

Deposition of:

Nancy Spencer

February 17, 2020

CITY OF MADEIRA

v.

PHILIP DOUGLAS OPPENHEIMER

Cause No. A1802415



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COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

_____)	
CITY OF MADEIRA,)	
)	
Plaintiff,)	
)	Case No.
vs.)	A1802415
)	
PHILIP DOUGLAS OPPENHEIMER,)	
)	
Defendant.)	
_____)	

Deposition of: NANCY SPENCER

Pursuant to: Notice

Date and Time: Monday, February 17, 2020
3:10 p.m.

Place: Finney Law Firm, LLC
1077 Celestial Street
Suite 10
Cincinnati, Ohio 45202

Reporter: Tracy L. Allen, RPR, RMR
Notary Public - State of Ohio

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13 - - -

1 NANCY SPENCER
2 a witness herein, having been duly sworn, was
3 examined and deposed as follows:

4 EXAMINATION

5 BY MR. HARTMAN:

6 Q. Ms. Spencer, to formally introduce
7 myself, I'm Curt Hartman. I'm an attorney
8 representing Mr. Oppenheimer in a lawsuit
9 that's been filed against him by the City of
10 Madeira.

11 I understand that you currently
12 serve as the mayor of the city; is that
13 correct?

14 A. Yes.

15 Q. Okay. And how long have you been on
16 city council?

17 A. I have been on council six years as
18 of December 1st. So now six years and -- what
19 is that -- two months.

20 Q. December 2013 forward?

21 A. Uh-huh.

22 Q. Is that a yes?

23 A. Yes.

24 Q. Okay. Before we get going, I need
25 to give you some ground rules just to make sure

1 we understand.

2 Have you ever had your deposition
3 taken before previously?

4 A. No.

5 Q. So because we got a court reporter
6 transcribing, we need to try to make sure our
7 answers are audible, yeses and nos as opposed
8 to nods of the head and uh-huh type sound.

9 I'll try to catch. She might catch
10 you if you do it. It's natural to do it.
11 Don't feel bad if you do.

12 Because she is transcribing, you
13 need to try to make sure only one of us is
14 speaking at a time. So if you can, try to let
15 me finish my question, I will try to make sure
16 I let you finish your answer before moving on.

17 As I indicated before, if you need
18 to take a break, and you said you might need
19 to, that will be fine, just let me know. I
20 would ask if a question's pending, that we
21 finish the question and then we'll take a break
22 as needed.

23 If you don't understand a question
24 I'm asking, feel free to ask to have me repeat
25 it or clarify. I will attempt to do so for

1 you.

2 There's always a few other rules
3 that pop up that I forget to go through at the
4 beginning, but we'll figure them out there.

5 What did you do in order to prepare
6 for today's deposition?

7 A. Well, the kids are off school today
8 and so I had to figure out what we were going
9 to do and what kind of bribes it might take to
10 get them to feel compliant and coming along
11 with me. And so that was the biggest thing.

12 MR. ROBERTS: And reading was the
13 answer to that? That's ridiculous.

14 THE WITNESS: No, no. No, no.
15 That's what they're willing to do during
16 the time that we're here, but anyway --

17 MR. ROBERTS: What's wrong with
18 those kids?

19 BY MR. HARTMAN:

20 Q. They're doing fine outside. I saw
21 them.

22 A. So that was the main area of
23 preparation was figuring out how it fit into
24 their day off school.

25 Q. Did you review any documents, talk

1 to anybody in preparation for the deposition?

2 A. I mean, there's been so much going
3 on over my tenure on council with the case that
4 I looked a little bit at what some of the case
5 history's been against the city.

6 Q. Okay. Mr. Oppenheimer's previous
7 lawsuits that underlie the current lawsuit?

8 A. Just the variety of litigation that
9 I've seen as being part of. It's primarily
10 been his lawsuits.

11 Q. Did you talk to Mr. Moeller in
12 advance of this deposition?

13 MR. ROBERTS: I'm sorry. For
14 purposes of the deposition or talk to him
15 at all ever?

16 BY MR. HARTMAN:

17 Q. Talked to him relative to the
18 subject of the vexatious litigation lawsuit.

19 A. No.

20 Q. Okay. Talk to any council member?

21 A. What time frame are you referring
22 to?

23 Q. Well --

24 A. Like any time since --

25 Q. Well, in preparation. When you knew

1 you had this deposition coming, when we were
2 trying to schedule it even, did you talk to him
3 about, okay, they're looking to depose me and
4 have -- here's what I need to know, should
5 know, what's it going to be like, anything like
6 that?

7 A. Oh, no.

8 Q. Any such conversations with any
9 members of council in preparation or
10 anticipation of being deposed?

11 A. No.

12 Q. Did you talk to anybody in
13 preparation for the deposition?

14 A. In preparation?

15 Q. Yeah.

16 A. No. There was no real preparation
17 required. I mean, I spoke to my husband to say
18 this is a new experience for me. And I spoke
19 to my kids because they think it's interesting
20 that I do different things on behalf of city
21 council, but I wouldn't call either of those
22 things preparatory.

23 Q. Okay. Now, when I reference the
24 vexatious litigation lawsuit, you understand
25 what I'm talking about?

1 A. Uh-huh.

2 Q. The lawsuit that --

3 A. Yes.

4 Q. -- the City of Madeira filed against
5 Mr. Oppenheimer --

6 A. Yes.

7 Q. -- claiming that because of three
8 other actions that he's been involved in, he
9 should be declared a vexatious litigator.

10 Do you understand that's, generally
11 speaking, what I'm talking about?

12 A. Yes.

13 Q. Okay. I'm going to show you what's
14 previously been marked as Exhibit 1. This is
15 the document. You can look at it.

16 That, I will represent to you, is a
17 copy of the complaint that was filed that
18 started this lawsuit. It indicates on the
19 first page it was filed on May 11th, 2018 at
20 4:51 p.m.

21 Take your time if you need to go --
22 to review it.

23 A. I was just looking where you were
24 referencing that, because I'm not -- I see it
25 now. I just didn't know where you were

1 referring.

2 Q. Yeah, it's at the bottom of every
3 page and on the top of the first.

4 A. Oh, I see right here, too.

5 Q. Yes.

6 Do you recall when you first became
7 aware that such a lawsuit was or was going to
8 be filed against Mr. Oppenheimer?

9 A. Was or was going to be -- well, we
10 had a council meeting where we publicly
11 discussed interest in understanding the
12 feasibility -- I'm not sure what the word was
13 specifically that was used at the time. So
14 that date would be when I first was aware we
15 were considering taking this action.

16 As for when it was actually filed, I
17 suppose -- without having my calendar, I would
18 say it had to be we were notified when it was
19 filed.

20 Q. Okay. Let me kind of move you
21 forward to what I think you're referencing.
22 I'm showing you now what's been marked as
23 Exhibit 2 and Exhibit 3.

24 Exhibit 2 is the -- I'll represent
25 to you, the minutes from the April 23rd, 2018

1 meeting. It actually does include Proclamation
2 18-81 at the back. And Exhibit 3 is that
3 Proclamation 18-01.

4 A. Uh-huh.

5 Q. Do you recognize these --

6 A. Uh-huh.

7 Q. -- as being those documents?

8 A. Yes.

9 Q. And is this the council meeting to
10 which you were making reference -- take your
11 time go through the minutes and figure it out,
12 make sure we're all on the same page.

13 A. Yes.

14 So if you could state your question
15 around these documents again, I'd be happy to
16 answer.

17 Q. No problem.

18 I'm looking at Exhibit 2, which are
19 the meeting minutes, and on the first page at
20 the roll call --

21 A. Yes.

22 Q. -- indicates that you were
23 present --

24 A. Yes.

25 Q. -- at that meeting.

1 And I know we have a lot of meetings
2 and meetings can sometimes merge together, but
3 this is kind of a unique thing, suing one of
4 your residents to be declared a vexatious
5 litigator.

6 And so do you have a recollection of
7 when -- this coming up --

8 A. Oh, yes.

9 Q. -- generally speaking, during the
10 course of this meeting?

11 A. Yes. I know exactly where it came
12 up. I just wanted to verify that I was looking
13 at the right thing.

14 Q. Okay. Very good.

15 A. We had the moment as it's stated in
16 the minutes where it was brought up as a
17 proclamation. And then we adjourned into
18 executive session and then we returned and took
19 a vote.

20 Q. Okay. I want to go, if you can
21 first, though, to page 1 where we -- Acceptance
22 of the Agenda and the Minutes. There's an
23 indication that Mr. Fox asked at the outset of
24 the meeting to add Proclamation 18-01 to the
25 new business.

1 Do you see that?

2 A. I see that.

3 Q. When Mr. Fox would have asked at the
4 beginning of the meeting to add that, did you
5 know at that time what Proclamation 18-01 was,
6 or was it not until the executive session that
7 you were able to figure out exactly what
8 Proclamation 18-01 was?

9 A. I can't recall based on these notes,
10 but if I had more notes from my personal notes,
11 I might be able to answer that. I can't
12 recall.

13 Q. You do take personal notes during
14 the meetings?

15 A. I do.

16 Q. Okay. And you keep and maintain
17 those notes?

18 A. I'm not sure if there's a strict
19 definition of keeping and maintaining, but I do
20 take notes to help me remember different things
21 that have happened over my six-year tenure on
22 council.

23 Q. But do you -- you don't throw them
24 out or shred them?

25 A. Some I do. I've had a lot of notes

1 in six years. Some notes I take on the margins
2 of papers. They're personal notes. I
3 understand they're for my own use.

4 Q. Well, so in this meeting the council
5 adjourned into an executive session. And would
6 it be safe to say that part of the discussion
7 or all the discussion in that executive session
8 concerned Proclamation 18-01 and the potential
9 filing of a vexatious litigation lawsuit
10 against Mr. Oppenheimer?

11 A. I couldn't say if that was the only
12 item. I would need to look at what we cited
13 were the reasons for going into executive
14 session. Clearly, that was one of them.

15 Q. Bottom of page 5 of 6 is the motion
16 to go into executive session.

17 A. It looks like we went into executive
18 session for the purpose of discussing pending
19 litigation and to discuss the purchase or sale
20 of property for public purposes.

21 Q. Okay.

22 A. So it looks like we just didn't have
23 any kind of personnel-related issues that
24 night.

25 Q. Correct. But one of the issues that

1 was discussed in that executive session
2 concerned Mr. Oppenheimer, the potential of
3 vexatious litigation lawsuit and Proclamation
4 1801; is that --

5 A. Well, we spent the time talking
6 about pending litigation.

7 Q. Okay. What pending litigation were
8 you discussing then?

9 A. Well, I am not certain about whether
10 this is covered by executive session.

11 THE WITNESS: Is that something we
12 talk about, the content of executive
13 session or not?

14 A. I don't want to get myself smeared
15 up improperly talking about executive session,
16 but we did talk about pending litigation.

17 BY MR. HARTMAN:

18 Q. Okay. What case was pending -- what
19 litigation was pending at the time that was the
20 subject?

21 A. Oh, my gosh. Well, as you can see
22 in the complaint, we've had so much pending
23 litigation. I would have to double check to be
24 sure which item of all of the pending
25 litigation that was specifically that night.

1 I can't answer that question without
2 checking more thoroughly the time and the dates
3 of the different actions we've been subjected
4 to.

5 Q. Was the prospect of filing a
6 vexatious litigation lawsuit against Mr.
7 Oppenheimer discussed in the executive session?

8 A. It would look very likely to be
9 since we decided to adjourn into executive
10 session to discuss, per the minutes, and then
11 when we returned from executive session is when
12 we took that action.

13 Q. All right. And if you look on the
14 bottom of page 5, I'll just point out to you,
15 even prior to going into the executive session
16 there's an indication that Mr. Fox said the
17 proclamation is related to pending or --

18 A. Yes.

19 Q. -- imminent -- and advised counsel
20 to go --

21 A. That's what I was just referring to.
22 I just don't have these -- oh, there's the page
23 numbering at the top. Okay.

24 Q. Okay.

25 A. But yes, that's what I was just

1 referring to, that it said specifically that it
2 was related to the pending and imminent
3 litigation.

4 Q. You go into the executive session?

5 A. And they advised us to go into --
6 you know, so I don't believe I'm allowed to
7 really comment on executive session itself, but
8 yes.

9 Q. Yes, you can -- well, your attorney
10 can advise --

11 A. That was something that we adjourned
12 into --

13 Q. Your attorney can --

14 A. -- and then spoke on it after.

15 I'm sorry. I thought I was supposed
16 to -- I'm sorry.

17 Q. Your attorney can advise you as to
18 what he might believe you can or cannot testify
19 to.

20 A. Okay.

21 Q. And then we can dispute that in it
22 terms of legal, whether -- you know, what is --

23 A. Okay.

24 Q. Communications -- I will tell you
25 this. Communications with counsel, the

1 substance of the actual communications, what he
2 actually advises you, that would be protected
3 by attorney-client privilege.

4 General subject matters I think is
5 safe for you to testify. Your counsel can
6 indicate otherwise and then we can take it up
7 with the court if need be.

8 So the general subject matter -- I
9 don't want to know what he said, what he said
10 the pros were, what the cons were. That would
11 get into attorney-client privilege. I'm not
12 looking for that. I'm trying to keep it at the
13 30,000-foot level, if you will.

14 A. Okay.

15 Q. Okay. But generally speaking, the
16 discussion of filing this lawsuit or potential
17 to file a lawsuit was discussed and you come
18 out and pass Proclamation 18-01, correct?

19 A. Yes.

20 Q. If you would look at Exhibit 3,
21 which is that proclamation. Kind of going down
22 to the last full paragraph where it starts,
23 Now, therefore.

24 Do you see that?

25 A. Yes.

1 Q. It says, Now, therefore, the
2 undersigned members of Council do hereby
3 proclaim our intention to direct Law Director
4 Brian W. Fox to explore the filing of a civil
5 action, pursuant to Ohio Revised Code Section
6 2323.52, to have Mr. Philip Douglas Oppenheimer
7 declared a vexatious litigator.

8 Do you see that --

9 A. Yes, I see those words.

10 Q. -- as the gist of the proclamation?

11 And that is your signature there on
12 the left side towards the bottom as the vice
13 mayor --

14 A. Yes.

15 Q. -- at the time, correct?

16 A. Yes.

17 Q. Okay. I'm trying to understand --
18 at this stage, though, was the intention only
19 to explore the filing of a lawsuit and not to
20 file a lawsuit? What exactly was going on or
21 the dynamics at this stage?

22 Because I'm trying to figure out how
23 we get from proclamation 18-01 on April 23rd to
24 the filing of the lawsuit on May 11th.

25 A. Let me review the language of the

1 proclamation again.

2 Q. Absolutely. Take your time.

3 A. Okay. And what was the question
4 again?

5 Q. The question I was trying to figure
6 out -- the proclamation that is Exhibit 3
7 indicates the declaration of an intention to
8 explore the filing of a civil action.

9 So was this simply telling Mr. Fox
10 to go look into it and let us know, or what
11 exactly was being authorized or not authorized
12 by Proclamation 18-01?

13 A. Well, it's two things.

14 Q. Okay.

15 A. You've identified for me to look at
16 that final paragraph, Now, Therefore, blah,
17 blah, but also in paragraph three, Whereas,
18 Ohio Revised Code Section 2323.52 authorizes
19 the city director of law of a municipal
20 corporation who has defended against habitual
21 and persistent vexatious conduct in the court
22 of common pleas to commence a civil action
23 against such person to have them declared a
24 vexatious litigator.

25 You know, I felt that what we were

1 discussing was using our legal counsel's
2 expertise in the law to look into the steps
3 necessary to file a civil action.

4 Q. And if you felt that the action was
5 warranted, council said it was okay to go ahead
6 and file the lawsuit then?

7 A. Well, we rely on our legal counsel
8 to represent us in taking appropriate actions
9 to protect the city, so yes. Exploring filing
10 of civil action and taking that action to me
11 are the same.

12 Q. Okay. So, basically, by the
13 proclamation, if I just understood you
14 correctly, you're authorizing him to explore,
15 do the research, figure out what's needed, one;
16 and then, two, if there is merit to it, to go
17 ahead and file the lawsuit?

18 A. Yes. It says in paragraph three,
19 also to commence a civil action against such
20 person to have him declared a vexatious
21 litigator.

22 Q. So just to make sure we're clear, I
23 may be repeating and I apologize if I am, but
24 by the proclamation, was it your understanding
25 that council was authoring the law director to,

1 one, explore the filing of a vexatious lawsuit;
2 and, two, to go ahead and file it if he thought
3 there was merit it to?

4 MR. ROBERTS: Objection. Asked and
5 answered.

6 Go ahead again. You can answer
7 again.

8 A. Okay. So the wording that is
9 contained expressly in this proclamation both
10 directs the law director to explore the filing
11 of a civil action pursuant to Ohio Revised Code
12 Section 2323.52 to have Mr. Philip Douglas
13 Oppenheimer declared a vexatious litigator.

14 And in the third paragraph states
15 quite plainly, whereas, Ohio Revised Code
16 Section 2323.52 authorizes the city director of
17 law of a municipal corporation who has defended
18 against habitual and persistent vexatious
19 conduct in the court of common pleas to
20 commence a civil action against such person to
21 have them declared a vexatious litigator.

22 I'm not a lawyer, but those are the
23 words that are in the proclamation that we
24 approved and signed our names to.

25 BY MR. HARTMAN:

1 Q. So is it your understanding as a
2 council member who voted for and signed the
3 proclamation that the proclamation authorized
4 the filing of the lawsuit?

5 MR. ROBERTS: Objection. Asked and
6 answered now three times.

7 Go ahead.

8 A. So --

9 BY MR. HARTMAN:

10 Q. That's a yes-no question. I'm
11 sorry. That is a yes-no question.

12 Is it your understanding as a
13 council member that by adopting Proclamation
14 18-01, their city council authorized the filing
15 of the lawsuit?

16 MR. ROBERTS: Objection. Asked and
17 answered four times.

18 Go ahead.

19 A. Yes. It clearly states that we both
20 authorize a plea to commence a civil action,
21 and we proclaim our intention to explore the
22 filing of a civil action. Yes.

23 BY MR. HARTMAN:

24 Q. Why do you need to explore something
25 if you're already authorizing it?

1 A. I'm not a lawyer and so I don't know
2 what steps must be taken prior to making the
3 actual filing --

4 Q. You just said --

5 A. -- but this expressly states both
6 the now therefore paragraph that you read to
7 me, and I reread myself to be sure I was really
8 clear on it, that it asks us to explore the
9 filing of a civil action to have Mr. Philip
10 Douglas Oppenheimer declared a vexatious
11 litigator, and it clearly says it authorizes
12 the city director of law of a municipal
13 corporation who has defended against habitual
14 and persistent vexatious conduct in the court
15 of common pleas to commence a civil action.

16 I guess I'm -- I just -- I must not
17 understand the question.

18 Q. You understand the -- you've been on
19 council since December 13th. You've passed
20 resolutions and motions.

21 MR. ROBERTS: December 2013; is that
22 what you meant to say?

23 A. Yeah. December 1st 2013 was my
24 first --

25 BY MR. HARTMAN:

1 Q. If I misspoke, I meant 2013.

2 A. Okay.

3 Q. You have all these motions and
4 resolutions, whereas this, whereas this, now
5 therefore be it resolved.

6 Do you understand that the
7 substantive aspect is the now, therefore, it be
8 resolved and that the whereas clauses are
9 simply foundational?

10 MR. ROBERTS: Objection.

11 Argumentative. Legal conclusion.

12 If you understand the question, go
13 ahead and answer it.

14 A. Well, I don't understand where that
15 is different --

16 BY MR. HARTMAN:

17 Q. Okay.

18 A. -- than the question you've already
19 asked me --

20 Q. Okay.

21 A. -- and the answer that I've
22 provided. I understand that when we have
23 resolutions and ordinances that I weigh my vote
24 on all of the language contained in that
25 ordinance or resolution, or proclamation in

1 this case.

2 If there's a specific distinction,
3 that has not been expressly explained to me.

4 Q. Let me ask this question. What date
5 did the Madeira City Council authorize the
6 filing of the vexatious litigation lawsuit
7 against Mr. Oppenheimer?

8 MR. ROBERTS: Objection. Asked and
9 answered five times.

10 Go ahead.

11 MR. HARTMAN: It's not been asked.
12 It's not been answered.

13 MR. ROBERTS: Objection. Asked and
14 answered five times.

15 Go ahead.

16 BY MR. HARTMAN:

17 Q. What date?

18 A. Well, this dated Proclamation 18-01,
19 Monday, April 23rd, 2018 states both that we
20 proclaim our intention to direct Brian Fox to
21 explore the filing of the civil action and that
22 we authorize him to commence a civil action
23 against such person to have them declared a
24 vexatious litigator.

25 Q. Ms. Spencer, what is today's date?

1 A. Oh, gosh. Valentine's Day was
2 Friday. Then the 15th was my dad's birthday on
3 Saturday. 16th -- it's the 17th. My brother's
4 birthday is tomorrow, the 18th.

5 Q. Today's date is February 17, 2020,
6 correct?

7 A. Yes.

8 Q. So you understand what it means to
9 ask for a date?

10 A. Yes.

11 Q. Month, day, year.

12 A. Yes.

13 Q. What date did the Madeira City
14 Council authorize the filing of the vexatious
15 litigation lawsuit against Mr. Oppenheimer?

16 A. Well, Proclamation 18-01, dated
17 Monday, April 23rd, 2018 -- I think that
18 contains the components of the date -- Monday,
19 April 23rd, 2018 contains provisions that both
20 allows us to authorize the city director of
21 law, et cetera. I've read that paragraph
22 before. I won't waste your time rereading that
23 again to commence a civil action.

24 Q. No. No, Ms. Spencer, you are
25 wasting time by not --

1 A. And that therefore --

2 Q. -- answering the question. It's a
3 simple question.

4 A. I don't know how else to answer your
5 question.

6 Q. Are you testifying --

7 A. I mean, your question is, do I know
8 how to state a date? And I do.

9 Q. I asked you, what is the date?

10 A. Okay.

11 Q. What is the month that city --

12 A. April.

13 Q. And what day did the city --

14 A. It says on here April 23rd, 2018.
15 And it says it was a Monday.

16 Q. So your testimony is that Madeira
17 City Council authorized the filing of the
18 vexatious litigation lawsuit on April 23rd,
19 2018; is that correct?

20 A. I have stated that the language
21 expressly written in Proclamation 18-01
22 includes both the language that we are
23 authorizing the city director of law to
24 commence a civil action.

25 Q. You read very well. That's not the

1 question.

2 A. I don't understand how it isn't. I
3 mean, there was --

4 Q. I will suspend and actually force a
5 judgment to come in -- the judge to come in and
6 order her to answer the question.

7 A. I have answered the question. I
8 mean, if what you're trying to get at is that
9 there was --

10 MR. ROBERTS: Hold on. That's not a
11 question. He just made a statement.

12 Answer questions.

13 BY MR. HARTMAN:

14 Q. Is the date that council authorized
15 the filing of the vexatious litigation lawsuit
16 May 23rd -- correction, April 23rd, 2018; yes
17 or no?

18 A. Yes.

19 Q. Thank you.

20 A. Well, it clearly states on
21 Proclamation 18-01.

22 MR. HARTMAN: Move to strike.

23 Non-responsive.

24 A. I don't know how that's
25 non-responsive. I've answered your question

1 five times.

2 MR. ROBERTS: Don't argue with him.

3 THE WITNESS: Oh, sorry.

4 BY MR. HARTMAN:

5 Q. When you were in that executive
6 session on April 23rd, 2018, who all was in the
7 executive session?

8 A. Let me review the notes as to who
9 signed the proclamation and that will help me
10 remember if everyone was present that night.

11 Q. I will refer you to Exhibit 2. The
12 minutes indicate Scott Gehring was absent that
13 night from the meeting.

14 A. Then I will refer to that as well.

15 Would you like me to restate what it
16 says under roll call or is that sufficient what
17 you just said?

18 Q. Were the six council members
19 indicated present during the roll call in that
20 executive session?

21 A. To the best of my knowledge where it
22 lists members present, those would also be the
23 members present. I don't see in the minutes
24 that it states anybody left early.

25 Q. Anybody else besides the council

1 members in that executive session?

2 A. Well, City Manager Tom Moeller is
3 always present during executive session. I
4 can't say whether or not assistant City Manager
5 Lori Thompson was present or not. She usually
6 attends if she has been present for the meeting
7 and I see that she was. But whether or not on
8 that evening she was present, I can't say. And
9 Law Director Brian Fox was also present.

10 Q. Would anybody else have been in the
11 executive session during the meeting of
12 April 23, 2018?

13 A. During executive session, not to my
14 knowledge.

15 Q. Okay. Who invited Mr. Moeller into
16 the executive session?

17 A. I couldn't say. In my time on
18 council he has always been present for
19 executive session unless it was a matter of
20 personnel directly relating to him. So I can't
21 say how he came to be invited to executive
22 session.

23 Q. Has council ever expressly
24 authorized Mr. Moeller to be in executive
25 session?

1 MR. ROBERTS: Objection. Asked and
2 just answered.

3 Go ahead.

4 A. I can't say. It's been my
5 experience during my six years and several
6 months tenure on council that he has always
7 been present for executive session. I don't
8 know how the invitation has been made
9 historically.

10 BY MR. HARTMAN:

11 Q. I'll hand you what's been marked as
12 Exhibit 7, which I will represent to you are
13 the codified ordinances of the City of Madeira,
14 Chapter 30.

15 If you would, go to page 5. The
16 number's in the top right corner of the page.
17 Are you on page 5?

18 A. Uh-huh.

19 Q. Is that a yes?

20 A. Yes.

21 Q. And third full paragraph down starts
22 with a (2), indicates Executive sessions shall
23 be limited to Council members, except that
24 those public officials or other persons who are
25 necessary or helpful for the discussion of the

1 subject matter of the executive session may be
2 included upon invitation of the Council members
3 requesting the executive session with the
4 consent of a majority of Council.

5 Do you see that?

6 A. Yes.

7 Q. These are part of the codified
8 ordinances for the City of Madeira governing
9 its city council.

10 During your time on council, has the
11 consent of a majority of council ever been
12 provided to invite anybody other than council
13 members into an executive session?

14 MR. ROBERTS: Objection. Vague.

15 Go ahead.

16 A. No.

17 BY MR. HARTMAN:

18 Q. If you would go back to Exhibit 3,
19 which is the Proclamation 18-01, please.

20 Do you have it there in front of
21 you?

22 A. Yes.

23 Q. Trying to -- well, strike that.

24 Understanding you're not an
25 attorney, but can you just kind of give me your

1 understanding as to what it means for somebody
2 to be a vexatious litigator?

3 MR. ROBERTS: Objection. Legal
4 conclusion.

5 Go ahead.

6 A. Well, I feel that the definition is
7 one that I am not legally well versed in, so I
8 can only provide my anecdotal response to that,
9 which is quite consistent with the third
10 paragraph in that it suggests that a vexatious
11 litigator is one who engages in habitual and
12 persistent vexatious conduct.

13 Now, anecdotally, if I was going to
14 try and use my own words to further explain
15 that, paragraph four I think gives more of what
16 I would try and use as a definition, the
17 purpose being to harass or maliciously injure
18 another party to the civil action.

19 I think the fact that the civil
20 actions taken against the city so far have been
21 found not warranted under existing law and
22 cannot be supported by good faith argument seem
23 also to fall under that definition of vexatious
24 conduct and the idea that is being imposed for
25 delay.

1 BY MR. HARTMAN:

2 Q. Okay.

3 A. Now, I wouldn't be able to pull out
4 of the air a specific definition for that if
5 not able to read it, but those are all of the
6 components.

7 Q. Okay. Fair.

8 I'm looking at the second whereas
9 clause where it says whereas, Mr. Oppenheimer
10 continues to make accusations of fraud,
11 corruption, and collusion against the City of
12 Madeira's public servants including the City
13 Manager, Tax Commissioner, Clerk of Council,
14 Council Members, and Law Directors. And
15 continues to take place despite clear and
16 unequivocal judicial declarations and findings
17 that his accusations are false and without
18 merit.

19 What does the fact that
20 Mr. Oppenheimer makes accusations, even
21 unfounded accusations of fraud, corruption, and
22 collusion tie into being a vexatious litigator?

23 MR. ROBERTS: Objection. Legal
24 conclusion.

25 Go ahead.

1 A. He certainly has plenty of
2 opportunity to use his freedom of speech to
3 make these types of false accusations against
4 all of the people listed.

5 What I think is very concerning to
6 me as a city council member and a steward of
7 the finances of the city is that there seems to
8 be a clear link between his accusations and
9 this bullying he uses as a tactic in this
10 harassment and malicious injury to other
11 parties through civil action or the threat of
12 civil action. We have been threatened a lot
13 with legal action.

14 And I believe that maybe, though I
15 couldn't say why that additional language is
16 included to show a pattern of harassment, that
17 may be related to the civil action.

18 The action itself doesn't take any
19 steps to suggest Mr. Oppenheimer shouldn't say
20 whatever he wants to say. But in the ability
21 to sue the city and create unnecessary delay
22 and expense to the taxpayers, I believe there
23 is a serious issue with using that for
24 harassment.

25 BY MR. HARTMAN:

1 Q. So there's no -- so are you seeing a
2 problem with him making accusations of fraud,
3 corruption, and collusion?

4 A. What's the question?

5 Q. Is there a problem with him making
6 accusations of fraud, corruption, and
7 collusion?

8 MR. ROBERTS: Objection. Legal
9 conclusion.

10 Go ahead.

11 A. Is there a problem --

12 BY MR. HARTMAN:

13 Q. Yeah.

14 A. -- with making those kinds of
15 accusations? That's his -- that's his first
16 amendment right to say the things he wants to
17 say.

18 However, it does not seem fair to
19 the residents of Madeira to take continuous
20 legal action in a harassment of the city.

21 Q. But I'm trying to figure out why you
22 voted for and signed off on a proclamation that
23 talks about his making accusations, but you
24 just said he had a first amendment right to.
25 Why is that included in the proclamation his

1 speech of making accusations of fraud,
2 corruption, and collusion?

3 A. I don't know. The proclamation
4 doesn't make any statement about that. It just
5 says he does that. It doesn't say that we are
6 looking to make him a vexatious litigator
7 because of the things he says.

8 It says we want to do that because
9 of civil actions that serve merely to harass or
10 maliciously injure another party to the civil
11 action and is not warranted under existing law
12 and cannot be supported by good faith argument
13 for an extension, modification, or reversal of
14 existing law or is imposed solely for delay.

15 Q. Right. You did a very good job --
16 you did a very good job of reading the fourth
17 whereas clause, but I'm talking about why is
18 even the second whereas clause included if it's
19 not related to -- if it's his speech, but
20 you're tieing it to his vexatious litigation
21 lawsuit.

22 A. I suppose -- and I don't recall the
23 exact words you said earlier. It's background
24 information.

25 Q. Okay. So it's a foundation for this

1 proclamation.

2 Would you agree with that?

3 A. No, I would not say it's a
4 foundation for the proclamation. I would say
5 it helps to inform the nature of all of the
6 legal action the city that been subjected to.

7 Q. I'm going to hand you what's been
8 marked as Exhibit 4. This indicates it's taken
9 from the Common Pleas Court website.

10 It's a notice of administrative
11 appeal filed against the City of Madeira and
12 its planning commission.

13 Do you recognize that lawsuit or
14 that administrative appeal?

15 A. I recognize it.

16 Q. Okay. Do you know what happened or
17 how that was ultimately resolved?

18 A. I don't recall. I think they
19 withdrew it, but I don't recall. I'd have to
20 review it. This is a matter for the planning
21 commission.

22 Q. Right. So if it was withdrawn --
23 I'll represent to you it was dismissed at
24 Mr. Gehring's and his wife's request. So the
25 city came out ahead on that one, too, correct?

1 A. I don't know how I would describe it
2 as came out ahead. If they withdrew, they
3 withdrew. I'm not sure what came out ahead
4 would mean.

5 Q. Okay. Could that be a potential
6 vexatious lawsuit because he filed something
7 that was ultimately withdrawn and the city had
8 to expend resources and money to defend it?

9 MR. ROBERTS: Objection. Legal
10 conclusion.

11 Go ahead.

12 A. No. I don't think that seems like
13 it's similar in any way.

14 BY MR. HARTMAN:

15 Q. Why is it not similar?

16 A. We have --

17 MR. ROBERTS: Objection.
18 Argumentative.

19 Go ahead.

20 A. We have --

21 MR. HARTMAN: She just said it was
22 similar. I'm asking her why is it
23 similar.

24 MR. ROBERTS: Objection. You're
25 arguing with her.

1 Go ahead.

2 A. I said it was not similar.

3 BY MR. HARTMAN:

4 Q. Well, why is it not similar? Excuse
5 me.

6 A. Yes. I specifically said it was not
7 similar. This was one action taken in response
8 to an administrative process that is outlined
9 in the charter for how one might appeal a
10 decision of the planning commission.

11 It is not a blanket pattern of legal
12 action by this couple or any other couple that
13 chooses to follow the administrative appeal
14 process laid out by the planning commission.

15 Q. So because he went through the
16 progress that's provided for in the charter to
17 appeal the planning commission, you think
18 that's what makes it different?

19 A. Well, again, I'm no legal expert and
20 I'm also not a member of the planning
21 commission, but what I can say is that this was
22 an administrative appeal related to a decision
23 by the planning commission.

24 Q. If you would, turn back to Exhibit 1
25 please. If you would turn to page 9 of the

1 complaint and start looking at paragraph 40 of
2 the complaint.

3 A. Page 9, paragraph 40. Okay.

4 Q. Okay. And this is what's indicated
5 in the complaint as the Unwarranted Lawsuit
6 number Three.

7 Do you see that?

8 A. Yes.

9 Q. And in paragraph 40 indicates it's
10 an administrative appeal of a decision of the
11 city's planning commission.

12 Do you see that?

13 A. Yes. I see that it says without
14 standing to oppose a zoning decision, filed an
15 administrative appeal of a decision by the
16 City's Planning Commission.

17 Q. But it was an administrative appeal
18 of the city planning commission, correct?

19 A. Well, I see the difference seems to
20 be that it says that it was filed without
21 standing.

22 Q. What do you mean without standing?

23 A. I'm not an expert in the law nor am
24 I an expert on the planning commission, but I
25 would have to guess that without standing

1 indicates there is some difference between this
2 administrative appeal and one that somebody
3 with standing might file.

4 Q. Okay.

5 A. That's the extent of what I know
6 about the difference in with standing and
7 without standing in an administrative appeal of
8 the planning commission.

9 Q. Okay. Again, turning back to page
10 4. And I'm starting at paragraph 14.

11 A. Page 4?

12 Q. Yes. Where it starts talking about
13 Unwarranted Lawsuit Number One.

14 Do you see that, City of Madeira ex
15 rel. Douglas Oppenheimer versus City of
16 Madeira?

17 A. Yes.

18 Q. Do you know what a taxpayer lawsuit
19 is?

20 A. Yes.

21 Q. What's your -- understanding it's a
22 legal issue, but what's your understanding of
23 what a taxpayer lawsuit is?

24 A. I understand there is a provision
25 that allows a taxpayer within -- I'm not

1 exactly sure the political subdivision, but I
2 would say in this case municipality, that a
3 taxpayer of record is able to bring legal
4 action as a taxpayer under a taxpayer lawsuit.

5 Q. And do you understand that as part
6 of a taxpayer lawsuit one of the requirements
7 that has to be done first is that a written
8 demand has to be made upon the city solicitor
9 or the city's law director calling upon them to
10 bring the lawsuit initially? Do you understand
11 that?

12 MR. ROBERTS: Objection. Legal
13 conclusion.

14 Go ahead.

15 A. There is a lot I do not know about
16 the process of legal action between the
17 municipal corporation and taxpayers. I can't
18 answer that.

19 BY MR. HARTMAN:

20 Q. I understand. But my question was,
21 were you aware that a law -- that before a
22 taxpayer can file such a lawsuit, he or she has
23 to make a written demand upon the city's law
24 director?

25 MR. ROBERTS: Objection. Legal

1 conclusion.

2 BY MR. HARTMAN:

3 Q. Either you're aware of it or you're
4 not.

5 A. I can't answer that.

6 MR. ROBERTS: Objection. Legal
7 conclusion.

8 A. I'm not aware of it. It's not a
9 yes-no for me. It's something I'm not aware
10 of.

11 BY MR. HARTMAN:

12 Q. So the answer is yes, I'm not aware
13 of it; no, I'm not aware of it. That's fine.

14 A. If that's the way you interpret my
15 answer. All I can say is I'm not aware of many
16 aspects of how -- that's why we have a law
17 director to represent us in these areas.

18 We're just moms and dads that serve
19 on council. I don't have a way of knowing what
20 the entire process should look like. But if
21 the law director takes action or advises us of
22 how that process should unfold, I will follow
23 the direction of our law director.

24 Q. Do you ever get a second opinion
25 from your law director's opinion? Do you go to

1 a different law firm and ask for a second
2 opinion?

3 A. That's not been my experience during
4 my six years on council.

5 Q. And your law director is paid hourly
6 for the work that he does, correct?

7 A. There are different components of
8 our contract with the law director that are on
9 public record.

10 Q. He gets paid hourly. It's a
11 different rate depending on the type of legal
12 services he and his firm provide, correct?

13 A. There's two components to his
14 contract that's in the public record. I would
15 want to answer that question with it in front
16 of me so that I didn't accidentally misstate
17 it, but yes, there are two components between
18 his services he provides us.

19 Q. And if he recommends litigation,
20 that benefits him financially, correct?

21 MR. ROBERTS: Objection. Misstates
22 facts. Foundation.

23 Go ahead.

24 BY MR. HARTMAN:

25 Q. Him or his law firm benefit

1 financially, correct?

2 MR. ROBERTS: Objection.

3 Foundation.

4 Go ahead.

5 A. I think that's --

6 THE WITNESS: Was that some --

7 MS. THEIS: I don't know.

8 A. I -- I don't know how I could answer
9 that. That's like saying your dentist benefits
10 by letting you know you have a cavity in your
11 mouth.

12 Yes, he will get paid for you having
13 a cavity, but you also benefit from receiving
14 his expert advice.

15 If you want to re-ask your question,
16 maybe I can understand it better.

17 BY MR. HARTMAN:

18 Q. I'm a little lost. You were so
19 concerned about the public finances that Mr.
20 Oppenheimer's lawsuits have brought, yet when
21 an attorney recommends let's sue, wouldn't it
22 be prudent as a public official to maybe get a
23 second opinion on a legal conclusion --

24 MR. ROBERTS: Objection.

25 BY MR. HARTMAN:

1 Q. -- that the person giving you the
2 opinion would benefit financially?

3 MR. ROBERTS: Objection.

4 Argumentative.

5 Go ahead.

6 A. I can't say why there is or is not
7 second opinions sought. I don't understand the
8 nature of your question.

9 BY MR. HARTMAN:

10 Q. Well, let me try to rephrase it then
11 since you don't understand it.

12 Mr. Fox, your law director, comes
13 and recommends -- or files a vexatious
14 litigation lawsuit that city council
15 authorized, correct?

16 A. Is that a question?

17 Q. Yes.

18 A. Okay. I thought you were just
19 restating the facts.

20 Q. No. I said, is that correct?

21 A. Oh, yes. We've gone over that in
22 18-01 proclamation.

23 Q. And Mr. Fox and his law firm is
24 being paid hourly to pursue this lawsuit,
25 correct?

1 A. If it is outside the other parts of
2 his normal contract, then he would be paid
3 hourly as the contract states, yes.

4 Q. And throughout this process, the
5 city council has never sought a second opinion
6 as to the merits of such a lawsuit; it's just
7 authorized Mr. Fox to proceed and he's paying
8 him hourly, correct?

9 A. As in any of the litigation that has
10 taken place against the city in my six years on
11 council, when we have had recommendation from
12 the law director on how we might want to pursue
13 for the best perceived outcome for the city,
14 then we have followed his recommendation.

15 Q. And never sought a second opinion?

16 A. The opinion of the law director has
17 been the guidance we follow.

18 Q. And you have never sought a second
19 opinion, correct?

20 A. Not to my knowledge.

21 MR. ROBERTS: Do you want to check
22 on those little minions?

23 THE WITNESS: Oh, yes.

24 MR. HARTMAN: We'll take a break.

25 (A recess was taken from 3:53 - 3:59.)

1 MR. HARTMAN: Back on the record.

2 BY MR. HARTMAN:

3 Q. I'm going to hand you what's been
4 marked as Exhibit 6. I'll represent these are
5 the meeting minutes from the August 12, this
6 2019 meeting.

7 Take a chance, just review them to
8 refresh your recollection on that meeting.

9 A. Is there any specific part you want
10 me to review or should I review all of it?

11 Q. Well, I just want to scan now. I'm
12 going to get to the executive sessions that are
13 on page 5 -- or that is on page 5.

14 A. If I need to back up, I'll ask for
15 some extra reading time.

16 Q. Okay. This was about four or five
17 months ago.

18 A. Uh-huh.

19 Q. And if you see there's -- following
20 the executive sessions, there's a litigation
21 clarification.

22 Do you see that in the minutes on
23 page 5?

24 A. Uh-huh.

25 Q. Is that a yes?

1 A. Yes, I see it in the minutes.

2 Q. Okay. To back up a little bit, the
3 motion to go into the executive session
4 indicates it's for a pending litigation and to
5 consider the purchase or sale of real estate
6 for public purposes.

7 Do you see that that motion?

8 A. Yes, I see that.

9 Q. Okay. Which pending litigation
10 would that have been that you went into the
11 executive session at this meeting?

12 A. Well, I would need to consult with
13 my personal notes to know for certain. We've
14 had a lot of litigation.

15 Q. Okay. I will tell you, I'm going to
16 issue a subpoena for all your notes, so please
17 make sure you keep them and get them organized.
18 And we'll get those, basically, from April of
19 2018 forward.

20 A. April 2018?

21 Q. Forward, yes.

22 A. Okay. If I have them, I'll keep
23 them.

24 Q. So you don't recall it, from four or
25 five months ago, what the pending litigation

1 would have been that you went into executive
2 session for?

3 A. Well, let's see, four or five months
4 ago -- we've had a lot of stuff going on.

5 No, I couldn't answer that without
6 any additional documentation to know for
7 certain which pieces of pending litigation we
8 needed to discuss.

9 Q. Well, what all pending lawsuits is
10 the City of Madeira involved in presently?

11 A. Well, we have this.

12 Q. When you say this, the vexatious
13 litigation lawsuit --

14 A. Yes.

15 Q. -- that the City of Madeira filed
16 against Mr. Oppenheimer?

17 A. Yes. And I feel like we've had so
18 much litigation that some have gone on and on
19 and on, but I would need to double check the
20 dates to be certain of that.

21 Q. Is there any other pending
22 litigation that you know of that the City of
23 Madeira is presently involved in?

24 A. I can only answer that we have had
25 extensive litigation during my time on council,

1 and where we are specifically in any particular
2 court action or appeal at any point in time is
3 something I need to refer to assistance from
4 the law director. I would never try and state
5 exactly where we are in a particular legal
6 case.

7 Q. Okay. Please identify all the
8 litigation that may -- that the City of Madeira
9 has been involved in that you're aware of that
10 you think may still be pending.

11 MR. ROBERTS: Objection.

12 Go ahead.

13 A. I really can't answer that.

14 BY MR. HARTMAN:

15 Q. Besides the litigation, the
16 vexatious litigation lawsuit against Mr.
17 Oppenheimer, are you aware of any other -- do
18 you have knowledge of any other existing
19 lawsuit that in which the City of Madeira's
20 involved?

21 A. I don't know the status of where we
22 are, if every case is finally now wrapped up.
23 I can't answer that. And especially, what was
24 it, four months ago? So in August? I really
25 can't answer it --

1 Q. No. I'm asking a date.

2 A. Oh. Wait. I'm sorry.

3 Q. As of today, what is --

4 A. As of today, I can't answer that.

5 Q. Well, what other lawsuits --

6 A. I think this --

7 Q. You say --

8 A. Oh, my gosh. You kept asking me not
9 to cut you off, but I feel it's really hostile.

10 Q. No, it's not.

11 A. It's making me very uncomfortable.

12 Q. You can quit grandstanding.

13 A. Well, it's making me very
14 uncomfortable.

15 Q. The question is -- you say, I'm not
16 sure what the status is of each lawsuit. Okay.
17 Fine. I'll figure out the status. You just
18 identify the lawsuits that you think may be
19 pending, besides the vexatious litigation
20 lawsuit against Mr. Oppenheimer.

21 A. I can't -- I can't answer to what
22 the status is on lawsuits. We have had
23 constant threat of lawsuit, constant appeal of
24 lawsuit, ongoing action of one lawsuit or
25 another. I cannot answer your question.

1 Q. Do you know of any other lawsuits
2 currently pending against the City of Madeira
3 or in which the City of Madeira is involved as
4 a party?

5 A. I don't think so. I don't know for
6 sure. I don't want to answer the question and
7 have it be incorrect.

8 Q. I understand you might miss
9 something. I'm not -- I'm not asking for a
10 perfect listing. I'm asking what you know.

11 Do you know of any other litigation
12 in which the City of Madeira is involved?

13 A. Well, this is where it gets
14 confusing. So if I think of July 2nd I believe
15 was the last day that we were in court with Mr.
16 Oppenheimer, I don't know all the words that
17 were associated with that day in court with
18 Judge Shanahan, but there was a lot of legal
19 stuff going back and forth about -- I don't
20 know the words that were all associated with
21 it. Was it some kind of a request for
22 injunction? Was it some kind of a this? Was
23 it some kind of a that?

24 It seemed to be some of kind of
25 response to our vexatious litigator lawsuit.

1 There were some actions taken from that. I
2 don't know the names or the words for all of
3 those actions without having some kind of
4 documentation in front of me.

5 Do I know that there was probably
6 continuing follow-up on that just as soon as
7 August 12th, just a mere month and ten days
8 later? Yeah. Almost certainly there was
9 continuing stuff.

10 I couldn't tell you what exactly was
11 the nature of stuff going on August 12th
12 following the meeting at the courthouse
13 July 2nd. So I really can't answer it.

14 There seems to be a constant fire
15 hydrant of stuff that I have experienced over
16 the last six years on council, so I cannot
17 answer your question.

18 Q. I didn't ask you --

19 A. But the timing of --

20 Q. I did not ask you about the stuff
21 that was being filed.

22 A. Okay.

23 Q. Was it an injunction or this or
24 that. I asked you just to identify any
25 lawsuits.

1 A. Okay.

2 Q. I didn't ask what was going on in
3 the lawsuits.

4 You had the one lawsuit, the
5 vexatious litigation lawsuit that the City of
6 Madeira has filed against Mr. Oppenheimer.

7 A. Well, it seems that you have helped
8 answer the question. All of the additional
9 actions appear from what you've just answered
10 to all come from that one lawsuit, and so I
11 guess that's the answer is what you've just
12 said.

13 Even though to me it feels like a
14 fire hose of stuff, it sounds like what you're
15 telling me is that that's all related to the
16 same lawsuit.

17 Q. When you were in --

18 A. I just wouldn't want to mistake that
19 because I'm not that familiar with the legal
20 jargon and all the crossing over of one case to
21 the next and where one case has not ended and
22 the other one has picked up and so forth, so
23 I'll go with the answer you provided.

24 Q. I didn't provide an answer. You're
25 here to answer questions as much as you might

1 not like to and as much as you might try to
2 avoid.

3 When you were in court on July 2nd
4 observing, that was one lawsuit, right, was the
5 vexatious litigation lawsuit, correct?

6 A. It was related to it. I don't know
7 if it's called the same thing or not. It
8 seemed like that was an action brought by Mr.
9 Oppenheimer looking for something to happen in
10 addition to the lawsuit that the city brought.

11 I don't really know if they all end
12 up with the same case number or not. I don't
13 know if when the plaintiff or the defendant
14 takes action, if that causes it to be called
15 something.

16 I can't answer that. Those are
17 things that are outside my area of expertise.
18 But I have tried to answer it as best I could.

19 Q. Okay. And there is a second lawsuit
20 involved, that is City of Madeira's being sued
21 for First Amendment violations, correct?

22 A. I can't answer that. To me all of
23 this rolls in together. I have a very
24 difficult time knowing where one lawsuit ends
25 and the next one begins. That is why we seek

1 the counsel of our law director.

2 If there's a totally separate case
3 number for that, then I guess that is a
4 separate case. I don't know. As I just
5 described, I don't know when there is a
6 subsequent action by the defendant, is that a
7 new suit or not? I don't know that answer.

8 Q. Are you aware there is a lawsuit
9 pending in federal court against the City of
10 Madeira for the violation of the First
11 Amendment based upon the City of Madeira sign
12 regulations?

13 A. I know there is a lot of stuff going
14 on in the courts, yes. I don't know the --

15 Q. I didn't ask you --

16 A. -- law number. I don't know what
17 that case is called. I don't know if that is
18 wrapped up into this.

19 That is why we spend executive
20 session month after month after month having
21 pending litigation on our agenda, because we
22 have been constantly under siege with lawsuits.

23 Q. It's a simple yes-no question that
24 you're not answering.

25 Are you aware that there is a

1 pending lawsuit in federal court against the
2 City of Madeira for the violation of the First
3 Amendment because of its sign regulations?

4 A. Oh, the sign regulations? Yes. I
5 did not know that was still going on. I
6 thought that was moot as a result of us
7 repealing the sign code. But if it's still
8 going on, I believe what you say.

9 Q. So we got the vexatious litigation
10 lawsuit and the First Amendment lawsuit.

11 A. If you say that is still going on, I
12 believe you.

13 Q. Okay. You don't know, but that
14 would have been a lawsuit you would have been
15 aware of. You weren't quite sure --

16 A. I was aware that that action had
17 been taken, yes.

18 Q. You weren't quite sure where it was
19 in the process. That's fine. I'm not asking
20 you to know where everything is in the process.

21 Any other things like that that,
22 yeah, I knew about this lawsuit, but I'm not
23 sure if it's over with or not over with?

24 A. Not that I recall.

25 Q. Okay. On Exhibit 6. Now, you guys

1 go into executive session for pending
2 litigation and issues with respect of purchase
3 or sale of real estate. And then immediately
4 come out and do this litigation clarification.

5 So would you have talked about this
6 pending vexatious litigation lawsuit in that
7 executive session?

8 A. It would seem very probable to me
9 that with that ongoing legal action that would
10 be a topic we'd discuss in executive session.

11 Q. Okay. Now, I see the motion to come
12 out of executive session was made by
13 Mr. Hilberg and seconded by Mr. Gehring.

14 Do you see that?

15 A. I see that.

16 Q. What was the vote?

17 A. On the motion to --

18 Q. To come out of --

19 A. -- come out of executive session?

20 Unanimous.

21 Q. What makes you say it was unanimous?

22 A. Oh, you're right. It does not say
23 that expressly in the minutes. I don't know.

24 Q. Minutes are incomplete?

25 A. I don't know that I would say they

1 are incomplete. I would say those words are
2 not written in the minutes.

3 Q. Was a vote taken on the motion to
4 come out of executive -- to adjourn -- you
5 characterize it as to adjourn executive session
6 and return to the regular section?

7 A. Yes. We take a vote to adjourn
8 executive session and return to regular
9 session.

10 MR. HARTMAN: I have no further
11 questions.

12 MR. ROBERTS: I have some questions.

13 EXAMINATION

14 BY MR. ROBERTS:

15 Q. Do you mind if I ask you questions?

16 A. Sure.

17 Q. My mom's name is Nancy. Anytime we
18 have a Nancy other oath I try to cross-examine
19 her.

20 A. Okay.

21 Q. Do you discuss personnel matters in
22 executive session?

23 A. When it's listed on the agenda.

24 Q. Okay. In your six years have you
25 ever discussed Mr. Moeller's compensation or

1 personnel issues regarding Mr. Moeller?

2 A. Yes.

3 Q. Do you invite him into those
4 executive sessions?

5 A. When -- during the time when we're
6 going to talk about his compensation?

7 Q. Yes.

8 A. No.

9 Q. He's barred from those executive
10 sessions?

11 A. No. We ask him to step out.

12 Q. He doesn't have your consent.

13 MR. HARTMAN: Objection. Leading.

14 And she needs to be able to testify and
15 give an answer.

16 BY MR. ROBERTS:

17 Q. Does he have your consent to attend
18 executive session when you're discussing his
19 compensation?

20 A. No.

21 Q. Okay. When you're not discussing
22 his compensation, he does have your consent to
23 attend executive session; is that what you're
24 saying?

25 A. Yes.

1 Q. In your six years have you ever
2 heard a council member oppose Mr. Moeller
3 attending executive session when personnel
4 issues regarding him are not the subject of the
5 executive session?

6 A. No. Never.

7 Q. So have all the council members
8 always consented to him being there?

9 A. I never heard an objection.

10 Q. Okay. Does a person need a written
11 piece of paper saying you have consent for
12 there to be consent?

13 A. I don't believe so.

14 MR. ROBERTS: Okay. I don't have
15 any further questions.

16 FURTHER EXAMINATION

17 BY MR. HARTMAN:

18 Q. Have you had any training on the
19 Open Meetings Act?

20 A. Yes.

21 Q. What type of training have you had
22 on the Open Meetings Act?

23 MR. ROBERTS: I'm going to object.
24 This exceeds the scope of the
25 cross-examination.

1 MR. HARTMAN: No, it doesn't. You
2 didn't -- you going to instruct her to
3 not answer immediately? I think if you
4 could give me a few questions, we'll lay
5 the foundation.

6 MR. ROBERTS: I'm sorry. It exceeds
7 the scope. I asked six questions. How
8 does it not exceed the scope?

9 MR. HARTMAN: Because the Open
10 Meetings Act deals with public action.
11 And we're dealing with a public body
12 acting without any documentation.

13 MR. ROBERTS: Yeah.

14 MR. HARTMAN: That's an Open
15 Meetings issue. And you raised the
16 issue --

17 MR. ROBERTS: So your question --

18 MR. HARTMAN: You raised the issue
19 about the consenting -- we consent to
20 Mr. Moeller coming into the executive
21 session. Fine. They consented.

22 MR. ROBERTS: Go ahead. Ask another
23 question. I'm not --

24 BY MR. HARTMAN:

25 Q. How could you guys consent to

1 Mr. Moeller coming into executive sessions?

2 A. It has always been that way, that he
3 comes to executive session unless there is a
4 matter specifically related to his employment,
5 in which case we have asked him at that time to
6 leave.

7 Q. So council will have made a decision
8 in an executive session to have Mr. Moeller
9 leave the executive session; is that correct?

10 A. There have been very limited
11 instances where we have asked him to leave when
12 it's been related to his personal employment
13 and compensation.

14 Q. And council wanted him to leave the
15 executive session and so indicated to him,
16 correct?

17 A. Correct.

18 Q. And he left?

19 A. Uh-huh.

20 Q. And --

21 A. Yes.

22 Q. -- the indication and the consensus
23 of council to have him leave was made in
24 executive session, correct?

25 A. Can you say that again so I heard

1 all the words?

2 Q. The consensus of council to have
3 Mr. Moeller leave, was that made in a public
4 session or in an executive session?

5 A. It was made in the context of
6 executive session when we reached the point
7 about personnel that related specifically to
8 his employment and compensation.

9 MR. HARTMAN: Thank you. No further
10 questions. That establishes it.

11 MR. ROBERTS: Great. Great job.

12 MR. HARTMAN: One final -- I'm going
13 to issue a subpoena for her notes.

14 Do you wish for me to serve her
15 personally or will you, as counsel,
16 accept --

17 MR. ROBERTS: We'll accept the
18 subpoena, sure.

19 MR. HARTMAN: Okay.

20

21

NANCY SPENCER

22

23 - - -

24 DEPOSITION ADJOURNED AT 4:16 P.M.

25 - - -

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