he now?

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1 A. Retired.
2 Q. Do you know if he's here in South Florida?
3 A. Yes.
4 Q. Do you know where in South Florida he is,
5 Coral Gables, Coconut Grove?
6 A. Homestead.
7 Q. Anyone other than Allen and Millicent work as
8 your bosses in code enforcement?
9 A. No.
10 Q. And your current boss, obviously. Anyone
11 other than those three?
12 A. No.
13 Q. Now, in this particular ticket that you issued
14 we've marked as Exhibit 15, were you aware that a lien
15 had been placed on the property as a result of this
16 ticket?
17 A. I don't think so.
18 Q. Go ahead and take a look at those documents.
19 Having looked at those documents, are you now
20 aware that a lien had than placed on the property as a
21 result of the ticket you issued?
22 A. Yes.
23 Q. Do you know when that lien, if it was ever,
24 released from the property?
25 A. No.

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1 Q. Do you know when the lien was actually placed
2 on the property? Can you tell?
3 A. 12th of June 2007.
4 Q. Do you know when the lien -- well, let me ask
5 you this. Do you know if the lien was ever released?
6 A. No.
7 Q. Look at the first page of the exhibit.
8 Do you see that first letter there that's
9 issued to Clerk of the Court?
10 A. Yes.
11 Q. Releasing six liens and placing one others?
12 A. Yes.
13 Q. Do you know if that one lien that was placed
14 in accordance with this letter of January 23rd, 2008
15 had anything to do with the ticket you issued?
16 A. Yes.
17 Q. It did?
18 A. Yes.
19 Q. So am I correct in stating that there was a
20 lien placed on this property on January 23rd of 2008
21 after a court had deemed that the statute that you were
22 citing this person under was unconstitutional?
23 MR. KUVIN: Object to form.
24 A. Liens are placed on property due to the fact
25 that the ticket hasn't been paid in a timely manner.

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1 Q. Well, you agree with me that last year a court
2 held that this ordinance was improper, struck it down?
3 MS. GLASSER: Object to form.
4 A. Yes.
5 Q. Let me rephrase that.
6 Do you agree with me that last year -- and
7 I've got a copy of the decision here; it was on
8 August 22nd of 2007 -- that a court found that the
9 ordinance was improper?
10 MS. GLASSER: Object to form.
11 A. In August of 2007?
12 Q. Correct.
13 A. Correct.
14 Q. After you issued the ticket?
15 A. Correct.
16 Q. But nonetheless, this lien was apparently
17 placed on this person's property after that August
18 decision, correct?
19 A. Correct.
20 Q. So how is it that the City can place a lien on
21 the property based on an unconstitutional ordinance?
22 MS. GLASSER: Object to form.
23 Q. If you know.
24 A. I don't know.
25 Q. Is that a proper lien, in your opinion?

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1 MS. GLASSER: Object to form.
2 A. I don't issue the liens.
3 Q. Do you have the qualifications to say whether
4 it is or is not an improper lien?
5 A. No.
6 Q. Do you understand what a lien is?
7 A. Yes.
8 Q. Explain to me your understanding.
9 A. My understanding is that failure to pay the
10 ticket in a timely manner could result in a lien being
11 placed on your property.
12 Q. But to someone who doesn't understand what a
13 lien is, can you explain what a lien is? What is that?
14 A. Outstanding monies that are due to the City of
15 Coral Gables for fines that haven't been paid need to
16 be addressed.
17 Q. And it can prevent somebody from selling the
18 property without satisfying it?
19 A. That's correct.
20 Q. So it's essentially an encumbrance on the
21 property?
22 A. Yes.
23 Q. The lien follows the property?
24 A. Yes.
25 MS. GLASSER: Object to form.

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1 Q. And you as you sit here today, you don't know
2 why the City would place a lien on a property based on
3 an unconstitutional ordinance?
4 MS. GLASSER: Object to form.
5 A. No. I can only say that the ticket was issued
6 in February of '07 and never paid. That's why the lien
7 took place.
8 MS. GLASSER: I'm going to object to the form
9 on the basis asked and answered, and also there's
10 a motion for a hearing pending. Nothing has been
11 final.
12 MR. KUVIN: Also when I checked, the Third DCA
13 decision was final unless a rehearing was granted.
14 MR. GLAZIER: Look at the cover page of the
15 opinion that says not final until motion for
16 hearing if filed is ruled.
17 MS. GLASSER: Correct.
18 MR. GLAZIER: Also disposition of timely filed
19 motion for rehearing.
20 MR. KUVIN: Okay. We can go with that.
21 (Thereupon, Plaintiffs' Exhibit No. 16 was
22 marked for Identification.)
23 Q. Let's go ahead and take a look at what I
24 marked as Exhibit 16.
25 MR. GLAZIER: That's what the opinion is.

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1 MS. GLASSER: It's verbatim.
2 MR. KUVIN: Okay.
3 Q. Take a look at Exhibit 16.
4 MS. GLASSER: Pass it down.
5 Q. While they're looking at that, when the
6 decision came out your bosses came to you and said
7 don't issue tickets under this ordinance anymore, did
8 they not?
9 A. For pickup trucks.
10 Q. For pickup trucks, right?
11 A. Correct.
12 Q. Why?
13 MS. GLASSER: Object to form.
14 Q. Why did he tell you that? Did he explain why?
15 MS. GLASSER: Object to form.
16 A. The court had reached a decision and had ruled
17 in the favor of the Plaintiff.
18 Q. Correct. So he told you not to issue tickets
19 under these ordinances for pickup trucks any longer?
20 A. Right.
21 Q. Or until there's any change?
22 A. Correct.
23 MS. GLASSER: Object to form. Who is he? Who
24 are you referring to?
25 MR. KUVIN: His boss, who I mentioned before.

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1 Q. Just so we're clear, Eli Gutierrez, that's
2 your boss, right?
3 A. Correct.
4 MR. KUVIN: Are you guys done looking at 16?
5 MS. GLASSER: No.
6 Q. Take a look at that one, if you would,
7 Exhibit 16.
8 Did you issue the ticket that's contained
9 within that packet?
10 A. Yes.
11 Q. Okay. Who is Terri Shepherd?
12 A. She's a code enforcement officer.
13 Q. And the ticket contained in that packet,
14 Exhibit 16, is for a pickup truck, correct?
15 A. That's correct.
16 Q. Parked in a residential area?
17 A. Correct.
18 Q. Pursuant to those code sections we've been
19 referencing, 4-411 and 4-412?
20 A. Correct.
21 Q. And the fine was \$100?
22 A. Correct.
23 Q. And the person apparently didn't pay that
24 ticket?
25 A. Yes.

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1 Q. And as a result Terri Sheppard signed a notice
2 of lien which was filed, according to this document, on
3 August 22nd, 2007, is that correct?
4 A. Correct.
5 Q. Do you know the day, the actual date that
6 the decision came out of the Third District Court of
7 Appeals striking down that ordinance?
8 MS. GLASSER: Object to form.
9 A. No.
10 Q. It happened to be August 22nd of 2007.
11 Do you know why it is that Terri Sheppard
12 might have signed -- and I've got another one here
13 we're going to mark as Exhibit 17 -- two liens on
14 property that exact same day?
15 A. No.
16 MS. GLASSER: Object to form.
17 Q. Did the city attorney or assistant city
18 attorney sign the notice of lien that's marked there on
19 Exhibit 16? Do you see the two signature lines there?
20 A. Yes. No.
21 Q. Neither one of them signed it, did they?
22 A. No.
23 Q. Do you know whether these notices of lien were
24 actually filed without the attorneys' signatures? Do
25 you have any idea?

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1 A. No idea.
2 Q. Let me show you what we'll mark as Exhibit 17,
3 which is the other one I've been referencing.
4 And just so the record is clear, Exhibit 16 is
5 a notice of lien with the respondent being Nancy Andino
6 and Hector Andino. Address is 1715 Red Road.
7 It's in the City of Coral Gables. Correct?
8 A. Correct.
9 Q. Lot 14, Block 28, Coral Gables SEC E, like
10 elephant, recorded in Plat Book 8, Page 86 of the
11 Public Records of Dade County, Florida.
12 Now, let me show you what we'll mark as
13 Exhibit 17.
14 (Thereupon, Plaintiffs' Exhibit No. 17 was
15 marked for Identification.)
16 Q. This is a packet of information regarding
17 property at 1711 Red Road, respondent is Maria Perez.
18 Did you issue the ticket contained within that
19 packet, Exhibit 17?
20 A. Yes.
21 Q. Was a lien issued with respect to that ticket
22 that you issued?
23 A. Yes.
24 Q. That ticket was issued for a violation or
25 alleged violation of Code Sections 4-411 or 4-412,

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1 which one?
2 A. 4-411.
3 Q. Pickup truck parked in residential area?
4 A. Correct.
5 Q. Do you know whether that truck was a
6 commercial truck or a personal-use truck?
7 Do you know whether or not that truck in
8 Exhibit 17 was a personal-use vehicle or a commercial
9 vehicle?
10 A. No.
11 MR. GLAZIER: I object to the form.
12 MS. GLASSER: Yes.
13 Q. Did it matter to you whether it was a personal
14 use or commercial use of a truck?
15 A. No.
16 MS. GLASSER: Form.
17 Q. Once again, that particular lien was placed on
18 August 22nd of 2007. Do you see that?
19 A. Correct.
20 Q. And that particular lien that was placed on
21 that particular date, once again, you have no idea of
22 why that lien might have been placed on the exact same
23 day that the Third District Court of Appeals struck
24 down that particular code section?
25 A. No.

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1 MS. GLASSER: Object to form.
2 Q. Never discussed that issue with anyone at the
3 City?
4 A. No.
5 Q. Once again you see the attorneys' signatures
6 appear to be missing from that particular notice of
7 lien, don't they?
8 A. Yes.
9 MS. GLASSER: Form.
10 Q. Do you know if they ever actually signed any
11 of the liens that were filed, if you know?
12 A. I don't know.
13 Q. All right. Let me show you what we'll mark as
14 Exhibit 18.
15 (Thereupon, Plaintiffs' Exhibit No. 18 was
16 marked for Identification.)
17 Q. While you're looking at that, let me just ask
18 you a couple quick questions.
19 Have you ever had any direction or discussions
20 at the City about going on private properties to
21 determine whether or not a vehicle complies or does not
22 comply with those sections of the code?
23 A. No.
24 Q. Do you know to what extent you're allowed to
25 go on someone's property to determine whether or not a

1 vehicle that's parked in a residential area does or
 2 doesn't violate the code?
 3 A. You don't have to go onto the property. You
 4 can see it from the street.
 5 Q. What if you can't see it from the street?
 6 A. Then if you can't see a truck from the street,
 7 then obviously there's no violation.
 8 Q. Are you allowed to go on someone's property to
 9 determine whether or not it is or is not a pickup truck
 10 and violates the code?
 11 Are you allowed to walk on the property to
 12 look at it?
 13 A. No.
 14 Q. Are you allowed to touch any portion of the
 15 property in order to determine whether or not something
 16 is or is not a pickup truck under the code?
 17 A. No.
 18 Q. Take a look at what I've marked as Exhibit 18,
 19 and if you look at the ticket on the front page there,
 20 is that a ticket you issued?
 21 A. Yes.
 22 Q. What's the property location of that ticket?
 23 A. Excuse me?
 24 Q. The property location that's listed on the
 25 ticket.

1 A. 5130 Carillo Street, Coral Gables.
 2 Q. Within the City of Coral Gables, correct?
 3 A. Correct.
 4 Q. Did you go on the property in order to
 5 determine whether or not that was a pickup?
 6 A. No.
 7 Q. Well, did you take those photographs?
 8 A. Yes.
 9 Q. Digital camera?
 10 A. Yes.
 11 Q. Where's the pickup?
 12 A. On the side of the house.
 13 Q. Can I see that? Thank you.
 14 Well, I see something under a tarp there in
 15 the two photographs on Page 2. What is it underneath
 16 that tarp?
 17 MS. GLASSER: Object to form.
 18 A. That's a Dodge pickup truck.
 19 Q. Okay. If I could see that for one second.
 20 A. Yes.
 21 MR. KUVIN: Let me hold this up for the
 22 camera.
 23 If you could zoom in on these photographs
 24 individually. Do the top one and then the bottom
 25 one, please.

1 THE VIDEOGRAPHER: Okay.
 2 Q. In looking at these two photographs that are
 3 Page 2 of this packet, how can you tell that's a pickup
 4 truck under that tarp?
 5 A. There must have been some way that I knew that
 6 this was a pickup truck, either from the rear of the
 7 property across the canal -- because I know where this
 8 house is located -- or I could observe it from the
 9 front.
 10 Q. Well, if you wanted to -- well, let me back
 11 up.
 12 You're taking pictures, are you not, in order
 13 to have evidence in case somebody challenges the
 14 ticket, correct?
 15 A. Correct.
 16 Q. To show what you did and did not see on the
 17 date of the ticket?
 18 A. Correct.
 19 Q. Okay.
 20 Do you see anywhere on those photographs that
 21 you can identify that that vehicle is in fact a pickup
 22 truck by looking at the photographs you yourself took
 23 as evidence?
 24 A. I don't know.
 25 Q. You can't tell, can you, that that's a pickup

1 truck under that tarp by looking at the photographs you
 2 took?
 3 A. Possibly, possibly not.
 4 Q. You'd have to guess?
 5 MS. GLASSER: Object to form.
 6 A. I don't know.
 7 Q. On the ticket you wrote the license tag
 8 number, correct?
 9 A. Yes.
 10 Q. How did you get the license tag number of that
 11 vehicle if you didn't go on the person's property?
 12 A. I believe this house sits on a canal and it
 13 can be seen from across the canal.
 14 Q. Do you see the license tag showing anywhere
 15 on the photographs that you yourself took for evidence?
 16 A. No.
 17 Q. Do you see the color of the vehicle?
 18 Can you tell the color of the vehicle by
 19 looking at the photographs you took?
 20 MS. GLASSER: Object to form.
 21 A. Possible.
 22 Q. Can you tell the make and model of the vehicle
 23 by looking at the photographs you took?
 24 A. Not from this particular view.
 25 Q. Does it make any difference in enforcement of

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1 the code whether or not a pickup truck is covered like
2 this and parked on residential property or not?
3 A. Yes.
4 Q. Tell me what difference it makes.
5 A. A pickup truck covered is still a pickup
6 truck.
7 Q. Still violates the code?
8 A. Correct.
9 Q. So it doesn't matter whether or not someone
10 can physically see it from the road or not, it would
11 still violate the code?
12 A. If you know that that's a pickup truck,
13 correct.
14 Q. In looking at that particular example we
15 marked as Exhibit 18, can someone tell that that's a
16 pickup truck if they drove by that property --
17 MS. GLASSER: Object to form.
18 Q. -- without lifting up the tarp?
19 MS. GLASSER: Object to form.
20 A. I don't know.
21 Q. Could you?
22 A. Possibly.
23 MS. GLASSER: Object to form.
24 Q. Let's take a look at what we'll mark as
25 Exhibit 19.

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1 (Thereupon, Plaintiffs' Exhibit No. 19 was
2 marked for Identification.)
3 Q. Now, there's an exception in this section --
4 MR. GLAZIER: Let us take a look.
5 MR. KUVIN: Sure. I'm not asking about the
6 exhibit, though.
7 MR. GLAZIER: There's only one thing we can do
8 at a time.
9 MS. GLASSER: Can't walk and chew gum.
10 Q. Before we get to Exhibit 19, 4-411 has an
11 exception for garages, correct?
12 A. Correct.
13 Q. If a pickup truck is kept on residential
14 property after the hours of 7:00 p.m. or 6:00 p.m. and
15 it's kept within a garage, a resident can do that,
16 correct?
17 A. In a garage that's enclosed, correct.
18 Q. And that's what I want to talk to you about
19 here -- and you've got the section in front of you, but
20 I'm referring to Subsection A-1.
21 Do you have that?
22 A. Yes.
23 Q. And it says that "Vehicles which are entirely
24 enclosed within the confines of an enclosed garage."
25 A. Correct.

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1 Q. First of all, are you aware of whether or not
2 the code defines, whether or not there's a definition
3 for the word "garage"?
4 A. I believe so.
5 Q. What is the definition, do you know?
6 A. No. I'd to have look at it.
7 Q. What is your general understanding as a code
8 enforcement officer of whether or not a vehicle is
9 entirely within an enclosed garage?
10 A. It would be within a space with walls on each
11 side and the rear with a door in front.
12 Q. So, for example, if I show you Exhibit 19 --
13 First of all, that's a ticket you issued,
14 correct?
15 A. Correct.
16 Q. And that vehicle was ticketed under 4-411?
17 A. Correct.
18 Q. And you determined that that particular
19 vehicle violated that code section because it was a
20 pickup, correct?
21 A. Correct.
22 Q. And you determined that that area that it
23 was kept in was not, under the code, an enclosed
24 garage?
25 A. That's correct.

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1 Q. Why?
2 A. Because it doesn't have a front and it does
3 not have a rear and the sides are open to view.
4 Q. What difference does that make, whether or not
5 something is open to view?
6 MS. GLASSER: Object to form.
7 A. That's what the code calls for, an enclosed
8 garage.
9 Q. Do you know why the code says that?
10 A. No.
11 Q. Do you know whether or not open to view makes
12 a difference?
13 MS. GLASSER: Object to form.
14 A. No.
15 Q. If you were to try and understand why a
16 particular code was put in place, 4-411 or 4-412 --
17 A. Yes.
18 Q. -- who would you go to to find an explanation?
19 In other words, if you said, you know what,
20 4-411 just doesn't make sense, I don't want to enforce
21 it, who would you go to to ask why or the reason behind
22 that code?
23 A. The City Attorneys Office.
24 Q. Anyone else?
25 A. No.

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1 Q. Who makes the codes?
2 In other words, who establishes the codes here
3 at the City?
4 A. The planning department through the City
5 building and zoning department.
6 Q. Can a code go into place here at the City
7 without the commission voting on a particular section?
8 A. No.
9 Q. So the commission has to vote --
10 A. Yes.
11 Q. -- to enact that section?
12 A. Yes.
13 Q. How many people on the commission currently?
14 A. Six.
15 Q. Do you know if it's always been that way since
16 you've been here?
17 A. Yes.
18 Q. That particular Exhibit 19, how did you know
19 that that was a particular pickup?
20 Could you tell that from the street?
21 A. Yes.
22 Q. And you took photographs to document that,
23 correct?
24 A. Yes.
25 Q. Any other reason why that code violates -- or

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1 let me ask it this way.
2 Does that particular vehicle violate any other
3 codes other than 4-411, that you're aware of?
4 A. No.
5 Q. And they were ticketed and given a fine?
6 A. Yes.
7 Q. There's just one last one want to ask you
8 about. Oh, two.
9 (Thereupon, Plaintiffs' Exhibit No. 20 was
10 marked for Identification.)
11 Q. Let me show you what I marked as Exhibit 20.
12 Almost done.
13 (Discussion off the record.)
14 Q. Let me show you what we marked as Exhibit 20.
15 Is that a ticket you issued?
16 A. Yes.
17 Q. It appears, according to this ticket, that
18 that ticket was issued to someone who is not a resident
19 of the City of Coral Gables, is that correct?
20 A. That's correct.
21 Q. They lived in Key Biscayne?
22 A. Correct.
23 Q. Outside the confines of the City of Coral
24 Gables?
25 A. Correct.

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1 Q. And this ticket was issued under 4-411,
2 correct?
3 A. 4-412.
4 Q. Okay. What is the difference between 411 and
5 412?
6 A. 411 is parked within the confines of private
7 property, and 412 is parked on the street.
8 Q. So 411 is private and 412 is public property?
9 A. Correct.
10 Q. But this particular ticket was issued under
11 412?
12 A. Correct.
13 Q. And it was issued because the vehicle was a
14 pickup truck, correct?
15 A. Yes, correct.
16 Q. Does it matter under 411 or 412 whether the
17 person is a resident of the City of Coral Gables or
18 not?
19 A. No.
20 Q. Both residents and non-residents are ticketed
21 under both of those code sections equally, correct?
22 A. Correct.
23 Q. So anyone who parks a pickup truck in the
24 City of Coral Gables in violation of 411 or 412,
25 whether a resident or not, can be ticketed under those

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1 sections?
2 A. Correct.
3 Q. And have been ticketed under those sections in
4 the past?
5 A. Yes.
6 Q. Are all the people with pickup trucks that are
7 ticketed under -- and let's start with 411 -- typical
8 to one another?
9 MS. GLASSER: Object to form.
10 Q. Do you understand what I mean by that?
11 A. No.
12 Q. Let me explain.
13 If someone has a Dodge pickup truck and
14 someone has a Ford pickup, they can both be ticketed
15 under 411 equally?
16 A. Yes.
17 Q. If someone has a Hummer that has an open bed
18 like I showed you as one of the exhibits today --
19 A. Yes.
20 Q. -- they can be ticketed under 411 the exact
21 same way as someone who has a Ford pickup truck?
22 A. Yes.
23 Q. In that way are they all typical to one
24 another with respect to they're all trucks under the
25 code?

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1 A. Yes.
2 MS. GLASSER: Object to form.
3 Q. And they can all be ticketed in the same way?
4 A. Yes.
5 Q. And they all are and have been ticketed the
6 same way at least since you've been here for the last
7 18 years?
8 A. Yes.
9 Q. All of that is the same with respect to
10 Section 4-412, correct?
11 A. Correct.
12 MS. GLASSER: Object to form.
13 MR. KUVIN: Of course, you do.
14 MS. GLASSER: If you can ask a legal
15 conclusion.
16 MR. GLAZIER: It goes to commonality now?
17 MS. GLASSER: Yes, right.
18 MR. KUVIN: Just because you guys know what
19 I'm talking about doesn't mean I can't ask the
20 question.
21 Q. I think I mentioned this before, but let's
22 just go ahead -- and this is the last one I'm going to
23 mark. This is Exhibit 21.
24 (Thereupon, Plaintiffs' Exhibit No. 21 was
25 marked for Identification.)

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1 Q. It makes no difference whether a vehicle, a
2 pickup truck, has a topper to it or not, correct?
3 A. Correct.
4 Q. So if a pickup truck has a standard issue top
5 put on the back of the bed portion -- you know what I
6 mean by a top or a topper?
7 A. Yes.
8 Q. That makes no difference to you, as a code
9 enforcement officer you would ticket it under the code
10 sections as you understand them?
11 A. Yes.
12 Q. And in fact, if we look at Exhibit 21, that's
13 a ticket you issued, correct?
14 A. Yes.
15 Q. And it was under 411 or 412?
16 A. 411.
17 Q. And that was a pickup truck that had a topper
18 on it?
19 A. Yes.
20 MR. KUVIN: Okay. I appreciate it.
21 That's all the question I have right now.
22 Your attorneys may have a few for you.
23 MS. GLASSER: Let's take a five-minute break.
24 MR. KUVIN: Okay.
25 THE VIDEOGRAPHER: We're off the record at

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1 3:13.
2 (Discussion off the record.)
3 THE VIDEOGRAPHER: We're back on the record at
4 3:17.
5 MS. GLASSER: I don't have any questions. So
6 we're concluded.
7 MR. KUVIN: No further questions.
8 (Whereupon, the taking of the deposition was
9 concluded at 3:20 p.m.)
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ACKNOWLEDGEMENT OF DEPONENT
STATE OF FLORIDA)
COUNTY OF DADE)
I, ANDREW CLUTE, under penalty of perjury,
declare that I have read my deposition and that it is
true and correct subject to any changes in form or
substance reflected on the attached errata sheet.
Done and signed this day of September
2008.

ANDREW CLUTE

CERTIFICATE OF OATH
STATE OF FLORIDA)
COUNTY OF DADE)

I, LINDA FITZGERALD, Notary Public in and for the State of Florida at Large, certify that, ANDREW CLUTE, personally appeared before me and was duly sworn.

WITNESS my hand and official seal this 10th day of September 2008.

LINDA FITZGERALD
Notary Public
State of Florida
Commission No. DD691874
Expires July 13th, 2011

TO: Mr. Andrew Clute
c/o Jennifer Cohen Glasser, Esq.
Akerman Senterfitt
One Southeast Third Avenue
25th Floor
Miami, Florida 33131

RE: John Kearns vs. City of Coral Gables
Dear Mr. Clute:

At the conclusion of your deposition in the above-styled cause you indicated you wished to read and sign your deposition transcript.

This letter is to advise you your deposition transcript is ready, and we ask that you call our office at (305)373-8404 at your earliest convenience for an appointment to come in.

If you are a party to this action and your attorney has ordered a copy of this transcript, you may wish to read his copy and forward to us a photostatic copy of your signed correction sheet.

It is necessary that you do this as soon as possible, since the transcript cannot be held beyond two weeks from the date of this letter.

If we do not hear from you, we will consider your deposition automatically waived.

Thank you for your prompt attention.

Very truly yours,
KLEIN BURY
One Southeast Third Avenue
Suite 1250
Miami, Florida 33131

BY: LINDA FITZGERALD
Shorthand Reporter
Dated: 9/10/08

REPORTER'S DEPOSITION CERTIFICATE
STATE OF FLORIDA)
COUNTY OF DADE)

I, LINDA FITZGERALD, Shorthand Reporter, certify that I was authorized to and did stenographically report the deposition of ANDREW CLUTE; that a review of the transcript was requested; and that the transcript is a true and complete record of my shorthand notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 10th day of September 2008.

LINDA FITZGERALD
Notary Public
State of Florida
Commission No. DD691874
Expires July 13th, 2011