

Proclamation Number 18-01
instructing Madeira Attorney Fox to
“Explore” the filing of a civil action.
This is the “accurate” version of
Proclamation number 18-01 that
was read and voted on at the April
23, 2018 City Council meeting. Mr.
Gehring was absent from the
meeting, but his signature is affixed
regardless of his absence, to the
proclamation.

PROCLAMATION 18-01
CITY OF MADEIRA, HAMILTON COUNTY, OHIO
MONDAY, APRIL 23, 2018

WHEREAS, over the past two and a half years, the City of Madeira has defended against various litigation actions brought by Mr. Philip Douglas Oppenheimer, at considerable and unwarranted expense to Madeira taxpayers. To date, numerous trial and appellate court judges and administrative bodies have rejected, unanimously, Mr. Oppenheimer's accusations and legal theories.

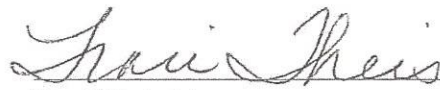
WHEREAS, Mr. Oppenheimer continues to make accusations of fraud, corruption, and collusion against the City of Madeira's public servants including the City Manager, Tax Commissioner, Clerk of Council, Council Members, and Law Director. This continues to take place despite clear and unequivocal judicial declarations and findings that his accusations are false and without merit.

WHEREAS, Ohio Revised Code § 2323.52 authorizes a city director of law of a municipal corporation who has defended against habitual and persistent "vexatious conduct" in the court of common pleas to commence a civil action against such person to have them declared a "vexatious litigator."


WHEREAS, the statute defines "vexatious conduct" as conduct of a party in a civil action that (i) serves merely to harass or maliciously injure another party to the civil action, (ii) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or (iii) is imposed solely for delay.

NOW, THEREFORE, the undersigned members of Council do hereby proclaim our intention to direct Law Director Brian W. Fox to explore the filing of a civil action, pursuant to Ohio Revised Code § 2323.52, to have Mr. Philip Douglas Oppenheimer declared a vexatious litigator.

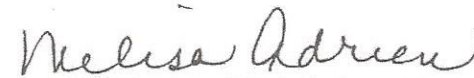
IN WITNESS WHEREOF, I have hereunto issued this Proclamation this 23rd day of April, 2018.



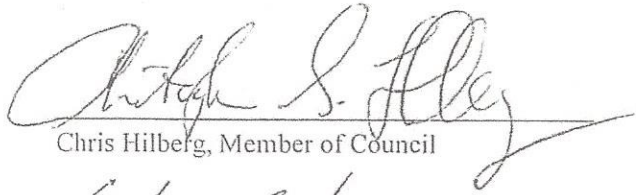
Traci Theis, Mayor



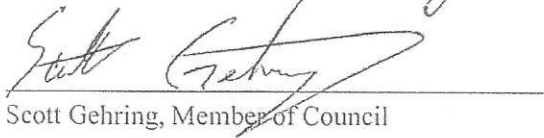
Nancy Spencer, Vice Mayor



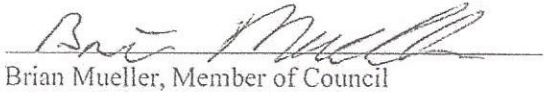
Melisa Adrien, Member of Council



Chris Hilberg, Member of Council



Scott Gehring, Member of Council



Brian Mueller, Member of Council



Matt Luther, Member of Council

S:Council/Proclamations/2018/Proclamation Related to Vexatious Litigator Claim – April 23, 2018

8493047.3

Proclamation Number 18-01,
April 23, 2018, embedded in
council minutes, instructing
Madeira Attorney Fox to “file a
civil action”. Councilman
Gehring absent from this
meeting.

X. NEW BUSINESS

1. Recycling

- Ms. Spencer suggested a Recycling subcommittee be formed to boost the community's recycling and to investigate services offered by Simple Recycling as well as event-based donation programs. Mayor Theis and Ms. Adrian volunteered to be a part of the subcommittee.

2. Proclamation 18-01

- Mr. Fox said the Proclamation is related to pending or imminent litigation and advised Council adjourn into Executive Session to discuss.

Motion to adjourn into Executive Session for the purpose of discussing pending litigation and to discuss the purchase or sale of property for public purposes made by Mr. Luther, second by Ms. Spencer. Motion approved by 6-0-1 roll call vote at 9:09 p.m.

Motion to return to regular session made by Ms. Spencer, second by Mr. Hilberg. Motion approved by 6-0-1 roll call vote at 9:56 p.m.

- Mayor Theis asked Mr. Fox to read Proclamation 18-01:

WHEREAS, over the past two and a half years, the City of Madeira has defended against various litigation actions brought by Mr. Philip Douglas Oppenheimer, at considerable and unwarranted expense to Madeira taxpayers. To date, numerous trial and appellate court judges and administrative bodies have rejected, unanimously, Mr. Oppenheimer's accusations and legal theories.

WHEREAS, Mr. Oppenheimer continues to make accusations of fraud, corruption, and collusion against the City of Madeira's public servants including the City Manager, Tax Commissioner, Clerk of Council, Council Members, and Law Director. This continues to take place despite clear and unequivocal judicial declarations and findings that his accusations are false and without merit.

WHEREAS, Ohio Revised Code § 2323.52 authorizes a city director of law of a municipal corporation who has defended against habitual and persistent "vexatious conduct" in the court of common pleas to commence a civil action against such person to have them declared a "vexatious litigator."

WHEREAS, the statute defines "vexatious conduct" as conduct of a party in a civil action that (i) serves merely to harass or maliciously injure another party to the civil action, (ii) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or (iii) is imposed solely for delay.

NOW, THEREFORE, the undersigned members of Council do hereby proclaim our intention to direct Law Director Brian W. Fox to file a civil action, pursuant to Ohio Revised Code § 2323.52, to have Mr. Philip Douglas Oppenheimer declared a vexatious litigator.

**Motion to accept Proclamation 18-01 made by Ms. Adrien, second by Ms. Spencer.
Motion passed by 6-0-1 roll call vote.**

Traci Theis	yes
Nancy Spencer	yes
Melisa Adrien	yes
Scott Gehring	absent
Chris Hilberg	yes
Matt Luther	yes
Brian Mueller	yes

XI. OLD BUSINESS

1. None

XIV. ADJOURNMENT

Motion made by Ms. Spencer, second by Mr. Luther, to adjourn the regular meeting at 10:00 p.m. Motion approved by 6-0-1 roll call vote.

Christine Doyle, Clerk of Council

Complaint filed with
Hamilton County Clerk of
Courts, electronically
Friday, May 11, 2018.
Plaintiff is City of
Madeira, City Council.

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

CITY OF MADEIRA
PLAINTIFF

-- vs --

PHILIP DOUGLAS OPPENHEIMER
DEFENDANT

Use below number on
all future pleadings

No. A 1802415
SUMMONS

PHILIP DOUGLAS OPPENHEIMER
7431 MAR DEL DRIVE
CINCINNATI OH 45243

D - 1

You are notified
that you have been named Defendant(s) in a complaint filed by

CITY OF MADEIRA
7141 MIAMI AVENUE
MADEIRA OH 45243

Plaintiff(s)

in the Hamilton County, COMMON PLEAS CIVIL Division,
AFTAB PUREVAL, 1000 MAIN STREET ROOM 315,
CINCINNATI, OH 45202.

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he/she has no attorney of record, a copy of an answer to the complaint within twenty-eight (28) days after service of this summons on you, exclusive of the day of service. Your answer must be filed with the Court within three (3) days after the service of a copy of the answer on the plaintiff's attorney.

Further, pursuant to Local Rule 10 of Hamilton County, you are also required to file a Notification Form to receive notice of all future hearings.

If you fail to appear and defend, judgement by default will be rendered against you for the relief demanded in the attached complaint.

Name and Address of attorney
BRIAN W FOX
312 WALNUT STREET
SUITE 1800
CINCINNATI OH 45202

AFTAB PUREVAL
Clerk, Court of Common Pleas
Hamilton County, Ohio

By RICK HOFMANN
Deputy

Date: May 15, 2018



D121866992



**AFTAB PUREVAL
HAMILTON COUNTY CLERK OF COURTS**

COMMON PLEAS DIVISION

**ELECTRONICALLY FILED
May 11, 2018 04:51 PM
AFTAB PUREVAL
Clerk of Courts
Hamilton County, Ohio
CONFIRMATION 736598**

CITY OF MADEIRA

A 1802415

vs.

**PHILIP DOUGLAS
OPPENHEIMER**

**FILING TYPE: INITIAL FILING (IN COUNTY) WITH JURY
DEMAND**

PAGES FILED: 46

EFR200

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

CITY OF MADEIRA
7141 MIAMI AVENUE,
MADEIRA, OH, 45243,

Plaintiff,

vs.

PHILIP DOUGLAS OPPENHEIMER
7431 MAR DEL DRIVE,
CINCINNATI, OH, 45243,

Defendant.

) CASE NO. _____

:

) JUDGE _____

:

)

:

) COMPLAINT TO DECLARE PHILIP

: DOUGLAS OPPENHEIMER A

) VEXATIOUS LITIGATOR

:

) (JURY DEMAND ENDORSED HEREIN)

:

)

Now comes Plaintiff, the City of Madeira, Ohio (the "City"), by and through undersigned counsel, and for its Complaint against Defendant Philip Douglas Oppenheimer ("Mr. Oppenheimer"), states and avers as follows:

INTRODUCTION

For several years, Mr. Oppenheimer has engaged in unrelenting, harassing, and malicious conduct against the City, City Council, the City Manager, the City's Tax Commissioner, the City's Clerk of Council, and the City's Law Director. Mr. Oppenheimer has time and time again advanced unsubstantiated accusations of fraud, collusion, dishonesty, and corruption against these public servants. Mr. Oppenheimer has paired his groundless accusations with a series of meritless and failed lawsuits and appeals against the City and its officials.

While each lawsuit has been dismissed and each appeal denied, the taxpayers of Madeira have nonetheless lost – for it is they who have been required to finance the defense of this senseless (and seemingly endless) onslaught of baseless litigation.

PARTIES, JURISDICTION AND VENUE

1. The City is a municipal corporation situated in Hamilton County, Ohio.
2. Mr. Oppenheimer is an individual residing within Hamilton County, Ohio.
3. By this action, the City seeks to have Mr. Oppenheimer declared a vexatious litigator pursuant to R.C. 2323.52.

4. Venue in Hamilton County, Ohio is proper. Mr. Oppenheimer resides in Hamilton County, Ohio, and all actions giving rise to this Complaint occurred in Hamilton County, Ohio.

FACTUAL BACKGROUND

A Partial Chronology of Mr. Oppenheimer's Harassment and Malicious Conduct

5. Over the past several years, Mr. Oppenheimer has filed, or caused to be filed, numerous meritless causes of action in the Hamilton County Court of Common Pleas against Madeira. He has likewise pursued groundless appeals, all to the great and needless expense of Madeira taxpayers.

6. Each of his most recent lawsuits has been – without exception – dismissed at the pleading stage by the various trial courts. Each subsequent appeal has likewise been denied by the First District Court of Appeals, including one which was dismissed as moot.

7. The malicious and harassing nature of these actions is apparent on their face; however, even a cursory glance at Mr. Oppenheimer's personal website and social media activity reveals the troubling and irrational nature of his vendetta against Madeira and its public servants (both elected and appointed).

8. While Mr. Oppenheimer is entitled to his right to political speech – no matter how false, specious or patently offensive it may be – the defamatory content of his writings provides

the necessary context for Mr. Oppenheimer's relentless pattern of litigation.

9. During the past four years, he has baselessly, falsely and publicly alleged that Madeira officials:

- a) covered up the attempted rape of a local high school student (Exhibit 1);
- b) engaged in tax evasion (Exhibit 2);
- c) intentionally defrauded public utilities (Exhibit 3);
- d) swindled money from the local school district (Exhibit 4);
- e) committed perjury and falsified an ordinance (Exhibit 5);
- f) engaged in election fraud (Exhibit 6);
- g) provided local media with false information about proposed charter amendments (Exhibit 7);
- h) instructed subordinates to lie (Exhibit 8);
- i) illegally interfered with city zoning decisions (Exhibit 9);
- j) behaved as "bank robbers" who "kept robbing banks" without fear of being captured (Exhibit 10);
- k) illegally altered public records and "cooking the books" (Exhibit 11);
- l) colluded with local developers (Exhibit 12); and
- m) engaged in general corruption and theft of Madeira resources.

10. Nearly every elected and appointed official in the City of Madeira has been the subject of Mr. Oppenheimer's harassment and vicious attacks.

11. Mr. Oppenheimer has also openly lobbied for firing of numerous city employees, as well as publicly chastising or misrepresenting Hamilton County judges and their decisions.

12. The above list is far from complete or exclusive, but nonetheless provides a

representative sample of the increasingly ludicrous and *ad hominem* invective Mr. Oppenheimer has directed toward Madeira and its public servants.

13. Nevertheless, this parade of patently false allegations provides insight into the thought process behind the lawsuits described below.

UNWARRANTED LAWSUIT ONE:
City of Madeira ex rel. Douglas Oppenheimer v. City of Madeira
Case No. A1506891

14. On or about November 4, 2014, Madeira's voters adopted Article XVI of the City Charter to amend the City Charter to designate certain properties as the "Madeira Historic District."

15. Article XVI of the City Charter, entitled "Madeira Historic District/Preservation," 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.'"

16. On November 9, 2015, City Council adopted Ordinance No. 15-30, authorizing the City Manager to enter into a contract for sale and purchase of a portion of vacant land next to the Muchmore House.

17. On November 30, 2015, Mr. Oppenheimer made a written demand to the City Law Director, Robert P. Malloy, that he "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.”

18. On December 8, 2015, the City’s attorney responded to Mr. Oppenheimer’s demand letter explaining that Article XVI of the Charter did not prohibit the City from selling the vacant portion of land, and declining to institute unnecessary legal proceedings.

19. On December 18, 2015, in an attempt to unilaterally obstruct the City’s right to sell a portion of property owned by the City, Mr. Oppenheimer filed a baseless lawsuit in this Court. Mr. Oppenheimer sought an injunction restraining the City from executing or engaging in any acts in furtherance of any contract authorized by Ordinance No. 15-30.

20. The City filed a Rule 12(C) Motion for Judgment on the Pleadings, which this Court granted. The Court’s judgment entry is attached hereto as Exhibit 13.

21. Despite the absence of any legal basis for that suit and despite the trial court’s resounding rejection of Mr. Oppenheimer’s assertions, Mr. Oppenheimer filed an appeal. On appeal, Mr. Oppenheimer again falsely accused the City of an “abuse of corporate power,” and attacked the trial court’s disposition of the underlying case.

22. But, as the City argued, the plain and unambiguous language of Article XVI of the City Charter “contains no language that could be construed as a restriction on the transfer of the properties described therein.” And on October 27, 2017, the First District entered judgment in favor of the City, overruling all assignments of error presented by Mr. Oppenheimer, and affirming the judgment of the trial court. The First District held that, “after taking the complaint’s allegations as true and making all reasonable inferences in favor of Oppenheimer, the trial court correctly determined that he could prove no set of facts entitling him to relief.” Additionally, the Court held, “[t]he plain language of Article XVI of the Madeira City Charter

establishes that it is not in conflict with Ordinance No. 15-30, and that it does not restrict Madeira from contracting to sell 'vacant land,' as opposed to structures, on the addresses listed in Article XVI." The First District's judgment entry is attached hereto as Exhibit 14.

23. That first baseless lawsuit consumed two years of time and effort (December 18, 2015 - October 27, 2017) at considerable and unnecessary expense to City taxpayers.

UNWARRANTED LAWSUIT TWO:
City of Madeira ex rel. Douglas Oppenheimer v. City of Madeira
Case No. A1702034

24. On March 2, 2017, City Council passed Ordinances No. 17-03 and 17-04 to present Charter amendments to the voters.

25. On March 10, 2017, the City Manager identified a typographical error in Ordinance No. 17-03. Thereafter, the City corresponded with representatives from the Board of Elections who, after consulting with counsel and the Ohio Secretary of State, advised that City Council adopt a resolution correcting the typographical error contained in Ordinance No. 17-03.

26. In response, City Council passed Ordinance No. 17-06, correcting the minor typographical error in Ordinance No. 17-03.

27. On April 4, 2017, thirty-three days after Ordinances No. 17-03 and 17-04 were enacted, and well after absentee voting had already begun, Mr. Oppenheimer submitted a letter to the Board of Elections protesting the inclusion of the proposed Charter amendments on the ballot for the May 2, 2017 Special Election.

28. At the meeting of the Board of Elections on April 7, 2017 and after conducting an administrative hearing, the Board unanimously denied Mr. Oppenheimer's request to remove the proposed Charter amendments from the ballot. Bizarrely enough, at this meeting Mr. Oppenheimer bragged of his political activism in distributing absentee ballot application forms in

the community, and expressed his intention to submit his absentee ballot for the Special Election while simultaneously lobbying to obstruct an election clearly well underway.

29. Thereafter, on April 11, 2017 (while the 2015 lawsuit was pending in the First District), less than a month before the May 2, 2017 Special Election, Mr. Oppenheimer filed a Verified Complaint for Declaratory Judgment and Injunctive Relief, requesting that the Hamilton County Court of Common Pleas prevent the City and the Board of Elections from submitting the Charter amendments to the City's voters.

30. At the time the City filed its opposition to Mr. Oppenheimer's Motion for Temporary Restraining Order, the Board of Elections had already issued fifty-one (51) absentee ballots with the proposed Charter amendments listed on the ballots. Moreover, nineteen (19) of those ballots had already been voted and returned by voters.

31. On April 27, 2017, a multi-hour hearing on Mr. Oppenheimer's claims was held, and on May 1, 2017, the Court entered judgment in favor of the City denying Mr. Oppenheimer's request for injunctive relief. The court further dismissed Mr. Oppenheimer's claims in their entirety and with prejudice. The Court's judgment entry is attached hereto as Exhibit 15.

32. With respect to Mr. Oppenheimer's request for Declaratory Judgment, the Court held as follows:

- The prohibitions, restrictions, and/or limitations within Article XIV of the Charter of the City of Madeira do not prohibit and/or preclude the City and the Board from proceeding forward with the special election on May 2, 2017;
- Neither the City nor [City Manager Tom Moeller] nor the Board [of Elections] engaged in any conduct relating to the certification of Issues 2 and 3 which constituted fraud, abuse of corporate powers or a sham legal process;

- The certification of the March 13, 2017 corrective ordinance by an “acting clerk” did not violate Ohio law in any regard and did not constitute fraud, abuse of corporate powers or a sham legal process;
- The certification of Issues 2 and 3 complied with the City Charter and thus did not violate Ohio law;
- The certification of Issues 2 and 3 likewise complied with the requirements set forth for such procedures by the Ohio Revised Code and the Ohio Constitution, particularly those set forth in Sections 8 and 9 of Article XVIII of the Ohio Constitution; and
- Neither the City nor [City Manager Tom Moeller] nor the Board [of Elections] engaged in a conspiracy to commit fraud against the “voters of Madeira” as alleged by [Oppenheimer] in his Verified Complaint.

33. Despite the clear absence of any merit to his claim and this Court’s pronouncement that the City had indeed fully complied with its Charter and Ohio’s Constitution, Mr. Oppenheimer filed a Notice of Appeal on May 8, 2017, six (6) days after all the votes were tallied for the Special Election he sought to enjoin.

34. City electors approved Issues 2 and 3 at the May 2, 2017 Special Election by a margin of 62% in favor and 37% against.

35. On appeal, Mr. Oppenheimer argued that the trial court erred in denying his request for injunctive relief, and declaring judgment in favor of the City. Specifically, Mr. Oppenheimer argued:

- The City Clerk’s one-time usage of the term “citizens” on the witness stand during the hearing before the trial court provided conclusive evidence that the City failed to follow the electoral provisions of the City Charter;
- The City’s use of a third-party mailing service to send notice of the proposed Charter amendments to the electors amounted to constitutional error; and
- The City, acting through City Manager Tom Moeller, conspired with the Board of Elections to facilitate a fraudulent and “sham” election.

36. The First District issued a judgment entry on March 30, 2018, dismissing Mr. Oppenheimer's appeal as moot and citing to well-established black letter law (*State ex rel. Hills Communities, Inc. v. Clermont Cty. Bd. of Elections*, 91 Ohio St.3d 465, 746 N.E.2d 1115 (2001)). The First District's judgment entry is attached hereto as Exhibit 16.

37. Ultimately, the First District, like the trial court and the Board of Elections before it, declined Mr. Oppenheimer's invitation to destabilize the value of the vote and undermine the integrity of the election.

38. On April 10, 2018, Mr. Oppenheimer filed a baseless Motion for Reconsideration *En Banc* in the First District. The First District overruled Mr. Oppenheimer's Motion for Reconsideration *En Banc* on May 9, 2018. The First District's entry is attached hereto as Exhibit 17.

39. The City was forced to defend against baseless allegations of fraud and conspiracy for thirteen (13) months (April 11, 2017 - May 9, 2018) in order to protect the democratic process for Madeira voters, at considerable and unnecessary expense to City taxpayers.

UNWARRANTED LAWSUIT THREE:
The Robert McCabe Company Inc., et al. v. City of Madeira, et al.
Case No. A1606293

40. On November 16, 2016, Mr. Oppenheimer, without standing to oppose a zoning decision, filed an administrative appeal of a decision by the City's Planning Commission. In a footnote to that Notice of Appeal, Mr. Oppenheimer acknowledged that, at the time of filing, the City Planning Commission had not issued any written decision with respect to the subject zoning application.

41. The City filed a Motion to Dismiss Mr. Oppenheimer's Notice of Appeal pursuant

to Rule 12(B)(1) of the Ohio Rules of Civil Procedure. The City argued that Ohio law requires a written decision from an administrative body for there to be a “final, appealable order” under R.C. 2506.01, *et seq.*

42. On January 9, 2017, the City issued a written decision effectively denying the Application, and advising the zoning applicant to resubmit an application should he wish to proceed for further consideration. Though he lacked standing, Mr. Oppenheimer had previously expressed his desire that the City deny the Application so his interests should have then aligned with the City’s.

43. On March 14, 2017, after the City Planning Commission had issued this written denial of the zoning application, the City filed a Supplemental Memorandum in support of its Motion to Dismiss. The City explained that since it had denied the application, the City and Mr. Oppenheimer had aligned interests. Thus, Mr. Oppenheimer’s claims should have dissolved. Notwithstanding that fact, Mr. Oppenheimer continued to vigorously litigate his case an additional three (3) months.

44. On June 12, 2017, the Court granted the City’s Motion to Dismiss. The Court’s judgment entry is attached hereto as Exhibit 18.

45. The City was involved in litigation in Case No. A1606293 for approximately eight (8) months (November 16, 2016 - June 12, 2017) at considerable and unnecessary expense to the City taxpayers.

COUNT ONE
VEXATIOUS LITIGATOR – R.C. 2323.52

46. The City incorporates all the foregoing paragraphs as if fully set forth herein.

47. Oppenheimer has habitually, persistently, and without reasonable grounds engaged in vexatious conduct against the City, and in his continued conduct directed towards others associated with the City.

48. Mr. Oppenheimer's conduct obviously serves merely to harass or maliciously injure the City, and is not warranted under existing law and is imposed solely for delay.

49. Mr. Oppenheimer's continued threats against the City and public servants evidence an imminent intent to pursue additional frivolous litigation.

WHEREFORE, Plaintiff the City of Madeira prays the Court to declare Mr. Oppenheimer to be a vexatious litigator and to issue an order prohibiting Mr. Oppenheimer from doing any of the following without first obtaining leave of this Court to proceed:

A. Instituting legal proceedings in the Court of Claims or in a Court of Common Pleas, Municipal Court, or County Court;

B. Continuing any legal proceedings that the vexatious litigator has instituted in the Court of Claims or in a Court of Common Pleas, Municipal Court or County Court prior to entry of this order;

C. Making any application, other than an application for leave to proceed under R.C. 2323.52(F)(1) in any legal proceedings instituted by the Plaintiff or another person in the Court of Claims or in a Court of Common Pleas, Municipal Court, or County Court;

D. Instituting legal proceedings, or continuing any previous legal proceedings, in a court of appeals, other than an application for leave to proceed pursuant to R.C. 2323.52(F)(2); and

E. Any other legal and equitable relief mandated by R.C. 2323.52 and Ohio law.

Respectfully submitted,

/s/ Brian W. Fox

Brian W. Fox (0086851)

Steven P. Goodin (0071713)

Attorneys for Plaintiff City of Madeira

GRAYDON HEAD & RITCHEY LLP

312 Walnut Street, Suite 1800

Cincinnati, OH 45202-3157

Phone: (513) 629-2706

Fax: (513) 651-3836

Email: bfox@graydon.law

Jury Demand

City of Madeira hereby requests a trial by jury on all claims so triable.

/s/ Brian W. Fox

Brian W. Fox (0086851)

PRAECIPE FOR SERVICE

TO THE CLERK:

Please issue a Summons along with a copy of this **COMPLAINT** to the Defendant identified in the caption on page one via Certified Mail, return receipt requested, pursuant to Civ.R. 4.1(A)(1)(a).

/s/ Brian W. Fox

Brian W. Fox (0086851)

Suburban Life Newspaper Revises "Madeira council working to fix technical conflict" story

..... Posted on cincinnati.com

February 9, 2017

A local High School Student, highly respected in the community, was caught attempting to rape a young woman. When the attempted rape was discussed among our seven Council Members and our City Attorney, our City Attorney pointed out that the attempted rape was not a huge deal, just a "Technical Conflict". This story is "made up, fictional" but was the term "Technical Conflict" in the made up story, appropriate, as a defense for the boy, and how appropriate is it for the Enquirer to imply that the term, "Technical Conflict" is appropriate when our City Council members made appointments to city commissions knowing that they were in conflict with our City Charter, and Ordinances. The story in the Suburban Life (on line, February 9, 2017) is slanted in favor of our Law Director, Brian Fox, our City Manager Thomas Moeller, and our City Council members. The Enquirer should have challenged the excuse, that the mistakes were just "Technical Conflicts", perhaps interviewing Loveland Attorney George Parker for additional facts.

Mr. Fox our Law Director, was the cause of the resignations because of his arrogant, stupid, comments at resent city council meetings, and then using the same arrogant comments in the letter that he authored and sent to Loveland Attorney George Parker (click blue button and red button above). Prior to the letter that Fox sent to Mr. Parker, Fox publicly stated at a city council meeting, when I was addressing council from the podium, that City Council could appoint five council members to the five positions on the Madeira Historic Preservation Commission. The content of the letter to Parker, and the comments from Fox at the council meeting are the same. The lack of integrity in the Enquirer story is stunning. Click onto cincinnati.com top of this page to read Enquirer story.



Madeira Ordered to Pay Back Tax's, Moeller, Adrien, Theis, Fox, Biggest Attempted Cover Up Ever, Explained.....



June 11, 2017

The cover up has been exposed. Our residents and our schools have been bilked for 21 years. Our city manager has misled the Hamilton County Auditor, and the Ohio Department of Taxation for more than 21 years. A near secret 99 year agreement with Madeira businessman Henry Schneider is a major factor along with City Manager Moeller, Law Director Fox, Mayor Adrien, Vice Mayor Theis and our five council members actively helping to conceal the non payment of Real-Estate tax's that were required to have been paid. To conceal the requirements of a bad agreement with Schneider, Moeller and others attempted to give away more than a half million dollars of city tax revenue for a phony public parking lot in an effort to conceal the tax issues that Moeller and council members were well aware of. Our Planning Commission members also had a role when they granted local developer Tom Powers unwarranted variances, clearly part of the effort to conceal the effects of the 99 year agreement. The Planning Commission actions are currently tied up in several lawsuits. Please review the documents posted on the red button above. No longer can Moeller, Fox and Adrien conceal the facts. This story is still developing, and more details will be provided in the coming days. Full Disclosure, There was one important benefit in the 99 year Schneider Agreement favorable for our city, egress is provided from the parking area to Laurel Avenue. June 26,2017 Moeller now calling all parking spaces, "Commercial Parking" admitting that he created documents to evade paying Real-Estate tax's.

Madeira City Manager Attempting to Defraud Duke Energy.....

March 15, 2017

Madeira City Manager, Tom Moeller has been meeting with Duke Energy officials in an attempt to have the electric pole fronting the B&B Mower property relocated. City Manager Moeller has not presented the true "Facts" to Duke energy nor has he explained the history of this electric pole. The truth is explained in the following six page letter authored by Mr. James Tepe. Mr. Tepe has been meticulous in his research explaining in detail the history of this particular electric pole. Moeller has not presented the correct facts to the Duke Energy Company, apparently with the full support of our city council members.



Madeira Ordered to Pay Back Tax's to Madeira School District.....



June 26, 2017

For the past 20 years City Manager Moeller has swindled the Madeira School District. Moeller's Scheme was to submit documents to Hamilton County taxing authorities designating the Schneider parking spaces (A Tavola Bar) as tax exempt, another Moeller rouse, in an effort to conceal the 99 year Schneider agreement (Page 7) from public view. At the June 26, 2017 City Council meeting Moeller claimed that he was not aware of the findings from the State of Ohio, but he was quick to say that all parking in the Historic District is now "Taxable, Commercial Parking". More smoke and mirrors. Is our city council and Law Director Brian Fox covering up for Moeller again? See Page 2 "Back Tax's".

More justification to terminate Moeller's Employment as Madeira City Manager. Only our City Council can "FIRE" Moeller, not true, all options are on the table, including the prosecution of Madeira city officials. Information found in the "City Manager Interim Reports" may lead to prosecutions.

Appeals Court Ruling "White Washes" Moeller Wrong Doing, City Council Complicit...

November 8, 2017 Updated

Please Note: Appeals Court Ruling from March 30th is posted on page 11.

Madeira City Manager, Thomas Moeller woke up on the morning of Tuesday April 14, 2017 facing a dilemma, Moeller did not have the Madeira City Council Clerk available to sign an extremely important Ordinance, number 17-06. Every Ordinance and Resolution passed by Madeira City Council must be signed and certified by the council clerk to be valid. Moeller was desperate, the Certified Ordinance had to be at the Hamilton County Board of Elections that day, April 14, 2017, or the Madeira May 2nd "Special Election" would be cancelled.....

Madeira City Tax Commissioner & Assistant Treasurer Christy Lowndes, in sworn testimony on April 27, 2017 stated, "I was appointed as the acting clerk (City Council Clerk) Tuesday morning March 14th 2017" She was asked who appointed her as the acting clerk, her answer was "The City Manager (Thomas Moeller)" She was then asked what authority does Mr. Moeller have to appoint an acting clerk? Christy answered " He is the City Manager" Madeira City Manager Thomas Moeller in his sworn testimony was asked "Ms. Lowndes testified, Is it correct that you appointed her as acting clerk of Council?" Moeller answered " No, I did not appoint her as acting clerk of council" Moeller was then asked "Who did appoint her?" Moeller then answered "Well, the city council approved legislation which designates the assistant treasurer / tax commissioner as the acting clerk in the absence of the Clerk of Council" Perjury or just very intentional misleading testimony, Perjury. City Manager Moeller immediately delivered the signed copy of ordinance 17-06 to the Hamilton County Board of Elections in effect perpetuating the Madeira City fraud, knowing that the copy of ordinance 17-06 had just been "Falsified" at his (Moellers) direction, a moment of desperation. You can review the full transcripts of Moeller's and Lowndes sworn testimony, go to page 11. Lies, & fraud, covered up by Mayor Adrien, Law Director Brian Fox, Vice Mayor Theis, council members Gehring, Steur, Hilberg, Ashmore, and Spencer, or were they complicit. Why is Moeller still employed as the City Manager of Madeira? The results of the May 2, 2017 election will be decided by either the Hamilton County Appeals Court or the Highest court in our state. The lawsuit is about the "Soul of our Town". City Council makes decision behind closed doors, in SECRET, results posted on white button above.



Honorable Brian Mueller
7331 Wood Meadow Drive
Madeira, Ohio 45243

January 13, 2018

Dear Councilman Mueller

I am writing this letter in response to your inaction regarding the criminal actions of our City Manager Thomas Moeller. The actions include instructing a subordinate to lie and falsify an Ordinance which in turn Mr. Moeller promptly hand delivered to the Hamilton County Board of Elections, perpetuating a fraud. After returning from the Board of Elections, Mr. Moeller continued the fraud by providing our residents a second copy of the Ordinance different from the Ordinance left at the Board of Elections, although Mr. Moeller had the BOE employee time stamp both the fraudulent Ordinance left at the BOE and the fraudulent copy brought back to Madeira with the same time, further perpetuating the crime. Now, we all are aware of the crime committed by Moeller, his sworn testimony is posted on madeiramessenger.com, Page 11 and both Councilman Hilberg and Mayor Traci Baylor This witnessed and listened to Mr. Moeller under oath. I want a public hearing scheduled at which time the actions outlined in this letter can be discussed.

The outcome of my case pending before the Hamilton County Court of Appeals will not exonerate Mr. Moeller nor any other appointed or elected official involved in what appears to be a cover up of Mr. Moeller's actions. You can no longer pretend that this never happened, please take the appropriate action, My Attorney George Parker and I look forward to a public hearing, unless you prefer to instead end Mr. Moeller's employment as our city manager.


Douglas Oppenheimer

7431 Mar Del

Madeira Ohio 45243

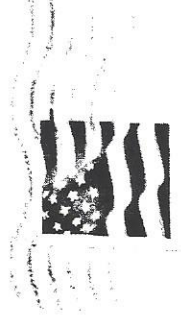
consultdoug@cinci.rr.com

513-240-4348





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CONSTRUCTION
Cincinnati, OH 452



CINCINNATI OH 452
JUN 14 2018 10:43 AM

Brian Mueller
7331 Wood Meadows Dr
Madison, Ohio 45243

4524383071



Cincinnati Enquirer Bamboozled Not !

January 28, 2017 (Updated February 4, 2017)



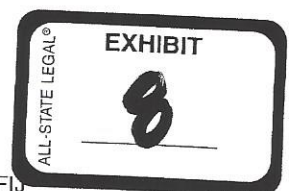
Madeira City Council Meeting, January 28, 2017, Cincinnati.com (link above) See Enquirer Story. City Manager and Law Director feeds Enquirer misleading information "Fake" facts, and the only Cincinnati newspaper bought in.

Suburban Life, February 1, 2017 headline, front page story "Madeira will vote on charter changes in May" It is now unlikely that our only newspaper was bamboozled, indeed the reporter was well aware that our city council was in serious violation of the Madeira City Charter and that four council members were signing letters resigning from three city commissions, Senior Commission, Parks and Recreation Commission, and the Madeira Historic Preservation Commission. The letters of resignation, posted on the red button above, attempt to make their actions trivial, and the Enquirer provided cover by not reporting on the resignations. The appointments of council members to the city commissions were wrong, our city council members, our city manager and our city attorney, Brian Fox all knew that it was wrong. Furthermore the Enquirer knows it.

The Enquirer is also helping our city officials cover up the content of a letter from our city notifying developer Thomas Powers that the city of Madeira has rescinded, zoning variances previously allowed. The January 9th letter, posted on the red button above and on page four, reads "the most prudent course of action moving forward is to request you submit a new application for zoning approval". Mr. Powers has previously been granted several controversial

Moeller Instructs Tax Commissioner to Lie, Commit Fraud, Councilmembers Complicit

July 3, 2017, The testimony posted on this page, justifies the firing of our City Manager Thomas W. Moeller. Moeller, Doyle, Lowndes, and City Attorney Brian Fox in their own words clearly have no respect for our City Charter, or the "Rule of Law". When Loundes was asked why she lied, when she agreed to sign her name on a document purporting to be "the acting clerk", she stated that she did it because her boss, Moeller "told her to do it". It did not matter that she was committing fraud and that Moeller would then take the fraudulent document to the Hamilton County Board of Elections, further perpetuating the fraud. Moeller used the power of his position for the purpose of committing fraud, was he that confident that he could "get away with it"? What makes this worse is that Mayor Adrien, Vice Mayor Theis council members Hilberg, Gehring, Ashmore, and Spencer have spent, already this year, *according to Mayor Adrien*, more than \$ concealed by Mayor Adrien & Council of tax payer's money in an attempt to cover up the lies and fraud. \$ concealed by Mayor Adrien & council, wasted already this year on payments to Attorneys Brian Fox and Steven Goodin. *Please note that Adrien and Fox have continued to conceal from the public specific legal billing records, meaning that we have no way of determining how to apply the \$184,000.00 in legal fees, paid out in total.*



Anatomy Of a Letter.....

February 18, 2017

ZA-2016-0028 Zoning Application number, Swingline Grill.

"I am writing to notify you (Developer Thomas Powers) of the need for resubmission of your application for zoning approval at 7710 Railroad Avenue, which is located in the Main Street Core District ("Application ZA-2016-0028"). Our Law Director in his January 9, 2017 letter goes on to say, "After reviewing your file, analyzing relevant provisions of the Ohio Revised Code, and consulting with the Ohio Ethics Commission (the "Commission") in Columbus, I regret to inform you that there appears to be an issue with respect to the city's consideration of Application ZA-2016-0028 that could cloud the foundation of any approval eventually obtained from the city".

"The most prudent course of action moving forward is to request you submit a new application for zoning approval". "Planning Commission will take necessary precautions to make certain you do not encounter the same problem". Developer Thomas Powers, often in collusion with our city manager two different city attorneys, and various city council members has been attempting since 2011 to build a restaurant for developer Powers. This letter is just the most recent mystery in the Madeira / Powers saga, and comes soon after Madeira Law Director Brian Fox received a letter from Loveland Attorney George Parker. (Page 2) questioning the potential of Ethics violations and conflicts of interest. Attorney Fox has refused to address the questions posed in the letter from Attorney Parker. Mr. James Tepe in a letter to City Council (Page 2, "Is Powers suing City of Madeira ?") has asked the logical question, why isn't Powers, the Johnsons or both suing the City of Madeira?

Now lets take a close look at the letter from Fox. In the letter our attention is focused on the Zoning Application number throughout the letter. ZA-2016-0028. This number is the key used from beginning to end in the Madeira zoning request process. In his letter addressed to Mr. Powers Attorney Fox clearly states that any approvals given under ZA-2016-0028 have now been subjected to recension. The following are the zoning approvals that have been voted on and approved by the Madeira Planning Commission identified specifically with the application number ZA-2016-0028.

1st approval now subject to recension and resubmission. Hearing date was June 20th 2016. Request was made for a "parking and sign variance" Swingline Grill. Property owner B&B Mowers, Jerry & John Johnson.

2nd approval now subject to recension and resubmission. Hearing date was August 15, 2016, request was made for a final MSC development plan approval, applicant was Thomas Powers. The planning commission did not approve this application as a final approval but instead decided to approve as a preliminary approval. As of this date (February 18 2017) our planning commission members have purposely not approved the minutes from this Planning Commission meeting. Minutes from this meeting are posted below.

3rd approval now subject to recension and resubmission. Hearing date was October 17, 2016, request was made for a final MSC development plan approval, applicant was Thomas Powers, property owner was B&B Mowers, Jerry and John Johnson. The planning commission approved this request by a vote of 4 to 3. As of this date (February 18, 2017) our planning commission members have purposely not approved the minutes from this Planning Commission meeting. Minutes from the three Planning Commission meetings are posted below on the green button below. Keep in mind that our Planning Commission has purposely not approved their minutes from August and October 2016.

The integrity of our Law Director Brian Fox. Our Mayor, City Council members, Planning Commission members and our City Manager, is very important. The approval of planning commission minutes has been stone walled, for months, and any effort by our city officials to alter or manipulate any Planning Commission minutes will be met with swift legal challenges. An early draft not vet



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Hilberg Reappointed to Madeira Historic Preservation Commission.....

May 23, 2017

At last night's City Council meeting Mayor Adrien suggested that council should reappoint Councilman Hilberg to the Madeira Historic Preservation Commission, in spite of his conflict of interest and ethics issues. Just last week our Law Director Brian Fox was forced to admit in court that Hilberg was the reason behind the letter sent to developer Powers (top of this page) rescinding all of his previously planning commission granted variances. Hilberg was reappointed at last night's council meeting and any conflicts or ethics issues begin anew. His reappointment will allow for further investigation of his ownership of property just a few feet from the vacant B&B Mower property. Any redevelopment of the B&B Mower property will surely increase the value of the Railroad Ave. property owned by the Hilberg family. The Hilberg family was able to acquire the Railroad Ave. property for \$1.00. Hilberg is a planning commission member, council member, and has now been reappointed to the Madeira Historic Preservation Commission. Reminds me of the Bank Robber that kept robbing banks thinking that he would never be caught. He was caught and went to jail.



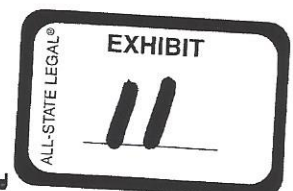
Planning Commission Meeting Records Concealed from Public and Manipulated.....

February 22, 2017 5 PM

Opinions in this column are those of Douglas Oppenheimer. Facts are not opinions.

There has been nothing in our community more egregious than the concealing of Planning Commission Minutes from August and October of 2016. Our seven Planning Commission members, our City Manager, and our City Law Director all equally share in the purposeful act of concealing from the public "Important Public Records". As of this date the three city entities mentioned, Manager Moeller, Attorney Fox and our Planning Commission members have all violated their oaths of office and as such should either resign their positions or be removed. Our City Manager, City Attorney, and seven members of Planning Commission, have NO excuses for their actions and no longer can be trusted as members of our city government. More to come including videos and more facts.

8:45 PM In an email received from Manager Moeller Moeller stated that "Mr. Fox directed me to send the revised minutes from last night as I made the changes this morning". As a statement of the obvious, we are in litigation over these matters with you". This statement from Moeller is further proof that important public records were intentionally concealed from the public and that Fox is "cooking the books" while all along manipulating public planning commission records. Any blame that any legal action pending against the city was justification to delay, conceal and manipulate public records is



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8:45 PM In an email received from Law Director Fox, Fox stated that complaints in previous emails requesting copies of the approved planning commission minutes "do not warrant a response". This statement from Attorney Fox has become his typical disrespectful, arrogant answer when addressing residents. Read his letter addressed to Attorney George Parker on Red Button, top of this page. Fox was untruthful and his arrogance stuck out like a sore thumb. Fox needs to be removed from his position as Law Director. **More to Come.**

More Collusion Involves Secret Council Plan to Spend \$1,000,000.00 On Private Property in Historic Area.....

August 19, 2017 / Updated August 21, 2017

Councilmember and former Mayor Mike Steur admits that interim reports have been used for concealing public business for decades and the "City Manager Interim Reports" posted on the green button, above substantiate that Steur is correct. It appears that our council members, our mayor, Adrien our expectant Mayor Theis and our council members have been hiding in executive sessions their one million dollar plan to cover the creek running from Laurel Avenue to Railroad Avenue in spite of the fact that the city does not own the creek. This secretly hatched plan, spending a million dollars can only benefit one person, local developer Thomas Powers, further collusion at the expense of Madeira tax payers. There is much more to this story that cannot yet be told. Collusion yes, corruption maybe.

Click on pictures below, Bottom top left Railroad Avenue showing McCabe company, follow blue arrow, creek is at far left / top right property and adjoining creek see white arrow, the building and creek in this picture are privately owned / bottom left, the creek one million dollar enclosure / bottom right the creek / middle left creek behind curious garden plants

Secret Meetings, Secret Communications,
\$1,000,000.00 Madeira Taxpayers Money.



COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

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

CITY OF MADEIRA *ex rel.*
DOUGLAS OPPENHEIMER,

Case No. A-15-06891

Relator,

Judge Dinkelacker

v.

ENTERED
SEP 21 2016

Barcode
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
ENTERED
Judge Patrick 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:

/s/ Steven P. Goodin
Steven P. Goodin (0071713)
Brian W. Fox (0086851)
Attorneys for Defendant
GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Direct: (513) 629-2845
Fax: (513) 651-3836
sgoodin@graydon.com
bfox@graydon.com

Distribution:

Curt Hartman
3749 Fox Point Court
Amelia, OH 45102

6676070.1

ENTERED
OCT 27 2017

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

CITY OF MADEIRA EX REL.	:	APPEAL NO. C-160762
DOUGLAS OPPENHEIMER, a.k.a.	:	TRIAL NO. A-1506891
PHILIP DOUGLAS OPPENHEIMER,	:	
Relator-Appellant,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
CITY OF MADEIRA,	:	
and	:	
THOMAS E. MOELLER,	:	
Respondents-Appellees.	:	



We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Relator-appellant Douglas Oppenheimer initiated a municipal-taxpayer action against respondents-appellees the city of Madeira and Madeira City Manager Thomas E. Moeller. Thomas Powers was also named as a respondent in the action. Oppenheimer's complaint sought a declaratory judgment and injunctive relief relating to Madeira Ordinance No. 15-30, which authorized Madeira to sell a portion of "vacant land" located at 7010 Miami Avenue to Powers. Oppenheimer alleged that the action authorized by Ordinance No. 15-30 was in violation of Article XVI of Madeira's City Charter, which provides that:

ALL-STATE LEGAL®
EXHIBIT
14

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.”

Oppenheimer sought a declaratory judgment that Article XVI prohibited Madeira from proceeding with the land-sale contract authorized by Ordinance No. 15-30. And he sought an injunction restraining Madeira and Moeller from executing or performing any acts in furtherance of any contract or prospective contract authorized by Ordinance No. 15-30 and from executing any deed transferring any portion of the Muchmore House property.

Powers filed a motion to dismiss all claims against him for failure to state a claim upon which relief can be granted. The trial court granted Powers’s motion. Madeira and Moeller then filed a motion for judgment on the pleadings, arguing that Article XVI of the Madeira City Charter was not in conflict with Ordinance No. 15-30 and did not prevent Madeira from selling a portion of the “vacant land” on the Muchmore House property.

During a hearing on the respondents’ motion, the trial court questioned whether there still existed a justiciable controversy in light of Powers’s dismissal from the action and the respondents’ representation that the contract authorized by Ordinance No. 15-30 was no longer pending. The court stated on the record that it was dismissing the complaint without ruling on the merits. It then, however, issued an entry granting the motion for judgment on the pleadings in its entirety and dismissing the complaint.

Oppenheimer appealed the trial court's judgment. Following submission of the appeal to this court, we remanded the cause for the trial court to clarify whether it had intended to dismiss the action as moot because there no longer existed a justiciable controversy, or whether it had intended to grant the motion for judgment on the pleadings. The trial court complied with our order, and issued an entry specifying that it was granting respondents' motion for judgment on the pleadings because the motion was legally appropriate under Civ.R. 12(C). The trial court's entry further specified that it had not found the cause to be moot.

Oppenheimer has raised six assignments of error for our review. In his first assignment of error, he argues that the trial court erred in orally dismissing his complaint based upon mootness but then failing to specify that the dismissal was without prejudice. And in his second assignment of error, he argues that the court erred in dismissing the complaint with prejudice, even though it concluded that the claims were moot. Oppenheimer's contentions are not reflected in the record. In its amended entry, the trial court clarified that it had not dismissed Oppenheimer's complaint as moot, and that it had granted the motion for judgment on the pleadings on its merits. Consequently, the first and second assignments of error are overruled.

In his third assignment of error, Oppenheimer argues that the trial court erred in granting the motion for judgment on the pleadings with only a "bare-bones entry." The record likewise fails to reflect this contention. The trial court's amended entry explained its reasoning for granting the motion for judgment on the pleadings and for denying Oppenheimer the requested declaratory judgment and injunctive relief. The third assignment of error is overruled.

In his fourth and fifth assignments of error, Oppenheimer argues that the trial court's granting of the respondents' motion for judgment on the pleadings was in error because his complaint stated a viable claim and because it was inappropriate to adjudicate the merits of the action. We address these assignments together.

We hold that, after taking the complaint's allegations as true and making all reasonable inferences in favor of Oppenheimer, the trial court correctly determined that he could prove no set of facts entitling him to relief. *See Sullivan v. Anderson Twp.*, 1st Dist. Hamilton No. C-070253, 2009-Ohio-6646, ¶ 7; Civ.R. 12(C). The plain language of Article XVI of the Madeira City Charter establishes that it is not in conflict with Ordinance No. 15-30, and that it does not restrict Madeira from contracting to sell "vacant land," as opposed to structures, on the addresses listed in Article XVI. In reaching this decision, we conclude that under the clear and unambiguous language of the charter, the historic "properties" to be "preserved, protected and left standing" are the specifically identified "Hosbrook House," "Muchmore House" and "Railroad Depot," and not the unencumbered land at the identified addresses. Consequently, Oppenheimer was not entitled to the declaratory judgment and injunctive relief sought in his complaint. The trial court did not err in granting the motion for judgment on the pleadings. The fourth and fifth assignments of error are overruled.

In his sixth and final assignment of error, Oppenheimer argues that the trial court erred in dismissing Powers from the action. In light of our resolution of the fourth and fifth assignments of error, we hold that any error that may have occurred from the early dismissal of Powers resulted in no prejudice to Oppenheimer, as the entire suit has been dismissed. The sixth assignment of error is overruled.

We note that, after issuing its amended entry granting the motion for judgment on the pleadings and dismissing the action, the trial court issued a nunc pro tunc entry specifying that the action was dismissed without prejudice. This was in error. In granting the motion for judgment on the pleadings under Civ.R. 12(C), the court ruled on the merits of the action. Consequently, its dismissal was with prejudice. *See Dragon v. Henderson*, 8th Dist. Cuyahoga No. 104021, 2016-Ohio-7305, ¶ 3, fn. 1; Staff Notes to Civ.R. 41.

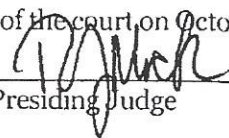
ENTERED
OCT 27 2017

Having overruled all assignments of error, we accordingly affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., MYERS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on October 27, 2017
per order of the court 
Presiding Judge

declaration of the parties' rights pursuant to Relator's request for such a declaration in his Verified Complaint).

The Court heard testimony from Sherry Poland, the Director of Elections for the Board, Christine Doyle, Clerk of Council for the City, Kristie Lowndes, Tax Commissioner and Assistant Treasurer of the City, and Moeller, the aforementioned City Manager.

I. Findings of Fact

According to the testimony and evidence adduced at the hearing, on March 2, 2017, the Madeira City Council passed Ordinances No. 17-03 and 17-04, submitting proposed Charter amendments to the electors as two ballot issues, Issues 2 and 3 for the Special Election to take place on May 2, 2017.

As the meeting minutes and testimony demonstrated, City Council passed each ordinance by the two-thirds vote required by Sections 9 of Article XVIII of the Ohio Constitution. Even though such action is arguably not required, City Council also voted to dispense with the three-reading rule pertaining to ordinances found in Article III, Section 4 of the Charter. Because the measures were not subject to referendum, the subject ordinances became effective immediately upon passage, pursuant to Article XI, Section 1 (A) of the Madeira City Charter.

Relator presented no evidence to corroborate his claims that Ordinances 17-03 and 17-04 were enacted as "emergency measures" or that the City of Madeira abused its corporate powers as alleged in his Verified Complaint. Likewise, Relator's claim that this process violated R.C. 731.19 is equally unavailing and not supported by the evidence adduced at the hearing.

On March 10, 2017, Mr. Moeller identified a typographical error in Ordinance No. 17-03. The City referred to "Article XI. ORDINANCES AND RESOLUTIONS" instead of "Article XII. INITIATIVE, REFERENDUM, AND RECALL." The body of the proposed amendments

was correctly transcribed on all documents. This fact was established by the testimony of Madeira City Manager Tom Moeller and the various exhibits submitted to the Court for review.

After discovering this typographical error, Mr. Moeller corresponded with Ms. Poland, who in turn sought advice from the Ohio Secretary of State's office. At the hearing, Ms. Poland testified that she followed the counsel of Patricia Wolfe at the Ohio Secretary of State's office by suggesting that the City should adopt a resolution correcting the typographical error contained in Ordinance No. 17-03. During a regular meeting on March 13, 2017, City Council passed Ordinance No. 17-06, which corrected the reference to the title of "Article XI." instead of "Article XII."

No evidence of any kind was adduced or presented which would tend to support Relator's allegations that both Ms. Poland and the Board more generally were involved in any fraud, deceit or abuse of corporate powers in regard to the correction of this typographical error.

Likewise, Relator also presented no evidence to corroborate his allegations that the City engaged in a conspiracy to commit fraud against the Hamilton County Board of Elections and electors of the City of Madeira. If anything, the evidence and testimony adduced at the hearing demonstrate the opposite – that the subject ordinances were enacted in an open meeting of City Council, and that the City remedied the typographical error as soon as it was discovered by notifying the Board.

The Court likewise finds that the City mailed the proposed amendments to the electors on March 31, 2017 well in advance of the May 2nd Special Election. This mailing was completed in accordance with Article XIV, Section 5 (E) the City Charter, which requires that the mailings occur not less than 30 days prior to the election.

Relator spent a significant portion of the hearing making arguments about the timing of the certification of Ordinance No. 17-06. As an initial matter, Ms. Doyle signed a copy of Ordinance No. 17-06, “certifying” the same. That notwithstanding, Relator failed to identify any specific certification requirements pertaining to proposed Charter amendment ordinances passed by City Council under Sections 8 & 9 of Article XVIII of the Ohio Constitution as codified in Article XIV, Section 5 of the Madeira City Charter. The lone references to certification requirements and proposed Charter amendments are found in Section 9 of Article XVIII of the Ohio Constitution and its corresponding codification in Article XIV, Section 5(F) of the Madeira City Charter, and is only triggered when a Charter amendment is approved by a majority of electors (*i.e.* after the election has taken place) and occurs between the Clerk and the Secretary of State.

Relator also alleged that the fact that Mr. Lowndes “certified” (that is, “signed”) the corrective ordinance as the “acting clerk” in some way invalidated its transmittal to the Board (and, thus, invalidated the Board’s subsequent placement of the corrected Charter amendment on the ballot). Despite nearly four hours of testimony, however, Relator did not present or adduce evidence which demonstrated any impropriety in Ms. Lowndes’ appointment and actions as “acting clerk.” Moreover, he did not present or adduce evidence demonstrating that her actions (or those of Mr. Moeller) constituted fraud, abuse of corporate powers or legal sham proceedings.

On April 4, 2017 (thirty-two days after Ordinances No. 17-03 and 17-04 were passed by City Council), Relator filed a protest regarding the proposed Charter amendments with the Board of Elections. On April 7, 2017, the Board unanimously (3-0) denied his request to remove the proposed Charter amendments from the ballot. According to its hearing transcript, the Board

noted that absentee ballots had already been mailed, and Relator indicated that he'd been actively soliciting absentee ballot applications for the election on the proposed Charter amendments. According to Ms. Poland, the Board of Elections had already issued 51 absentee ballots, 19 of which have already been voted and returned.

Relator neither submitted nor adduced evidence tending to show any entitlement to injunctive relief. More specifically, he did not demonstrate any factual basis for suffering irreparable harm, nor did he establish any basis for this Court to take the extraordinary step of enjoining the democratic process – an action which would be adverse to the public interest and public policy more generally.

The Court also accepted as evidence and reviewed all applicable Madeira Council meeting minutes, as well applicable provisions of the Madeira City Charter and the Ohio Constitution.

II. Conclusions of Law and Holding

After reviewing the filings and evidence in the record, the Court holds as follows:

- Relator's Motion for a Temporary Restraining Order, request for a Preliminary Injunction and additional request for injunctive relief in his Verified Complaint are hereby **OVERRULED and DENIED**.
- Upon review of the request for Declaratory Judgment set forth in Relator's Verified Complaint, the Court does hereby find Declaratory Judgment in favor of the City, Moeller and the Board and does hereby state and declare as follows:
 - 1) The prohibitions, restrictions, and/or limitations within Article XIV of the Charter of the City of Madeira do not prohibit and/or preclude the City and the Board from proceeding forward with the special election on May 2, 2017;

- 2) Neither the City nor Mr. Moeller nor the Board engaged in any conduct relating to the certification of Issues 2 and 3 which constituted fraud, abuse of corporate powers or a sham legal process;
- 3) The certification of the March 13, 2017 corrective ordinance by an “acting clerk” did not violate Ohio law in any regard and did not constitute fraud, abuse of corporate powers or a sham legal process;
- 4) The certification of Issues 2 and 3 complied with the City Charter and thus did not violate Ohio law;
- 5) The certification of Issues 2 and 3 likewise complied with the requirements set forth for such procedures by the Ohio Revised Code and the Ohio Constitution, particularly those set forth in Sections 8 and 9 of Article XVIII of the Ohio Constitution; and
- 6) Neither the City nor Moeller nor the Board engaged in a conspiracy to commit fraud against the “voters of Madeira,” as alleged by Relator in his Verified Complaint;

- As it pertains to Relator’s taxpayer demand, his request for relief is hereby **OVERRULED**.
- Relator’s claims against the City, Moeller, and the Board are hereby **DISMISSED** in their entirety and with prejudice with each party bearing their own costs.

IT IS SO ORDERED.

**COURT OF COMMON PLEAS
ENTER**
Robert C. Winkler
RON ROBERT C. WINKLER
**THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN.**

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

CITY OF MADEIRA, EX REL.
DOUGLAS OPPENHEIMER,

Relator-Appellant,

vs.

CITY OF MADEIRA,

THOMAS W. MOELLER,

and

HAMILTON COUNTY, OHIO
BOARD OF ELECTIONS,

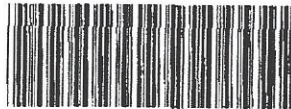
Respondents-Appellees.

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APPEAL NO. C-170206
TRIAL NO. A-1702034

JUDGMENT ENTRY.

ENTERED
MAR 30 2018



D121418317

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Relator-appellant Douglas Oppenheimer, as a taxpayer and resident of the City of Madeira ("Madeira"), filed an action against Madeira, Thomas Moeller, the city manager of Madeira, and the Hamilton County Board of Elections ("Board of Elections") to declare unlawful ordinances submitting proposed charter amendments to the voters and to prohibit a special election on the proposed charter amendments.

Following an evidentiary hearing on the merits of the claims, the trial court denied Oppenheimer's request for declaratory judgment and for temporary and

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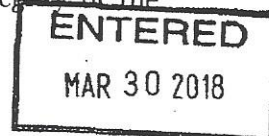
OHIO FIRST DISTRICT COURT OF APPEALS

permanent injunctive relief. The trial court held that Oppenheimer had presented no evidence that Madeira had abused its corporate powers by failing to comply with the procedures set forth in Article XIV, Section 5 of the Madeira Charter, the Ohio Revised Code, and the Ohio Constitution, Article XVIII, Sections 8 and 9, and that the Board of Elections had not engaged in any conduct that constituted fraud, abuse of power, or a sham legal process.

The special election was held, and the voters approved the charter amendments. Six days after the election, Oppenheimer appealed the trial court's judgment. Four days later, he moved this court, pursuant to App.R. 7, for an injunction pending appeal to prohibit the clerk from certifying the results of the special election and from implementing the charter amendments. This court denied his motion, and the results of the special election were certified on March 23, 2017.

In two assignments of error, Oppenheimer argues that the trial court erred by denying his request for an injunction and by entering judgment in favor of Madeira, Moeller, and the Board of Elections. Madeira, Moeller, and the Board of Elections assert that Oppenheimer's appeal is moot and must be dismissed because the special election has passed and the vote has been certified. Therefore, they contend, this court cannot afford Oppenheimer any relief on appeal. We agree.

The Ohio Supreme Court has held that when an election has passed, the action for extraordinary relief or an appeal from a judgment in an extraordinary-writ action is moot. *State ex rel. Hills Communities, Inc. v. Clermont Cty. Bd. of Elections*, 91 Ohio St.3d 465, 467, 746 N.E.2d 1115 (2001); see *State ex rel. Patrick v. Bd. of Elections*, 174 Ohio St. 12, 13, 185 N.E.2d 433 (1962). Ohio appellate courts have applied the mootness doctrine equally to claims for injunctive relief after an election has been held to protect the value of the vote and the integrity of the



OHIO FIRST DISTRICT COURT OF APPEALS

election. See *Reveria Tavern, Inc. v. Summit Cty. Bd. of Elections*, 9th Dist. Summit No. 21893, 2004-Ohio-6733, ¶ 20-44.

We recognize that this court nullified the results of an election on proposed charter amendments in *Oppenheimer v. City of Madeira*, 1 Ohio App.3d 44, 439 N.E.2d 440 (1981). That case, however, is factually distinguishable. It was tried on stipulated facts and the “plaintiff had asked for alternative relief: to enjoin the placing of this issue on the ballot, or to enjoin the counting of the votes on the issue, to enjoin the release and certification of the results.” *Id.* at 45. We held “[th]is demand for relief was sufficiently broad to bring the whole elective process on this issue into question.” *Id.*

Oppenheimer did not seek this alternate relief in the trial court. Furthermore, he does not assert, and we cannot conclude, that the issues in this case are capable of repetition yet evading review or that they are of great public interest or constitutional concern. See *State ex rel. White v. Kilbane Koch*, 96 Ohio St.3d 395, 2002-Ohio-4848, 775 N.E.2d 508, ¶ 11-18. We, therefore, dismiss the appeal as moot.

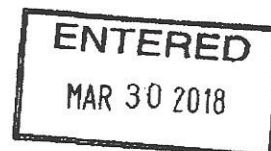
Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on March 30, 2018

per order of the court *Beth A. Meyer*
Presiding Judge





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

CITY OF MADEIRA EX REL.
DOUGLAS OPPENHEIMER,

APPEAL NO. C-170206
TRIAL NO. A-1702034

Appellant,

vs.

ENTRY OVERRULING MOTION FOR
RECONSIDERATION OR FOR EN
BANC CONSIDERATION

CITY OF MADEIRA, et al.,

Appellees.

This cause came on to be considered upon the motion of the appellant to reconsider the Court's judgment entry of dismissal entered on March 30, 2018, or to consider the matter en banc, and upon the response thereto.

The motion is not well taken and is hereby overruled.

To The Clerk:

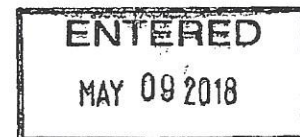
Enter upon the Journal of the Court on MAY 09 2018 per order of the Court.

By: *Wendy M. Gagner*
Presiding Judge

(Copies sent to all counsel)



D121815333



IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

COURT OF COMMON PLEAS
ENTER
HON. ROBERT P. RUEHLMAN
THE CLERK SHALL SERVE NOTICE
TO PARTIES PURSUANT TO CIVIL
RULE 58 WHICH SHALL BE TAXED
AS COSTS HEREIN.

THE ROBERT MCCABE COMPANY, : CASE NO. A1606293
INC., et al.,
Appellants,

vs.

CITY OF MADEIRA CITY
COUNCIL, et al.,
Appellees.

:
: JUDGE ROBERT P. RUEHLMAN
:
: ENTRY GRANTING DEFENDANT'S
: 12 (B)(1) MOTION TO DISMISS
:

ENTERED
JUN 12 2017



This matter is before the Court on Appellees City of Madeira City Council and City of Madeira Planning Commission's **Motion to Dismiss for Lack of Subject Matter Jurisdiction**. After reviewing the submitted briefs and hearing oral argument this Court finds as follows:

Whether this Court retains subject matter jurisdiction pursuant to ORC § 2506 is a matter of law. *Burns v. Daily*, 114 Ohio App.3d 693, 701 (11th Dist. 1996).

Appeals of decisions from administrative agencies are governed by ORC § 2506 *et seq.* ORC §2506.01 (A) limits appeals of administrative decisions to "final order[s], adjudication[s], or decision[s] of any officer, tribunal, authority, board, bureau, [or] commission..." While ORC §2506.01 (C) represents a final, appealable decision as any decision which will affect or determine rights, commissions speak through their written record or minutes. *Swafford v. Norwood Bd. Of Educ.*, 14 Ohio App.3d 346, 348 (1st Dist. 1984). Regardless of any decision made by oral pronouncement or vote, the act lacks the clarity found in a final written approval, which is necessary for any further challenge.

FOR COURT USE ONLY
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Line #:

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This case was filed on November 16, 2016, based solely on the oral decision of the Madeira and before any written decision had been formerly issued by Madeira. That filing was therefore premature and not ripe for review. In fact, when the parties appeared for argument on this Motion to Dismiss the final written decision was no longer congruent with the original oral decision. Madeira eventually reversed its oral decision when it finally published its minutes on January 9, 2017 when additional inquiry showed a procedural defect in the vote. These events exemplify the need for a final written decision before initiating an appeal process.

Additionally, and contrary to those arguments made by Appellants, there is recourse for Appellants to intervene in any future challenge (i.e. by the original applicant) to Appellee's final decision. Adjacent land owners are entitled to intervene in challenges to administrative decisions, even when it is to protect a "victory" at the administrative level. *American Sand & Gravel, Inc. v. Theken*, 41 Ohio App.3d 98, 101 (5th Dist. 1987). While this does not cover all listed Appellants, there is clearly room for those interests to be represented in any future appeal regarding this matter.

Therefore, Appellee's Motion to Dismiss is **GRANTED**. The captioned Defendants are dismissed without prejudice.

IT IS SO ORDERED.



JUDGE ROBERT P. RUEHLMAN

madeiramessenger.com

May 20, 2018

Updated June 12, 2018

List Serve / Friday Flash Update
E-mailed to community and
Posted on “Speak out Madeira”
by Mayor Traci Bayer Theis.
Personal Comments From Theis
posted to “Speak out Madeira”.

See 1 more comment...



Chuck Dimmitt
Glad to see that the city is going after the person wasting our tax dollars with the proclamation 18-01

April 28 · Like

[View more replies](#)



Elizabeth Naegele
Is there somewhere I could read this? What great news this is!!

April 28 · Like



Traci Bayer Theis
Proclamation 18-01 was delivered by Law Director Brian Fox at our last meeting and everyone present voted to accept it. Scott Gehring was absent because he was in DC for work. All 7 council members will sign the document for unanimous support and we should have it to be posted as soon as that is complete. There is a summary of it on the Friday Flash under Meeting Update. In essence: We are exploring the option to declare Mr. Oppenheimer as a vexatious litigator. If court declares him as such, he can no longer file lawsuits against the city (or anyone else without court approval) and continue to waste tax dollars. So far to date he has filed 4 different lawsuits and the city has won them all. His latest was heard by 9 judges in 5 different forums (because of his appeals) all 9 judges saying the city has done no wrong. He tried to refile this same one with intention to take to Ohio Supreme Court. I am disgusted how 1 person can waste so much money and we as a city are struggling to come up with funds for road repaving. Council is trying very hard to be good stewards of tax dollars. If not sooner the actual Proclamation will be out in next Friday's packet for council review of draft Minutes.

April 29 · Like · 9



John Cravaack
It's amazing how one man has wasted so much city money and halted so much progress. Hopefully the court can reign in his frivolous lawsuits

April 29 · Like · 8



Traci Bayer Theis shared a link.

April 26

Hey everyone could you please take a survey for our comprehensive plan process? Community input is very important! Thank you!

736 members

[Join Group](#)

PHOTOS

[See All](#)



RECENTLY ACTIVE GROUPS



BOND HILLBILLIES
1 new post



Conservatives News Network
25 new posts

SUGGESTED GROUPS

[See More](#)



Madeira "No Rules" Gara...
1,555 Members

[Join](#)



Cincy Kids from the '60s
5,529 Members

[Join](#)



Deer Park/Kenwood/Made...
13,335 Members

[Join](#)

FAVORITE:

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Friday Flash



Friday Flash Update

Upcoming Meetings

There are no meetings scheduled for the week of April 23, 2018.

To view the agenda for upcoming meetings, please visit [Public Access 180808](#)

Upcoming Events

The following events will be held the week of April 23, 2018:
- Cedar Ridge State Inspectors - April 23, 2018, 10:00 AM to 1:00 PM, Madeira High School Fire Center, 4400 W. Dublin Rd., Cincinnati, OH 45240. No equipment necessary.
- National Day of Prayer - May 1, 2018, 7:30AM at Mt. Carmel Cemetery.
- Please visit our website [Cincinnati at Large](#) for event details on upcoming events.

Comprehensive Plan News

Please visit our Community Survey to give your input on community needs as part of the Comprehensive Plan. Your input is a key component of the process. [Click Here](#) for additional details.

The City will hold Public Forum #1 for the Comprehensive Plan on the following dates:

- May 16, 2018 - May 22, 2018
1:00 pm to 3:30 pm
Shakerwood Presbyterian Church
6000 Shaker Ave
Mason, OH 45243
- May 23, 2018 - May 29, 2018
7:00 pm - 9:30 pm
Madison Middle School
6612 Madison Ave
Mason, OH 45243

The same presentation is being held at 7 different times in surrounding Madison Middle School and community input.

Future Events

More date locations for future future events. More information will be announced as the event approaches. No plans, check our website for dates. [Click Here](#)

- Madeline Art Fair - May 6, 2018

- Comprehensive Plan Public Engagement at Madeline Art Fair - May 6, 2018

- Spring Festival and Live Music - May 26, 2018

- Comprehensive Plan Public Forum #1 - May 16, 2018 from 1:00pm to 3:30 pm at Shakerwood Presbyterian Church, 6000 Shaker Ave.

- Comprehensive Plan Forum #1 - May 23, 2018 from 7:00pm to 9:30pm at Madison Middle School, 6612 Madison Ave.

Meeting Updates

City Council at the April 23rd meeting, held the following actions:
- Approved the 13-14 Amending the Purchase of a 2018 "Save Home" Special

- Forward Proclamation 18-01 concerning the candidate to serve as Clerk of Court to the City to express the City's support, pursuant to Ohio Revised Code 1.2023 (2) (b) from the "Make Change" Comprehensive Review & Revision Request

Like Share

2

See 1 more comment...



Chuck Dimmitt
Glad to see that the city is going after the person wasting our tax dollars with the proclamation 18-01

April 28 · Like

736 members

Join Group

PHOTOS

See All



RECENTLY ACTIVE GROUPS

BOND HILLBILLIES

1 new post

Conservatives News Network

25 new posts

SUGGESTED GROUPS

See More

"Madeira " No Rules" Gara...

1,555 Members

Cincy Kids from the '60s

5,529 Members

Deer Park/Kenwood/Made...

13,335 Members

FAVORITE:

- Su
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- Mi
- Cr
- Jill
- Bri
- Co
- Su
- Ka

madeiramessenger.com
June 12, 2018

Answer of Defendant Philip Douglas Oppenheimer to Complaint. Case # A1802415

madeiramessenger.com

**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

CITY OF MADEIRA	:	Case No. A1802415
	:	
Plaintiffs,	:	Judge Jody M. Luebbbers
	:	
v.	:	ANSWER OF DEFENDANT
	:	PHILIP DOUGLAS OPPENHEIMER
PHILIP DOUGLAS OPPENHEIMER	:	TO COMPLAINT
	:	
Defendant.	:	

Defendant Philip Douglas Oppenheimer (“Oppenheimer” or “Defendant”) for his Answer to the Complaint of Plaintiff City of Madeira (the “City”), states and avers as follows:

INTRODUCTION

Oppenheimer generally denies the allegations in the Introduction

PARTIES, JURISDICTION AND VENUE

1. Oppenheimer admits the allegations of Paragraph 1.
2. Oppenheimer admits the allegations of Paragraph 2.
3. Oppenheimer admits only that the City, through its Complaint, seeks to have him declared a vexatious litigant, but specifically denies same, and denies the remaining allegations in Paragraph 3.
4. Oppenheimer is without sufficient knowledge to admit or deny the allegations in Paragraph 5, and therefore denies same.

FACTUAL BACKGROUND

5. Oppenheimer admits only that he has filed certain causes of action and appeals against the City, but denies the remaining allegations of Paragraph 5.

6. Oppenheimer states that the court records of the lawsuits that he has filed speak for themselves, and denies the remaining allegations of Paragraph 6.
7. Oppenheimer denies the allegations of Paragraph 7.
8. Oppenheimer admits that he is entitled to his right to political speech, but denies the remaining allegations of Paragraph 8.
9. Oppenheimer states that Exhibits 1 through 12 attached to the Complaint speak for themselves, and denies the remaining allegations of Paragraph 9.
10. Oppenheimer denies the allegations of Paragraph 10.
11. Oppenheimer denies the allegations of Paragraph 11.
12. Oppenheimer denies the allegations of Paragraph 12.
13. Oppenheimer denies the allegations of Paragraph 13.
14. Oppenheimer admits that on November 4, 2015, Madeira's voters adopted Article XVI of the City Charter, states that Article XVI speaks for itself, and denies the remaining allegations of Paragraph 14.
15. Oppenheimer states that Article XVI of the City Charter speaks for itself, and denies the remaining allegations of Paragraph 15.
16. Oppenheimer admits that on November 9, 2015, City Council adopted Ordinance No. 15-30, states that Ordinance 15-30 speaks for itself, and denies the remaining allegations of Paragraph 16.
17. Oppenheimer admits that on November 30, 2015, he made a written demand upon the City Law Director, Robert P. Malloy, states that his demand speaks for itself, and denies the remaining allegations of Paragraph 17.

18. Oppenheimer admits that on December 8, 2015, the City's attorney responded to Oppenheimer's demand, states that the City's written response speaks for itself, and denies the remaining allegations of Paragraph 18.

19. Oppenheimer admits that on December 18, 2015, he filed a lawsuit in the Hamilton County Court of Common Pleas, admits that the Complaint sought injunctive relief restraining the City from executing or performing any other acts whatsoever in furtherance of any contract or prospective contract authorized by Ordinance No. 15-30, and denies the remaining allegations of Paragraph 19.

20. Oppenheimer admits the allegations of Paragraph 20.

21. Oppenheimer admits that he filed an appeal of the decision, states that his appeal briefs and filings speak for themselves, and denies the remaining allegations of Paragraph 21.

22. Oppenheimer states that the City's appeal briefs and filings speak for themselves, admits that on October 27, 2017, the First District Court of Appeals affirmed the decision of the trial court in a Judgment Entry and states that the Court's opinion speaks for itself, admits that a copy is attached to the Complaint as Exhibit 14, and denies the remaining allegations of Paragraph 22.

23. Oppenheimer denies the allegations of Paragraph 23.

24. Oppenheimer admits that on March 2, 2017, the City purported to pass Ordinance Nos. 17-03 and 17-04, states that those Ordinances speak for themselves, and denies the remaining allegations of Paragraph 24.

25. Oppenheimer is without sufficient knowledge to admit or deny the allegations in Paragraph 25, and therefore denies same.

26. Oppenheimer admits that the City purported to pass Ordinance Nos. 17-06, states that the Ordinances speaks for itself, and denies the remaining allegations of Paragraph 26.

27. Oppenheimer admits that on April 4, 2017, he submitted a letter to the Board of Elections, states that his letter speaks for itself, and denies the remaining allegations of Paragraph 27.

28. Oppenheimer admits that the Board of Elections held a hearing on April 7, 2017, and admits that the Board denied his request to remove the proposed Charter amendments from the ballot. Oppenheimer denies the remaining allegations of Paragraph 28.

29. Oppenheimer admits that on April 11, 2017, he filed a Verified Complaint for Declaratory Judgment and Injunctive Relief, states that the Complaint speaks for itself, and denies the remaining allegations of Paragraph 29.

30. Oppenheimer is without sufficient knowledge to admit or deny the allegations in Paragraph 30, and therefore denies same.

31. Oppenheimer admits that on April 27, 2017, an evidentiary hearing was held on Oppenheimer's claims, admits that on May 1, 2017, the Court entered judgment in favor of the City denying Oppenheimer's claim for injunctive relief and dismissing his claims with prejudice, admits that a copy of the Entry is attached to the City's Complaint as Exhibit 15, and denies the remaining allegations of Paragraph 31.

32. Oppenheimer states that the Court's Entry speaks for itself, and denies the remaining allegations of Paragraph 32.

33. Oppenheimer admits that he filed a Notice of Appeal on May 8, 2017. Oppenheimer is without sufficient knowledge to admit or deny the remaining allegations in Paragraph 33, and therefore denies same.

34. Oppenheimer admits that City electors approved Issues 2 and 3 at the May 2, 2017 Special Election, but is without sufficient knowledge to admit or deny the remaining allegations in Paragraph 33, and therefore denies same.

35. Oppenheimer states that his appeal brief and court filings speak for themselves, and denies the remaining allegations of Paragraph 35.

36. Oppenheimer admits that the First District Court of Appeals issued a judgment entry on March 30, 2018 dismissing the appeal as moot, admits that a copy of the judgment entry is attached to the City's Complaint as Exhibit 16 and states that the judgment entry speaks for itself, and denies the remaining allegations of Paragraph 36.

37. Oppenheimer denies the allegations of Paragraph 37.

38. Oppenheimer admits that on April 9, 2018, he filed a Motion for Reconsideration En Banc in the First District, admits that the First District overruled the Motion, admits that a copy of the Entry is attached to the City's Complaint as Exhibit 17, and denies the remaining allegations in Paragraph 38.

39. Oppenheimer denies the allegations in Paragraph 39.

40. Oppenheimer admits that on November 16, 2016, he, along with Appellants The Robert McCabe Company, Inc. and Woellner Enterprises, LLC, filed a Notice of Appeal of a decision of the City's Planning Commission, states that the Notice of Appeal speaks for itself, and denies the remaining allegations of Paragraph 40.

41. Oppenheimer admits that the City filed a Motion to Dismiss the Appellants' Notice of Appeal or, In the Alternative, Motion to Stay, states that the City's Motion speaks for itself, and denies the remaining allegations of Paragraph 41.

42. Oppenheimer admits that on January 9, 2017, Brian Fox, the Law Director for Madeira, sent to Tom Powers a letter relating to his zoning application, and Oppenheimer states that the letter speaks for itself. Oppenheimer denies the remaining allegations in Paragraph 42.

43. Oppenheimer admits that on March 14, the City filed a Supplemental Memorandum in support of its Motion to Dismiss, states that the Supplemental Memorandum speaks for itself, and denies the remaining allegations of Paragraph 43.

44. Oppenheimer admits that on June 12, 2017 the Court granted the City's Motion to Dismiss, admits that a copy of the Entry is attached to the City's Complaint as Exhibit 18, and denies the remaining allegations in Paragraph 44.

45. Oppenheimer denies the allegations in Paragraph 45.

COUNT ONE
(Vexatious Litigator – RC 2323.52)

46. Oppenheimer incorporates by reference his responses to the foregoing.

47. Oppenheimer denies the allegations in Paragraph 47.

48. Oppenheimer denies the allegations in Paragraph 48.

49. Oppenheimer denies the allegations in Paragraph 49.

FIRST DEFENSE

Oppenheimer denies each and every allegation contained in the Complaint not specifically admitted or denied above.

SECOND DEFENSE

The Complaint fails to state a claim against Oppenheimer upon which relief can be granted.

THIRD DEFENSE

Plaintiff's claims are barred by the doctrines of laches, waiver, estoppel, and the doctrine of unclean hands and Plaintiff's own bad faith.

FOURTH DEFENSE

Plaintiff's claims are barred since Oppenheimer is not a vexatious litigator and did not engage in vexatious conduct as defined in Ohio Revised Code § 2323.52.

FIFTH DEFENSE

Plaintiff's claims are barred by the applicable statute of limitations or statute of repose.

SIXTH DEFENSE

If Plaintiff suffered harm as alleged in its Complaint, which is specifically denied, such harm was not the direct and proximate result of any acts or omissions of Oppenheimer, and instead was the result of Plaintiff's own actions.

SEVENTH DEFENSE

Oppenheimer is entitled to recover, pursuant to Ohio Revised Code § 2323.51, reasonable attorneys' fees and costs against Plaintiff on the grounds that this action, in whole or in part, is unreasonable, frivolous, vexatious, without merit and/or has not been brought or asserted in good faith.

EIGHTH DEFENSE

Plaintiff's claims are barred by the doctrine of privilege, qualified privilege and/or absolute privilege.

NINTH DEFENSE

Oppenheimer reserves the right to assert additional defenses upon continuing investigation into the factual bases of Plaintiff's Complaint.

WHEREFORE, Defendant prays that Plaintiff's claims be dismissed and that he be awarded their costs and attorneys' fees and all other relief to which he is entitled.

Respectfully submitted,

/s/ Bryce A. Lenox
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served upon the following by email, this 12th day of March, 2018:

Brian W. Fox
Steve P. Goodin
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