

STATE OF OHIO )  
PORTAGE COUNTY ) SS: IN THE COURT OF COMMON PLEAS

CASE NO. 07 CV 1774

VILLAGE OF WINDHAM, ET AL. )  
Plaintiffs )  
VS. )  
WINDHAM TOWNSHIP, ET AL. )  
Defendants )  
DEPOSITION  
OF  
DONALD ALTIERE

DEPOSITION taken before me, Gina M. Allen, a Notary Public within and for the State of Ohio, on the 14th Day of May, 2009, pursuant to Agreement and at the time and place therein specified, to be used pursuant to the Rules of Civil Procedure or by agreement of counsel in the above cause of action, pending in the Court of Common Pleas, within and for the County of Portage, State of Ohio.

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3 STIPULATIONS  
4  
5 It is stipulated and agreed by and between  
6 counsel for the parties hereto that the deposition may be  
7 taken at this time, 11:23 a.m., May 14, 2009, in the  
8 offices of Atty. Mark S. Finamore, 258 Seneca Avenue N.E.,  
9 Warren, Ohio.  
10 It is further stipulated and agreed by and  
11 between counsel that the deposition may be taken in  
12 shorthand by Gina M. Allen, a Notary Public within and for  
13 the State of Ohio, and may be by her transcribed with the  
14 use of computer-assisted transcription; that the witness'  
15 signature to the finished transcript of his\her deposition  
16 may be and is hereby waived by agreement of the parties;  
17 and that the deposition may be thereupon used on behalf of  
18 the parties in the aforesaid cause of action as fully and  
19 to the same extent as if written in the presence of the  
20 witness and subscribed by the witness in the presence of  
21 the Notary Public.  
22  
23  
24

1 APPEARANCES  
2  
3 On Behalf of Plaintiffs:  
4 David C. Comstock, Jr., Attorney at Law  
5 Comstock, Springer & Wilson  
6 100 Federal Plaza East  
7 Suite 926  
8 Youngstown, Ohio 44503  
9  
10 On Behalf of Defendant, Windham Township  
11 Board of Trustees:  
12 Mark S. Finamore, Attorney at Law  
13 258 Seneca Avenue N.E.  
14 Warren, Ohio 44481  
15  
16 On Behalf of Defendant, Janet Esposito:  
17 Theresa Scahill, Attorney at Law  
18 466 S. Chestnut Street  
19 Ravenna, Ohio 44266  
20  
21 Also Present:  
22 Mayor Robert Donham  
23 Mr. Cecil James Moore  
24 Mr. Dann Timmons  
Mr. Brian Miller

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9 OBJECTIONS AND MOTIONS: NONE  
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13 EXHIBITS INTRODUCED: NONE  
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1 WHEREUPON,  
 2 DONALD E. ALTIERE,  
 3 of lawful age, being by me first duly  
 4 sworn to testify the truth, the whole  
 5 truth, and nothing but the truth, as  
 6 hereinafter certified, deposes and  
 7 says as follows:  
 8 CROSS EXAMINATION:  
 9 BY MR. COMSTOCK, JR.  
 10 Q Could you please state your full name?  
 11 A Donald E. Altiere.  
 12 Q Go by Don?  
 13 A That's fine.  
 14 Q Don, my name is David Comstock. I go by  
 15 the nickname Chip.  
 16 A Okay.  
 17 Q So you may refer to me by my nickname  
 18 throughout this deposition.  
 19 A Okay.  
 20 Q I don't know if you've ever given a  
 21 deposition before, either on a personal basis or in regard  
 22 to the township, and even if you have, I'm going to just  
 23 run through some basic ground rules.  
 24 Make sure you give your answers out loud so the court

1 age?  
 2 A I'm 64.  
 3 Q Okay. Marital status?  
 4 A Married.  
 5 Q Kids?  
 6 A Two.  
 7 Q Grown?  
 8 A Yeah.  
 9 Q Still in the area?  
 10 A Columbus and Cuyahoga Falls, yeah.  
 11 Q All right. Where did you go to school?  
 12 A Windham.  
 13 Q And have any other schooling, education  
 14 or training following graduation from high school?  
 15 A Just the military.  
 16 Q Okay. What branch did you serve?  
 17 A Army.  
 18 Q And you were in from what years to what  
 19 years?  
 20 A '64 through '67.  
 21 Q And then you -- we were discussing  
 22 before we began about you being self-employed?  
 23 A Uh-huh.  
 24 Q So tell me about your employment, what

1 reporter can take down your responses. Make sure you say  
 2 yes or no as opposed to uh-huh or huh-uh, which most  
 3 witnesses will do at one point or another.  
 4 If I ask you a question you don't understand, let me  
 5 know, and I'll try to ask the question in a manner that  
 6 you're comfortable with what I'm asking.  
 7 If you don't know an answer, just tell me you don't  
 8 know. That's fine, too. I don't expect you to know  
 9 everything. I don't think you're going to be that long.  
 10 If you need to take a break, just let me know, and  
 11 we'll stop. I've been sitting here drinking pop, so I may  
 12 take a quick break at some point.  
 13 A Yeah.  
 14 Q And just sort of a reminder to every  
 15 witness I give, just do your best to give me true and  
 16 accurate answers to the best of your ability at all times;  
 17 okay?  
 18 A Okay.  
 19 Q Don, what I'm going to do is just get a  
 20 little bit of background information about you. We've  
 21 kind of been talking before we started about your past  
 22 political activities, but I'm just going to just run  
 23 through those, and again, just to find out a little bit  
 24 about you. So I'll start off and ask you your present

1 you --  
 2 A Okay. Well, when I got out of the  
 3 service, I went to work at General Motors when they first  
 4 opened and decided that wasn't for me, and then I worked  
 5 for General Refractories for two years, and I had the  
 6 opportunity to take the station over, the gas station, so  
 7 I took that in 1969, February.  
 8 Q Okay. And you worked, owned, operated  
 9 the gas station --  
 10 A Uh-huh, garage, gas station.  
 11 Q From '69 to when?  
 12 A Until March of this year.  
 13 Q So just a -- only 40 years?  
 14 A Yeah.  
 15 Q And since -- since you retired a month  
 16 or two ago, we were kidding, you've taken up hobbies or  
 17 just relaxing?  
 18 A Not yet, no. There's too many things on  
 19 my list that need to be done between my list and my wife's  
 20 list.  
 21 Q I was just going to ask. Which list?  
 22 A More important list. Well, she'll be  
 23 done tomorrow for the rest of the summer. She teaches for  
 24 Head Start, and they'll be done, but she leaves me a list

1 and says, if you get time, and then I have my list over  
2 here. Well, I might do one of those, but I work on my  
3 list.

4 Q Okay. Now, I also understand that you  
5 had a political life --

6 A Yes.

7 Q -- for a period of time?

8 A Yes.

9 Q And tell me about that.

10 A Okay. Well, it was interesting. In  
11 fact, my wife and I both had, at one time, she was on the  
12 school board for four years, and I was trustee. Which  
13 that didn't really -- that wasn't a good thing.

14 Q Who got more calls at home?

15 A In the four years she probably did --

16 MR. FINAMORE: School board.

17 A -- than I did at any one period in that  
18 time.

19 Q Yeah.

20 A Now, I got my share, but I think she got  
21 more.

22 Q Okay.

23 A And --

24 Q Now, we've alluded to, I think you said,

1 Q Okay. What I -- what I want you to try  
2 to -- what I'd like you to do is tell me from your  
3 recollection what the relationship was between the  
4 township and the fire department or the township and the  
5 village back during the period you were trustee, as it  
6 relates to the operation of the fire department.

7 A Gee. Well, when I started, we had a  
8 pretty good relationship. The firemen themselves were the  
9 only ones that -- they had an issue of wants. I mean,  
10 they wanted more than what the budget would allow. It  
11 went on every year, so, I mean, that was normal. And I  
12 think every fire department had the same issue.

13 Q Mark and I talk about that all the time.

14 A Yeah. At that point in time what the  
15 village and the township could afford to pay if they went  
16 to the village first, and we don't have the money, then  
17 they'd come, well, we need 15 of those, 9 of these, and  
18 we'd like one of them big ones. But, you know, the money  
19 wasn't there, so we'd compromise. And it all worked out.  
20 There was nobody that went away totally unhappy, maybe,  
21 well, we'd like to have seven instead of two, but, I mean,  
22 it worked out. That was probably the biggest issues.

23 As far as the village and township, we -- we didn't  
24 have any issues there. It came along at a point where the

1 you were a trustee. And, for the record, trustee of what  
2 township?

3 A Windham Township.

4 Q Okay. And you were a trustee from what  
5 period to what period?

6 A Oh, geez.

7 Q Give me your best shot.

8 A 1975. I was there for 16 years, two  
9 terms -- four terms.

10 Q Around 1990, '91?

11 A Uh-huh; somewhere in there, yeah.

12 MR. FINAMORE: Four terms.

13 Q What I'd -- I don't know if you've been  
14 following the issues with the -- between the village and  
15 the township with --

16 A Somewhat.

17 Q -- respect to the fire department. I  
18 would think just given your past history you'd have maybe  
19 a heightened awareness or interest than the ordinary  
20 resident?

21 A Well, yeah, kind of since I'm a resident  
22 of the township, and I had been involved with the  
23 township. Yeah, you know, my interest has been trying to  
24 keep up on it.

1 village got in a financial bind, and that's, I think, when  
2 the township kicked in, you know, said, okay -- you know,  
3 the clerk had called me and said, we don't have any  
4 insurance.

5 Q Township or village clerk?

6 A The village clerk.

7 Q Okay.

8 A Had called me at work and said, we don't  
9 have any insurance on these vehicles. It lapsed. We  
10 didn't pay the bill. So I called our clerk. We called an  
11 insurance man, and he came out and immediately put  
12 insurance on those vehicles. You can't have them out on  
13 the road. So there were some other factors they didn't --  
14 the village couldn't -- they just didn't have the money to  
15 pay for it so we initially took over and paid for it.

16 Q Okay. And what -- what it sounds to me  
17 like from that one illustration you gave me with respect  
18 to the insurance matter, that was something that you did  
19 in response to a request from the clerk as opposed to the  
20 mayor or council?

21 A Right.

22 Q Right. Because she recognized that  
23 there was an issue?

24 A The council, it wasn't a -- it was her

1 notifying me that there was no insurance on any of them  
 2 vehicles, and they could not be taken out.  
 3 Q Who was -- for the record, who was the  
 4 clerk?  
 5 A Rachel Barrett.  
 6 Q Okay. And were there -- were there  
 7 other things that as time went by -- because one of the  
 8 things that -- I've looked at all these papers, and it  
 9 appears to me that as time has gone on, the -- the  
 10 township has had more and more of a hands-on involvement?  
 11 A Uh-huh.  
 12 Q That it started off not that way, and as  
 13 time went on, really kind of got into the operational  
 14 aspect of the department itself?  
 15 A Uh-huh.  
 16 Q Was that your experience as --  
 17 A Yes.  
 18 Q -- during the time you were there?  
 19 A Yes.  
 20 Q When you left back in the early '90s,  
 21 what was the involvement of the -- of the township in the  
 22 fire department's operation? What I'm asking you, as  
 23 trustees, what do you remember doing other than allocating  
 24 funds for department operations?

1 A That -- that's pretty much what we did.  
 2 As I remember, you know, they came with equipment lists,  
 3 needed a truck, I mean, things like that. That was -- as  
 4 far as the -- I don't remember any other involvement at  
 5 that point in time.  
 6 Q And I'm going to just run down a couple  
 7 things, and you can tell me if you remember doing this or  
 8 not.  
 9 A Okay.  
 10 Q Do you have a -- your own recollection  
 11 of ever appointing firefighters to the fire department?  
 12 A No.  
 13 Q Okay. Do you have a recollection of  
 14 ever appointing or swearing in the fire chief?  
 15 A No.  
 16 Q All right. Do you have a recollection  
 17 of -- of making up procedures or policies for the  
 18 operation of the department?  
 19 A No.  
 20 Q This is -- I'm going to show you a  
 21 document that's been -- from 1982, and you said you were  
 22 trustee starting in?  
 23 A '75, I believe.  
 24 Q '75?

1 A Uh-huh.  
 2 Q It's an agreement that was signed June  
 3 3, 1982, and it's been previously marked Plaintiff's  
 4 Exhibit 7 or Exhibit E.  
 5 MR. COMSTOCK, JR.: I think you've seen  
 6 that.  
 7 MR. FINAMORE: Yeah.  
 8 Q If you look at the second page of that  
 9 document, you see your signature down there?  
 10 A Uh-huh.  
 11 Q Yes?  
 12 A Uh-huh.  
 13 Q So the record's clear, make sure you say  
 14 yes or no.  
 15 A Yes, I do. I signed that.  
 16 Q All right. If I can -- on the front  
 17 page it has a document that -- or you'll see I highlighted  
 18 it. It says, the party of the second part is the owner of  
 19 a village fire department which consists of volunteer  
 20 members and equipment. And it says, the party of the  
 21 first part, which is the township, has no legally  
 22 organized fire department.  
 23 Was it your understanding at that time that the  
 24 relationship between the village and the township fire

1 district was that the village had historically owned and  
 2 operated the fire department, and the fire district,  
 3 township fire district or windham fire district provided  
 4 the operating funds for that?  
 5 A No. That's not how I -- my  
 6 understanding was. The village operated or paid for the  
 7 fire department. The fire department was kind of its own  
 8 entity. I mean, it kind of -- it was kind of a weird  
 9 situation. You got the village that paid for and saw over  
 10 the fire department. They were their own entity. They  
 11 operated with their own bylaws. And then the township was  
 12 on the other end of it, you know, money and so forth. It  
 13 was a strange situation. I never did understand it,  
 14 but --  
 15 MR. FINAMORE: But it worked?  
 16 THE WITNESS: It worked.  
 17 Q Let me ask you, because you talk about  
 18 bylaws. Do you know whether or not the fire department  
 19 was ever incorporated as a nonprofit corporation?  
 20 A I don't know.  
 21 Q Okay. And I told you you might not know  
 22 everything --  
 23 A Yeah.  
 24 Q -- so that's fine. Did you -- we have

1 this agreement that was signed between the township and  
2 the village. Did you ever sign, to your recollection, an  
3 agreement between the township and the -- and the fire  
4 company or the fire department itself?

5 A Not that I'm aware of.

6 Q All right. To your recollection, did  
7 the township ever form its own fire department during the  
8 period that you were trustee?

9 A Not form its own.

10 Q Okay.

11 A When the building was in process or  
12 in -- of being built --

13 Q Right.

14 A -- the fire department said we're  
15 running out of room, and the village said, we don't have  
16 any other space. Well, they had a piece of property that  
17 was acquired by the village. It was a house torn down, so  
18 we did some background research, the village and the  
19 township. And we got a price on building a new building.  
20 So the village said, okay, in order to do this, we have to  
21 sell bonds. Well, they couldn't sell them. They didn't  
22 have enough inside millage, so they came back to us and  
23 said, would we sell them, the township. So we got a hold  
24 of an attorney in Columbus, Bricker & Eckler. She did

1 that the fire department needed space, as you already  
2 said?

3 A Uh-huh.

4 Q And so the way to do it -- well, you had  
5 to pass a bond, and you had to get funding. And one of  
6 the -- at the time you did this, the village was a part of  
7 the township?

8 A Uh-huh.

9 Q Correct?

10 A Uh-huh.

11 Q Yes?

12 A (Nodding head.)

13 Q You have to say yes.

14 A Yes. I'm sorry.

15 Q That's okay. So if the village, even  
16 with restriction of the millage, the village put a bond  
17 levy on, it would only be on the village residents?

18 A Yes.

19 Q But if the township put a bond on, it  
20 would be on the village and the township residents?

21 A That's correct.

22 Q So it was -- it would make more sense  
23 for the township to do it because then everybody -- I  
24 mean, the village -- the township to do it, I'm correct,

1 research, and said, yes, we can do that. So that's what  
2 we did.

3 When the building was built, we went to Columbus. We  
4 met with the attorney general, our attorney from Bricker &  
5 Eckler, there was some firemen there, and I don't know --  
6 it was like eight people, and I don't know who all went.  
7 But I do know that there was the trustees, some firemen,  
8 fire chief at that time, I believe, and I don't know if  
9 somebody from council went or not. I don't.

10 But anyway, when they explained to us, the attorney  
11 general explained to us, when this building is built, and  
12 it's occupied, you can continue operating as you are. You  
13 can go under a grandfather clause and operate it as a fire  
14 district, or you can form a new fire district with the  
15 board. Everybody at that meeting was in agreement that it  
16 was fine, and we wanted to stay under the grandfather  
17 clause, and the township would be in charge of the  
18 operation.

19 Q Okay. Let me back up. And I'm going to  
20 tell you, I've looked through all these documents, so I'm  
21 going to tell you what my impression is --

22 A Okay.

23 Q -- okay? And I may be wrong, or I may  
24 be right, but at least from what I see, it appears to me

1 because then everybody would pay?

2 A That's correct.

3 Q All right. So a -- a levy was -- bond  
4 issue was put on back in the '80s, I think?

5 A Uh-huh.

6 Q 1983 or 1984?

7 A Yes.

8 Q And one of the other issues, though,  
9 that came up was that if the township was going to put the  
10 bond levy on to build a fire station, it had to have some  
11 interest in the property itself, and so the attorney  
12 general and your lawyer told you guys that you had to at  
13 least have a lease for a period of years, which was  
14 determined to be 40?

15 A That's correct.

16 Q All right. And at the same time the  
17 fire department and the firefighters didn't want to  
18 disrupt the operations of what they had been doing?

19 A That's correct.

20 Q And so the township and the village  
21 basically said, although there will be this lease for the  
22 building for a period of 40 years, the fire department's  
23 just going to continue to operate as it always has?

24 A That's correct.

1 Q And I ask that because in -- see, I even  
2 got the Bricker & Eckler letters, and that says Squire  
3 Sanders. But in 1985, which was after the station was  
4 built. Station was built in 1984?  
5 A '84. I don't know when they took  
6 occupancy.  
7 Q Okay. But I know the lease -- the lease  
8 itself was signed -- the ground lease was July 26, 1984?  
9 A (Nodding head.)  
10 Q The village and the township entered  
11 into another agreement for operation, which I'll hand you  
12 what's been marked Plaintiff's Exhibit 16, or I think  
13 Exhibit G to the complaint.  
14 A Yeah. That's true.  
15 Q Your signature's on that?  
16 A Oh, yeah.  
17 Q This agreement?  
18 A Yeah.  
19 Q And you'll see, again I highlighted, and  
20 it says under this that the party of the second part is  
21 the owner of a village fire department which consists of  
22 volunteer members and equipment. And the second paragraph  
23 reads, the party of the first part has no legally  
24 organized fire department, desires under statutes to

1 contract or for agreement between the township and the  
2 village; is that right?  
3 A I think so.  
4 Q Okay. And there's also the line here  
5 that -- in the second -- second page, second paragraph  
6 says, we, meaning the trustees, wish to take this  
7 opportunity to assure the village that the township has no  
8 desire to either, quote, take over, end quote, or, quote,  
9 run, end quote, the fire department. The fire chief is  
10 responsible for the operation of the fire department.  
11 At that time in terms of operations, the village  
12 oversaw the fire chief who ran the fire department on a  
13 day-to-day basis; is that right?  
14 A Yes.  
15 Q And again, during that period the  
16 township's primary responsibility was providing the  
17 funding for purchases and operation of the fire  
18 department?  
19 A That's correct.  
20 Q Okay. There is -- and you may not have  
21 seen this. There is a -- Plaintiff's 18 is a document  
22 from the record of resolutions from the village, and it  
23 relates to an agreement for fire protection between the  
24 village of Windham Fire Department and the arsenal.

1 contract with the party of the second part for fire  
2 protection. That's the same language of the agreement I  
3 handed you before that was before the building was built?  
4 A That's correct.  
5 Q Okay. So the relationship, as at least  
6 reflected in those two agreements for fire protection  
7 services before the building was built and after the  
8 building was built, reflect no change --  
9 A That's true.  
10 Q -- as a relationship between the  
11 parties? And I think you said that was the desire of the  
12 village and township, and more importantly, the  
13 firefighters themselves?  
14 A Yes.  
15 Q Now, in 1985, and you may -- your  
16 signature's on this, and you may not remember this much at  
17 all, but there was a letter sent from the township to  
18 the -- to the -- to the village, and it's signed by the  
19 three trustees. I'm going to hand you what's been marked  
20 as -- previously marked Plaintiff's Exhibit 17. Take a  
21 minute to --  
22 A Yeah, I remember that.  
23 Q Okay. At this time that the letter was  
24 sent, there was issues regarding the language of the

1 Were you aware -- and I'll hand you what's marked  
2 Exhibit 18. Were you aware of the fact that the fire  
3 department was providing fire protection to the arsenal  
4 property?  
5 A No. To my knowledge, they never did.  
6 They would never let them in there.  
7 Q Okay.  
8 A At one time I remember our chief, Don  
9 Miller, stating something at one of the meetings, but as  
10 far as I know, Windham never went inside the gates. There  
11 was some fires along the fence that they responded to, but  
12 I'm not aware of this.  
13 MR. COMSTOCK, JR.: Okay. You know  
14 what? Give me a second.  
15 (A recess was taken)  
16 Q After a long discussion and debate, we  
17 decided we don't want to ask you anything more.  
18 A All right.  
19 Q So you're done.  
20 MR. COMSTOCK, JR.: You know you have  
21 the right, should this transcript be typed up, to read it.  
22 You can make arrangements with the court reporter to  
23 review. There are lawyers who say you can't change any of  
24 your answers. You're just to make corrections on

1 spellings. I take the opinion -- I take the position that  
2 if you really need to change an answer, it was wrong, and  
3 you realize it's wrong, you can go ahead and change that,  
4 subject to additional cross examination by any lawyer as  
5 to why you changed your answer.

6 But, in any event, or you could do what's called just  
7 waiving signature and saying, hey, answers are fine. The  
8 court reporter took down everything, and I don't want to  
9 read this.

10 THE WITNESS: I don't have an issue with  
11 it.

12 MR. FINAMORE: That's standard.

13 MR. COMSTOCK, JR.: So you waive  
14 reading?

15 THE WITNESS: Yes.

16 MR. COMSTOCK, JR.: Okay. We're done.

17 SIGNATURE WAIVED

18  
19  
20  
21  
22  
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24

1 STATE OF OHIO )  
2 TRUMBULL COUNTY ) SS: NOTARY CERTIFICATE

3  
4

I, Gina M. Allen, Notary Public  
5 within the State and County aforesaid, duly commissioned  
6 and qualified, do hereby certify that the within-named  
7 deponent was by me first duly sworn to testify the truth,  
8 the whole truth, and nothing but the truth, and that the  
9 foregoing testimony was written by me in stenotype in the  
10 presence of the witness; that by agreement of counsel,  
11 signature was waived.

12

13 I do further certify that I am not of  
14 counsel, attorney or relative to either party, or  
15 otherwise interested in the event of this action or  
16 proceeding.

17

18 IN WITNESS WHEREOF, I have hereunto set  
19 my hand and seal of office at Youngstown, Ohio, this 3rd  
20 Day of June, 2009.

21  
22

23 Gina M. Allen, Notary Public  
24 My Commission Expires 08/01/11

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that the above and foregoing is a  
true and correct transcript of all the testimony  
introduced and proceedings had in the taking of the  
testimony in the above-entitled matter, as shown by my  
stenotype notes taken by me at the time said testimony was  
taken.

Gina M. Allen  
Registered Professional Reporter