

1 MR. PARKER: Nothing further.

2 THE COURT: Anything based on that?

3 All right. Ma'am, thank you for  
4 your testimony. You may step down. Now,  
5 don't discuss your testimony with anyone  
6 until this matter is concluded, ma'am.  
7 Thank you.

8 THE WITNESS: Okay.

9 MR. PARKER: Judge, I'm going to  
10 call Thomas Moeller.

11 THE COURT: Mr. Moeller.

12 MR. GOODIN: Judge, can she be  
13 excused?

14 MR. PARKER: No objection.

15 THE COURT: Yes, as far as I'm  
16 concerned.

17 (The witness was sworn.)

18 THE COURT: Just have a seat here.

19 MR. PARKER: Judge, am I cutting  
20 into your lunchtime? I apologize.

21 THE COURT: No. Not yet. We'll  
22 see.

23 THOMAS W. MOELLER

24 having been first duly sworn, was examined and  
25 testified as follows:

## 1 DIRECT EXAMINATION

2 BY MR. PARKER:

3 Q. Sir, could you tell the court your  
4 name?

5 A. Thomas W. Moeller. M-o-e-l-l-e-r.

6 Q. Mr. Moeller, you just heard your  
7 employee, Ms. Lowndes -- how do you say her  
8 name?

9 A. Lowndes.

10 Q. -- Ms. Lowndes testify. Is she  
11 correct that you appointed her acting clerk of  
12 Council?13 A. No. I did not appoint her as  
14 acting clerk of Council.

15 Q. Who did appoint her?

16 A. Well, the city council approved  
17 legislation which designates the assistant  
18 treasurer/tax commissioner as the acting clerk  
19 in the absence of the clerk of Council.20 Q. Okay. So why don't you explain to  
21 the judge why she thinks you appointed her  
22 acting clerk.

23 MR. STEVENSON: Objection.

24 THE COURT: Overruled. I mean,  
25 sustained. Unless she told you why she

1 thought. I mean, I don't think -- how  
2 would he know what she thought?

3 Q. Well, let's talk about it.

4 A. Restate the question.

5 Q. That's okay. Let's talk about that  
6 ordinance, the one you're talking about that  
7 authorizes city council --

8 THE COURT: That's a new question.  
9 Go ahead.

10 Q. -- to appoint an acting clerk.  
11 Were those -- were the steps of that ordinance  
12 followed before Ms. Lowndes signed this document  
13 as acting clerk?

14 A. When you say steps --

15 Q. Yeah.

16 A. -- please define that.

17 Q. Why don't you tell us what the  
18 ordinance says.

19 A. I'm going to paraphrase, but the  
20 ordinance refers to an absence of public  
21 officials, and it provides -- by city council  
22 ordinance -- that an acting clerk be appointed  
23 in the absence of the clerk.

24 So in this situation, once the  
25 clerk is absent, the acting clerk can act in her

1 capacity.

2 Q. That's what the ordinance says?

3 A. I said I was paraphrasing.

4 Q. Okay. Well, there has to be some  
5 things that have to occur. Council has to --  
6 you first have to be notified by the clerk that  
7 she's going to be gone, right?

8 A. That's correct.

9 Q. And then council has to make a  
10 decision then, because she's been gone, then  
11 they appoint an acting clerk, right?

12 A. I believe so, yes.

13 Q. And neither one of those steps  
14 happened, right?

15 A. Not to my knowledge.

16 Q. In fact, you said -- you told  
17 Mr. Oppenheimer and I that the council is  
18 perfectly content with what happened?

19 A. To my knowledge, yes.

20 Q. And that was after the fact?

21 A. That's correct.

22 Q. Okay. Because you needed to get a  
23 copy of Ordinance 17-06 to the Board of  
24 Elections because you were butting up against  
25 deadlines?

1 A. That's correct.

2 Q. And the Clerk of City Council was  
3 not available to sign the document?

4 A. That's correct.

5 Q. So she didn't sign it?

6 A. That's correct.

7 Q. And no one who attended the meeting  
8 the night before on March 13th was appointed  
9 clerk?

10 A. Correct.

11 Q. You sent Doug Oppenheimer, the  
12 relator here, an email on March the 14th and  
13 said -- when he was asking you for the copies of  
14 the legislation, you said: I have a copy of the  
15 legislation at the front desk. Please note that  
16 the Clerk of Council is out of town and has not  
17 signed it yet. She will return next week. The  
18 Board of Elections accept the legislation  
19 approved last night so they could proceed with  
20 printing the ballot language. We will be  
21 providing a copy of the Board of Elections with  
22 her signature when she returns on Monday.

23 Did you in fact do that?

24 A. I don't believe that that took  
25 place.

1 MR. PARKER: Okay. So -- may I  
2 approach the witness, Judge?

3 THE COURT: Yes.

4 Q. You recognize Exhibit 2? That's  
5 what was submitted to the Board of Elections,  
6 that and only that.

7 A. I believe so.

8 THE COURT: Mr. Moeller, do you  
9 mind handing that to me?

10 Q. Then you also told Mr. Oppenheimer  
11 in an email: You're correct, 17-06 was not  
12 listed in any agenda published on Friday.  
13 Right?

14 Do you remember that?

15 Can I approach the witness and show  
16 him the email?

17 THE COURT: Yes. Go ahead. That's  
18 a letter to Mr. Oppenheimer?

19 MR. PARKER: Yeah.

20 Okay. You know what, don't worry  
21 about it. We're good. Don't worry.  
22 We're good. I have nothing further.

23 THE COURT: All right. Thank you.  
24 Go ahead, Mr. Fox.

25 CROSS-EXAMINATION

1 BY MR. FOX:

2 Q. Okay. Mr. Moeller, can you  
3 describe your role as the city manager?

4 MR. PARKER: Judge, pardon me. Can  
5 I get my Exhibit 2? Do you have it,  
6 Mr. Moeller?

7 THE COURT: I have it.

8 MR. PARKER: Oh, you have it. You  
9 can keep it.

10 THE COURT: No. I have it up here,  
11 but I just couldn't find it.

12 MR. FOX: Was there an objection  
13 or --

14 MR. PARKER: No. I was just  
15 looking for --

16 THE COURT: No. I had his exhibit.

17 BY MR. FOX:

18 Q. All right. Mr. Moeller, so the  
19 pending question is: what is your role as the  
20 city manager? Can you describe it for the  
21 court?

22 A. In general I'm considered to be the  
23 chief executive officer of the municipality,  
24 appointed by city council. It's my  
25 responsibility to administer the policies and

1 legislation of the city council, in addition to  
2 managing the day-to-day operations.

3 Q. Okay. And how long have you been  
4 city manager for Madeira?

5 A. Since 1989, 28 years.

6 Q. Okay. And how do you interact with  
7 legislative decisions of council?

8 A. In a couple of manners. In  
9 legislation that is administrative in nature,  
10 i.e. approval of contracts, et cetera, those --  
11 legislation is prepared by my office and  
12 presented to city council for approval.

13 In the case of all ordinances that  
14 have what we refer to as force and effect of  
15 law, which amend the code, or have other  
16 enforcement proceedings or procedures, that's  
17 generally generated through the City Law  
18 Director's office, and then presented to city  
19 council at the regular scheduled meetings.

20 Q. Okay. And how can the charter be  
21 amended?

22 A. Under -- I believe it's Article  
23 XIV. The charter can be amended in two  
24 different ways. One is by legislative action of  
25 city council. And that requires that city



1 council approve legislation with the appropriate  
2 language for the charter amendment. And then  
3 it's submitted to the Board of Elections in  
4 whatever schedule is required to meet the  
5 election cycle.

6           The other method for amending the  
7 charter is actually through an initiative  
8 process by an elector, or electors, of the  
9 community. And in that case the elector or  
10 electors would submit a petition to city council  
11 requesting that a matter be placed on the ballot  
12 to amend the charter. There's a certain number  
13 of signatures that are required in order to  
14 submit that petition. The petition must be  
15 certified by the Clerk of Council, and then  
16 submitted to city council, and city council then  
17 approves it to put it on the ballot.

18           Q.     Okay. So there's a distinction  
19 under the charter between council proposing an  
20 amendment to the charter and just electors,  
21 correct?

22           A.     That's correct. Yes.

23           Q.     Okay. And when was the last time  
24 that charter was amended?

25           A.     I believe there -- the most recent

1 was 2014.

2 Q. Okay. And how was the charter  
3 amended then?

4 A. That was done through an initiative  
5 by an elector of the community.

6 Q. Okay. And what is your  
7 understanding of the required threshold for  
8 council to approve amendments to submit to the  
9 electors?

10 A. The legislation must be approved by  
11 what we would just generally refer to as a  
12 supermajority or two-thirds of city council  
13 members. So it's more than a simple majority.

14 So all legislation that is to amend  
15 the city charter requires five votes.

16 Q. Okay. And, to your knowledge, is  
17 there more than just the charter that weighs on  
18 amending the city charter?

19 A. I believe the Ohio Constitution  
20 also is applicable in some cases, or in some  
21 instances.

22 Q. Okay. What is Ordinance 17-02?

23 A. Ordinance 17-02 was a -- I'll just  
24 refer to it as an omnibus legislation, that had  
25 four proposed amendments to the city charter.

1 And it was all to be included on one ballot to  
2 appear on the May 2nd election.

3 Q. Okay. And I want to show you in  
4 your exhibit book there, or your exhibit binder,  
5 if you flip to the first tab, Exhibit D. And if  
6 you could flip through that, can you confirm for  
7 the court whether this is a true and accurate  
8 representation of 17-02?

9 A. It appears to be.

10 MR. FOX: I would like to move that  
11 Ordinance No. 17-02 be moved into  
12 evidence.

13 THE COURT: Okay. Any objection,  
14 Mr. Parker, to that?

15 MR. PARKER: We do it after each  
16 piece of evidence or at the end? Because  
17 I may have made a mistake, Judge. I move  
18 for all my exhibits to be admitted.

19 THE COURT: Well, do you care if  
20 Mr. Parker's -- he has 1, 2, 3 and 4.  
21 Any objection to Mr. Parker's exhibits?

22 The first I wrote down was the  
23 Madeira mailing.

24 Two is 17-06. Sherry Poland.

25 And then 3 was the ballot. Well,

1 what appeared to be a ballot. I'm not  
2 sure Ms. Poland identified what it was,  
3 actually.

4 But then No. 4 was the second  
5 language, the revised language.

6 Any objection?

7 MR. FOX: No objection.

8 THE COURT: All right. They'll be  
9 admitted then.

10 (Relator's Exhibits 1, 2, 3 and 4  
11 were received into evidence.)

12 THE COURT: All right. So any  
13 objection to D, objection to that? This  
14 is 17-02, Mr. Parker.

15 MR. PARKER: No.

16 THE COURT: All right. It's  
17 admitted.

18 (Respondents' Exhibit D was  
19 received into evidence.)

20 MR. PARKER: We'll also stipulate  
21 to 3, 4, 5 and 6.

22 THE COURT: Say what?

23 MR. PARKER: We'll stipulate, 3, 4,  
24 5 and 6 are what they purport to be too.

25 THE COURT: But they have -- theirs

1 are letters.

2 MR. FOX: Yes. So that would be in  
3 our --

4 THE COURT: Oh, the tabs?

5 MR. FOX: Yeah, the tabs. It would  
6 be --

7 THE COURT: I only have three tabs.

8 MR. FOX: It would be Tab One,  
9 Exhibit G, Exhibit H --

10 THE COURT: Okay. G.

11 MR. FOX: -- Exhibit L.

12 THE COURT: So right now I have  
13 D -- I'm sorry. D, G and L are  
14 stipulated to. What was the other one?  
15 I thought you said there were four. Or  
16 did I misunderstand?

17 MR. FOX: D, G, H and L.

18 THE COURT: Let me catch up with  
19 you. I was only on D.

20 MR. FOX: Okay.

21 THE COURT: All right. So --

22 MR. FOX: D, G --

23 THE COURT: Got it.

24 MR. FOX: H.

25 THE COURT: Okay. L?

1 MR. FOX: And L.

2 THE COURT: All right. Got it.

3 (Respondents' Exhibits D, G, H, and  
4 L were received into evidence.)

5 BY MR. FOX:

6 Q. Mr. Moeller, can you tell the court  
7 how many times Ordinance 17-02 was read?

8 A. It was read on three separate  
9 occasions at regularly scheduled council  
10 meetings. I believe the dates were the 23rd of  
11 February and -- I'm sorry. The 23rd of January.  
12 And then the 13th and 27th of February. And it  
13 was actually passed on the 27th of February.

14 Q. So Ordinance 17-02 was passed on  
15 what date?

16 A. February 27th.

17 Q. Okay. And what is Ordinance 17-05?

18 A. 17-05 repealed 17-02. During the  
19 discussion of the three readings of 17-02, city  
20 council considered, and eventually approved,  
21 bifurcating the amendments to the charter such  
22 that they would be two separate ballot issues.  
23 They're just --

24 There was discussion that that was  
25 the most appropriate way of presenting it to the

1 voters, because of the importance of the issues  
2 that were actually on 17-04, and so city council  
3 eventually moved to bifurcate the ballot issues  
4 into two.

5 Q. Okay. And were you present for all  
6 of the readings relative to 17-02?

7 A. I was.

8 Q. Okay. And were you also present  
9 for the introduction of Ordinance 17-05?

10 A. I was.

11 Q. Okay. When was ordinance 17-05  
12 introduced?

13 A. 17-05 was introduced at a special  
14 council meeting on March the 2nd.

15 Q. Okay. And how many times was the  
16 ordinance read?

17 A. It was only read one time.

18 Q. Okay. And under the charter is  
19 council permitted to pass an ordinance after  
20 reading it only one time?

21 A. They are.

22 Q. Okay. What section of the charter  
23 would permit that?

24 A. I believe that that is -- the  
25 council's voting and the ordinances themselves

1 are addressed in Article -- I believe it's  
2 Article III, Section 4, and then Article XI.

3 Q. And so Ordinance 17-05 was passed  
4 on March the 3rd?

5 A. Actually it was on March the 2nd.

6 Q. Okay. March the 2nd.

7 And do you -- you said -- you  
8 testified earlier you were in attendance at the  
9 meeting. Do you recall council dispensing with  
10 the three-reading requirement --

11 A. I do.

12 Q. -- relative to 17-05?

13 A. I do.

14 Q. Do the official minutes from the  
15 March 2nd, 2017 special meeting demonstrate that  
16 council dispensed with the three-reading  
17 requirement?

18 A. They do.

19 Q. Okay. And can you describe for the  
20 court what 17-04 is?

21 A. 17-04 is the proposed amendment to  
22 the charter, which creates a Board of Zoning  
23 Appeals, and amends the City Planning  
24 Commission's responsibility relative to  
25 administrative appeals, zoning variances, and



1 exceptions to the code.

2 Q. And how many times was that  
3 ordinance read?

4 A. That ordinance was read one time.

5 Q. Okay. And was it passed as an  
6 emergency measure?

7 A. It was not.

8 Q. Okay. And why was it not passed as  
9 an emergency measure?

10 MR. PARKER: Objection. Asking the  
11 witness to draw a legal conclusion, Your  
12 Honor.

13 THE COURT: Overruled.

14 A. The charter does not require  
15 amendments to the charter legislation that amend  
16 the charter to be passed as an emergency  
17 measure.

18 Q. Okay. And why not?

19 A. Because they are not subject to  
20 referendum. And so, therefore, there is no need  
21 to waive the 45-day requirement that -- that  
22 normal -- or typical legislation has force and  
23 effect of law.

24 Q. So is there a distinction under the  
25 charter between administrative ordinances and

1 ordinances that are creating new laws?

2 A. There is.

3 Q. Okay. And what is your  
4 understanding as to when an ordinance that is  
5 adopted, not as an emergency measure, but that  
6 is an administrative measure, when does it  
7 become effective?

8 A. It becomes effective immediately.

9 Q. And did you witness and recall  
10 council dispensing with the three-reading  
11 requirement relative to 17-04?

12 MR. PARKER: Objection. Relevance.

13 THE COURT: well, overruled.

14 A. I did.

15 Q. Okay. And do the official minutes  
16 from the March 2nd, 2017 special meeting  
17 evidence that council dispensed with the  
18 three-reading requirement?

19 A. They do.

20 Q. Okay. I want to show you what has  
21 been marked as -- turn to Tab One, Exhibit F,  
22 the March 2nd meeting minutes.

23 THE COURT: I know it's minutes.

24 What meeting was it? March the 2nd?

25 THE WITNESS: March the 2nd.

1 MR. FOX: It's Exhibit F under Tab  
2 One.

3 Q. And can you flip through those  
4 minutes and confirm that those minutes are a  
5 true and accurate reflection of the minutes that  
6 were passed by council?

7 MR. PARKER: Judge, I think that's  
8 irrelevant, what he can say. It's the  
9 Clerk of Council's job to have this --  
10 minutes, not the city manager's.

11 THE COURT: Well, he said he was  
12 there. And if he recollects what was  
13 said -- take a look at it. Overruled.

14 A. These appear to be the minutes of  
15 that meeting, yes.

16 MR. FOX: Your Honor, I'd like to  
17 move the March 2nd meeting minutes into  
18 evidence.

19 THE COURT: All right. Any  
20 objection to those, Mr. Parker? March  
21 2nd. It's Exhibit F.

22 Looks like they're signed by the  
23 mayor and certified by Christine Doyle,  
24 who was here earlier.

25 MR. PARKER: Are these certified by

1 the clerk?

2 THE COURT: Well, it has her  
3 signature on it. Do you have an  
4 objection to it?

5 MR. PARKER: Not -- the only one I  
6 have an objection to is K. So I'll agree  
7 to everything but K.

8 (Respondents' Exhibits A through M,  
9 with the exception of K, were stipulated  
10 to and received into evidence.)

11 THE COURT: All right.

12 MR. PARKER: Well -- yeah, K.

13 THE COURT: All right. F will be  
14 admitted then. We'll get to K. All  
15 right. So F's admitted.

16 (Respondents' Exhibit F was  
17 received into evidence.)

18 MR. FOX: So they've been admitted?

19 THE COURT: Yes.

20 BY MR. FOX:

21 Q. Mr. Moeller, where does -- where do  
22 the meeting minutes for March 2nd demonstrate  
23 that the three-reading requirement was dispensed  
24 with by council relative to 17-04?

25 A. Toward the bottom of page two.

1 Q. Okay. And does the same section of  
2 the minutes also demonstrate that the  
3 three-reading requirement was also dispensed  
4 with relative to ordinances 17-03 and 17-05?

5 A. Yes. 17-03 is on page two. And  
6 17-05 is on page three.

7 Q. What is an emergency measure? What  
8 is your understanding of an emergency measure  
9 under the charter?

10 A. City council has the authority to  
11 pass legislation by emergency, if it is deemed  
12 appropriate to preserve the public peace, health  
13 safety and welfare of the community. By passing  
14 legislation as an emergency, the -- it does go  
15 into effect immediately upon its passage, which  
16 then waives the standard 45-day waiting period  
17 in that regard.

18 Q. Okay. And was 17-04 passed as an  
19 emergency measure?

20 A. It was not.

21 Q. Okay. Why?

22 A. Amendments to the city -- or  
23 legislation that propose amendments to the city  
24 charter are not -- do not have force and effect  
25 of law, and are not subject to referendum.

1 Q. And why wouldn't those  
2 ordinances -- why wouldn't Ordinance 17-03 and  
3 17-04, and 05, and 06, be subject to referendum?

4 A. Just from a purely logical  
5 standpoint. Referendum of a piece of  
6 legislation is to have it voted on by the  
7 residents.

8 By virtue of its nature these  
9 pieces of legislation are proposing to put  
10 measures in front of the electors. So a  
11 referendum would be either redundant or  
12 paradoxical.

13 Q. And, to your knowledge, were there  
14 any errors contained in Ordinance 17-04, any  
15 typographical errors?

16 A. Not to my knowledge.

17 Q. What is 17-03 ordinance?

18 A. 17-03 was the remaining issues that  
19 city council had proposed to put before the  
20 voters. It involved three amendments to the  
21 charter. One was to eliminate the residency  
22 requirements for appointed officials. That was  
23 done in response to action by the Ohio General  
24 Assembly to make residency requirements  
25 unconstitutional.

1           Another amendment, or proposed  
2 amendment, was to modify the way the City would  
3 advertise for legal notices, zoning variances,  
4 et cetera.

5           And the third is to allow for  
6 committee -- or for council members to be  
7 appointed to various boards and commissions that  
8 were not prescribed by the charter.

9           Q.     Okay. And why were the amendments  
10 proposed to -- based on your understanding of  
11 the discussion of members of council, why was  
12 the section of the charter amended relative to  
13 the provision of notice?

14          A.     Council believed that the City  
15 could do a more efficient and cost-effective  
16 procedure in terms of notifying the public of --  
17 what I'll just refer to as legal notices, rather  
18 than publishing them in a paper of general  
19 circulation, by using electronic media and other  
20 methods that we have available to us.

21          Q.     And why was this section relative  
22 to members of council being able to serve on  
23 other committees or commissions, why was that  
24 proposed as an amendment?

25          A.     City council believed it was

1 appropriate and important for a council member  
2 to serve on a board and commission, and the  
3 present language of the charter created a  
4 conflict for council not to be able to do that.  
5 So council believed -- they said it was  
6 important for -- for example, for the Park  
7 Board, for the Senior Commission, for the  
8 Historical Preservation Commission, that one  
9 council member be represented on each of those  
10 boards.

11 Q. Okay. And did the City arrive at  
12 its decision to amend the charter organically,  
13 or did someone drive that?

14 A. The first two that I had mentioned  
15 I believe were done -- to use your expression --  
16 organically. That was -- those were discussions  
17 that council actually had over the last several  
18 months.

19 The third matter in regard to  
20 council members being appointed a committee was  
21 actually brought to our attention by a resident.

22 Q. Okay. And who is the resident that  
23 brought that to council's attention?

24 A. Mr. Oppenheimer.

25 Q. Okay. Ordinance 17-03, when was



1 that introduced?

2 A. That was introduced at the special  
3 meeting on March the 2nd, 2017.

4 Q. So it was also introduced along  
5 with 17-04 and 17-05?

6 A. That's correct.

7 Q. Okay. And the three-reading  
8 requirement was also dispensed with, correct?

9 A. That's correct.

10 THE COURT: For both four and five?

11 MR. FOX: Yeah.

12 Q. Was Ordinance 17-03 passed as an  
13 emergency ordinance?

14 A. It was not.

15 Q. And was it not passed as an  
16 emergency ordinance for the same reasons that  
17 17-04 was not passed as an emergency ordinance?

18 A. That's correct.

19 Q. Okay. What is Ordinance 17-06?

20 A. 17-06 was introduced to city  
21 council on March 13th to correct a typographical  
22 error in 17-03.

23 Q. Okay. And when was that ordinance  
24 introduced?

25 A. It was introduced on March 13th,

1 2017.

2 Q. Okay. And if you could flip to  
3 Exhibit K in Tab One.

4 Can you flip through Exhibit K and  
5 confirm for the court whether Exhibit K is a  
6 true and accurate reflection of the meeting  
7 minutes relative to the meeting that took place  
8 on March 13th, 2017?

9 MR. PARKER: Objection.

10 THE COURT: Okay. Well, let him  
11 take a look first. Looks like a lengthy  
12 meeting.

13 A. These appear to be the minutes that  
14 were approved by city council, yes.

15 MR. FOX: Your Honor, I would like  
16 to move --

17 THE COURT: Well, I think -- is  
18 this the one you -- you have an objection  
19 Mr. Parker?

20 MR. PARKER: Yes.

21 THE COURT: What's the basis for  
22 that? What's the basis for your  
23 objection to K?

24 MR. PARKER: He's the wrong person.

25 THE COURT: I thought he was there

1           though, right?

2           MR. PARKER: That doesn't mean that  
3           the minutes -- that he can say that the  
4           minutes are what they purport to be. He  
5           can say what he -- he can say that, hey,  
6           it looks like a reflection, but the  
7           people that can do that is the clerk. I  
8           mean, that's the -- that is really the  
9           sum and substance of --

10          THE COURT: You want me to have him  
11          recall Ms. --

12          MR. PARKER: No.

13          THE COURT: Well, I mean --

14          MR. PARKER: But it's the sum and  
15          substance of what's going on here, Judge.  
16          It's very Nixonesque that the city  
17          manager can do whatever he wants,  
18          disregard the law and disregard rules,  
19          and then come in and say it's okay 'cause  
20          the city manager did it. So --

21          THE COURT: I think he's just  
22          asking him -- you know, he said he was  
23          present, and if this accurately reflects,  
24          so I'll note your objection and overrule  
25          on K.

1 MR. PARKER: Yes, sir.

2 (Respondents' Exhibit K was  
3 received into evidence.)

4 THE COURT: Okay. Go ahead.

5 BY MR. FOX:

6 Q. And as it pertains to Exhibit K and  
7 the meeting minutes, were you in attendance at  
8 the March 13th meeting?

9 A. I was.

10 Q. Okay. And how many times was 17-06  
11 read?

12 A. It was read one time.

13 Q. Okay. And why is that the case?

14 A. For the same reasons that there was  
15 only one reading for 17-03 and 17-04. Again, it  
16 was correcting a typographical error, council  
17 waived the three readings, as indicated in the  
18 minutes, and approved it under that waiver.

19 Q. All right. In looking at 17-06,  
20 can you identify for the court what changes were  
21 made to Ordinance No. 17-03?

22 A. The title to Exhibit C was  
23 corrected as part of 2 -- 17-06.

24 Q. Okay. So looking at this  
25 demonstrative right here, is that 17-03 on the

1 left? I can bring it closer.

2 THE COURT: I can't see it.

3 A. Yeah, bring it closer. Yes, that's  
4 correct.

5 Q. Okay. And is that 17-06 on the  
6 right?

7 A. That's correct.

8 Q. Okay. Other than the Roman  
9 numerals and the reference to the title of those  
10 sections, was there anything else changed  
11 substantively between those two?

12 A. There was not.

13 THE COURT: Let me ask you: Is  
14 that exhibit in this book or not?

15 MR. FOX: No. But it could be.

16 THE COURT: All right. So -- go  
17 ahead.

18 BY MR. FOX:

19 Q. So Ordinance No. 17-06, was it  
20 certified by the clerk, Christine Doyle?

21 A. After -- after she returned, yes.

22 Q. Okay. So after she -- can you  
23 describe that.

24 A. Describe in --

25 Q. How that took place. How did she

1 certify the ordinance after she returned?

2 A. I reviewed the legislation with her  
3 when she returned to the city, and showed to her  
4 what city council had done, and that's when she  
5 acknowledged that it was the -- it was the  
6 appropriate legislation.

7 Q. Okay. And then she affixed her  
8 signature to Ordinance 17-06?

9 A. That's correct.

10 Q. Okay. And I want to show you  
11 what's been marked as Exhibit L in Tab One.  
12 Okay. And, looking at Exhibit L, is Ms. Doyle's  
13 signature present there?

14 A. It is not.

15 Q. Okay. And why is that the case?

16 A. Because she was out of the country  
17 at the time.

18 Q. Okay. And so, to your knowledge,  
19 does the City have possession of 17-06, which  
20 has been certified and signed by Christine  
21 Doyle?

22 A. We do.

23 Q. Okay. To your knowledge, is there  
24 any requirement or obligation of the City to  
25 certify an ordinance prior to sending it to the

1 Board of Elections?

2 A. No.

3 Q. And are there any obligations  
4 relative to certification for a charter  
5 amendment at any time?

6 A. Not to my knowledge.

7 Q. Okay. What about after an  
8 election, is there a certification requirement  
9 after an election?

10 A. Yes, there is. I believe that it's  
11 required that once the charter amendment has  
12 been approved by the electors, the Clerk of  
13 Council then is required to certify that ballot  
14 language, or that approved charter amendment, to  
15 the State of Ohio.

16 Q. And what is your understanding as  
17 to how minutes are prepared for a meeting?

18 A. The Clerk of Council generally is  
19 in attendance, but we do have an audio recording  
20 of the proceedings. And in most cases she will  
21 take notes at the meeting. I think she  
22 indicated she even uses a laptop to do that.  
23 And then she goes back and she reviews the  
24 audiotape to make sure that she has a clear  
25 understanding, as well as including all the

1 information that city council discussed. And  
2 then presents that draft to city council. And  
3 city council reviews those minutes to determine  
4 if that's, in fact, what took place. And they  
5 vote on those minutes, to approve them. And  
6 then the clerk certifies that those are -- the  
7 minutes were approved by city council.

8 Q. To your knowledge, is there any  
9 obligation that the clerk have attended a  
10 council meeting or special meeting of council in  
11 order to prepare the minutes or sign the  
12 minutes?

13 A. Not to my knowledge.

14 Q. Okay. What preventive measures, or  
15 processes, exist within the City of Madeira to  
16 ensure that the minutes accurately reflect what  
17 took place at a meeting?

18 A. I think the primary measure in the  
19 situation is that the city council members who  
20 were in attendance have reviewed those minutes,  
21 again, to make sure that they accurately reflect  
22 their actions --

23 MR. PARKER: Objection. Relevance.  
24 His opinion of what the charter requires  
25 on this issue is really kind of



1 irrelevant. If he's looking at Article  
2 V, Section 1, it tells us everything we  
3 need to know, Judge. It's irrelevant  
4 what he thinks.

5 THE COURT: Okay. Overruled. Go  
6 ahead.

7 Do you remember where you were,  
8 sir?

9 A. So -- yes. So, again, I think the  
10 most important factor there is for city council,  
11 when they review the minutes prior to approving  
12 them at a next -- at their next meeting, is  
13 the -- is the main part of the process.

14 Q. Okay. So city council attends, and  
15 then they approve, or don't approve, the  
16 minutes?

17 A. Correct. Or amend.

18 Q. Or amend. Are there circumstances  
19 where city council will -- in your experience,  
20 are there circumstances where city council will  
21 review the minutes and then revise the minutes  
22 based on what they understood to have taken  
23 place at the meeting?

24 A. Yes.

25 Q. Okay. And you attend all or most

1 of the meetings unless you're ill; is that  
2 correct?

3 A. I do.

4 Q. Okay. And were you at all of the  
5 meetings that are in issue in this case? For  
6 instance, were you present at the March 2nd  
7 meeting?

8 A. I was.

9 Q. You were present at the March 13th  
10 meeting?

11 A. I was.

12 Q. Okay. So at both of those meetings  
13 you attended, did you have occasion to review  
14 the minutes, yourself?

15 A. I did.

16 Q. Did you suggest any changes, or  
17 were there any issues, relative to the minutes  
18 or your understanding as to what took place?

19 A. Not to my knowledge.

20 Q. Okay. And so the minutes for the  
21 March 13th meeting were approved by council?

22 A. That's correct.

23 Q. Okay. Are there circumstances  
24 where measures of the City require a special  
25 certification?

1           A.     I believe that there are a couple  
2 of instances. And I think Ms. Doyle even  
3 referred to them. One is if the city council  
4 wants to put before the voters a property tax  
5 levy. I believe that that has to be certified.

6                     I'm not sure I'm familiar with the  
7 others.

8           Q.     Okay. Is there a certification  
9 requirement relative to an extra levy?

10          A.     That would -- a property tax levy,  
11 yes.

12          Q.     Are there certification  
13 requirements relative to an initiative petition?

14          A.     That's correct, both initiative and  
15 referendum petitions are required to be  
16 certified by the Clerk of Council once they  
17 are -- once it's submitted by the elector who is  
18 requesting to have the initiative or referendum  
19 certified to the ballot.

20          Q.     Okay. You've been accused of  
21 fraud, do you want to respond to that?

22          A.     There's no fraud that was involved  
23 in any of this.

24          Q.     Okay. Do you stand to personally  
25 benefit from the residency requirements, or the

1 notice provisions, or the serving on commissions  
2 or the BZA?

3 A. None whatsoever.

4 Q. Now, is this the first time that  
5 you have been accused of fraud --

6 MR. PARKER: Objection. Relevance.

7 Q. -- on Mr. Oppenheimer?

8 MR. PARKER: It's irrelevant and  
9 it's highly prejudicial.

10 THE COURT: Overruled. Go ahead.

11 A. There have been other instances  
12 where myself and the City has been accused, yes.

13 Q. Okay. What sorts of things has Mr.  
14 Oppenheimer accused you of?

15 MR. PARKER: Objection. This is  
16 irrelevant to the issue whether or not --

17 THE COURT: Do you want to say  
18 anything on that, Mr. Goodin? I'm going  
19 to overrule it. I mean --

20 why don't you start with how many  
21 times has this occurred? How many times,  
22 do you recall, Mr. Moeller?

23 THE WITNESS: I'll just recall --

24 THE COURT: Accusations of fraud.

25 A. Yeah. I'll recall the most -- the

1 most recent time. And that is in regard to a  
2 development project that -- I've been accused of  
3 colluding and fraud in regard to a development  
4 project in the community.

5 Q. Okay. And how long have you been  
6 with the City of Madeira?

7 A. Twenty-eight years.

8 Q. In your 28 years, has Mr.  
9 Oppenheimer been a resident of the City of  
10 Madeira all 28 years?

11 A. Yes.

12 Q. To your knowledge?

13 A. To my knowledge.

14 Q. And in that 28 years would it be  
15 fair -- would it be a fair characterization to  
16 say that he accuses you of fraud, or deception,  
17 or collusion, with some regularity?

18 A. There have been a number of  
19 instances, yes.

20 Q. And in your 28 years of being the  
21 city manager, do you recall how many lawsuits  
22 Mr. Oppenheimer has filed against the City or as  
23 a relator?

24 A. I do not have a specific number.  
25 But there have been some, yes.

1 MR. FOX: Okay. Your Honor, if  
2 it's okay, I'd like to move the  
3 demonstratives into evidence.

4 THE COURT: All right. Let's see.  
5 Where are we now? Well, I don't have --  
6 I went all the way to Z. What's your  
7 last exhibit in your book?

8 MR. FOX: Well, I --

9 THE COURT: You know what --

10 MR. FOX: It starts over,  
11 unfortunately. So do you want us to  
12 start with numbers?

13 THE COURT: Yeah, why don't we do  
14 that. Let's call it Defendant's -- make  
15 it -- make that Defendant's 1 right  
16 there.

17 MR. PARKER: Judge, can we just  
18 give you a copy of the charter? Because  
19 it's included in it, isn't it?

20 MR. FOX: I would like to  
21 specifically move what was actually  
22 changed.

23 THE COURT: I can look -- I can get  
24 the charter at the law library. It's up  
25 there. I know it's up there.

1           why don't you just start that as 1,  
2           1 with the changes.

3           MR. FOX: Okay. So, initially, I'd  
4           like to move Exhibit -- Defendant's -- or  
5           Respondents' Exhibit 1-1 into evidence,  
6           which is a demonstrative, that  
7           demonstrates the difference between  
8           Ordinance No. 17-03 and Ordinance No.  
9           17-06.

10          THE COURT: Okay. Any objection to  
11          that one, Mr. Parker?

12          MR. PARKER: No.

13          THE COURT: Okay. Then, it's  
14          admitted.

15          (Respondents' Exhibit No. 1-1 was  
16          received into evidence.)

17          THE COURT: Is that the only one  
18          you're interested in?

19          MR. FOX: Yes. Nothing further,  
20          Your Honor.

21          THE COURT: Okay. Thank you.

22          Now, Mr. Stevenson, do you have any  
23          questions?

24          MR. STEVENSON: Not of Mr. Moeller.

25          THE COURT: Mr. Parker?

1 MR. PARKER: No further witnesses.

2 THE COURT: All right. Mr.  
3 Moeller, you may step down, sir. Thank  
4 you for your testimony.

5 Now, he may remain. He's a  
6 defendant in this. All right.

7 Mr. Parker, you said no further  
8 witnesses?

9 MR. PARKER: No.

10 THE COURT: All right. Then you've  
11 already admitted your exhibits. So you  
12 rest at this time?

13 MR. PARKER: Yes.

14 THE COURT: All right. And do  
15 you -- defendants wish to say anything,  
16 or do anything, or call any witnesses?

17 MR. STEVENSON: Your Honor, I move  
18 to dismiss this complaint before we're  
19 required to submit evidence. In his  
20 complaint -- the evidence that he's  
21 presented today wholly fails to establish  
22 cause of action against the Board of  
23 Elections.

24 THE COURT: Thank you, sir.

25 And Mr. Goodin or Mr. Fox?



1 MR. GOODIN: Your Honor, just very  
2 briefly. We would join in the motion to  
3 dismiss at this point, specifically  
4 regards to the TRO, preliminary  
5 injunction request.  
6 I mean, this has been certified for  
7 the ballot by the Board of Elections.  
8 Madeira simply cannot provide the relief  
9 that is sought conjunctively at this time  
10 even if it wanted to.  
11 Madeira cannot pull this ballot  
12 initiative back and cannot pull the  
13 language off the ballot. The ship has  
14 sailed. He had a chance to file an  
15 expedited election appeal or attempt to  
16 mandamus the City before the minutes --  
17 or before the ordinances were certified  
18 or transferred to the Board of Elections;  
19 he did not. That ship has sailed.  
20 At this point we couldn't enjoin  
21 this election even if we so chose, or  
22 even if the court ordered us to.  
23 So we would maintain at this point  
24 in time, you know, there really -- in  
25 terms of injunctive relief, preliminary

1 injunction, temporary restraining order,  
2 there's nothing Madeira can do. We're  
3 not the proper party to that anymore.

4 In regards to the motion for  
5 declaratory judgment, Judge, I think the  
6 facts do speak for themselves. We're  
7 happy to argue that separately or in  
8 addition to. But we would ask that --  
9 certainly in regards to the Madeira, that  
10 we be dismissed from the P.I. request and  
11 the TRO request.

12 THE COURT: Thank you.

13 MR. PARKER: Judge, everybody wants  
14 to disregard it. But you heard it, right  
15 from the clerk's mouth. She did not send  
16 the required mailer that the Madeira City  
17 Charter requires her to send. The Board  
18 of Elections does not verify about the  
19 mailer. The City has the clerks -- she  
20 has the obligation. She was forthright  
21 and honest with you.

22 This case is so eerily similar to  
23 the 1979 case that Mr. Oppenheimer filed  
24 against the City of Madeira where the  
25 Court of Appeals overturned the decision

1 of the trial court and said, you didn't  
2 do the mailing correctly, election  
3 results thrown out.

4 THE COURT: Can I stop you? My  
5 recollection was she didn't personally --  
6 she didn't go to the mailbox. I thought  
7 that's what she said.

8 MR. PARKER: She said she didn't  
9 send it. And the -- and this is what --  
10 this is what --

11 THE COURT: I'm just going to  
12 overrule the Rule 50 motions at this  
13 time, but if you want to continue, I may  
14 change my mind. So overruled.

15 MR. PARKER: Yes, sir.

16 THE COURT: All right. Do you want  
17 to present any evidence?

18 MR. FOX: Your Honor, could we take  
19 a brief recess?

20 THE COURT: Yeah. It's almost one  
21 o'clock. So you want to take maybe a  
22 half hour or so? I think Lois just went  
23 to get my salad. So is that a problem?  
24 why don't we just -- why don't we take  
25 about a half an hour. That clock is

1 wrong. Actually it's about 10 of. Is 20  
2 after two okay?

3 MR. FOX: That's fine, Your Honor.

4 THE COURT: I'm sorry. Twenty  
5 after one. All right.

6 (Respondents' Exhibit No. 1-1 was  
7 marked for identification.)

8 (Lunch recess.)  
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1 AFTERNOON SESSION, April 27th, 2017

2 - - -

3 THE COURT: All right. Court's in  
4 session.

5 Now, I denied the motion to  
6 dismiss. And I guess at this point,  
7 Mr. Stevenson, or Mr. Fox, you wish to  
8 call any further witnesses?

9 MR. FOX: Your Honor, I'd like to  
10 call -- recall Tom Moeller.

11 THE COURT: All right. Mr.  
12 Moeller, come back on up, sir. You can  
13 come on up, sir.

14 You're still under oath, sir.

15 THE WITNESS: Yes.

16 THOMAS W. MOELLER

17 having previously been sworn, was examined and  
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. FOX:

21 Q. Mr. Moeller, just a couple of  
22 questions. You heard earlier opposing counsel  
23 make issue about when the proposed language was  
24 mailed to electors. Can you speak to that for  
25 the court's benefit?

1           A.     I can. The charter requires that  
2 once counsel approves the legislation, that  
3 every elector in the community receives a full  
4 copy of the proposed amendments.

5                     So our procedure for that, in  
6 working in conjunction with the Law Director's  
7 office and the Clerk of Council's office, we get  
8 an up-to-date list of all of the registered  
9 voters in the city from the Board of Elections.

10 We provide --

11                     MR. PARKER: Objection, Judge,  
12 respectfully. His opinion regarding the  
13 process and procedures is irrelevant.  
14 The City charter talks about whose  
15 responsibility it is.

16                     He's the chief executive officer  
17 for the City, but the Clerk of Council is  
18 who's defined in their City charter as  
19 the one who's got the responsibility to  
20 do this.

21                     So his opinion is irrelevant. And  
22 the process that they followed should be  
23 described by her, not him.

24                     THE COURT: All right. It's  
25 overruled. Now, I know that the mailing

1 is mentioned in your -- at least in the  
2 verified complaint, Mr. Parker.

3 MR. PARKER: Yes, sir.

4 THE COURT: I read all of that.

5 MR. PARKER: Yeah.

6 THE COURT: So I'm going to  
7 overrule it.

8 MR. PARKER: Yes, sir.

9 THE COURT: Go ahead.

10 A. (Continuing) So we receive a list,  
11 an up-to-date list, of all of the registered  
12 voters within the community. They provide that  
13 to us. We work in conjunction with the Clerk of  
14 Council. Again, primarily because the Clerk of  
15 Council is a part-time position. The mailer is  
16 prepared with the Clerk of Council. And in my  
17 office, we send it to the law director's office  
18 to make sure the language was appropriate.

19 And then it was provided to the  
20 third-party mailing company, who does mailing  
21 for us. They mail our -- mail our newsletter.  
22 And they verified that it was sent to the Post  
23 Office on March 31st.

24 MR. FOX: Okay. No further  
25 questions.



1 THE COURT: Okay. Well, anything  
2 on that, Mr. Parker, on the mailing?

3 MR. PARKER: Judge, may I approach?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. PARKER:

7 Q. You've got the charter kind of  
8 memorized, Mr. Moeller, after 28 years?

9 A. I would never say I have it  
10 memorized.

11 Q. Okay. Well, let's go through the  
12 charter amendment provision and let's talk about  
13 who's supposed to send out the proposed charter  
14 amendment language to the residents. You  
15 remember that section?

16 A. I do.

17 Q. Okay. On page 28, isn't it, of the  
18 charter? Right? Amending the charter is where  
19 we start.

20 A. Section 5.

21 Q. Yep. And then Section 5 E says:  
22 Not less than 30 days prior to the  
23 election, the clerk shall mail a copy of the  
24 proposed charter amendment to each elector whose  
25 name appears on the poll or registration books

1 of the last regular or general election held in  
2 Madeira.

3 Right? That's what it says?

4 A. That's correct.

5 Q. And the clerk did not do that,  
6 correct?

7 A. The clerk did that in conjunction  
8 with my office.

9 Q. The clerk did not do it. You sat  
10 here and heard her say this morning, she did not  
11 mail them, correct?

12 MR. FOX: Objection.

13 Argumentative.

14 THE COURT: Well, the way I took  
15 it, she didn't personally go to the  
16 mailbox and -- maybe I misunderstood her,  
17 but that's what I thought she said, is I  
18 didn't -- her answer was, no, I didn't  
19 take a -- I don't know how people in  
20 Madeira -- but she didn't drive a truck  
21 down to the Post Office.

22 Your exhibit looks like it was a  
23 mailer, though. Where is that exhibit?  
24 Is that a mailer? Was that -- it looks  
25 like it was mailed out.

1 MR. PARKER: Well, if they want to  
2 stipulate that my exhibit is what was  
3 mailed, then I think that we got bigger  
4 problems.

5 THE COURT: It looks -- when I  
6 looked at it, it looked like -- I don't  
7 even know -- I didn't look at the  
8 address, but it looked like it had been  
9 mailed out.

10 MR. PARKER: No, Judge. That's the  
11 one we picked up from the city.

12 THE COURT: I didn't see an address  
13 on it. Well, okay.

14 Anyway, he said he -- you know,  
15 that -- I understand what you're saying,  
16 is the clerk didn't -- or my take on what  
17 she said, she didn't personally take  
18 everything, drive down to the main Post  
19 office and mail it.

20 MR. PARKER: Judge, I didn't write  
21 the charter.

22 THE COURT: No. I'm not going to  
23 argue. I'm just telling you that's  
24 what -- that's what I took from her  
25 testimony.

1 BY MR. PARKER:

2 Q. So -- well, so you know the clerk  
3 isn't the one who mailed them, right?

4 A. The clerk did not personally take  
5 them to the Post Office, that's correct.

6 MR. PARKER: Nothing further.

7 THE COURT: All right. Anything?

8 All right. Mr. Moeller, thank you.

9 THE WITNESS: Thank you, Your  
10 Honor.

11 THE COURT: All right. Another  
12 witness?

13 MR. FOX: We have no further  
14 witnesses to call, Your Honor.

15 THE COURT: All right. And let me  
16 ask -- Mr. Stevenson, do you have anyone  
17 you wish to call, sir?

18 MR. STEVENSON: No, Your Honor, we  
19 don't have any witnesses. I would just  
20 ask the court to take judicial notice of  
21 Article XVIII, sections 8 and 9 of the  
22 Ohio Constitution, which provide the  
23 provision -- provide the process by which  
24 the amendments to city charters are made.

25 THE COURT: All right. Thank you,