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October 25, 2017

Hamilton County Court of Appeals, "Entry Ordering Limited Remand for Clarification of the Record" Sent To Trial Judge Patrick T. Dinkelacker.

Please Scroll Down.....

D119561979

ENTERED
SEP 27 2017

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

CITY OF MADEIRA ex rel.
DOUGLAS OPPENHEIMER,

APPEAL NO. C-160762
TRIAL NO. A-1506891

Appellant,

vs.

ENTRY ORDERING LIMITED
REMAND FOR CLARIFICATION
OF THE RECORD

CITY OF MADEIRA, et al.,

Appellees.

Upon review of the record, we are unable to determine if we have jurisdiction to proceed with this appeal. The trial court's pronouncements concerning its judgment are inconsistent.

It is the order of this Court that this cause is remanded to the trial court under App.R. 9(E) for the court to clarify whether it intended to dismiss the action without prejudice as moot because there no longer exists a justiciable controversy, or whether it intended to grant Appellees' motion for judgment on the pleadings. Further, the trial court shall by means of a supplemental record transmit and certify its amended order to this Court on or before October 27, 2017.

To The Clerk:

Enter upon the Journal of the Court on SEP 27 2017 **per order of the Court.**

By: _____
Presiding Judge

(Copies sent to all counsel)

motrem13.doc

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October 25, 2017

New Entry Adding "Relator City of Madeira ex rel. Oppenheimer's Complaint is hear by dismissed Without Prejudice", meaning that any Madeira Resident Can Refile Against any Renewed Effort to Sell Historic District Property. Resolution No. 17-16 May Be the Next Legislation to be embroiled in the Courtroom.

This Resolution was briefly discussed at the October 23, 2017 City Council Meeting. Councilman Scott Gehring Initiated the discussion stating that the Resolution has Not Been Repealed and is Still Pending Legislation. Discussion is planned for the Next City Council Meeting.

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D119612332

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED
OCT 03 2017

CITY OF MADEIRA ex rel. DOUGLAS OPPENHEIMER,	:	**Case No.: A1506891**
Relator,	:	**Judge Patrick T. Dinkelacker**
v.	:	
CITY OF MADEIRA, et al.,	:	**NUNC PRO TUNC ENTRY / ORDER GRANTING CITY OF MADEIRA AND CITY MANAGER TOM MOELLER'S MOTION FOR JUDGMENT ON THE PLEADINGS**
Respondents.	:	

This matter originally came before the Court on the motion of Respondents City of Madeira and Tom Moeller for judgment on the pleadings pursuant to Ohio Civil Rule 12(c). This Court granted said motion and placed of record an order granting said motion on September 21, 2016.

Upon appeal, the First District Court of Appeals transmitted to this Court an "Entry Ordering Limited Remand for Clarification of the Record." In order to comply with the dictates of the First District Court of Appeals, the Court hereby orders the following:

1. Respondents City of Madeira and Tom Moeller's Motion for Judgment on the Pleadings is granted in its entirety.
2. Relator City of Madeira ex rel. Oppenheimer's Complaint is hereby dismissed **without prejudice.**
3. The only basis for the dismissal of the Complaint is because the Motion for Judgment on the Pleadings is found to be legally appropriate and in compliance with the dictates of Ohio Civil Rule 12(c).

4. The case was not found to be moot nor was there a finding of the nonexistence of a justiciable controversy as the basis for the dismissal of this case.
5. The language of this entry/order is the sole basis for the finding of the Court.

It is so ordered.

Judge Patrick Dinkelacker
10-3-17

RESOLUTION NO. 17-16

AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR PURCHASE OF PROPERTY LOCATED AT 7710 RAILROAD AVENUE, MADEIRA, OHIO

WHEREAS, Thomas M. Powers and/or his related affiliates (collectively "Powers") is in negotiations to purchase certain real property ("Property") located at 7710 Railroad Avenue; and

WHEREAS, upon Powers' acquisition of the Property, Council intends to purchase a portion of the land located on the Property from Powers; and

WHEREAS, the Council of the City of Madeira recognizes the benefit that will continue to accrue to the community by the use of that portion of the Property as public parking located at 7710 Railroad Avenue; and

WHEREAS, the basic terms and conditions of the proposed Contract for Sale and Purchase ("Contract") are acceptable to the City.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Madeira, State of Ohio:

Section 1. That the City Manager is hereby authorized and directed to enter into a Contract with Thomas M. Powers, and/or his related affiliates, for the purchase of a portion of the land located on the Property located at 7710 Railroad Avenue in a form substantially the same as set forth in the Contract for purchase attached hereto and incorporated herein as if fully set forth.

Section 2. That this Resolution shall take effect from and after the earliest period allowed by law.

Section 3. That the City Manager is further authorized to execute any and all other documents necessary and related to the contract for purchase.

Section 4. That the City Manager is further authorized to take any and all steps necessary to effectuate the terms of this Resolution.

This Resolution is not subject to referendum per Article XII, Section 3 of the Madeira Home Rule Charter.

PASSED ON THE 25TH DAY OF APRIL, 2016 BY THE FOLLOWING 5-2 VOTE:

YEA:	*NAY:*	*ABSTAIN:*	*ABSENT:*
Melisa Adrien, Mayor	Tom Ashmore		
Chris Hilberg	Scott Gehring		
Nancy Spencer			
Mike Steur			
Traci Theis			

Melisa Adrien
Melisa Adrien, Mayor

Diane D. Novakov
Diane D. Novakov, Clerk of Council

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October 25, 2017

Hamilton County Court of Appeals Case Number C-16-762, An Attempt by The City of Madeira to Sell Part of The Historic District, Appellants Brief.

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October 25, 2017

Please be advised that Attorney Curt Hartman was appointed as a Hamilton County Trial Judge and Attorney Brian C. Shrive of The Finney Law Firm Continued Legal representation of Douglas Oppenheimer, Shrive's name should be substituted in place of Curt Hartman.

Please Scroll Down.....

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

CITY OF MADEIRA *ex rel.* DOUGLAS OPPENHEIMER,	**Trial Case No. A-15-06891**
Relator-Appellant,	**Judge Dinkelacker**
v.	**C 1600762**
CITY OF MADEIRA,	
and	**RELATOR'S NOTICE OF APPEAL**
THOMAS E. MOELLER,	
and	
THOMAS POWERS,	
Respondents-Appellees.	**D115924066 INI**

Now comes the CITY OF MADEIRA, by and through Relator DOUGLAS OPPENHEIMER, and, hereby appeals to the Hamilton County Court of Appeals, First Appellate District, from the Order/Judgment entered herein on September 21, 2016, a copy of which is attached hereto, so as to include all orders and decisions merging into said Order/Judgment, including, without limitation, the entry of dismiss entered herein on March 24, 2016, a copy of which is also attached hereto.

Respectfully submitted,

Curt C. Hartman (0064242)
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Submitted by:

/s/ Steven P. Goodin

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Distribution:

Curt Hartman
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Amelia, OH 45102

First District
Court of Appeals

Form II
Rev. 5/01

C 1600762

Civil Docket Statement

(Must Be Typed and Filed In Duplicate and Served On Opposing Counsel)

1. Case Caption

City of Madeira ex rel. Oppenheimer **vs.** City of Madeira, et al.,

2. Appeal No. _____
3. Trial No. A-15-06891
4. Trial Judge Dinkelacker
5. Related Appeals _____
6. Date of Judgment/ Order Appealed From 9/21/2016
7. Date Appeal Filed 10/6/2016

8. Counsel for Appellant
Curt. C Hartman (0064242)
E-Mail address hartmanlawfirm@fuse.net

9. Counsel for Appellee
Steve Goodin (0071713, Brian Fox (0086851)
E-Mail address sgoodin@graydon.com, bfox@graydon.com

10(A) Civil Rule 54-B
If multiple judgments or claims:
Does Civil Rule 54-B Apply: ☐ Yes No ☑

If yes, does the judgment include a certification of "No Just Cause for Delay?" ☐ Yes No ☐

FILED
COURT OF APPEALS
OCT 06 2016
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY

11. Record
There will be a partial transcript of proceedings filed. ☑ Yes No ☐
The parts to be ordered are: _____
There will be a complete transcript of proceedings filed. ☑ Yes No ☐
If either of the above are applicable the court reporter's certification below must be completed.

If neither of the above are applicable then one of the following must be circled:
There will be a statement filed pursuant to App. R. 9(C) ☐ Yes ☐ No
There will be an agreed statement filed pursuant to App. R. 9(D) ☐ Yes ☐ No
There is no transcript, statement or agreed statement to be filed. ☐ Yes ☐ No
Circling any of the above three will be deemed sufficient compliance with App. R. 9(C)and Local Rule 5.

12. Court Reporter's Certification
The transcript as ordered consists of approximately _____ pages and pursuant to Local Rule 10, the transcript will be prepared and ready for filing on 1-6-16
Date: 10-6-16 Signature: _____

D115924221

13. Brief
Upon the filing of the complete record I request _____ days to file the brief and assignments of error.

14. Nature of Appeal
Please Check All That Apply and Provide Specific Information Whenever Space Is Provided.
BE SURE TO NOTE IF THE APPEAL IS PURSUANT TO APP R. 11.2 ADOPTION OR TERMINATION OF PARENTAL RIGHTS.

( ) APP R. 11.2 ADOPTION OR TERMINATION OF PARENTAL RIGHTS
( ) Administrative Appeal _____
( ) Attachment
( ) Civil Defense
( ) Consumer Law
( ) Contracts _____
( ) Corporations/Partnerships
(✓) Damages
(✓) Declaratory Judgment _____

Domestic Relations/Children
( ) Child Support
( ) Custody
( ) Dependency
( ) Divorce
( ) Other: _____

( ) Insurance
( ) Landlord/Tenant
( ) Procedure/Rules _____
( ) Real Property
( ) Summary Judgment
( ) Tax

Tort
( ) Intentional Tort - Workplace
( ) Malpractice
( ) Negligence - Auto
( ) Negligence - _____
( ) Product Liability
( ) Slip and Fall
( ) Other: _____

Trial Matters
( ) Evidence
( ) Jury Instructions
( ) Expert Witnesses
( ) Other: _____
( ) Weight of Evidence
( ) Other: _____

( ) Unemployment Compensation
( ) Weight/Sufficiency of Evidence
( ) Workers Compensation
( ) Writs _____
( ) Zoning _____
(✓) Other: _____
Municiapl taxpayer action

15. Probable Issues for Review
Final Appealable Order / Motion Judgment On the Pleadings / Necessary Party

16. Case[s] and/or Statute[s] to be Discussed
R.C. 733.59

17. Certificate of Service
I certify that I have mailed or otherwise delivered a copy of this docket statement to all counsel of record or the parties if unrepresented.

Date: _____ Signature: _____

Case No. C-16-762

In the Court of Appeals
First Appellate District
Hamilton County, Ohio

CITY OF MADEIRA *ex rel.* DOUGLAS OPPENHEIMER,

Relator-Appellant,

v.

CITY OF MADEIRA, *et al.*,

Defendants-Appellees.

APPELLANT'S MERIT BRIEF

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TABLE OF CONTENTS

	Page
Table of Contents	**i**
I. STATEMENT OF THE CASE	**1**
A. Statement of Jurisdiction	**1**
B. Procedural Posture	**1**
C. Statement of the Facts	**2**
II. ARGUMENT IN SUPPORT OF ASSIGNMENTS OF ERROR	**4**
FIRST CLAIMED ASSIGNMENT OF ERROR	
The trial court erred in orally announcing the dismissal of the Complaint based upon mootness but then failing to include "without prejudice" language in its formal entry (*T.d. 35, Entry Granting Motion for Judgement on the Pleadings*).	**4**
SECOND CLAIMED ASSIGNMENT OF ERROR	
The trial court erred in dismissing the Complaint with prejudice (*T.d. 35, Entry Granting Motion for Judgement on the Pleadings*) even though it had concluded that the claims had become moot.	**4**
First Issue Presented for Review and Argument	
A dismissal based upon mootness does not constitute a final appealable order so long as a party may refile or amend the complaint.	4
***Authorities*:**	
Johnson v. H&M Auto Serv., 2007-Ohio-5794 (10th Dist.)	
Policastro v. Tenafly Bd. of Ed., Case Civ. 09-1794, 2009 WL 2232525 (D.N.J. July 24, 2009)	
State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd of Elections, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 23	
*State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Dupu*is, 98 Ohio St.3d 126, 781 N.E.2d 163, 2002-Ohio-7041	
Washington Mut. Bank, F.A. v. Wallace, 194 Ohio App.3d 549, 957 N.E.2d 92, 2011-Ohio-4174 (12th Dist.)	
State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd of Elections, 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 23	

Second Issue Presented for Review and Argument
A dismissal with prejudice is treated as an adjudication on the merits; a dismissal without prejudice is an adjudication otherwise than on the merits. 7

Authorities:

Thomas v. Freeman, 79 Ohio St.3d 221, 680 N.E.2d 997, 1997-Ohio-395

Paganis v. Blonstein, 3 F.3d 1067, 1071 (7th Cir. 1993)

Third Issue Presented for Review and Argument
Under Civ. R. 41(B)(3), when a trial court dismisses a complaint, but the entry is silent about whether the dismissal is with or without prejudice, the dismissal is with prejudice. 8

Fourth Issue Presented for Review and Argument
Although a court generally speaks only through its journal entries, a reviewing court must examine the entire entry and proceedings when it is in the interest of justice to ascertain the grounds upon which a judgment is rendered. 8

Authorities:

Elias v. Gammel, 2003-Ohio-2751 (8th Dist.)

State v. Purnell, 171 Ohio App.3d 446, 871 N.E.2d 613, 2006-Ohio-6160 (1st Dist.)

Deutsche Bank Natl. Trust Co. v. Edington, 2014-Ohio-1769 (4th Dist.)

State ex rel. Felson v. Mchenry, 2002-Ohio-4804 (1st Dist.)

Ohio R. Civ. P. 41(B)(1)

Ohio R. Civ. P. 41(B)(3)

State v. Nguyen, 2015-Ohio-4414 (4th Dist.)

Joyce v. General Motors Corp., 49 Ohio St.3d 93, 551 N.E.2d 172 (1990)

State ex rel. Midwest Pride IV, Inc. v. Pontious, 75 Ohio St.3d 565, 569, 1996-Ohio-459

Infinite Security Solutions, L.L.C. v. Karam Properties II, Ltd., 143 Ohio St.3d 346, __ N.E.2d __, 2015-Ohio-1101

Joyce v. General Motors Corp., 49 Ohio St.3d 93, 551 N.E.2d 172 (1990)

THIRD CLAIMED ASSIGNMENT OF ERROR

The trial court erred in granting a motion for judgment on the pleading/motion to dismiss on a claim for declaratory judgment with only a bare-bones entry (*T.d. 35, Entry Granting Motion for Judgement on the Pleadings*) void of any declaration of rights, status and other legal relations. 11

Fifth Issue Presented for Review and Argument

In order to properly resolve on the merits an action seeking a declaratory judgment, a trial court must issue a judgment that specifically sets forth the rights, status and other legal relations of the parties; entry of a perfunctory or bare-bones judgment is improper and reversible error. 11

***Authorities*:**

Waldman v. Pitcher, 2016-Ohio-5909 (1st Dist.)

R.C. 733.56

State ex rel. Felson v. McHenry, 2002-Ohio-4804 (1st Dist.)

Waldeck v. City of North College Hill, 24 Ohio App.3d 189, 493 N.E.2d 1375 (1st Dist. 1985)

Bettis v. Natl. Union Fire Ins. Co. Of Pittsburgh, Pa, 2004-Ohio-2172 (5th Dist.)

Hall v. Strzelecki, 2002-Ohio-2258 (8th Dist.)

FOURTH CLAIMED ASSIGNMENT OF ERROR

The trial court erred in granting a motion for judgment on the pleading/motion to dismiss (*T.d. 35, Entry Granting Motion for Judgement on the Pleadings*) as the complaint stated a viable claim. 13

Sixth Issue Presented for Review and Argument

As Ohio requires only notice pleading, not fact pleading, a plaintiff is not required to prove his or her case at the pleading stage but simply must include allegation setting forth a viable claim. 13

***Authorities*:**

Sullivan v. Anderson Township, 2009-Ohio-6646 (1st Dist.)

Zepp v. City of Columbus, 112 N.E.2d 46 (Franklin Cty. C.P. 1951)

Parker v. City of Upper Arlington, 2006-Ohio-1649 (10th Dist.)

Scott v. Houk, 127 Ohio St.3d 317, 939 N.E.2d 835, 2010-Ohio-5805

Graham v. Perkins, 2015-Ohio-3943 (6th Dist.)

Springfield v. Palco Invest. Co., 992 N.E.2d 1194, 2013-Ohio-2348 (2d Dist.)

York v. Ohio State Highway Patrol, 60 Ohio St.3d 143, 573 N.E.2d 1063

FIFTH CLAIMED ASSIGNMENT OF ERROR

The trial court erred in granting a motion for judgment on the pleading (*T.d. 35, Entry Granting Motion for Judgement on the Pleadings*) to the extent it sought to adjudicate the merits of the case. 16

Seventh Issue Presented for Review and Argument

The meaning and intent of the voters of a municipality in adopting a municipal charter should not be resolved on the merits through a motion to dismiss or a motion for judgment on the pleadings. 16

***Authorities*:**

Deluca v. Aurora, 144 Ohio App.3d 501, 760 N.E.2d 880, 2002-Ohio-1056 (11th Dist.)

City of Cleveland ex rel. Neelon v. Locher, 25 Ohio St.2d 49, 266 N.E.2d 831 (1971)

City of North Canton v. Osborne, 2015-Ohio-2942 (5th Dist.)

Village of Lucas v. Lucas Local School Dist., 2 Ohio St.3d 13, 442 N.E.2d 449 (1982),

Vanhorne's Lessee v. Dorrance, 2 U.S. 304 (Cir. Ct. Pa. Dist. 1795).

Perez v. Brownell, 356 U.S. 44, 64 (1958).

State ex rel. Pawlowicz v. Edy, 60 Ohio App. 159, 20 N.E.2d 260 (6th Dist. 1938)

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)

Hayslip v. City of Akron, 21 Ohio App.3d 165, 486 N.E.2d 1160 (9th Dist. 1984)

Fisher v. Amberley Village, 2015-Ohio-2384 (1st Dist.)

Kraus v. City of Cleveland, 94 N.E.2d 814 (Cuyahoga Cty. C.P. 1950)

Andover Village Retirement Community v. Cole, 2014-Ohio-4983 (11th Dist.)

Jewish Hosp., Inc. v. Secretary of Health & Human Services, 19 F.3d 270 (6th Cir. 1994)

In re Timken Mercy Medical Ctr., 61 Ohio St.3d 81, 572 N.E.2d 673 (1991)

McQueen v. Dohoney, 2013-Ohio-2424 (1st Dist.)

Schulman v. City of Shaker Heights, 29 O.O.2d 373, 196 N.E.2d 102 (8th Dist. 1964)

SIXTH CLAIMED ASSIGNMENT OF ERROR

The trial court erred in dismissing as a party (*T.d. 23, Entry Granting Power's Motion to Dismiss*) the person who had or claimed any interest that would be affected by the declaratory judgment or injunctive relief sought. 24

Eighth Issue Presented for Review and Argument

When a person is a party to a contract that is the subject of a declaratory-judgment action or an injunctive action, that person inherently claims or might claim an interest to such a contract and must be named as a party to such declaratory-judgment action or injunctive action. 24

***Authorities*:**

R.C. 2721.12(A)

Ohio R. Civ. P. 19(A)(2)

Ohio R. Civ. P. 19(A)(1)

City of Cincinnati ex rel. Smitherman v. City of Cincinnati, 188 Ohio App.3d 171, 934 N.E.2d 985, 2010-Ohio-2768 (1st Dist.)

State ex rel Satow v. Gausse-Milliken, 98 Ohio St.3d 478, 786 N.E.2d 1289, 2003-Ohio-2074

State ex rel. Beane v. Dayton, 112 Ohio St.3d 553, 862 N.E.2d 97, 2007-Ohio-811

III. CONCLUSION 27

Certificate of Service 28

Appendix 29

APPELLANT'S MERIT BRIEF

I. STATEMENT OF THE CASE

A. Statement of Jurisdiction

On September 21, 2016, the trial court entered an order dismissing all the remaining claims against all of the remaining parties. *T.d. 35, Entry Granting Motion for Judgement on the Pleadings*. Within 30 days thereof, *i.e.*, on October 19, 2016, Relator-Appellant filed a timely notice of appeal invoking the jurisdiction of this Court. *T.d. 36, Notice of Appeal.* As developed below, *See First Assignment of Error and Second Assignment of Error,* due to the disparity between the trial court's oral pronouncements as to the basis and rationale for its dismissal of the claims versus the content of the trial court's entry, a question exists whether the entry below actually constitutes a final appealable order.

B. Procedural Posture

In conformity with the requirements of the municipal taxpayer statute, R.C. 733.56 *et seq.,* Relator-Appellant Douglas Oppenheimer commenced this action on December 18, 2015, seeking generally a declaratory judgment and injunctive relief so as to stop and restrain the abuse of corporate power by the City of Madeira and the execution or performance of a contract of a municipal contract made in violation of the laws governing it. *T.d. 1, Complaint*. Besides naming the municipal corporation and the city manager (collectively, the "City") as respondents, Relator also included as a respondent Thomas Powers, the individual who was the prospective party to the contract at issue. *T.d. 1, Complaint ¶4 & Exh. C.*

Upon motion of Mr. Powers, *T.d. 15, Motion to Dismiss for Failure to State a Claim,* the trial court, "[b]ased upon the unique circumstances of this case," dismissed the claims against Mr. Power. *T.d. 23, Entry Granting Power's Motion to Dismiss.*

After a responsive pleading had been filed, *T.d. 17, Answer*, the City moved for judgment on the pleadings. *T.d. 28, Motion for Judgment on the Pleadings*. Following briefing, *T.d. 33, Memorandum in Opposition; T.d. 34, Reply Memorandum in Support,* together with oral argument thereon, *9/6/16 T.p., Hearing Transcript*, the trial court issued its pronouncement from the bench, declaring "the case is dismissed because there is nothing left." *9/6/16 T.p., Hearing Transcript*, at 32. When the parties could not agree upon the language of an appropriate entry, a second hearing was held, *9/20/16 T.p., Hearing Transcript*, following which the trial court entered an order dismissing the case. *T.d. 35, Entry Granting Motion for Judgement on the Pleadings*. A timely notice of appeal was subsequently filed. *T.d. 36, Notice of Appeal.*

C. Statement of the Facts

In an act ratifying their role of the people as being the ultimate sovereign within a municipality, the people of the City of Madeira adopted a City Charter and, in November 2014, approved an amendment thereto. *T.d. 1, Complaint* ¶6. This charter amendment became Article XVI of the Madeira City Charter and provides:

> The City of Madeira was deeded and assumed ownership of the "Hosbrook House" located at 7014 Miami Ave. and the "Muchmore House" located at 7010 Miami Ave. In addition to these two properties the City also has ownership of the historic Railroad Depot located at 7701 Railroad Ave. These three important and historic properties are to be preserved, protected, and left standing on the same ground that the structures were built upon. These three historic structures will be included in the "Historic District".

T.d. 1, Complaint ¶7. The referenced property on which the referenced Muchmore House is located was first deeded to the City of Madeira in 1989. *T.d. 1, Complaint* ¶5 *& Exh. A.* Thus,

when the people of the City of Madeira adopted this charter amendment in 2014, the City's ownership of the property had been long-standing such that the people clearly would have or should have known of the referenced property; and by their adoption of this charter amendment, the people clearly expressed their desire and direction that such property, *inter alia*, be preserved and protected.

From the outset, the City Council of the City of Madeira opposed the expressed desire and direction that the people of the City were providing to their government. *T.d. 1, Complaint ¶10.* For in the month before the election at which the people ultimately approved the charter amendment, the City Council passed a resolution expressing its opposition to the proposal. In so doing, the City Council expressly recognized that Article XVI of the City Charter of the City of Madeira "obligate[s]…[the] preserv[ation]and maint[enance] [of] the properties and buildings" located on, *inter alia,* the Muchmore House Property. *T.d. 1, Complaint ¶¶11&12 & Exh. B.*

Never relenting on its opposition to Article XVI and in plain disregard of the restrictions and limitations contained therein, the City Council has adopted Ordinance No. 15-30 which provided for and authorized the execution of a contract for the sale or transfer of a portion the Muchmore House Property.

Recognizing the violation of Article XVI of the City Charter that would result if such sale or transfer would occur, Relator Douglas Oppenheimer tendered a written demand to the Law Director for the City of Madeira "pursuant to Sections 733.56 *et seq.* of the Ohio Revised Code … [t]o make application to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers of the City of Madeira as it relates to the effort to sell or transfer a portion of the Muchmore House property located at 7010 Miami Avenue." *T.d. 1, Complaint ¶17 & Exh. D.* In response to the Taxpayer Demand Letter, the Interim Law Director responded

on December 8, 2015, via a written letter, rejecting the contention that the action envisioned, authorized or anticipated by the contract authorized by Ordinance No. 15-30 violates Article XVI of the City Charter. *T.d. 1, Complaint ¶18 & Exh. E.* Thus, pursuant to R.C. 733.59, Mr. Oppenheimer, as a taxpayer and resident of the City of Madeira, commenced this action on behalf of the City so as to stop and restrain the abuse of corporate power by the City and the execution or performance of a contract of a municipal contract made in violation of the laws governing it.

II. ARGUMENT IN SUPPORT OF ASSIGNMENTS OF ERROR

FIRST CLAIMED ASSIGNMENT OF ERROR
The trial court erred in orally announcing the dismissal of the Complaint based upon mootness but then failing to include "without prejudice" language in its formal entry (*T.d. 35, Entry Granting Motion for Judgement on the Pleadings*).

SECOND CLAIMED ASSIGNMENT OF ERROR
The trial court erred in dismissing the Complaint with prejudice (*T.d. 35, Entry Granting Motion for Judgement on the Pleadings*) even though it had concluded that the claims had become moot.

First Issue Presented for Review
A dismissal based upon mootness does not constitute a final appealable order so long as a party may refile or amend the complaint.

A *sine qua non* issue for this Court is whether the trial court's dismissal actually constitutes a final appealable order. And resolution thereof depends upon whether the trial court's disposition was on the merits *vel non* such that Relator could, at some future date, refile the same or similar claims. *See Johnson v. H&M Auto Serv.,* 2007-Ohio-5794 ¶7 (10th Dist.)("a dismissal without prejudice is not a final appealable order, so long as a party may refile or amend a complaint"). However, based upon the trial court record, confusion abounds as to the specific status of the trial court's disposition.

"It is well-established that a dismissal on the grounds of mootness does not constitute a judgment on the merits of a claim." *Policastro v. Tenafly Bd. of Ed.*, Case Civ. 09-1794, 2009 WL 2232525 (D.N.J. July 24, 2009); *see State ex rel. Comm. for the Referendum of Lorain Ordinance No. 77-01 v. Lorain Cty. Bd of Elections,* 96 Ohio St.3d 308, 2002-Ohio-4194, 774 N.E.2d 239 (when case dismissed as moot, no final judgment was rendered on the merits and *res judicata* did not apply). And, in the present case, the trial court repeatedly indicated orally that its ruling was not a disposition on the merits in light of the contention by the City's attorney that the underlying dispute had become moot:

> THE COURT: And in the Complaint, the Complaint is asking, in part, under the first cause of action, the declaratory judgment aspect that, in part, preclude the City of Madeira from proceeding forward with the contract authorized by Ordinance Number 15-30. That contract is gone.
>
> Is there any basis for declaratory judgment in regards to that?
>
> MR. GOODIN: In regards to that specific contract, no, Your Honor.
>
> THE COURT: Thank you. As far as the second cause of action, which is the injunction against Madeira and Thomas Moeller as the manager, in part, and I quote from part of it, "This is to order the City of Madeira as far as an injunction from executing or performing any other acts whatsoever in furtherance of any contract or prospective contract authorized by ordinance number 15-30."
>
> MR. GOODIN: In regards strictly to that ordinance, Your Honor, no. That ordinance is dead. You are absolutely correct.
>
> THE COURT: So what is, in your opinion, if you would help me with that, the justiciable with why is this lawsuit still here, then? I understand that you want me to move on and make it a further order regarding future thing. I am just talking about this lawsuit, the language of this lawsuit, what's before the Court?
>
> MR. GOODIN: That is the key question. I will tell you what our position on that is, very straightforward. The Court is correct, The contract that brought this issue to a head is dead. It is not happening. It has been withdrawn. Ordinance was never enacted. It was never acted upon, I should say....

9/6/16 T.p., Hearing Transcript, at 8-9.[1] And the trial court set forth a similar view of the current status of the facts as the foundation for its ruling:

> Again, [Ordinance No.] 15-30 is not something that is pending before the Court. There is no contract pending. There is no deed transfer pending. There is nothing with Mr. Powers. He is out of this case pursuant to the filings in this case. So the Court has trouble with finding what justiciable issue is pending at this point. I think I know which way I have to go on that.

9/6/16 T.p., Hearing Transcript, at 28. And, thus, the trial court provided the following oral ruling and disposition:

> ...there is no pending issue before this Court. There is no [aggrieved] party left. If I, in fact, grant the motion, there may be a grievance in the future, and it certainly looks like it is heading that way, but I don't believe the Court is empowered with the authority or the jurisdiction maybe even to decide the case at this point.
>
> What I have before me, I am persuaded that the motion – Respondent's Motion to Dismiss is appropriate. I will grant that motion. Relator's Complaint is dismissed on the merits and with prejudice at this point.

---

[1] Even though the Respondents-Appellants posited that the claims had become moot, they offered no evidence in support of such a contention even though they had the burden of establishing mootness. *See State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Dupu*is, 98 Ohio St.3d 126, 781 N.E.2d 163, 2002-Ohio-7041 ¶¶9-10 (refusing to dismiss case based on mootness; "Appellees...offer no proof that they have provided this record aside from the bare unverified assertions in their appellate brief. The Enquirer has not conceded that it has received the proposed settlement agreement, and the court of appeals never so found. Furthermore, the Enquirer's claim of attorney fees would not be rendered moot by the provision of the requested record").

Then, after offering only *ipse dixit* that the claims were moot, Respondents-Appellants still contended, again with only *ipse dixit*, that the claims were capable of repetition-yet-evading-review. *9/6/16 T.p., Hearing Transcript, at 6, 9-10.* But Respondents-Appellants offered no evidence nor any argument that actually addressed the two elements by which this exception to mootness is applicable, *viz.*, "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Washington Mut. Bank, F.A. v. Wallace*, 194 Ohio App.3d 549, 957 N.E.2d 92, 2011-Ohio-4174 ¶15 (12th Dist.)(quoting *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975)). There is no indication (let alone evidence) that the challenged action is of such a nature so as to have a short duration as to not be fully litigated prior cessation or expiration; such situations arise more aptly in election-related matters.

> I find the other request because there is no justiciable issue before the Court, the Court is not in the business of and should not be in the business of making preemptive anticipatory ruling so I am not going to rule on that.
>
> The case is dismissed.

9/6/16 T.p., Hearing Transcript, at 28-29. However, the ensuing colloquy between the trial court and Relator-Appellant's counsel clarified the trial court's intention:

> MR. HARTMAN: If I can seek clarification on your ruling. I was a little lost. You indicate the Motion to Dismiss is granted on the merits and as otherwise stated. I am a little bit lost. If the case is moot –
>
> THE COURT: You are absolutely right. It is dismissed, but I am not ruling on the merits.... If you are providing the Court with an entry, I asked both counsel to provide it to me, but if you are providing it to me, please do not put in there on the merits because I think Mr. Hartman is absolutely correct, it is not on the merits.

9/6/16 T.p., Hearing Transcript, at 30. Thus, the trial court through its pronouncements from the bench clearly indicated the intent of its dismissal entry was not an adjudication on the merits.

> **Second Issue Presented for Review**
> **A dismissal with prejudice is treated as an adjudication on the merits; a dismissal without prejudice is an adjudication otherwise than on the merits.**

However, when the issue ensued about whether the entry of dismissal should specifically indicate with or without prejudice, the trial court indicated the following:

> THE COURT: I have to admit, I did not recently look up what prejudice means. I apologize to everybody. Perhaps the Court should know that. I do not. I do not want to grant this on the merits. I actually took that language, which I wrote out, from [Defendants'] suggested entry.
>
> It will be dismissed. I am dismissing the case based upon the granting of the motion. There is nothing there for me to do. It is over. Help me with the prejudice.
> ...
> ... [T]he case is dismissed because there is nothing left.

9/6/16 T.p., Hearing Transcript, at 30 & 32.

When the parties presented alternative proposed entries to the trial court, the issue arose again as to whether the entry should explicitly indicate whether the dismissal was without

prejudice or should be silent on that point. *9/20/16 T.p., Hearing Transcript, at 3-8.* Following an exchange between counsels on this issue, the trial court reiterated its previously-stated intent:

> All I know is my attempt was to grant the motion for judgment on the pleadings, which I believe then results in the Complaint being dismissed and *I am not dismissing it on the merits or with prejudice per the entry.* That's what I meant to do. That's what I am telling the Court of Appeals, which will take a look at this and that's fine. That is what I am saying to the Court of Appeals.

9/20/16 T.p., Hearing Transcript, at 8-9 (emphasis added).

"A dismissal with prejudice is treated as an adjudication on the merits. Therefore, a dismissal without prejudice is an adjudication otherwise than on the merits." *Thomas v. Freeman*, 79 Ohio St.3d 221, 225 n.2, 680 N.E.2d 997, 1997-Ohio-395 (1997); *see Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002)("[t]he phrase 'final judgment on the merits' is often used interchangeably with 'dismissal with prejudice'"); *Paganis v. Blonstein,* 3 F.3d 1067, 1071 (7th Cir. 1993)(noting that ""with prejudice" is an acceptable shorthand for "adjudication on the merits"). Thus, based upon its repeated pronouncements from the bench, the trial court clearly intended the disposition below to not be an adjudication on the merits, *i.e.*, without prejudice.

> **Third Issue Presented for Review**
> **Under Civ. R. 41(B)(3), when a trial court dismisses a complaint, but the entry is silent about whether the dismissal is with or without prejudice, the dismissal is with prejudice.**
>
> **Fourth Issue Presented for Review**
> **Although a court generally speaks only through its journal entries, a reviewing court must examine the entire entry and proceedings when it is in the interest of justice to ascertain the grounds upon which a judgment is rendered.**

Ultimately, though, the entry signed by the trial court was silent on whether the dismissal was either on the merits *vel non* or with prejudice *vel non*, even though the trial court clearly

pronounced its intention that the dismissal was to be construed as an adjudication not on the merits, *i.e.*, without prejudice.

"It is axiomatic that a court speaks through its journal, not through its oral pronouncements." *Elias v. Gammel*, 2003-Ohio-2751 ¶7 (8th Dist.); *accord State v. Purnell*, 171 Ohio App.3d 446, 871 N.E.2d 613, 2006-Ohio-6160 ¶13 (1st Dist.). Thus, this Court must consider, in the first instance, whether the entry was with or without prejudice. In explaining its ultimate conclusion not to include such specificity in the entry, the trial court explained:

> THE COURT: I thought if you did not put with prejudice, the law presumes that it was done without prejudice.

9/20/16 T.p., Hearing Transcript, at 7. It is true that when *a party* voluntarily dismisses all claims under Ohio R. Civ. P. 41(A)(1), the lack of any indication in the notice of dismissal results in the dismissal being without prejudice. But the dismissal in this case was done by the trial court, not a party. And "under Civ. R. 41(B)(3), when a trial court dismisses a complaint, but the entry is silent about whether the dismissal is with or without prejudice, the dismissal is with prejudice." *Deutsche Bank Natl. Trust Co. v. Edington*, 2014-Ohio-1769 ¶11 (4th Dist.); *see State ex rel. Felson v. Mchenry*, 2002-Ohio-4804 ¶8 (1st Dist.)(with respect to previously dismissed action, "[b]ecause the supreme court did not specify otherwise, its dismissal of relators' mandamus petition operated as an adjudication on the merits" pursuant to Ohio R. Civ. P. 41(B)(3)). Thus, notwithstanding the trial court's stated intention and understanding, based solely upon the journal entry of the trial court, the dismissal of this case would be construed as being with prejudice and, thus, said entry would constitute a final appealable order.

However, "[a]lthough a court generally speaks only through its journal entries, the reviewing court must examine the entire entry and proceedings when it is in the interest of justice to ascertain the grounds upon which a judgment is rendered." *State v. Nguyen*, 2015-Ohio-4414

¶28 (4th Dist.); *accord Joyce v. General Motors Corp.*, 49 Ohio St.3d 93, 551 N.E.2d 172 (1990)(syllabus ¶1); *State ex rel. Midwest Pride IV, Inc. v. Pontious,* 75 Ohio St.3d 565, 569, 1996-Ohio-459 ("[a] reviewing court must examine the entire journal entry and the proceedings below where necessary to ascertain the precise basis of a lower court's judgment"); *State v. Reed*, 2000-Ohio-2028 (4th Dist.)("we have previously held that in the interests of justice we will examine the entire record to determine the basis of a lower court judgment"); *but see Infinite Security Solutions, L.L.C. v. Karam Properties II, Ltd.*, 143 Ohio St.3d 346, __ N.E.2d __, 2015-Ohio-1101 ¶29 ("[n]either the parties nor a reviewing court should have to review the trial court record to determine the court's intentions. Rather, the entry must reflect the trial court's action in clear and succinct terms"). As developed above, consideration of the entire proceedings below reveal clearly that the trial court intended the dismissal to not be an adjudication on the merits, *i.e.*, without prejudice. And because, in such a circumstance, nothing would preclude the Relator from filing a similar action should the Madeira City Council seek to undertaken the same or similar action as that within Ordinance No. 15-30, the dismissal would not constitute a final appealable order.

Confronted with a trial court pronouncing orally one position (disposition not on the merits) but then filing a contradictory entry (disposition was with prejudice pursuant to Ohio R. Civ. P. 41(B)(3)), Relator-Appellant found himself between the Scylla of having a similar action in the future precluded based upon *res judicata* and the Charybdis of prematurely seeking appellate review of a non-final order. Strictly limiting the trial court's entry to it express terms would create the necessary final appealable order for this Court to exercise jurisdiction; but considering the entire entry and proceedings would lend itself to the conclusion that jurisdiction is lacking due to the dismissal not being an adjudication on the merits, *i.e.*, without prejudice.

Thus, at this stage, this Court must determine whether the entry below is a final appealable order *vel non*. In so doing, the options available include: (i) finding the entry constitutes a final appealable order based solely upon its express terms and, thus, proceed to consider the ultimate resolution on the merits of the Motion for Judgment on the Pleadings; (ii) recognizing, based upon the entire entry and proceedings below, that the dismissal was based upon the trial court's conclusion that the claims were moot and, therefore, such dismissal was without prejudice (notwithstanding the lack of such indication in the entry) and, therefore, the entry does not constitute a final appealable order; or (iii) vacate the entry below and remand to the trial court for explicit clarification in an appropriate entry as to the basis for its disposition, including whether such dismissal was with or without prejudice, *i.e.*, on the merits *vel non*.

THIRD ASSIGNMENT OF ERROR
The trial court erred in granting a motion for judgment on the pleading/motion to dismiss on a claim for declaratory judgment with only a bare-bones entry (*T.d. 35, Entry Granting Motion for Judgement on the Pleadings*) void of any declaration of rights, status and other legal relations.

Fifth Issue Presented for Review
In order to properly resolve on the merits an action seeking a declaratory judgment, a trial court must issue a judgment that specifically sets forth the rights, status and other legal relations of the parties; entry of a perfunctory or bare-bones judgment is improper and reversible error.

Assuming that the entry below constitutes a final appealable order, then the trial court's dismissal of the claim seeking a declaratory judgment concerning the meaning and effect of Article XVI of the City Charter of the City of Madeira as it related to the specific contract at issue was clearly improper and constitutes reversible error.

"Ohio's Declaratory Judgment Act is 'remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.'" *Waldman v. Pitcher*, 2016-Ohio-5909 ¶18 (1st Dist.)(quoting *Radaszewski v. Keating,* 141 Ohio

St. 489, 496, 49 N.E.2d 167 (1943)). And this declaratory-judgment/injunctive action was brought pursuant to the taxpayer lawsuit provisions of R.C. 733.56 *et seq.* when the conduct of the Madeira City Council violated or threated to violate Article XVI of the City Charter of the City of Madeira. But instead of specifically decreeing the rights, status and other legal relations between the taxpayers of the City of Madeira and the municipal government itself, the trial court simply issued a bare entry void of any declaration of rights, *etc.*, under the City Charter.

Assuming arguendo the trial court's disposition was on the merits, then disposition of a declaratory judgment action without any substantive declaration is wholly improper. In *State ex rel. Felson v. McHenry*, 2002-Ohio-4804 (1st Dist.), this Court reiterated the proposition that:

> As a general rule, a court fails to fulfill its function in a declaratory judgment action when it disposes of the issues by journalizing an entry merely sustaining or overruling a motion for summary judgment without setting forth any construction of the document or law under consideration.

Id. ¶13 (quoting *Kramer v. West American Ins. Co.,* (Oct. 6, 1982), 1st Dist. Nos. C-810829 and C-810891). In the present case, the trial court did not even wait until the parties filed cross-motions for summary judgment; instead, it simply purported to resolve a declaratory judgment action on the merits without even awaiting any evidence nor actually decreeing the meaning and scope of Article XVI of the Madeira City Charter as it related to the specific factual allegations in this case.

With respect to resolution of a declaratory-judgment action by summary judgment, this Court has recognized that "[a]n action of that nature does not present the best situation for determination by summary judgment." *Waldeck v. City of North College Hill*, 24 Ohio App.3d 189, 190, 493 N.E.2d 1375 (1st Dist. 1985). If resolution of such an action by summary judgment is not ideal, then resolution on a motion to dismiss is *a fortiori* all the more improper.

"[A] simple dismissal without 'setting forth any construction of the document or law under consideration' is error." *Bettis v. Natl. Union Fire Ins. Co. Of Pittsburgh, Pa*, 2004-Ohio-2172 ¶26 (5th Dist.); *see Hall v. Strzelecki*, 2002-Ohio-2258 (8th Dist.)("a trial court fails to fulfill its function when it disposes of the issues in a declaratory judgment action by journalizing an order sustaining or overruling a motion for summary judgment without setting forth any construction of the document under consideration"). Accordingly, assuming that the entry below constitutes a disposition on the merits so as to constitute a final appealable order, then the trial court's dismissal of the claim seeking a declaratory judgment (or its perfunctory entry of judgment on the pleadings) concerning the meaning and effect of Article XVI of the Madeira City Charter as it related to the specific property at issue was clearly improper and constitutes reversible error

FOURTH ASSIGNMENT OF ERROR
The trial court erred in granting a motion for judgment on the pleading/motion to dismiss (*T.d. 35, Entry Granting Motion for Judgement on the Pleadings*) as the complaint stated a viable claim.

Sixth Issue Presented for Review
As Ohio requires only notice pleading, not fact pleading, a plaintiff is not required to prove his or her case at the pleading stage but simply must include allegation setting forth a viable claim.

The legal standard on whether to grant a motion for judgment on the pleadings is the same as dismissal based upon failure to state a claim upon which relief may be granted and, thus, simply considers whether a plaintiff (or, in this case, the relator) can prove any set of facts to support the claim. *See Sullivan v. Anderson Township*, 2009-Ohio-6646 ¶7 (1st Dist.)("judgment on the pleadings is proper where the court construes all material allegations in the amended complaint, along with all reasonable inferences, as true and in favor of the plaintiff and

concludes, beyond doubt, that the plaintiff can prove no set of facts to support the claims for relief"). Thus, in the specific context of a declaratory judgment action:

> The motion for judgment on the pleadings is in the nature of a demurrer. The only question presented by such motion is whether or not the facts alleged are sufficient to give the court jurisdiction to enter a declaratory judgment.

Zepp v. City of Columbus, 112 N.E.2d 46, 47 (Franklin Cty. C.P. 1951); see *Parker v. City of Upper Arlington*, 2006-Ohio-1649 ¶17 (10th Dist.)("[a] court may dismiss a declaratory judgment claim upon a Civ.R. 12(C) motion if a plaintiff fails to plead a justiciable issue or actual controversy between the parties, or if declaratory relief will not terminate the uncertainty or controversy").

In this context, Respondents-Appellees did not even claim that the facts alleged in the complaint (together with all reasonable inferences therefrom) were not sufficient to vest the trial court with jurisdiction or that Relator-Appellant could prove no set of facts to support the claims for relief. Instead, Respondents-Appellees simply sought to have the trial court decree some abstract principle concerning the Madeira City Charter without the development of an evidentiary record that places the issue in a fact-specific context; but a fully developed evidentiary record is appropriate in a case such as this. *See Scott v. Houk*, 127 Ohio St.3d 317, 939 N.E.2d 835, 2010-Ohio-5805 ¶¶50 & 52 (Brown, C.J., dissenting)("[a] declaratory-judgment action permits evidentiary discovery and hearings, which would create a thorough record of facts.... A declaratory-judgment action would allow the creation of a record on which a court may base its ruling").

Applying the proper legal standard to a motion for judgment on the pleadings, Respondents-Appellees did not established beyond doubt that Relator-Appellant could prove no set of facts to support the claims for relief and, as such, the motion for judgment on the pleadings

should have been denied. *See Graham v. Perkins*, 2015-Ohio-3943 ¶13 (6th Dist.)("[a] Civ.R. 12(C) motion essentially tests the sufficiency of the complaint as written.... In order to prevail on a motion for judgment on the pleadings pursuant to Civ.R. 12(C), 'it must appear beyond doubt that [appellant] can prove no set of facts warranting relief, after all factual allegations of the complaint are presumed true and all reasonable inferences are made in [appellant's] favor'" (quoting *State ex rel. Fuqua v. Alexander,* 79 Ohio St.3d. 206, 207, 680 N.E.2d 985 (1997))).

Essentially, the Respondents-Appellees sought to have the trial court divine *sans* any evidentiary record the purpose and intent of the citizens of Madeira when they adopted, over the opposition of the city council, Article XVI of the Madeira City Charter. But "Ohio is a notice pleading, not a fact pleading, state." *Springfield v. Palco Invest. Co.*, 992 N.E.2d 1194, 2013-Ohio-2348 ¶33 (2d Dist.). Thus, "a plaintiff is not required to prove his or her case at the pleading stage... If the plaintiff were required to prove his or her case in the complaint, many valid claims would be dismissed because of the plaintiff's lack of access to relevant evidence. Consequently, as long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion to dismiss." *York v. Ohio State Highway Patrol*, 60 Ohio St.3d 143, 144-45, 573 N.E.2d 1063 (1991). And, the Complaint clearly set forth sufficient facts giving viability to a claim that Ordinance No. 15-30 violated or threatened to violate Article XVI of the Madeira City Charter, including, *inter alia,* the then-existing size and scope of the real property at 7010 Miami Avenue when the citizens adopted Article XVI that specifically referenced that property, *T.d. 1, Complaint ¶¶5&6;* the vehement opposition by the Madeira City Council to Article XVI, *T.d. 1, Complaint ¶¶10-11;* the acknowledgment by the Madeira City Council that Article XVI would require the "preserv[ation] and maint[enance] of the properties and the buildings" located on the specific

parcels identified in Article XVI, *T.d. 1, Complaint ¶12;* and the significant diminution in the size of the real property to such an extent that the property would not be preserved and maintained as it was when the citizens approved Article XVI, *T.d. 1, Complaint ¶15.*

FIFTH ASSIGNMENT OF ERROR
The trial court erred in granting a motion for judgment on the pleading (*T.d. 35, Entry Granting Motion for Judgement on the Pleadings*) to the extent it sought to adjudicate the merits of the case.

Seventh Issue Presented for Review
The meaning and intent of the voters of a municipality in adopting a municipal charter should not be resolved on the merits through a motion to dismiss or a motion for judgment on the pleadings.

As noted above, due to the ambiguity in the trial court's entry, the ultimate issue of what was actually resolved by such an entry is not readily apparent. However, within their motion, Respondents proceeded to argue abstract issues concerning the meaning and scope of the Madeira City Charter. *T.d. 28, Motion for Judgment on the Pleadings, at 7-14.* While Relator-Appellant believes such a disposition is improper based upon the procedural posture of this case, including the lack of any evidentiary record, should this Court consider the judgment entry to have gone so far as to decree the meaning and scope of Article XVI of the Madeira City Charter as it applied to the Muchmore House Property and Ordinance No. 15-30, then, in such a scenario, the trial court erred in its pronouncement of the meaning and scope of Article XVI (whatever it was).

Through nothing more than linguistic gymnastics, Respondents-Appellees argued that, notwithstanding the purpose and intent of the voters of the Madeira in adopting Article XVI, the Madeira City Council can dispose, without any restriction or limitation whatsoever, the real property on which historic structures were built and on which they were located when the voters adopted Article XVI. Respondents-Appellees would allow the Madeira City Council, through

nothing more than *ad hoc* and *post facto* fiats, to assume a power and authority it does not possess so as to dictate the content and meaning of the City Charter and in contravention of the intent of the voters in adopting the pertinent provision to the City Charter.

Through a selective, out-of-context and contradictory reading of an isolated portion of Article XVI of the Madeira City Charter, Respondents-Appellees claimed that the Madeira City Council has the unlimited power to alienate or otherwise transfer all the real estate referenced therein just so long as they do nothing to the actual structures thereon. But in order to posit such a contention, Respondents-Appellees: (i) failed to consider the entirety of Article XVI so as to assess the context of the language throughout; (ii) wrongfully construed different words within Article XVI synonymously; and (iii) failed to even consider or address the purpose and intent of the voters in adopting Article XVI which clearly does not include the constrained and absurd position taken by Respondents-Appellees herein.

The nature of municipal charters must be considered and appreciated. "A municipal charter is the constitution of a municipality." *Deluca v. Aurora*, 144 Ohio App.3d 501, 510, 760 N.E.2d 880, 2002-Ohio-1056 (11th Dist.); *accord City of Cleveland ex rel. Neelon v. Locher*, 25 Ohio St.2d 49, 51, 266 N.E.2d 831 (1971). "Accordingly, when provisions of a city's charter and its ordinances conflict, the charter provision prevails, and the ordinance in conflict is void." *City of North Canton v. Osborne*, 2015-Ohio-2942 ¶13 (5th Dist.)

Furthermore, just as "[i]t is the role of the judiciary to interpret our constitution and such interpretation does not rise or fall upon the view of the General Assembly," *Village of Lucas v. Lucas Local School Dist.*, 2 Ohio St.3d 13, 16 n.2, 442 N.E.2d 449 (1982), so too is the role of the judiciary to interpret the constitution of a municipality, *i.e.*, the city charter, and such

interpretation does not rise or fall upon the fiat of the city council.[2] For "no court has permitted the exercise of any powers not granted in [a] charter, or powers contrary to or inconsistent with the plain provisions of the charter." *State ex rel. Pawlowicz v. Edy*, 60 Ohio App. 159, 164-65, 20 N.E.2d 260 (6th Dist. 1938). Yet, through their effort to summarily dispose of the case *sans* any evidentiary records (and assuming the trial court's judgment entry actually disposed of the meaning of the Madeira City Charter through its silence), Respondents-Appellees improperly

[2] Respondents premised their argument upon the proposition that what is controlling is "the obvious construction of Article XVI adopted by the City". (*T.d. 28, Motion for Judgment on the Pleadings*, at 13-14.) But any position taken or adopted by the Madeira City Council as to the meaning or scope of the Madeira City Charter is illusory and a nullity. Just like a constitution, a city charter is the embodiment of the will of the people themselves to control and limit those who govern:

> What is a Constitution? It is the form of government, delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The Constitution is certain and fixed; it contains the permanent will of the people, and is the supreme law of the land... The life-giving principle and the death-doing stroke must proceed from the same hand.... The Constitution is the work or will of the People themselves, in their original, sovereign, and unlimited capacity.... In short, gentlemen, the Constitution is the sun of the political system, around which all Legislative, Executive and Judicial bodies must revolve.

Vanhorne's Lessee v. Dorrance, 2 U.S. 304, 308 (Cir. Ct. Pa. Dist. 1795). Yet, Respondents-Appellees sought to make the Madeira City Council the center of the universe. Such an argument or position demonstrates a fundamental misunderstanding as to whose government the government really is. Spoken like those who have held elective office for way too long, Respondents appear to take the position that they lord over the people. Respondents-Appellees clearly need a basic civics lesson:

> What is this Government, whose power is here being asserted? And what is the source of that power? The answers are the foundation of our Republic. To secure the inalienable rights of the individual, "Governments are instituted among Men, deriving their just powers from the consent of the governed." I do not believe the passage of time has lessened the truth of this proposition. It is basic to our form of government. This Government was born of its citizens, it maintains itself in a continuing relationship with them, and, in my judgment, it is without power to sever the relationship that gives rise to its existence....

Perez v. Brownell, 356 U.S. 44, 64 (1958).

attempted to afford the Madeira City Council with the ultimate and absolute authority to decree what is and is not permitted by the City Charter, in general, and Article XVI, in particular, all without any judicial authority or review. But "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

The critical issue in this case concerns the scope and limitations imposed upon the Madeira City Council by Article XVI of the Madeira City Charter. "In interpreting a city charter provision, the general principles of statutory construction will be applied; the objective is to give effect to the intention behind the provision." *Hayslip v. City of Akron*, 21 Ohio App.3d 165, 486 N.E.2d 1160 (9th Dist. 1984)(syllabus ¶1); *accord Fisher v. Amberley Village*, 2015-Ohio-2384 ¶32 (1st Dist.). Additionally, though, appreciation must be given to the different roles and functions served by a city charter versus a statute or ordinance. For in interpreting a city charter provision, the Court must proceed from a perspective that that considers the role and function of a city charter, *i.e.*, the constitution for the municipality:

> [C]onstitutions do not legislate. They locate and limit the powers of government and define the modes of their exercise....
>
> The essential difference between a constitution and a statute or ordinance is that a constitution usually states general principles, and establishes a foundation of the law and government, whereas a statute or ordinance must provide the details of the subject of which it treats. A constitution, unlike a law, is intended not merely to meet existing conditions, but to govern future contingencies.
>
> The Constitution must be interpreted and effect given it as the paramount law of the land, according to the spirit and intent of its framers, as indicated by its terms. A legislative enactment which violates the true intent and meaning of the instrument, although it may not be within the letter, is as much within the purview and effect of a prohibition as if within the strict letter; and an act in evasion of the terms of the Constitution, as properly interpreted and understood, and frustrating its general and clearly expressed or necessarily implied purpose, is as clearly void as if in express terms forbidden. The fundamental law of the State is to be construed in no narrow and illiberal spirit. It is to be construed according to its intention, where that is clear; and that which clearly falls within the reason of a constitutional prohibition may be regarded as embodied within it.

> It is a well recognized rule of construction that such interpretation will be given to a provision of the Constitution as will promote the object of the people in adopting it. It is the duty of the Court, and its only proper purpose, in the construction of constitutional provisions, to ascertain and give effect to the intent of the people when they wrote them into their constitution. The rule of constitutional interpretation that, a purpose being clearly indicated, provisions should, so far as their terms will permit, be construed so as to further that purpose, will not justify a court in denying the plain meaning of an unambiguous provision because of the belief that its natural consequences should not have been intended.
>
> Although a constitutional provision is usually a declaration of principles of the fundamental law, many of its provisions being only commands to the legislature to enact laws to carry out the purposes of the framers of the Constitution, or mere restrictions upon the power of the legislature to pass laws, yet it is entirely within the power of those who establish and adopt the Constitution to make any of its provisions self-executing. Obviously there is a distinction between constitutional provisions which are self-executing and those which are not. One of the recognized rules is that constitutional provisions are not self-executing, if they merely enact a line of policies or principles, without supplying the means by which such policies or principles are to be effectuated. Prohibitory provisions in a constitution are usually self-executing to the extent that anything done in violation of them is void.

Kraus v. City of Cleveland, 94 N.E.2d 814, 817-18 (Cuyahoga Cty. C.P. 1950)(internal citations omitted).

Respondents-Appellees wrongfully couched the issue before the trial court as whether Article XVI operates as an absolute ban on the transfer by the City of the properties described therein, *i.e.*, whether "Article XVI contains some sort of unspoken public ownership requirement". *T.d. 28, Motion for Judgment on the Pleadings*, at 8. But Relator has never claimed or asserted that the properties described in Article XVI must be maintained in public ownership – and Respondents never cited to any such claim other than their own, though inaccurate, *ipse dixit*. Instead, as a statutory taxpayer action brought pursuant to R.C. 733.56 *et seq.*, the issue is simply whether the effort and attempt by the Madeira City Council to sell or transfer a portion of the properties *without any restrictions or limitations whatsoever* constitutes an abuse of corporate powers and/or the execution or performance of a contract in contravention of the laws governing it. *See T.d. 1, Complaint* ¶*21*. Specifically, the ultimate issue (which is

not clear was actually resolved or addressed by the trial court) is whether the effort and attempt by the Madeira City Council to sell or transfer a portion of the properties *without any restrictions or limitations whatsoever* is consistent with the intent of the voters of the City of Madeira in adopting Article XVI of the City Charter wherein the voters, as the ultimate sovereign, imposed the mandate upon the City that the "three important and historic properties" specifically identified by name and address in the City Charter "are to be preserved, protected, and left standing on the same ground that the structures were built upon." Relator-Appellant maintained that Article XVI imposes, at a minimum, the mandatory duty upon the City of Madeira, regardless of how the parcels may be titled, to ensure that the three properties identified therein are, *inter alia*, preserved and protected against waste, neglect or deterioration, either in terms of the structures themselves or the real estate on which they sit;[3] this may be accomplished through deed restrictions, *etc.*, but not through the effort by the City to sell or transfer a portion of the properties as authorized by Ordinance No. 15-30 or otherwise.

In order to attempt to be given *carte blanche* authority to dispose of the historical properties, Respondents-Appellees considered only a few isolated (and different) term. *See T.d. 28, Motion for Judgment on the Pleadings, at 9-10.* In fact, Respondents went so far as to treat different terms within Article XVI ("structures" and "properties") as being synonymous even "the use of different words indicates an intention that the words possess different meanings." *Andover Village Retirement Community v. Cole*, 2014-Ohio-4983 ¶15 (11th Dist.); *accord Jewish Hosp., Inc. v. Secretary of Health & Human Services*, 19 F.3d 270 (6th Cir. 1994) ("[a]djacent provisions utilizing different terms, however, must connote different meanings").

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[3] Through Ordinance No. 15-30 and otherwise, Respondents-Appellees essentially took the position that the Madeira City Council can alienate all or part of the properties without any restriction whatsoever. Such a contention would make Article XVI ring hollow and undermine the will and intent of the voters of the City of Madeira.

But as the Ohio Supreme Court has recognized, even "[t]he [U.S.] Supreme Court has specifically rejected the isolation and decontextualization of specific terms within a statute as a valid mode of statutory interpretation." *In re Timken Mercy Medical Ctr.*, 61 Ohio St.3d 81, 84 n.2, 572 N.E.2d 673 (1991); *see id.* ("[t]o take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute" (quoting *United States v. American Trucking Associations, Inc.*, 310 U.S. 534, 542 (1940))). In fact, this Court has recognized that "charter provisions, like statutes and constitutions, must be read as a whole and in context. We are not permitted…to look at the first sentence and disassociate it from the context of the entire section." *McQueen v. Dohoney*, 2013-Ohio-2424 ¶48 (1st Dist.). Thus, the entirety of Article XIV and the different terms used therein must be considered, with the ultimate goal and purpose being to ascertain and effectuate the intent of the voters in adopting that provision.

In its entirety, Article XVI of the Madeira City Charter provides:

> The City of Madeira was deeded and assumed ownership of the "Hosbrook House" located at 7014 Miami Ave. and the "Muchmore House" located at 7010 Miami Ave. In addition to these two properties the City also has ownership of the historic Railroad Depot located at 7701 Railroad Ave. These three important and historic properties are to be preserved, protected, and left standing on the same ground that the structures were built upon. These three historic structures will be included in the "Historic District".

Thus, in considering what limitations, if any, exist with respect to efforts by the City of Madeira to sell or transfer a portion of the real properties referenced therein, consideration must be given to the language utilized and the context of the entire provision.[4]

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[4] Respondents-Appellees also made an argument essentially that the City's home-rule authority preclude the imposition of any restriction on the City's ability to sell any property. *T.d. 28, Motion for Judgment on the Pleadings at 9-10.* Such an argument further demonstrated a lack of appreciation and respect for the sovereignty of the people in a municipality and the people's authority, as the ultimate sovereign, to limit and restrict their municipal government, including limiting or restricting the use or disposition of municipal-owned property.

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Article XVI identifies three specific properties previously acquired by the City, *viz.*, the Hosbrook House, the Muchmore House and the Railroad Depot. But beyond simply giving an appellation to these three properties, Article XVI sets forth the specific address of each of these properties, *viz.*, 7014 Miami Avenue, 7010 Miami Avenue and 7701 Railroad Avenue. Thus, when the voters of the City of Madeira adopted Article XVI, they not only recognized the appellation given to the structures themselves but also expressed an understanding and intent that these three structures were then-existing on three distinct parcels of real property which had been deed to or acquired by the City, *i.e.*, the parcels with the addresses of 7014 Miami Avenue, 7010 Miami Avenue and 7701 Railroad Avenue.[5] And at the time of the adoption of Article XVI, the contours of these three parcels were clearly a matter of public record in the office of the Hamilton County Auditor. Thus, by including not only the appellation given to the three structures themselves, but also the addresses thereof, the voters of the City of Madeira clearly were intending to address both the historic structures and the property on which they were located.[6] Such a reading and interpretation is consistent with the intent of the people in adopting

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Additionally, Respondents-Appellees also raised an argument concerning the *ex post facto* imposition of restrictions on the alienation of real property. *T.d. 28, Motion for Judgment on the Pleadings*, at 9. But such a principle is not even applicable as this case does not involve efforts by the government to impose such a restriction on private property. Instead, this case involves the people of a municipality, in their role and function as the ultimate sovereign thereof, imposing a restriction or limitation upon themselves *qua* the municipal corporation. In fact, nothing prohibits a private property owner from imposing a restriction or limitation upon the real property he or she may own.

[5] Respondents-Appellees actually acknowledged that the language of Article XVI actually recognizes that the City "owns the structures and land in question." *T.d. 28, Motion for Judgment on the Pleadings, at 9.* Later in their motion, however, Respondents attempted to divorce themselves from this concession by claiming Article XVI only relates to the structures or buildings themselves, and nothing to do with the land associated therewith. *See T.d. 28, Motion for Judgment on the Pleadings at 10.*

[6] Respondents-Appellees also attempted to claim that any ambiguity must be read against Relator-Appellant because he was one of the petitioners supporting the charter amendment that became Article XVI. *T.d. 28, Motion for Judgment on the Pleadings at 11.* Such an argument

(continued on next page)

that provision. But, at a minimum, a sufficient issue exists to preclude the entry of judgment on the pleadings.

SIXTH ASSIGNMENT OF ERROR
The trial court erred in dismissing as a party (*T.d. 23, Entry Granting Power's Motion to Dismiss*) the person who had or claimed any interest that would be affected by the declaratory judgment or injunctive relief sought.

Eighth Issue Presented for Review
When a person is a party to a contract that is the subject of a declaratory-judgment action or an injunctive action, that person inherently claims or might claim an interest to such a contract and must be named as a party to such declaratory-judgment action or injunctive action.

As noted, the individual who was the prospective party to the contract authorized by Ordinance No. 30-15, Thomas Powers, was also named a party. *T.d. 1, Complaint ¶4 & Exh. C.* Yet, upon motion of Mr. Powers, *T.d. 15, Motion to Dismiss for Failure to State a Claim,* the trial court, "[b]ased upon the unique circumstances of this case," dismissed the claims against him. *T.d. 23, Entry Granting Power's Motion to Dismiss.* Thus, should the entry dismissing the claims against the City, *T.d. 35, Entry Granting Motion for Judgement on the Pleadings*, constitute a final appealable order, further consideration must then be given to the earlier dismissal of Mr. Powers as a party hereto.

In seeking dismissal, Mr. Powers claimed that "[d]ue to the fact that the Relator can receive no relief or remedy from Mr. Powers, the Relator has not stated a claim upon which relief can be granted, and [the] purported claims against Mr. Powers should be dismissed with

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fails to appreciate that, in the present case, the City of Madeira *qua* a municipal corporation, and not the Relator, is the real party-in-interest. *Schulman v. City of Shaker Heights*, 29 O.O.2d 373, 196 N.E.2d 102 (8th Dist. 1964). This fact was actually acknowledged by Respondents-Appellees in the Agreed Preliminary Injunction entered herein. *T.d.14, Agreed Preliminary Injunction.* Furthermore, such an argument fails to appreciate that the adoption and amendment of a charter itself is undertaken, not by an individual, but by the people of a municipality in their collective act as ultimate sovereign.

prejudice." *T.d. 15, Powers' Motion to Dismiss, at 2.* Because, as developed below, Mr. Powers was a party to the contract authorized by Ordinance No. 15-30 and the declaratory judgment/injunctive action directly impacted his interest in such contract, he was properly named a party hereto and the trial court's dismissal of him as a party constituted reversible error.

R.C. 2721.12(A) provides that, when a declaratory judgment is sought, "all person who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding." Similarly, Ohio R. Civ. P. 19(A)(2) provides that, if a person is subject to service of process, he "shall be joined as a party in the action if … he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may … as a practical matter impair or impede his ability to protect that interest."[7] In this case, the inclusion of Mr. Powers is required pursuant to these two provisions. *See T.d. 1, Complaint* ¶5 (Mr. Powers "may have or claim an interest in and to the property that is the subject of this action, either directly or through a separate legal entity").

This action was brought in order to obtain both a prohibitory injunction and a declaratory judgment, which is appropriate in municipal taxpayer actions. *See City of Cincinnati ex rel. Smitherman v. City of Cincinnati*, 188 Ohio App.3d 171, 934 N.E.2d 985, 2010-Ohio-2768 ¶26 (1st Dist.)(in a municipal taxpayer action, "[a] party may institute an action for a declaratory judgment *and* a prohibitory injunction to challenge legislation"); *see also State ex rel Satow v.*

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[7] It is noteworthy, too, that Ohio R. Civ. P. 19(A)(1) provides that, if a person is subject to service of process, he "shall be joined as a party in the action if … in his absence complete relief cannot be accorded among those already parties." Because the language of Ohio R. Civ. P. 19(A) is in the disjunctive, the criteria under Ohio R. Civ. P. 19(A)(2) has to be different than that required under Ohio R. Civ. P. 19(A)(1), less the two divisions of Ohio R. Civ. P. 19(A) be redundant of each other. Mr. Powers essentially argued from the perspective of Ohio R. Civ. P. 19(A)(1), *i.e.*, that he is not necessary in order for complete relief to be afforded, while he ignores the separate bases for his inclusion as a party herein, *i.e.*, Ohio R. Civ. P. 19(A)(2) and R.C. 2721.12(A).

Gausse-Milliken, 98 Ohio St.3d 478, 786 N.E.2d 1289, 2003-Ohio-2074 ¶22 ("Relators have an adequate remedy to challenge this new legislation by an action for declaratory judgment and prohibitory injunction"); *State ex rel. Beane v. Dayton*, 112 Ohio St.3d 553, 862 N.E.2d 97, 2007-Ohio-811 ¶31 ("Relators here have an adequate remedy in the ordinary course of law by an action for declaratory judgment and prohibitory injunction in [common pleas court], seeking (1) a judgment declaring that [the state law] is constitutional and supersedes [the city's] conflicting charter residency requirement and (2) an injunction preventing [the city] from applying the city's charter requirement conditioning municipal employment on city residency"). And while Mr. Powers focused exclusively upon the relief being sought as its concerns efforts to enjoin the City and its officials from proceeding with Ordinance No. 15-30, the trial court failed to appreciate the declaratory judgment aspects of this case which directly impacted Mr. Powers. For the underlying issue and the declaratory judgment action itself concern the legality *vel non* of a proposed contract to which Mr. Powers is a party. *See T.d. 1, Complaint ¶26* (claim for declaratory judgment includes judgment "that the prohibitions, restrictions and/or limitation within [the Madeira City Charter] prohibit and/or preclude the CITY OF MADEIRA from proceeding forward with the contract" with Mr. Powers). Thus, in the language of the mandatory requirement within R.C. 2721.12(A), Mr. Powers is a person "who [has] or claim[s] any interest that would be affected by the declaration" being sought; for if this Court should issue such a declaratory judgment, Mr. Powers, who has a direct interest in and to said proposed contract, would be affected by such declaratory judgment. As such, Mr. Powers was properly named and joined as party herein, and the trial court committed reversible error in dismissing from the case.

III. CONCLUSION

Based upon the inconsistency between the oral pronouncements of the trial court and its entry, the determination must be whether such entry constitutes a final, appealable order which vests this Court with jurisdiction. Assuming *arguendo* such entry constitutes a final, appealable order, then on the merits, the trial court committed reversible error when it: (i) resolved a claim for declaratory judgment with nothing more than an entry void of any substantive declaration of rights, status and other legal relations; (ii) granted the motion for judgment on the pleading/motion to dismiss even though the complaint stated a viable claim; and (iii) pursuant to a motion for judgment on the pleading, effectively adjudicated the merits of the case and the meaning of the Madeira City Charter. Additional error arose in the earlier dismissal of Thomas Powers who clearly claimed or might have claimed an interest to the contract at issue in this case.

Respectfully submitted,

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Attorneys for Relator-Appellants

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was or will be served upon the following on the 9th day of February 2017, via e-mail and via regular mail:

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/s/ Curt C. Hartman

APPENDIX

Notice of Appeal (T.d. 36), October 19, 2016

Entry Granting Motion for Judgement on the Pleadings (T.d. 35), September 21, 2016

Entry Granting Power's Motion to Dismiss (T.d. 23), March 24, 2016

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

CITY OF MADEIRA *ex rel.* DOUGLAS OPPENHEIMER,	**Trial Case No. A-15-06891**
Relator-Appellant,	**Judge Dinkelacker**
v.	**C 1600762**
CITY OF MADEIRA,	
and	**RELATOR'S NOTICE OF APPEAL**
THOMAS E. MOELLER,	
and	
THOMAS POWERS,	
Respondents-Appellees.	

Now comes the CITY OF MADEIRA, by and through Relator DOUGLAS OPPENHEIMER, and, hereby appeals to the Hamilton County Court of Appeals, First Appellate District, from the Order/Judgment entered herein on September 21, 2016, a copy of which is attached hereto, so as to include all orders and decisions merging into said Order/Judgment, including, without limitation, the entry of dismiss entered herein on March 24, 2016, a copy of which is also attached hereto.

Respectfully submitted,

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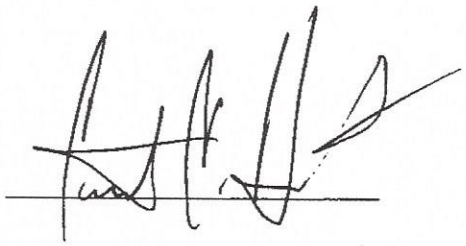

FOR COURT USE ONLY
S.C. Line #: 7

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

CITY OF MADEIRA *ex rel.* DOUGLAS OPPENHEIMER,	:	**Case No. A-15-06891**
	:	**Judge Dinkelacker**
Relator,	:	
	:	ENTERED SEP 21 2016
v.	:	
	:	D115780343
CITY OF MADEIRA, *et al.*,	:	
	:	
Respondents.	:	

ORDER GRANTING
CITY OF MADEIRA AND CITY MANAGER TOM MOELLER'S
MOTION FOR JUDGMENT ON THE PLEADINGS

This matter is before the Court on the Motion of Respondents City of Madeira and Tom Moeller for Judgment on the Pleadings pursuant to Ohio Civil Rule 12(C). Having considered the record, including the memoranda submitted by counsel, this Court finds said Motion well-taken.

IT IS HEREBY ORDERED AND DECLARED:

1. Respondents City of Madeira and Tom Moeller's Motion for Judgment on the Pleadings is granted in its entirety.

2. Relator City of Madeira ex rel. Oppenheimer's Complaint is hereby dismissed.

IT IS SO ORDERED.

COURT OF COMMON PLEAS
ENTER
Judge Patrick T. Dinkelacker
THE CLERK SHALL SERVE NOTICE TO PARTIES PURSUANT TO CIVIL RULE 58 WHICH SHALL BE TAXED AS COSTS HEREIN.

9-20-16

Submitted by:

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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

D113950490

CITY OF MADEIRA *ex rel.* DOUGLAS OPPENHEIMER,	:	**Case No. A-15-06891**
	:	
Relator,	:	**Judge Dinkelacker**
	:	
v.	:	
	:	**ENTRY GRANTING DEFENDANT**
CITY OF MADEIRA, *et al.*,	:	**THOMAS POWERS' MOTION TO DISMISS**
	:	
Respondents.	:	

ENTERED
MAR 24 2016

This matter came before the Court pursuant to Defendant Tom Powers' ("Powers") Motion to Dismiss.

The Court has reviewed the Powers' Motion to Dismiss all responsive memoranda, pertinent documents of record, and the applicable law.

Based on the unique circumstances of this case, the court finds Powers' Motion to Dismiss to be well-taken.

The motion is granted. AS TO POWERS' MOTION ONLY. PD

It is so ordered.

Patrick T. Dinkelacker, Judge 3.24.16

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