

In The Matter Of:

*Delaware City Board of Ethics
In re: Megan Titus Complaint #2*

*Hearing
November 16, 2016*

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1 DELAWARE CITY BOARD OF ETHICS
2
3 IN RE: HEARING AND DECISION ON
4 MEGAN TITUS' COMPLAINT #2
5
6 The City of Delaware City
7 City Council Chamber
8 407 Clinton Street
9 Delaware City, Delaware 19706
10
11 Wednesday, November 16, 2016
12 7:30 p.m.
13
14 BEFORE: TIM DILLIPLANE
15 RAY FRUYTIER
16 TIM KONKUS
17
18 APPEARANCES: MAX B. WALTON, ESQ.,
19 LAUREN P. DE LUCA, ESQ.
20 for Delaware City
21 MARGARET TITUS
22
23 ALSO PRESENT: D. BARRETT EDWARDS, IV, ESQ.,
24 for the Delaware City Board of
Ethics

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1 MR. KONKUS: It being 7:30, this
2 meeting of the Board of Ethics is now called
3 to the order. Let's rise for the Pledge of
4 Allegiance, please.
5 (The Pledge of Allegiance was
6 recited.)
7 MR. KONKUS: Welcome to this
8 Board proceeding. I know the last time we
9 made a motion and a vote to accept Mr. Barrett
10 Edwards as our law officer. I think we need
11 to do that again in that I don't think there's
12 any provisions to carry such a motion over to
13 the next meeting.
14 Is that correct, Mr. Edwards?
15 MR. EDWARDS: I think that will
16 be fine.
17 MR. DILLIPLANE: I make a motion
18 to accept Mr. Barrett as our counsel.
19 MR. KONKUS: There being a
20 motion and seconded by a nod by Mr. Fruytier.
21 All in favor, say "aye."
22 ALL: Aye.
23 MR. KONKUS: Opposed.
24 There being no opposition,

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1 Mr. Barrett is again our law officer.
2 Mr. Barrett.
3 MR. EDWARDS: Okay. So we all
4 know why we're here today this evening.
5 Now, one preliminary matter
6 before we get going. Would you like to --
7 MR. DILLIPLANE: I don't know
8 how late we're going to run, but at 10:30 I
9 have to take my daughter to work.
10 A VOICE: I won't be here to see
11 you all --
12 MR. WALTON: I would hope
13 earlier than that and we're not still here at
14 10:30. I think I speak for the entire crowd
15 when I say so.
16 MR. DILLIPLANE: I didn't think
17 it would be a problem. I just thought --
18 MR. EDWARDS: All right. So I
19 just wanted to make sure everyone was on the
20 same page about that. Right?
21 So we'll conduct a couple
22 preliminary matters, but how things will
23 proceed tonight is we're going to have a
24 hearing on various ethic violations that have

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1 been alleged. How it will begin is
2 Councilwoman Titus will have the opportunity
3 to provide some opening remarks, after which
4 Mr. Walton will have an opportunity to provide
5 his opening remarks. Once he has concluded
6 with that, Councilwoman Titus will have the
7 opportunity to present her case and all that
8 that includes, after which Mr. Walton will be
9 able to present his case. And once he has
10 concluded, if you have any follow-up that you
11 would like to do, you can.
12 Okay. All witnesses that are --
13 all witnesses are going to have to be sworn
14 in. And anyone who is going to be testifying
15 will be subject to cross-examination, meaning
16 that you call a witness. When you're done,
17 Mr. Walton will be able to ask questions. And
18 vice versa. If Mr. Walton calls anyone, once
19 he has concluded, you'll be able to ask
20 questions of that individual also.
21 So in terms of what I said so
22 far, are there any questions at all?
23 All pretty standard.
24 Okay. So just as one

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1 preliminary matter, just to get into the
2 record, for each of the individual board
3 members, if you can all just affirm for the
4 record that prior to this hearing you've not
5 had any conversations with either Councilwoman
6 Titus or Mr. Walton with regards to the
7 subject matter of this evening's hearing.
8 Can you confirm that for the
9 record?
10 **MR. DILLIPLANE:** Yes. Tim
11 Dilliplane.
12 **MR. FRUYTIER:** Yes.
13 **MR. KONKUS:** Tim Konkus as well,
14 confirmed.
15 **MR. EDWARDS:** Okay.
16 **MR. FRUYTIER:** And Ray Fruytier.
17 **MR. EDWARDS:** Okay. And because
18 this is being recorded, it's important that
19 when anybody speaks or when anybody responds
20 it's not just a nod, a wink, or a hand raise
21 or anything. You've got to speak audibly so
22 that it can be picked up by the court
23 reporter.
24 Okay. So what I think we'll --

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1 how we'll proceed is we'll just dive right
2 into it. And as -- we've done it different
3 ways. Sometimes we just have all the
4 witnesses sworn in at once. I think tonight
5 we can just swear the witnesses as they will
6 be testifying.
7 And so, without any further
8 adieu, unless anybody has any questions,
9 Councilwoman Titus, I believe you can provide
10 your opening comments.
11 **MS. TITUS:** I filed this ethics
12 complaint again not because I want to but
13 because I took an oath to uphold the laws of
14 this town.
15 I do apologize for getting upset
16 and emotional last time. I was very
17 frustrated, because I'm not a lawyer and
18 Mr. Walton had turned the whole case around on
19 me. I am not disgruntled. But if I were, I
20 would have a right to be. The actions of this
21 council are not transparent and fair to all
22 citizens. This complaint is not about me
23 having anything against Preston Carden either.
24 He was a customer and we were friendly --

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1 right up until I voted against the terms he
2 wanted in the first lease go-round.
3 A few years ago the previous
4 council, with the city manager's added
5 attorney's help, drew up a lease that we felt
6 was fair to the Snow/Walton family, Mr. Carden
7 and the city. We tried to consider everyone's
8 concerns, the fair market value of the lot.
9 Mr. Carter rejected that offer, countered with
10 an offer half the amount and the terms that
11 were unacceptable to the city.
12 It's my belief that Betty
13 Barrett, Bud Fitzwater and Natalie Green have
14 conducted themselves unethically and
15 disregarded the laws that they were sworn in
16 to uphold. My evidence will show the
17 Jefferson Street lease is a sweetheart deal
18 offered only to PSC and made behind closed
19 doors. It's not a coincidence that almost
20 immediately after being elected the council
21 members that Preston Carden backed and
22 campaigned for, along with Council Member
23 Barrett, presented a lease at the June 20th
24 council meeting. No one else even knew that

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1 the property was up for lease -- not the
2 attorney, the city manager, the mayor or other
3 council members.
4 From August to October of 2015,
5 the city had sent three vacate letters to PSC,
6 which they ignored. Originally, enforcement
7 was to be the topic of the scheduled executive
8 session that night. There was never a motion
9 made to resolve the vacate orders that were
10 sent to PSC. Regardless, these three council
11 members engaged behind closed doors in lease
12 negotiations with Mr. Carden, who at the time
13 was illegally occupying city property and in
14 the process of being removed. We were all
15 ambushed by Council Member Barrett who
16 presented the lease immediately before an
17 executive session and tried to have it voted
18 on right away. What happened to the oath of
19 office to uphold the city laws?
20 By not publicly discussing or
21 advertising the available leasing opportunity
22 by RFP and usurping the duties of the city
23 manager by not allowing him to negotiate on
24 behalf of the city, the council members made

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1 available to PSC consideration, treatment, and
2 advantage far beyond that which is general
3 practice to make available to the public.
4 That is unethical. It is not the general
5 practice for our town to lease streets of
6 right -- or right of ways. Yes, we do permit
7 day use parks and such, but we do not lease
8 other streets or right of ways. After reeding
9 the "use of public property" in the ethics
10 code, in my opinion, it should not be leased
11 at all. This mess is probably why.
12 By leasing this property to PSC,
13 these council members are not extending the
14 same considerations to the Walton/Snow family
15 by allowing PSC to block access to that side
16 of their property, thereby devaluing it.
17 Admittedly, Mr. Carden had previously put a
18 bid in on the Snow/Walton property and would
19 benefit from its devaluation.
20 At the August meeting, we all
21 heard Mr. Carden ranting about how he would
22 have access regardless one way or the other.
23 But the same advantage is not being granted to
24 the Walton family. This is the life-long

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1 family of good and law-abiding citizens who
2 have all contributed to this community. Why
3 are their pleas for fair and equal treatment
4 being ignored and rejected?
5 In the previous request for
6 dismissal, Mr. Walton mentioned Allegheny's
7 11th-hour proposal. No one knew that the
8 property was up for lease again except these
9 three council members and Mr. Carden. It's
10 not their job to decide without any discussion
11 at a public meeting. The city manager,
12 attorney or other council members had no idea.
13 So how did that happen? This is a violation
14 of the Delaware open meeting laws, which,
15 according to the ethics code, council members
16 are required to abide by.
17 The lease was never discussed in
18 an open meeting until August 15th meeting
19 where it was voted on. It was only discussed
20 in executive session on July 18th, which I
21 believe is another violation of the state and
22 federal law in not stating specifically what
23 will be discussed in executive session.
24 Mr. Walton stated that the lease

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1 was discussed prior, but it wasn't. That
2 lease was over a year ago. Nothing is the
3 same after a year -- the terms, the time,
4 the -- everything but the price is different.
5 And no one or anything is the same a year ago
6 as when it was presented. It has to start
7 over.
8 The discussion that we discussed
9 was that we could not discuss it. The tapes
10 are available from town hall, and the minutes
11 show that we were instructed not to discuss
12 it.
13 By not even considering a higher
14 bid with better terms, the council members in
15 question have shown that they are partial to
16 PSC. It doesn't matter who the bid was from.
17 The better terms and the financial benefit to
18 the town should have been discussed and
19 considered. It's their job. In fact, it's
20 discriminatory that it wasn't. I proved the
21 point that I was trying to make. This offer
22 was exclusive to PSC.
23 Many townsfolk are aware of a
24 life-long, close, personal relationship

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1 between Mr. Carden and Bud Fitzwater and his
2 father Paul. In fact, Mr. Carden lived with
3 the Fitzwaters for years and has been heard to
4 consider them family. There have been many
5 business connections, dealings, partnership,
6 leases between Mr. Carden and Bud Fitzwater
7 for many years. This close personal
8 relationship should have been brought up prior
9 to discussing or voting on its lease.
10 In addition, Mr. Fitzwaters'
11 pickup truck was parked on the paper street
12 during the election with his campaign
13 billboard. And then it was sold there
14 afterwards. I understand that he helped clean
15 up the property for Mr. Carden. I know how --
16 I know -- always known that they were very,
17 very close. And I can't help but feel that
18 there is a conflict of interest.
19 At the September meeting, we all
20 witnessed Council Member Barrett interrupt
21 Ms. Snow, rise up out of her chair, lean
22 across the counter -- the council desk,
23 pointing and shouting as she proclaimed her
24 life-long friendship with Mr. Carden and how

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1 well he takes care of his properties, all
2 while berating Ms. Snow for wanting access to
3 her property. That behavior was
4 disrespectful, rude, and clearly violates
5 conduct in city council meetings. I don't
6 think Ms. Snow will ever have the nerve to get
7 up at a council meeting and try to get a point
8 through again.
9 These council members were so
10 determined to sign a lease with PSC that --
11 even though the terms in the e-mail that
12 Mr. Walton sent us before the meeting said one
13 thing, the agenda terms said another thing.
14 Mr. Carden was shouting that he wanted
15 another -- other terms. And Mr. Walton said
16 that's not what he had written in the e-mail.
17 They still voted in favor of a lease that
18 wasn't even in writing and that no one was
19 sure of what the terms were. You just don't
20 see that kind of bending over backwards from a
21 city council very often.
22 Officials and employees are
23 strongly encouraged to avoid involvement in
24 situations where conduct is not a technical

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1 conflict but where active participation might
2 raise the perception of undue influence or
3 impropriety.
4 Contrary to what Mr. Walton has
5 informed this Board, the Board does have
6 jurisdiction over FOIA violations as an
7 ethical code. The ethics code clearly states
8 council conduct in and out of meetings must be
9 in compliance with the open meeting laws. My
10 evidence will show a letter from Bud Fitzwater
11 that's in violation of the open meeting laws.
12 I don't feel that these council
13 members take their positions seriously, have
14 read all of the charter and code and
15 understand the consequences of their actions
16 can have devastating legal impacts and
17 financial impacts on our town. I believe that
18 this situation can be negotiated to
19 accommodate PSC's employees, bus riders, bike
20 riders and the Snow/Walton's family's access
21 to their property.
22 Thank you.
23 **MR. WALTON:** Good evening,
24 members of the Board. Max Walton on behalf of

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1 the city. Counsel -- with me today is my
2 colleague, Lauren DeLuca, and she will do some
3 of the questioning this evening. So I wanted
4 to introduce her.
5 First off, I'd like to thank the
6 members of the Board for their service. I
7 know you're giving your time to the city for
8 this important function. And I appreciate
9 that.
10 And before we get started, if at
11 any time during this proceeding anyone is
12 having any difficulty hearing me, because
13 sometimes I speak softly, please let me know.
14 So -- so I just wanted to get that out front.
15 Tonight you guys have a -- have
16 a really important job. This Board was
17 established by the City Council and it has
18 been approved by the State Public Integrity
19 Commission as a Board entrusted to steward the
20 ethics code of this city. In this case you
21 act as a judge. That's why your counsel
22 tonight said that if you have any discussions
23 about the subject matter your job is to judge
24 the case on the evidence before you and not --

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1 and not on personal feelings.
2 Ms. Titus, as the complainant,
3 has the burden of proof by a preponderance of
4 the evidence to show that there was a
5 violation of the ethics code when three
6 members of council voted to approve the
7 Jefferson Street paper lease to PSC
8 Properties. But what this case is not
9 about -- it's not about the wisdom of that
10 decision by council. The question is --
11 whether or not you favor the lease or not, the
12 question is: Does the approval of the lease
13 violate the ethics code? So -- so your job is
14 to apply the code as written and be the judge
15 in a certain sense of the elected officials
16 before you.
17 I'd just like to make a personal
18 comment that this paper street has been the
19 most aggravating issue that I've had to deal
20 with since I became solicitor. So I just
21 wanted to say that out front. It started out
22 as a sale of a property that has gone on for
23 four years. And I'm actually really
24 disappointed or upset that it's landed here.

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1 But, at the end of the day, the officials in
2 this town have spoken. The elected officials
3 of the town have spoken. They said it should
4 be leased to PSC.
5 I understand Councilwoman Titus.
6 She vigorously opposes this. For one, she's
7 upset that her bid wasn't accepted. And, for
8 two, she believes that it's unfair to the
9 Snow/Walton family next door.
10 But, at the end of the day,
11 council chose a path that's different from
12 what Councilwoman Titus wants is irrelevant to
13 the issue. The issue is whether or not there
14 is a violation of the ethics code. And the
15 evidence we're going to present tonight will
16 demonstrate that they did not.
17 And before -- last time I filed
18 a motion to dismiss. And I thought about
19 filing it again this time. And I said: You
20 know what? Let's just have the hearing,
21 present our evidence, and I'll let the
22 Board -- I'll let the Board hear it.
23 So there are a slew of
24 allegations in the complaint. So I tried to

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1 cabin them to try to get them down to what I
2 think the five primary issues are.
3 And I think the first issue is
4 that the lease was negotiated behind closed
5 doors. Evidence will be presented this
6 evening that the lease was not negotiated
7 behind doors -- closed doors by three members
8 of council. Indeed, it will be established
9 that the lease that was presented at the
10 June 20th council meeting was the same lease
11 that Mr. Carden provided to the city manager a
12 year earlier before two of the council members
13 were elected.
14 Councilwoman Barrett -- the
15 evidence will show that she brought a draft of
16 the lease on June 20th. And that's the first
17 time Councilperson Green or Councilperson
18 Fitzwater saw it. Surely, there cannot be --
19 it cannot be held that there was negotiations
20 behind closed doors when they never saw the
21 lease before June 20th.
22 So the second issue is whether
23 there was a general practice of the town that
24 was violated by not putting the lease out to a

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1 request for production or a bid. At the end
2 of the day, there is no law in the city of
3 Delaware City that mandates that a lease go
4 out -- that a lease go out to RFP before the
5 council approves it. So without a law
6 mandating that a lease must go to RFP, there
7 is no violation of the code, and there can be
8 no ethics violation.
9 And there's also a statement
10 in -- in the complaint -- and I'm not sure if
11 Ms. Titus referenced it here tonight. But
12 there's a statement in the complaint that says
13 that the -- that ultimately the duties of the
14 city manager were usurped. And I have
15 provided the affidavit in a prehearing
16 motion -- I'll provide it again tonight --
17 where the city manager makes clear in his
18 affidavit that he wanted council to take an
19 action on this. And that's what they --
20 because he was kind of tired of dealing with
21 it, much like I am. So ultimately it's the
22 council's decision. So those are the first
23 two issues.
24 The third issue is whether the

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1 Board has jurisdiction to hear open meeting
2 law violations. We won't present a whole lot
3 of testimony on that, but we'll -- we'll -- at
4 the end we'll probably argue about that a
5 little bit. Or I'll present some argument.
6 Very simply, you don't have jurisdiction over
7 on open meetings law -- law violations.
8 Section 1005 of the FOIA law
9 grants only jurisdiction to two bodies -- the
10 Court of Chancery and the attorney general's
11 office to hear FOIA violations. So I submit
12 to you: If the -- if the Superior Court and
13 the Court of Common Pleas don't have
14 jurisdiction, neither do you.
15 The fourth issue is whether
16 Councilperson Fitzwater's alleged -- alleged
17 close personal friendship with Mr. Carden is
18 sufficient to create an ethics violation. And
19 we have provided cases in both our motion to
20 dismiss before and now where the United States
21 Supreme Court says friendship alone is not.
22 And -- and we will also prove that some of the
23 allegations that were made just aren't true.
24 Finally is a claim whether or

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1 not there was a fair and equal treatment
2 violation. And at the end of the day,
3 legislatures, town councils have to make
4 choices all the time. They have to make
5 choices regarding when a zone is a property
6 that might be to the detriment of its
7 neighbor. Laws are passed that cost money
8 because you have license fees and things like
9 that. License fees are charged for certain
10 uses and not others. The government decides
11 to spend money on some things and not others.
12 Those are all choices that government make.
13 In the end -- and I've always
14 heard this. And I'll say it here tonight --
15 the word "fair" doesn't appear in the
16 Constitution. And at the end of the day, this
17 Board is -- your job is to figure out if there
18 was a violation of the ethics code. Your job
19 is not to second-guess the legislative choices
20 of council, because that would be an improper
21 move. It would be improper for you to
22 second-guess those choices. And I would
23 submit that it would be unconstitutional
24 simply because the council here made a choice

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1 that a neighbor does not like does not mean
2 that the fair and equal treatment provisions
3 of the ethic code were violated.
4 At the end of the day, after
5 hearing all of the evidence which we're going
6 to put on tonight, we submit that there is no
7 violation, and we would request that you rule
8 in the city's favor and in the three
9 councilpeople's favor.
10 And that's the end of my opening
11 statement. Thank you.
12 **MR. KONKUS:** Board members, any
13 questions?
14 **MR. FRUYTIER:** No.
15 **MR. DILLIPLANE:** It is correct
16 that the FOIA violations are under the edict
17 of the -- aegis, rather, of the attorney
18 general of the state?
19 **MR. EDWARDS:** I think what he
20 has interpreted from the statute is what the
21 statute says.
22 **MR. KONKUS:** However, it's -- my
23 inclination is that in our ethics code it says
24 don't violate it.

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1 **MR. EDWARDS:** Well --
2 **MR. KONKUS:** But for criminal
3 prosecution, it's under the AG's office.
4 **MR. EDWARDS:** Well, I think -- I
5 think it's a little premature to be discussing
6 this at this point.
7 **MR. KONKUS:** Right.
8 **MR. EDWARDS:** We should wait
9 till we hear all the testimony.
10 **MR. KONKUS:** Well, it really
11 isn't, because he brought it up. It was a
12 question. I just wanted to frame it that
13 there's two different ways to looking at
14 absolutely everything that's said here.
15 And one of them is -- is, yeah,
16 for criminal prosecution, we -- we can go
17 pound sand. But as far as our code is
18 concerned, it goes on for nearly two pages
19 about open meeting laws. And sure and
20 fair -- even though the Constitution has
21 nothing to do with "fair," the ethics code
22 does.
23 **MR. EDWARDS:** Well, again, I
24 think it's a little premature, but I will say

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1 that the AG's office routinely deals with FOIA
2 violations that are noncriminal in nature.
3 And so --
4 **MR. KONKUS:** Right.
5 **MR. EDWARDS:** And so I don't
6 think that's necessarily -- you know, they
7 don't necessarily deal with criminal acts
8 regardless of FOIA violations.
9 So Councilwoman Titus, are
10 you --
11 **MS. TITUS:** It's 21 of your
12 packet that I put for you.
13 **MR. EDWARDS:** Well, if you'd
14 like to begin presenting your case, you're
15 certainly more than welcome to at this point.
16 And if you want to jump to that immediately,
17 you can. If you just want to go through --
18 **MS. TITUS:** Well, I --
19 **MR. EDWARDS:** -- however you
20 prepared.
21 **MS. TITUS:** Go ahead.
22 On my letter that you all got,
23 there is corresponding --
24 **MR. EDWARDS:** Who --

<p>Margaret Titus</p> <p>Page 25</p> <p>1 MS. TITUS: -- evidence -- 2 MR. EDWARDS: Hold on. Before 3 you go there, are you -- I assume you're 4 probably going to be in some fashion 5 testifying. So we probably should have you 6 sworn in. 7 MS. TITUS: Oh. 8 MARGARET TITUS, 9 the witness herein, having first been 10 duly sworn on oath, was examined and 11 testified as follows: 12 DIRECT TESTIMONY 13 MS. TITUS: So -- 14 MR. EDWARDS: Can you state your 15 name for the record? 16 MS. TITUS: Margaret Titus, 17 Councilwoman. "Megan" is my nickname. 18 So am I supposed to -- I'm just 19 supposed to start now and -- or -- 20 MR. EDWARDS: You can proceed 21 however you like. If you would like to 22 present whatever you have to present for the 23 Board, you can do that. If you want to answer 24 questions -- it's really up to you. However</p>	<p>Margaret Titus</p> <p>Page 27</p> <p>1 law and ethical. 2 The definition of "ethical" is 3 morally good or correct, avoiding activities 4 or organizations that do harm to people or the 5 environment. And you can't -- these things 6 may have been legal. That does not mean 7 they're ethical. That's why we have the 8 ethics board -- because all things legal are 9 not ethical. 10 I would like you to know that 11 I'm the only councilperson who has been on 12 board since the very beginning of this. I am 13 not -- I don't have a personal vendetta 14 against Mr. Carden. I'm simply trying to 15 prevent these council members from financially 16 harming senior citizen residents to make one 17 businessperson happy. 18 I was the one who seconded the 19 motion in 2012 to allow the sale to 20 Mr. Carden. Then after Mr. Walton, our 21 attorney, advised us that many of the 22 restrictions on the sale of surplus property 23 and the likelihood of a lawsuit for 24 devaluation of a neighboring property by</p>
<p>Margaret Titus</p> <p>Page 26</p> <p>1 you can most logically present what you're 2 here to present tonight. 3 MS. TITUS: Okay. In my 4 understanding and reading Evidence 21, this is 5 you all's department here -- is the ethics. 6 And this is your job. And because an attorney 7 is going to tell you that you have to find 8 something or you have to do something or 9 whatever -- this is not a court of law. This 10 is an ethics hearing. And this is your ethics 11 code. And it says council member conduct in 12 and out of council meeting must be in 13 compliance with the open meeting laws of the 14 Delaware Code or applicable law. 15 This is not -- this has been 16 turned into a courtroom when there isn't a 17 need for it. There are no legal consequences 18 for these council people. They can't be put 19 in jail. This is your hearing. And you 20 decide how your city will be run. It will 21 either be run transparently with all of the 22 citizens being considered or underhandedly 23 with certain people getting preferential 24 treatment. That's the difference between the</p>	<p>Margaret Titus</p> <p>Page 28</p> <p>1 eliminating the right of way, we decided not 2 to sell it. That was in 2012. That was the 3 advice of our attorney, because we asked him. 4 We asked the person who we were paying what 5 was the best interest of the city, what we 6 should do in the best interest of the city. 7 If you ask him, he can tell you. If you don't 8 ask him, he's not going to tell you. He will 9 not offer his opinion. 10 In November of 2014 when 11 Mr. Carden requested to lease the property, I 12 was the one who made the motion. That's in 13 your evidence -- your second packet of 14 evidence that I gave you -- for fair market 15 value. And no one seconded my motion. 16 In 2015 Mayor -- Councilman 17 Malinowski made a motion to lease the 18 property, and I seconded it. It included 19 restrictions to protect the contiguous 20 property. And there's a bailout clause that 21 Mr. Walton had previously -- or had 22 recommended to the city to protect from a 23 lawsuit by devaluation of elimination of the 24 right of way.</p>

<p>Margaret Titus</p> <p>Page 29</p> <p>1 Why did Mr. Walton recommend 2 these restrictions and a bailout clause then? 3 Because we asked him. Being ethical council, 4 we asked him for his opinion of what would be 5 in the best interest of the citizens and the 6 city -- all parties involved. We used our 7 attorney for what we thought was the best 8 interest of the city. And we asked his 9 opinion. This council did not -- did not 10 allow him to negotiate. 11 Access and the right of way is 12 the issue here. There wouldn't be any problem 13 if it didn't affect the citizens and their 14 property value. These council members took an 15 oath to make decisions for the best interest 16 of the city, not individual businesspeople. 17 Only one month after being 18 elected two of the council people knew enough 19 about the situation to ignore all the 20 recommendations made by the city solicitor and 21 city manager from the previous lease, 22 negotiate from the previous lease negotiations 23 and accommodated their friend. They decided 24 to lease the property without knowledge of</p>	<p>Margaret Titus</p> <p>Page 31</p> <p>1 you know, their -- that's their family 2 inheritance. And I just think it's unethical. 3 So that are my opening 4 statements. You have all my evidence. That 5 is everything that I could drag up from 6 everywhere. I've been through this from the 7 get-go. 8 I have a statement from 9 Mr. Cathcart -- questions that I asked him. 10 Because even though the rules said I was 11 allowed to subpoena a witness -- I went up to 12 the courthouse in Wilmington to subpoena him 13 as a witness. And I was told I couldn't 14 subpoena him as a witness because it was not a 15 court proceeding. 16 But our -- our -- our rules for 17 the ethics hearing say still that you can 18 subpoena a witness or I can subpoena a 19 witness. I came to the town hall to subpoena 20 him. I was told I couldn't subpoena him. So 21 then we asked Mr. Walton. And he said that I 22 would have to get an affidavit from him. I 23 couldn't subpoena a witness. So the rules 24 that I'm trying to follow are not the rules</p>
<p>Margaret Titus</p> <p>Page 30</p> <p>1 anyone else. 2 This is exactly what unethical 3 behavior is -- sneaky and under the radar. 4 Their actions may be legal, but that's not why 5 we're here. They have to be morally and 6 ethically responsible to all the city -- 7 citizens of the town. 8 And the vary -- variance paper 9 that I gave you from the Board of Adjustment 10 clearly states that the city had no intention 11 of relinquishing the rights to Jefferson 12 Street in any matter. And that was part of 13 the reason why Ms. Snow did not oppose the 14 variances of Mr. Carden's property. And I 15 think that's very important to read the entire 16 sheet, because it does explain that those 17 were the terms that she was told at the time. 18 And then everything is changed. And her 19 property will be significantly devalued. And 20 she's had two realtors to -- and we're not 21 talking chump change here. We're talking 22 probably a couple hundred thousand dollars 23 and -- because it can't be divided into a 24 number of lots. And that's their inheritance,</p>	<p>Margaret Titus</p> <p>Page 32</p> <p>1 that I'm being told that I have to follow. 2 So these are questions that I 3 asked Mr. Cathcart. 4 Is it the scope of your duty as 5 city manager to negotiate and execute lease -- 6 leases for the -- for and in the best interest 7 of the city? 8 For the lease -- this is his 9 answer. For the lease of real property, the 10 city manager has the duty to negotiate leases 11 as authorized by council. 12 Is the lease in question in the 13 best interest of the city or in the best 14 interest of PSC? 15 It's not the duty of a city 16 manager to question the actions of city 17 council. The council determines what's in the 18 best interest of the city. 19 Do you believe that this lease 20 devalues the adjacent property? 21 I'm not qualified to give that 22 answer. It's best answered by a real estate 23 appraiser. 24 Would you have negotiated this</p>

<p>Margaret Titus</p> <p>Page 33</p> <p>1 lease on behalf of the city with the terms as 2 they are? 3 I would have recommended to 4 mayor and council that a bailout clause be 5 included to protect the city should there be a 6 need to open Jefferson Street to traffic. 7 Have any other businesses ever 8 presented a lease for the use of city property 9 prepared by their attorney that was then not 10 negotiated by the city manager and our 11 attorney? 12 No. Not that I'm aware of. 13 So there has never happened 14 before that somebody just comes up with their 15 own lease, all the terms that they want, and 16 it's not even asked by council to be 17 negotiated by the city manager or the 18 attorney. They just get what they want free 19 reign. 20 Before June 20th were you aware 21 that Jefferson paper street was back up for 22 lease? 23 No. 24 Were you made aware of or asked</p>	<p>Margaret Titus</p> <p>Page 35</p> <p>1 diligence working with the land surveyors. 2 That was already done -- the city solicitor -- 3 to have him vacate the property. 4 In 2016 -- now, this was from 5 October 2015 to April of 2016. The makeup of 6 council changed. And he says there were no -- 7 there was no more interest. 8 So that far away nothing was 9 done. Nothing proceeded. Things were done. 10 We were told, you know, there's legal 11 problems. There's legal problems. We were 12 not going to deny PSC access. We have -- I 13 have shown you evidence of that. And that's 14 one of my questions for Dick when we 15 discussed -- hold on. I'm sorry. 16 Did we discuss using the -- oh. 17 When you, Council Member Malinowski and I had 18 discussed the vacation of the property, did we 19 discuss allowing PSC parking and access to 20 their building? 21 Yes. The discussion was to 22 allow parking and access. 23 Did we discuss using the 24 remainder of the lot for day parking and bus</p>
<p>Margaret Titus</p> <p>Page 34</p> <p>1 to negotiate for the city's interest the lease 2 in question? 3 No. 4 Is it normal policy and 5 procedure for council members to determine 6 that the city property is for lease when it 7 has not been discussed with you or at a public 8 meeting? 9 Council has the authority to 10 establish any policy and/or procedure it 11 wishes with a majority vote of council. 12 So they just established this 13 policy that this is what can happen now. So I 14 guess that anybody, you know, can -- maybe 15 Crabby Dick's wants to lease that parking lot 16 from the city over there. And if they have 17 three people on council, then that can just be 18 established that that can be a lease and it 19 can be theirs and it can be cut off from 20 anything. 21 Is it -- why was nothing done 22 to -- after to vacate letters from October 23 2015? 24 The city was doing its due</p>	<p>Margaret Titus</p> <p>Page 36</p> <p>1 riders and bike riders? 2 Yes. 3 And here is -- because they're 4 trying to turn this around on me, like I'm 5 upset that my bid -- that was to show that -- 6 to show exactly what I knew was going to 7 happen. 8 On August 11th at 4 p.m., I 9 called you to discuss Allegheny -- Allegheny 10 Boat and Army Stores put in a bid on the lot 11 for more money and better terms. Do you 12 remember that call? 13 Yes. 14 If yes, did I tell you that my 15 reason for the bid was to show that no matter 16 what these council members were going to sign 17 the lease for PSC? 18 Yes. 19 So you have all my evidence. 20 Hopefully, you had time to go through it. I 21 can do no more. I respect your decision. 22 MR. EDWARDS: Okay. So, real 23 quick, we're -- if it's all right with the 24 Board, I think we're going to admit the</p>

<p>Margaret Titus</p> <p>Page 37</p> <p>1 submission that you gave us on October 13th as 2 your Exhibit A, and then the most recent 3 submission that you provided a couple days ago 4 as Exhibit B. 5 Now, what you just read right 6 there, I'm not sure I remember that being part 7 of this. Do you want that to be -- 8 MS. TITUS: I just got this. He 9 just gave it -- 10 MR. EDWARDS: Okay. 11 MS. TITUS: -- to me yesterday. 12 I had asked him for it. And he 13 just had it finished. 14 MR. EDWARDS: Okay. Mr. Walton, 15 I'm guessing you have not seen this. 16 MR. WALTON: I have not. But I 17 don't know if it's material to what I need to 18 ask Ms. Titus. 19 MR. EDWARDS: Do you have any 20 problem with this being entered into evidence? 21 MR. WALTON: No. I have no 22 objection. 23 MR. EDWARDS: Okay. And since 24 this is not part of either packet, we'll make</p>	<p>Margaret Titus</p> <p>Page 39</p> <p>1 MS. TITUS: Just a few minutes. 2 MR. EDWARDS: I -- I -- 3 MS. TITUS: Did I already take 4 up too much time? 5 MR. EDWARDS: No. 6 MR. WALTON: Right. 7 MR. EDWARDS: We have till 8 10:30, remember. 9 MS. TITUS: I'm not staying here 10 till 10:30. 11 MR. EDWARDS: So if there's no 12 objection, maybe it would flow better to have 13 Ms. Snow testify, and then you can do the 14 cross-examination. 15 MR. WALTON: I more than likely 16 do -- I may not have any questions for 17 Ms. Snow. I certainly have some questions for 18 you. I just want to make sure that's okay 19 with everybody. That's all. I'll do that if 20 you're okay with that, Meg. 21 MS. TITUS: Do you want to do 22 that first? 23 MR. WALTON: No, no. 24 Why don't you do Ms. Snow first.</p>
<p>Margaret Titus</p> <p>Page 38</p> <p>1 this Exhibit C. 2 MS. TITUS: Okay. 3 MR. EDWARDS: Okay. 4 MS. TITUS: Thank you. 5 MR. WALTON: Now, just as really 6 a point of order, I have a number of questions 7 to ask you, Meg. I didn't know if you were 8 going to call another witness. And because 9 maybe I -- I don't know -- just didn't know -- 10 kind of with Barrett's help, I'm just trying 11 to get this right, if that makes sense. So I 12 think if -- if you answer the question are you 13 going to call another witness or not -- 14 MS. TITUS: I was just going to 15 call Ms. Snow. Jill Snow. 16 MR. EDWARDS: With your 17 indulgence -- 18 MR. WALTON: Well, Barrett, I 19 guess I'll go to you. What should I do? 20 Should we do cross-examination now or should 21 we allow Ms. Titus to call Ms. Snow? 22 MR. EDWARDS: How long do you 23 think the testimony of Ms. Snow is going to 24 be?</p>	<p>Margaret Titus</p> <p>Page 40</p> <p>1 MS. TITUS: Okay. 2 MR. WALTON: Ask whatever 3 questions you have. 4 MS. TITUS: Then, I call 5 Ms. Snow. 6 MR. FRUYTIER: Don't forget to 7 speak up, Max. 8 MR. WALTON: Thank you, Ray. 9 MR. EDWARDS: Okay. So you need 10 to be sworn in. 11 MS. SNOW: Okay. 12 MR. EDWARDS: If you can state 13 your name for the record. 14 MS. SNOW: Jill Snow. 15 JILL SNOW, 16 the witness herein, having first been 17 duly sworn on oath, was examined and 18 testified as follows: 19 DIRECT EXAMINATION 20 BY MS. TITUS: 21 Q. Ms. Snow, did you have two realtors 22 come look at your property and advise you 23 about the devaluation of the right of way -- 24 of -- of the lack of right of way --</p>

<p>Margaret Titus Page 41</p> <p>1 A. Yes. 2 Q. -- if your right of way was given? 3 A. Yes, I did. 4 Q. And what did they say? 5 A. They said that, yes, it would devalue 6 the property. I did not have an official paid 7 appraisal done at that time. I just wanted an 8 opinion from them as to whether or not it 9 would devalue the property. And they said, 10 yes, it would. 11 Q. And so two -- two realtors have said 12 that? 13 A. Yes. 14 Q. And are -- are you planning to pursue 15 a lawsuit if this contract is not voided? 16 A. Yes, yes. 17 Q. Why didn't you oppose Mr. Carden's 18 variances for his building and setbacks during 19 the Board of Adjustment hearings for his -- 20 A. I actually recused myself at that 21 meeting from voting, but I -- you know, Dick 22 Cathcart did state that it would in no way 23 interfere with the opening of the paper 24 street.</p>	<p>Margaret Titus Page 43</p> <p>1 outside of the normal procedure for executing 2 a lease from the town manager because they're 3 tired of it is a little distressing. No one 4 could be any more tired than myself or 5 Preston. I mean, "tired" doesn't even touch 6 it. But, yeah, it has gone on for a long 7 time. And, you know, I expect, no matter how 8 long it goes on, that it is negotiated the way 9 any new lease would be negotiated. 10 So I had some notes here. The 11 thing that has bothered me about this is that 12 the council is supposed to endeavor to pursue 13 a course of conduct which will not raise 14 suspicion among the public that they are 15 engaging in acts which are in violation of 16 public trust and will not reflect unfavorably 17 upon the city. 18 And I think, you know, this 19 action has done that. I think if I had walked 20 into a meeting and said, "Hey, I have a lease. 21 I know you wanted \$600 a month, but now I'm 22 going to give you 300. And I want it for 23 15 years with no bailout and no price 24 increase" -- I think that the council would</p>
<p>Margaret Titus Page 42</p> <p>1 Q. And how has this decision by the city 2 council affected you and your family? 3 A. Well, the whole thing for four and a 4 half years has just about driven all of us 5 involved insane, I think, including Max and 6 everyone else involved in it. It just goes on 7 and on and on. And over the years, you know, 8 I get an answer on one thing that, you know, 9 it's not going to affect the street. The 10 street will always be open, blah-blah-blah. 11 And the next meeting that takes place, again, 12 they're not going to close the street. They 13 have a lease. And we would be -- I was told 14 that we would be notified if the street would 15 be leased. We were not. And, again, at that 16 point I was told that because it was 17 negotiated for less than \$10,000 that we -- it 18 didn't have to be offered to us. And -- and 19 so it wasn't. And it is more than \$10,000. 20 So, you know, I had a lot of conflicting 21 answers over the years. And, you know, it has 22 gone on for a long time. 23 I have to say in sitting here 24 this evening and hearing that we stepped</p>	<p>Margaret Titus Page 44</p> <p>1 have looked at me like I had gone out of my 2 mind. 3 Q. Mm-hmm. 4 A. I just can't imagine anyone doing 5 that. But that's what happened. 6 You know, I know that, you know, 7 it's a small town. Everyone knows a lot about 8 everyone's business. Everyone knows who's 9 friendly with whom. And, you know, I think in 10 putting myself in the -- that place, or as 11 chairperson of the Planning Commission or any 12 other committee I'm serving on -- if I had to 13 vote against a friend, you are looking at 14 voting against -- you know, you're going to 15 vote against a friend. And is it -- are you 16 willing to lose a friendship over a vote for 17 the town? I would be hard pressed to do that 18 personally. 19 The -- you know, it is -- it is 20 distressing to have lived here all this time. 21 And my parents, who are involved in this, and 22 I -- the rest of the family -- have been loyal 23 volunteers and servants to the city. And we 24 were not given so much as an iota of</p>

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1 consideration here. None. And it's most
2 distressing. The fact that we're at meetings
3 fighting and hollering, my parents were
4 extremely upset to have that go on. And in
5 their name. They -- they just were very upset
6 about it.
7 And I just think when you're in
8 a position like this you have to think about
9 everyone involved and represent everyone,
10 including the other citizens. You now closed
11 the street not only for our access to our
12 property for that side of the property but
13 also for the town. So no one in Delaware City
14 will be able to use that street for 15 years.
15 And I don't think anyone is
16 capable of deciding that there wouldn't be a
17 grant at some point to open it. Madison
18 Street was never opened. For years and years
19 and years since 1957 when we -- my uncle and
20 grandmother bought the property -- that it was
21 like a little valley there. And now it's a
22 street. So our -- you know, we thought at
23 some point Jefferson Street would also open.
24 And this precludes it from doing so for

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1 Q. A couple of things. I just wanted to
2 make sure. I believe it's your parents that
3 are the Waltons, and I don't want any ethical
4 thing against me. We are not related,
5 correct, Ms. Snow?
6 A. I think everybody already knew that.
7 Q. We wanted to make sure.
8 And -- and I believe that you --
9 and I just want to clarify a couple of things
10 that you said just to make sure that the
11 record is clear.
12 I believe that you said -- and
13 you talked about a \$10,000 limit along the way
14 or something --
15 A. Yeah.
16 Q. -- to that effect.
17 A. Yes.
18 Q. You and I never had that conversation.
19 A. No, no.
20 Q. Correct?
21 A. No. Dick Cathcart and I had that
22 conversation.
23 Q. Okay.
24 A. Actually, I have it in an e-mail.

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1 15 years, which is unfortunate for -- also for
2 the people of Delaware City.
3 So that's in a nutshell how I
4 feel about it.
5 I just think at some point in
6 the four and a half years there could have
7 been a more amicable agreement that would have
8 satisfied Preston, as well as given us access
9 to that property.
10 MS. TITUS: I still think there
11 is. I think one can be made. But --
12 MR. EDWARDS: Do you have any
13 more questions of Ms. Snow?
14 MS. TITUS: No. Thank you.
15 MR. EDWARDS: Okay. Do you have
16 any questions?
17 MR. WALTON: I just have a
18 couple or three questions for Ms. Snow.
19 CROSS-EXAMINATION
20 BY MR. WALTON:
21 Q. Hello, Ms. Snow.
22 How are you?
23 A. Hello. I'm fine.
24 How are you?

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1 Q. Okay. But, in other words, I never
2 gave you that advice.
3 A. No, no.
4 Q. Okay.
5 A. I don't think -- I never talked to you
6 about this at all, I don't think, other than
7 here.
8 Q. And I just -- just for going
9 forward -- and maybe this will help out with
10 when Meg talks. The court reporter can't take
11 down what we have to say when we're talking
12 over one another. So --
13 A. Oh, okay.
14 Q. So just make sure I finish my
15 question.
16 MR. WALTON: And, besides that,
17 I don't have any further questions.
18 THE WITNESS: Okay.
19 MR. WALTON: All right. Thank
20 you.
21 MR. EDWARDS: Okay. If you
22 don't have any --
23 MR. KONKUS: The Board can have
24 questions.

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1 **MR. EDWARDS:** Yeah.
2 **MR. KONKUS:** Ms. -- Councilwoman
3 Titus presented some evidence or made some
4 statements for which there's no
5 substantiation. But I think that Ms. Snow can
6 add -- as her only witness, might be able to
7 add some clarity.
8 **THE WITNESS:** Okay.
9 **MR. KONKUS:** In her opening
10 address, Councilwoman Titus mentioned that
11 there were vehicles parked along the lot
12 during the most recent election for city
13 council members that were partisan in nature.
14 Did you see that?
15 **THE WITNESS:** I can't remember
16 that far back, actually. I mean, I don't --
17 I -- I -- I know that there was a vehicle
18 parked with a sign on it.
19 **MR. KONKUS:** Did you see signs
20 anywhere on the property -- on the property
21 adjacent to you that -- or along that street
22 that had any election campaign signs? Any
23 electioneering whatsoever?
24 **THE WITNESS:** I think that I

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1 And so if there's nothing else
2 for Ms. Snow, you can be seated.
3 **THE WITNESS:** Okay.
4 (The witness was excused.)
5 -----
6 **MR. EDWARDS:** Okay. So
7 Mr. Walton has the opportunity now to
8 cross-examine.
9 Do you have any objection if
10 she -- it sounds like she wants to testify to
11 something additional right now.
12 **MR. WALTON:** No. I have no
13 objection.
14 **MR. EDWARDS:** Yeah. If you want
15 to --
16 **MR. KONKUS:** I can wait until
17 you, Counselor --
18 **MR. WALTON:** Okay. Thank --
19 thank you.
20 **MR. KONKUS:** I have written down
21 my questions.
22 **MR. WALTON:** Thank you.
23 And I have, for the members of
24 the Board -- and I'll hand them all out. Just

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1 had -- let's see. I had signs on my
2 property -- on the Walton property.
3 **MR. KONKUS:** Okay. Okay. Thank
4 you.
5 **MR. EDWARDS:** Do you have any --
6 **MS. TITUS:** May I say something
7 to that?
8 **MR. EDWARDS:** Well --
9 **MS. TITUS:** To answer his
10 question?
11 Can you ask me that question?
12 **MS. TITUS:** I called the town
13 hall about a sign on the city property.
14 **MR. EDWARDS:** So -- okay. We've
15 got to keep a little bit of order here.
16 So Ms. Snow has testified right
17 now. She just had some questions asked.
18 Mr. Walton, do you have any
19 follow-up?
20 **MR. WALTON:** For Ms. Snow, no.
21 But as I stated before, we need to have a
22 discussion with Ms. Titus.
23 **MR. EDWARDS:** Oh, absolutely.
24 Absolutely.

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1 because I thought it would be a little bit
2 more efficient at the end of the day to hand
3 out these exhibits. And I will go over the
4 exhibits when I speak with Ms. Titus.
5 Here you go, Meg. I think it
6 will just make things easier and go a little
7 bit quicker.
8 **MS. TITUS:** My gosh.
9 **MR. WALTON:** Actually, Meg, most
10 of them are what you produced.
11 **MS. TITUS:** Oh, okay.
12 **MR. WALTON:** Fine. That's fine.
13 It just makes it easier.
14 **MS. TITUS:** I did a lot of paper
15 copying.
16 **MR. WALTON:** You sure did. You
17 sure did.
18 **BY MR. WALTON:**
19 Q. So just a couple of introductory
20 issues, Meg.
21 **MR. EDWARDS:** So are these all
22 your exhibits packaged nicely?
23 **MR. WALTON:** Yes. Those are all
24 my -- to answer the solicitor's -- or the

<p>Margaret Titus Page 53</p> <p>1 Board -- what do they call you? The law -- 2 MR. EDWARDS: It doesn't matter. 3 MR. WALTON: -- official? 4 To answer your question, yes, I 5 tried to package everything up neatly and give 6 to you. 7 MR. EDWARDS: Do you want these 8 entered as Exhibits 1 through 25 or just 9 Exhibit -- 10 MR. WALTON: This is for 11 essentially the cross-examination. A lot of 12 them are statutes and meeting minutes that are 13 already part of the record. But I'll probably 14 get to the end and then ask them to come in. 15 MR. EDWARDS: Okay. 16 MARGARET TITUS, 17 having been previously sworn as a 18 witness, was resumed on examination and 19 testified further as follows: 20 CROSS-EXAMINATION 21 BY MR. EDWARDS: 22 Q. So, Ms. Titus, did you draft the 23 complaint that you placed into evidence before 24 the Board?</p>	<p>Margaret Titus Page 55</p> <p>1 here knows what you're asking me to look at. 2 Q. Okay. So in that -- and I'm going to 3 call that the complaint. 4 A. Okay. 5 Q. In that complaint, you state that it's 6 your belief that the lease negotiation 7 occurred behind closed doors. Is that 8 correct? 9 A. Yes. 10 Q. And isn't it true that you did not see 11 Councilperson Barrett, Councilman Fitzwater 12 and Councilwoman Green meeting to discuss that 13 lease outside of the council meetings? 14 A. No. I did not. 15 Q. And isn't it true that you have, at 16 least to date, not produced any writings 17 indicating that they met behind closed doors 18 about that lease? 19 A. I have not. 20 However, if you -- if someone 21 wanted to listen to the meeting -- to the 22 recording on the night that Ms. Barrett -- 23 June 20th -- presented it, they were already 24 then saying that they were -- Bud said that it</p>
<p>Margaret Titus Page 54</p> <p>1 A. Yes. 2 Q. And did you receive any assistance 3 with the preparation of that complaint? 4 A. No. 5 Q. And are the allegations in that 6 complaint true and correct? 7 A. To my -- how I feel they're true and 8 correct. 9 Q. Okay. All right. In that complaint 10 you make -- 11 A. Now, which one are we talking about 12 here? This first -- 13 Q. Sure. 14 A. -- this October 13th? 15 Q. Yes. Ms. Titus, if you go to -- flip 16 over to the book that I gave you -- I'm sorry. 17 I should have done a better job about that. 18 If you go to Exhibit 1 -- 19 A. Oh, my God. Yes. 20 Q. -- that's the complaint I was talking 21 about. 22 A. Okay. That's the letter I just read. 23 Q. Correct. 24 A. I'm trying to make sure that everybody</p>	<p>Margaret Titus Page 56</p> <p>1 should have been voted in a long time ago. 2 This should have taken place a log time ago. 3 And Natalie was already talking about voting 4 it in. Before you got to them -- that's not 5 recorded in the minutes. But if you get a 6 copy of the minutes -- and you guys do not 7 have to decide this tonight like it says on 8 the paper. It says in our rules that you can 9 take as long as it wants for you to decide it. 10 So if you want to listen to that tape, you 11 can. They already had prior knowledge of it, 12 because they stated that. It's just not 13 written down. 14 Q. Ms. Titus -- 15 A. Sorry. 16 Q. -- sitting here tonight, do you have 17 any written -- 18 A. No. 19 Q. -- documentation -- 20 A. No written documentation. 21 Q. Now, Ms. Titus, I'm sorry. We've been 22 friends a long time. But the court reporter 23 has the ability -- 24 A. I'm sorry.</p>

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1 Q. -- needs to be able to get to write
2 down what we say.
3 So if you can just let me finish
4 my question --
5 **A. I'm sorry.**
6 Q. -- I would appreciate it.
7 So you don't have any writings
8 that indicate they met behind closed doors.
9 **A. I do not.**
10 Q. And isn't it also true that you have
11 no Facebook posts or other social media
12 indicating that they met behind closed doors?
13 Isn't that correct?
14 **A. That's correct.**
15 Q. And isn't it true you haven't produced
16 a witness this evening indicating that they
17 witnessed Councilperson Barrett --
18 **A. That's --**
19 Q. -- Fitzwater and Green meeting to
20 discuss this lease --
21 **A. That's --**
22 Q. -- in private?
23 **A. That's correct.**
24 Q. And from what you just said just a

Margaret Titus Page 59

1 **I don't believe to it.**
2 Q. I'm -- I'm trying -- I'm trying to
3 actually read from your complaint, Meg.
4 **A. Okay.**
5 Q. So what you said was that no one --
6 **A. Yeah. No one.**
7 Q. -- the city --
8 **A. No.**
9 Q. No one had notice.
10 The city manager or other
11 members of council or the solicitor, they
12 hadn't seen that lease before that day.
13 Correct?
14 **A. Yes.**
15 Q. All right. Have you ever --
16 **A. Well, at that time we didn't know**
17 **what -- like nobody knew that this lease was**
18 **coming. And nobody knew what was in the lease**
19 **because we weren't -- we didn't know we were**
20 **leasing the property. Dick didn't even know**
21 **the property was for lease at that time. It**
22 **was supposed to have been -- you know, it was**
23 **the process of -- we were waiting for you to**
24 **tell us what legal proceedings we were to go**

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1 minute ago -- and I don't mean to -- I'm
2 trying to paraphrase it. I'm trying to get it
3 together. I believe that what you said, or --
4 or at least it might be in your complaint --
5 that Councilwoman Barrett produced the lease
6 at the June meeting. Is that correct?
7 **A. It was at the June 20th meeting, I**
8 **believe, when she brought the lease up. It's**
9 **in my minutes. And then it went into**
10 **discussion in the July 18th meeting.**
11 Q. I'm just asking right now about --
12 **A. Yes.**
13 Q. -- the June meeting.
14 All right. And your complaint
15 clearly says no one had notice of that. Isn't
16 that correct?
17 **A. No one knew that the property was up**
18 **for lease before she presented. They had**
19 **given us a copy of the lease.**
20 Q. And I'm just going to say I'm kind of
21 paraphrasing.
22 **A. I know you're paraphrasing, but I'm**
23 **going to say what's right -- what I believe,**
24 **not what you say and just say "yes" or "no" if**

Margaret Titus Page 60

1 **through to vacate it. That was the subject of**
2 **the -- that was supposed to be the subject of**
3 **the executive session that night.**
4 Q. Ms. Titus --
5 **A. I'm going to just say. Go ahead.**
6 Q. -- this isn't a difficult question.
7 My question is really simple.
8 Have you ever asked Councilperson Green if she
9 saw that lease before the June meeting?
10 **A. No, I haven't.**
11 Q. Have you ever asked Councilperson
12 Fitzwater if he saw the lease before that
13 meeting?
14 **A. No. But they wouldn't have been able**
15 **to comment on it before you stopped them if**
16 **they hadn't seen it.**
17 Q. Had you ever asked them at any time if
18 they negotiated any portion of the lease
19 before the June --
20 **A. No, I haven't.**
21 Q. And I assume you haven't had any
22 discussion with them at all about this issue.
23 Is that correct?
24 **A. That's correct.**

Margaret Titus Page 61

1 Q. So your allegations that they
2 negotiated the lease behind closed doors is
3 solely based on your perception of what
4 happened at the June meeting. Isn't that
5 correct?
6 **A. No, it's not. Because I heard them**
7 **state at the June meeting -- if you will**
8 **listen to the tape -- before you could stop**
9 **them, they were in agreeance (phonetic) with**
10 **that lease and stating that -- Bud**
11 **specifically -- I remember him saying, "Well,**
12 **this should have been passed a long time ago."**
13 **So obviously he knew what it was. And if they**
14 **didn't know anything about it, they should**
15 **have taken more time to find out about it,**
16 **because we were --**
17 **MR. FITZWATER:** I would also
18 like to hear the tape instead of you just
19 assuming I said stuff. I'm tired of sitting
20 here and --
21 **MR. EDWARDS:** Hold on, hold on,
22 hold on, hold on, hold on.
23 **BY MR. WALTON:**
24 Q. The fact is that the tape -- let me

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1 **lines where everything was red-lined out --**
2 Q. If I proffered to you that that's the
3 lease that was -- and I can have --
4 **A. It probably is. I just don't have**
5 **that lease with me, so --**
6 Q. That's perfectly fine.
7 And if you flip over just -- I
8 think this maybe will help clarify -- to the
9 next exhibit. It's an e-mail from Dick
10 Cathcart to me. Do you see that?
11 **A. Yes.**
12 **MR. FRUYTIER:** What tab would
13 that be?
14 **MR. WALTON:** That is Tab 3.
15 **MR. FRUYTIER:** Three.
16 **BY MR. WALTON:**
17 Q. And before we get to that lease, do
18 you remember there being discussions about
19 this lease -- and I think you testified about
20 Mr. Carden rejecting the lease sometime in
21 2015.
22 **A. Rejecting the lease that we offered**
23 **him, yes.**
24 Q. That's correct.

Margaret Titus Page 62

1 ask this question. You didn't produce that
2 tape for the meeting this evening. Correct?
3 **A. No, I didn't.**
4 Q. And that's not part of the evidence
5 here this evening that you're presenting?
6 **A. No. But the Board can do that, if**
7 **they wish.**
8 Q. Isn't that correct?
9 **A. That's correct.**
10 Q. You have the burden of proof. Isn't
11 that correct?
12 **A. Yes.**
13 Q. All right. So I'd like to -- if you
14 could go to the Tab -- I think it's Tab 2
15 of -- of your packet that you have there.
16 **A. (The witness complied with counsel's**
17 **request.)**
18 Q. Ms. Titus, do -- have you -- do you
19 recognize that?
20 **A. Yes.**
21 Q. Is that the lease that was handed out
22 on June -- at the June council meeting?
23 **A. Well, this says 2015, so I -- I don't**
24 **know if this is exactly one. And the red**

Margaret Titus Page 64

1 And were you aware ultimately
2 that he submitted a revised proposal that was
3 ultimately --
4 **A. Yes.**
5 Q. -- rejected?
6 And on Tab 3, that's the revised
7 proposal that you ultimately rejected?
8 Tab 3.
9 **A. I -- that's the one I'm on. Right?**
10 **Oh. Behind this letter?**
11 Q. Yes.
12 **A. I -- I don't know. It could -- it can**
13 **be. There's a lot of red line, as you see,**
14 **where he red-lined everything you had put in**
15 **the first lease that we offered to him. So,**
16 **yes, that looks like it, because everything is**
17 **removed. All the stuff that -- all the**
18 **precautions that you advised us to put in the**
19 **first lease were removed. So, yes, this**
20 **probably is the one.**
21 Q. Here's my point.
22 If you go to the -- that's the
23 lease. And if you could flip over to the
24 first page, it shows Mr. Cathcart's e-mail.

<p>Margaret Titus Page 65</p> <p>1 A. Mm-hmm. 2 Q. What is the date of Mr. Cathcart's 3 e-mail? 4 A. I see it. And I'm wondering why I 5 have a sworn affidavit here. 6 Q. I'm just asking you what the date of 7 the e-mail is. 8 A. It says July 16th. 9 Q. All right. So July 16th. 10 And if you flip over to Tab 2, 11 that's the one you testified that was handed 12 out at the meeting in June -- in June of 2016. 13 Correct? 14 A. This says 2015. 15 Q. Correct. But -- and I can have 16 someone else bring it up. And I can have 17 someone else do the testimony. 18 But at the end of the day, if 19 Tab 2 is the lease that was presented at the 20 June 20th meeting, would you agree with me 21 that it is identical to Tab 3, the lease that 22 was put in in -- or that was provided to the 23 city in 2015? 24 A. It is identical. But we did not</p>	<p>Margaret Titus Page 67</p> <p>1 Q. Just -- just answer my questions, 2 please. Are the two leases that I have at 3 Tab 2 and Tab 3 -- are they virtually 4 identical? 5 A. Yes. 6 Q. So sitting here right now, if Tab 2 is 7 the lease that was presented on -- in the June 8 council meeting, would you agree with me that 9 there was no negotiation or no changes to the 10 draft lease from July 2015 until June 20th, 11 2016? 12 A. Yes. 13 Q. And if that's indeed correct, there 14 wasn't any negotiation of the lease behind 15 closed doors because it's exactly the same one 16 that was submitted the year before. 17 A. They still decided behind closed doors 18 to lease the property without bringing it up 19 at a public meeting. That is not ethical. It 20 may be legal in your eyes. It is not ethical. 21 In the city it is not ethical. 22 Q. Ms. Titus, you're making allegations 23 that they negotiated a lease behind closed 24 doors in the plain language of your complaint.</p>
<p>Margaret Titus Page 66</p> <p>1 negotiate this lease. 2 Q. That's -- 3 A. We did not discuss this lease because 4 I presented evidence to show that we said we 5 were not discussing and negotiating this lease 6 at the meeting. We voted it down immediately. 7 Q. Ms. Titus, you're not answering my 8 question. 9 A. I thought I did. 10 Q. And my question is this: If the lease 11 didn't change from 2015 -- July 2015 until 12 introduced in June of 2016, there wasn't any 13 lease negotiation going on behind closed doors 14 now, were there? 15 A. These are not the same terms. These 16 are not the same terms that the lease is. 17 Q. I'll tell you what. I'll tell you 18 what. I'll make you a deal. I'll have 19 Ms. Barrett testify to it. Okay? That that's 20 the lease that was handed out. 21 A. That can be the lease that was handed 22 out. That -- what I'm more concerned about is 23 the e-mail from Dick saying that he had no 24 knowledge of it.</p>	<p>Margaret Titus Page 68</p> <p>1 A. Okay. 2 Q. What I'm trying to do is get at that 3 you didn't have any basis to make that claim 4 because there wasn't any negotiation that 5 occurred behind closed doors. 6 A. Because it -- it says it's exactly the 7 same thing. 8 Q. It says it's exactly the same thing. 9 A. Okay. 10 Q. That's exactly right. 11 And so, therefore, at the end of 12 the day, there wasn't any changes. Correct? 13 A. Okay. No, there weren't. 14 Q. All right. So -- and would you agree 15 with me, based upon the plain language of the 16 e-mail on Tab 2, that -- that this is a 17 lease that was -- this version of the lease -- 18 excuse me -- Tab 3, Meg -- that, based upon 19 Mr. Cathcart's e-mail, this was a version of 20 the lease that was provided by Dan Losco, 21 Preston's attorney. 22 A. Yes. Oh. This is July 16th, not -- 23 yes. And I was thinking this said June 16th, 24 not July 16th. Okay. I was thinking that</p>

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1 **that's June, not July.**
2 Q. Okay. I'm glad we got that
3 straightened out. Now, if you flip over to
4 the next tab -- and it's an exhibit to your
5 complaint.
6 **MR. FRUYTIER:** What one is that?
7 **MR. DILLIPLANE:** Four.
8 **MR. WALTON:** Tab 4.
9 **BY MR. WALTON:**
10 Q. Exhibit No. 7 from your complaint.
11 Correct?
12 **A. Yes.**
13 Q. All right. Now, if you flip over to
14 the seventh page --
15 **MR. DILLIPLANE:** We're going to
16 the seventh?
17 **MR. WALTON:** Correct. The
18 seventh page of Tab 4.
19 **BY MR. WALTON:**
20 Q. And the minutes of that meeting say
21 that Solicitor Walton said you would like to
22 clarify that the lease that was brought up on
23 the 20th of June was a modification of the
24 initial lease that was done by Mr. Carden's

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1 Q. Ms. Titus --
2 **A. -- is this the same as that?**
3 **MR. KONKUS:** I have a question.
4 **MR. WALTON:** She called me a
5 liar, Tim.
6 **MR. TITUS:** No. I just -- I did
7 not --
8 **MR. KONKUS:** Sir, I just have a
9 question.
10 **MS. TITUS:** I'm just saying --
11 **MR. KONKUS:** It's on what you're
12 doing, because I'm taking the time to do it.
13 And I don't see that they're the same leases.
14 **MR. WALTON:** Okay.
15 **MR. KONKUS:** I'm missing a whole
16 section here on Confession of Judgment,
17 paragraph 16, which runs two pages.
18 **MR. WALTON:** That's correct.
19 And I'd like to explain that real quickly.
20 When the lease --
21 **MR. KONKUS:** Because you said
22 they were the same leases.
23 **MR. WALTON:** You're right. And
24 I'm sorry about that. And I had forgotten

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1 attorney.
2 Do you see that?
3 **A. Yes.**
4 Q. And you said that's not true.
5 Correct?
6 **A. Well, you just said it wasn't true**
7 **because you said it's not a modification. You**
8 **said it was exactly the same. So you just**
9 **said it is not true.**
10 Q. The lease on the 20th -- the lease
11 that was provided on the 20th --
12 **A. Didn't you just tell me they were the**
13 **same lease?**
14 Q. The lease that was provided on the
15 20th, was it a modification of the lease
16 that -- that was provided by Mr. Carden's
17 attorney in July of 2015?
18 **A. Evidently, from what you just made me**
19 **say, it wasn't a modification. It was exactly**
20 **the same lease. You just made me say that it**
21 **was exactly the same.**
22 Q. Ms. Titus --
23 **A. We went all through that. And you**
24 **said --**

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1 about that, Tim. Thank you for reminding me.
2 And can I give a --
3 **MR. KONKUS:** Okay.
4 **MR. WALTON:** -- quick
5 explanation?
6 **MR. KONKUS:** Sure.
7 **MR. WALTON:** It's -- it's the
8 same lease. When the copy was distributed at
9 council -- and I'd like to clarify that --
10 **MR. KONKUS:** Mm-hmm.
11 **MR. WALTON:** -- because I don't
12 want to be untruthful.
13 **MR. KONKUS:** All right.
14 **MR. WALTON:** When the copy was
15 distributed to council that day, it was
16 missing the Confession of Judgment page. I
17 should have said that and I did not.
18 **MR. KONKUS:** Okay.
19 **BY MR. WALTON:**
20 Q. All right. So let's get on a
21 different subject, because I'm tired of
22 talking about the lease right now.
23 **MR. KONKUS:** Kind of like the
24 whole lease?

<p>Margaret Titus</p> <p>Page 73</p> <p>1 BY MR. WALTON: 2 Q. So you allege that Councilpersons 3 Barrett, Green and Fitzwater have disregarded 4 the laws that they were sworn to uphold. Is 5 that correct? 6 A. Yes. 7 Q. Is it your position as a councilperson 8 you should be aware of the laws? 9 A. Yes. 10 Q. And that would include the ethics 11 code? 12 A. Yes. 13 Q. And is it your position sitting here 14 today that by not publicly advertising the 15 lease that the laws of the city were violated? 16 A. The laws of the city and the ethics -- 17 I believe that they usurped the power of the 18 city manager. You don't believe that. That's 19 what I believe. 20 Q. So let's just do it one time -- one at 21 a time. 22 A. So that's the laws. 23 Q. Are there any provisions within the 24 city code of that part of it -- the code of</p>	<p>Margaret Titus</p> <p>Page 75</p> <p>1 Q. But that provision does not apply 2 here. Correct? 3 A. That provision does not apply in 4 whole. However, I feel that tying up the 5 property for 15 years -- and as you explained 6 to me prior, there is -- it can be considered 7 in some aspects like the sale of surplus 8 property because of the amount of the total 9 weeks. 10 Q. Ms. Titus, before you get yourself in 11 trouble, please do not divulge confidential 12 information which is provided to you in 13 your -- 14 A. Oh, I'm sorry. 15 Q. -- in your capacity as a 16 councilperson. 17 A. I didn't know -- 18 Q. And I'm just doing that as your 19 friend. 20 A. Okay. I'm sorry. 21 Q. And I don't want to get into that. 22 A. I didn't realize that was 23 confidential. 24 Q. All right. Speaking of that, can you</p>
<p>Margaret Titus</p> <p>Page 74</p> <p>1 the City of Delaware City -- that prevents the 2 leasing of this property by vote of council 3 sitting here today? 4 A. Say that again, please. 5 MR. FRUYTIER: Speak up, Max. 6 Q. Isn't it true there's nothing in the 7 city code that requires an RFP or another 8 process for the leasing of properties? Isn't 9 that correct? 10 A. Yes, that's correct. 11 Q. That's -- and it's your testimony that 12 that's just a general practice. Correct? 13 A. Yes. But that is not ethically. 14 Q. But that's not -- 15 A. That's the law. 16 Q. That is not the law of the town now, 17 is it? 18 A. No, it's not. 19 A VOICE: It's common sense. 20 Q. Now, there is a provision within the 21 code -- I think it's attached as Exhibit 5 to 22 your packet -- that deals with the sale of 23 surplus property. Is that correct? 24 A. Yes.</p>	<p>Margaret Titus</p> <p>Page 76</p> <p>1 flip over to No. 7? 2 And I believe at the very 3 beginning -- excuse me. Flip over to -- 4 actually, flip over to No. 8, if you wouldn't 5 mind. 6 A. (The witness complied with counsel's 7 request.) 8 Q. And -- and it -- in No. 8, would you 9 agree with me at the top that -- or at the -- 10 would you agree with me at the bottom is a 11 very long e-mail sent by Councilman Fitzwater? 12 A. Yes. 13 Q. Would you agree with me at the top 14 that there's legal advice provided by the 15 solicitor? 16 A. Yes. 17 Q. And would you agree with me also that 18 that's a violation of the ethics code because 19 the ethics code says you're not allowed to 20 divulge confidential information? 21 A. I don't see that says "confidential." 22 Q. It's advice from an attorney. You 23 would agree that that's attorney-client 24 privilege. Isn't that correct?</p>

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1 **A. All the other ones that say -- say**
2 **"privilege" and "confidential." So when I see**
3 **one that doesn't say that from your office,**
4 **then I assume that I can --**
5 Q. You make the assumption?
6 **A. Well, it doesn't say "privilege" and**
7 **"confidential." And it was his e-mail.**
8 Q. It's advice from an attorney. Isn't
9 that correct?
10 **A. Yes.**
11 Q. Okay. That's all I need to know.
12 **A. Are we not allowed to -- so if you**
13 **give us any advice --**
14 Q. Ms. Titus, unfortunately, I get to ask
15 the questions here.
16 **A. Okay. Go ahead.**
17 Q. It's not that difficult. All right?
18 **A. It's pretty difficult.**
19 Q. It's difficult for me too. I want you
20 to know that.
21 Prior to your August -- to the
22 August council meeting, as you recall, that's
23 where you submitted a bid.
24 **A. Mm-hmm.**

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1 **put that bid in. And that's why I was going**
2 **to read this before, you know, I voted.**
3 Q. But you read it that day. Didn't you?
4 **A. Yes. Because, you know, you read it**
5 **from the other side, yes.**
6 Q. That's correct.
7 And I believe we testified
8 earlier that you had general knowledge of what
9 the laws of the town are. Isn't that correct?
10 **A. Yes.**
11 Q. And ultimately -- ultimately, you gave
12 your opinion.
13 **A. Yeah. I know. And now I realize I**
14 **shouldn't have. Since I read the ethics code**
15 **completely, I do realize that I shouldn't**
16 **have. At the time I hadn't -- I did not think**
17 **this was a violation of the ethics code. But**
18 **I'm not the one that's -- I mean, I guess you**
19 **can file ethics against me, then.**
20 Q. And I don't intend to do that.
21 I'm just saying that, at the end
22 of the day, Ms. Titus, we all have to live
23 under the code and do the best we can.
24 **A. And I know that now that I have**

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1 Q. Do you remember that?
2 Did you share with me that you
3 would be submitting a lease bid?
4 **A. No. Because -- never mind. No.**
5 Q. And is that bid, just so we're
6 clear, Exhibit 9?
7 **A. Yes.**
8 Q. And you've crossed out the date of
9 July 12th?
10 **A. Yeah. Because it was a typo.**
11 Q. Okay.
12 **A. And I have the check. I showed the**
13 **check to prove it. And I have Dick's**
14 **affidavit to prove it as well.**
15 Q. Agreed. I'm not fighting that. I
16 just wanted to make sure that the record was
17 clear that you submitted it --
18 **A. Yeah.**
19 Q. -- in -- in August.
20 Okay. But you also prepared
21 a -- a statement that day. Is that correct?
22 And that's Tab 11?
23 **A. Yes. Because I wanted to recuse**
24 **myself from the council because I knew that I**

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1 **completely immersed myself in it.**
2 Q. You own a business in town. Isn't
3 that correct?
4 **A. Mm-hmm.**
5 Q. You have a number of customers in
6 that. Right?
7 **A. Mm-hmm.**
8 Q. And customers vote in city council
9 elections?
10 **A. Say that again.**
11 Q. Do customers vote --
12 **A. Customers that vote?**
13 Q. I'm sorry. We've got to watch out for
14 the court reporters again.
15 Let me ask the question again.
16 You have customers that vote for you --
17 **A. Yes.**
18 Q. -- in the city council elections.
19 **A. Yes.**
20 Q. Isn't that correct?
21 And did you ever put campaign
22 signs up on a -- for an election?
23 **A. Yep.**
24 Q. And if someone put a campaign sign up

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1 in their yard, I assume that you would agree
2 that they support you in that election. Isn't
3 that correct?
4 **A. I would hope so.**
5 Q. So isn't it true that if someone put a
6 campaign sign up that wouldn't disqualify you
7 from a matter before council in which that
8 person came forward?
9 **A. That's correct.**
10 Q. And as a practical matter, if that
11 were the test, if you had to disqualify
12 somebody because they were a customer of yours
13 or because they were a friend of yours or
14 because they put up a campaign sign for you,
15 virtually everyone would be disqualified.
16 Isn't that correct?
17 **A. Yes.**
18 **MR. WALTON:** You'll be happy to
19 know I'm going to skip over several pages to
20 sort of speed this along.
21 **MR. DILLIPLANE:** Okay.
22 **BY MR. WALTON:**
23 Q. In your complaint, I think it's safe
24 to say that there are -- you believe that open

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1 **can determine that a FOIA violation is an**
2 **ethical violation as per our code here. Not**
3 **that they can determine. In like the state**
4 **level. Because I've already talked to -- to**
5 **the state attorney general's office about this**
6 **and Joe Rogowski (phonetic) and another person**
7 **about this. So, no, I do not think that they**
8 **can cause an action about it. But they can**
9 **say that is unethical here in Delaware City.**
10 Q. So if they have no jurisdiction to
11 decide whether or not a FOIA violation
12 occurred in the first instance, is it your
13 testimony that they can go ahead and decide
14 the FOIA decision first and then plan that
15 there is an ethical violation second?
16 **A. They can decide if they think a FOIA**
17 **violation has occurred, but they can't act on**
18 **that and put -- they can't act on that and**
19 **make a judgment on that like in the law where**
20 **you would actually get a penalty.**
21 Q. So they can't make a judgment on
22 whether a FOIA violation occurred. Isn't that
23 correct?
24 **A. No. That's not what I'm saying, Max.**

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1 meeting law violations occurred. Is that
2 correct?
3 **A. Yes.**
4 Q. And --
5 **MR. FRUYTIER:** What tab are you
6 on now, Max?
7 **MR. WALTON:** I'm not on any tab
8 at the moment. Thank you, Ray. I'm actually
9 trying to disregard some of my tabs to speed
10 it up.
11 **MR. FRUYTIER:** I'm just testing
12 you.
13 **MR. WALTON:** Thank you. Thank
14 you.
15 **MR. DILLIPLANE:** You did such a
16 thorough job here.
17 **BY MR. WALTON:**
18 Q. So have you ever had any FOIA training
19 formally?
20 **A. No.**
21 Q. And I believe you claimed that the
22 Board has jurisdiction to determine if a FOIA
23 violation has occurred. Correct?
24 **A. No. What I understand is that they**

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1 **I'm sorry. I'm not saying -- that's not how I**
2 **see this.**
3 **I see it that they can look at**
4 **something and say this is a -- they can make a**
5 **judgment in their mind that a FOIA action has**
6 **occurred and deem it unethical. But they**
7 **can't put a charge on somebody, like the**
8 **FOIA -- like a state level or the federal**
9 **level. That's what I'm interpreting.**
10 Q. We're just going to have to agree to
11 disagree --
12 **A. Okay. That's fine.**
13 Q. -- because that's not what the law
14 says.
15 So -- but in your complaint --
16 and we're going to flip over to it -- you said
17 that -- and I'm going to read. And this is
18 actually from Tab 1, the page that starts 17.
19 And the sentence starts "It was only discussed
20 in executive session on July 18th, which I
21 believe is another violation of state and
22 federal law..."
23 Do you see that?
24 **A. Yes.**

<p>Margaret Titus</p> <p>Page 85</p> <p>1 Q. Okay. So specifically tell me what 2 federal law? 3 A. Well, the open meeting law. Because 4 I -- 5 Q. Is that a Delaware or federal law? 6 A. Okay, Max. Scratch the federal law 7 out of there and put "state" law -- the "open 8 meeting" law. 9 Q. So it's State of Delaware's open 10 meeting law? 11 A. Yes. I'm not an attorney. 12 Q. Look -- and this is hard for me, 13 because you made a lot of allegations. In 14 order to make the record with that court 15 reporter, I have to walk through these 16 questions. 17 A. Well, there is just so much wrong with 18 this whole thing. I had to make allegations 19 because there's just wrong at every turn. 20 Q. You can say it's wrong at every turn, 21 but the question is whether or not there was a 22 violation of the ethics code. 23 A. Right. 24 Q. And so I'm trying to --</p>	<p>Margaret Titus</p> <p>Page 87</p> <p>1 starts with a 17 in the corner, Ray. 2 MR. FRUYTIER: Okay. 3 MR. WALTON: And -- 4 THE WITNESS: Oh. And the 5 reason I believe that is because from things I 6 have read. When you put on the agenda the 7 reason for executive session, it cannot be 8 generalized. That meeting we were still 9 waiting to discuss the rights of the city and 10 the vacation in the next executive session. 11 And then all of a sudden, this lease is 12 brought up. And this just -- Jefferson paper 13 street is always on there. Not what is going 14 to be discussed about the Jefferson paper 15 street. So that is what I think -- that I 16 think is a violation of the state open meeting 17 laws, because it keeps getting put just 18 Jefferson paper street up for discussion, 19 not -- and Bob Malinowski agrees with this 20 too. It -- we were gonna -- the disposition 21 or the vacation of what was to be done was the 22 topic until they changed it. And then all of 23 a sudden, it's discussion of a lease, which -- 24 a lease that has not been discussed in public.</p>
<p>Margaret Titus</p> <p>Page 86</p> <p>1 A. It's unethical. 2 Q. And they -- I have the right and, in 3 fact, the duty, even though it's difficult for 4 me, to go through and take your allegations 5 and to find out if they are true or not. 6 So why do you believe the 7 Freedom of Information Act was violated? 8 A. Because -- okay. Which -- which 9 page -- which -- 10 Q. On July 18th -- 11 A. Where -- where is paragraph -- what 12 was it on? The first page? 13 Q. If I may approach and turn you to the 14 appropriate page. 15 A. That would be good. Thank you. I 16 didn't number these pages. And I should have. 17 Q. It's right here. 18 A. Okay. Oh, I was on it already. 19 Q. Okay. All right. We're getting 20 there. 21 MR. FRUYTIER: What page is 22 that, Meg? 23 THE WITNESS: It would be the -- 24 MR. WALTON: It's the page that</p>	<p>Margaret Titus</p> <p>Page 88</p> <p>1 That lease was not discussed in public back in 2 2015 when it came -- it was presented -- it 3 was never discussed in public until this open 4 meeting till this executive session. 5 Q. The July 18th meeting -- 6 A. The executive session. Not the 7 meeting, the executive session. 8 Q. I believe your claim is that there 9 wasn't notice that there was going to be 10 executive session. 11 A. No. 12 Q. Is that correct? 13 A. No. There was notice. It was not 14 specific. And this lease was not discussed in 15 public before it was discussed at this 16 executive session. 17 Q. Can you flip over to the agenda, which 18 is Tap 15, for the meeting? 19 A. (The witness complied with counsel's 20 request.) 21 Q. And if you go down under Old 22 Business -- do you see that? 23 A. Yes. 24 Q. And it says Jefferson Paper Street</p>

<p>Margaret Titus</p> <p>Page 89</p> <p>1 Lease, paren, potential executive session, 2 close paren. Do you see that? 3 A. Yes. 4 Q. Did I read that correctly? 5 A. Yes. 6 Q. So that provided notice that there was 7 going to be executive session on the Jefferson 8 Paper Street Lease. Isn't that correct? 9 A. Yes. The June 20th was to be -- this 10 is because you -- this says -- yes, it does 11 there. 12 Q. And on -- let's talk about the 13 June 20th meeting, because you and I were both 14 there. And I think we can flesh out some of 15 this pretty easily. 16 At the June 2016 meeting, I was 17 there. Correct? 18 A. Yes. 19 Q. And there was discussion that began 20 very briefly, maybe for a minute or two, at 21 the beginning of that meeting about -- about a 22 lease. Is that correct? 23 A. Yes. 24 Q. And didn't I immediately, as quickly</p>	<p>Margaret Titus</p> <p>Page 91</p> <p>1 anybody a hundred percent. So, yes, I would 2 say for the most part. 3 Q. Fair enough. Fair enough. 4 But for the most part, you -- 5 but you had no reason to challenge or dispute 6 any portion of the affidavit I submitted -- my 7 affidavit in this case. Correct? 8 A. No. I mean, was that the right -- I 9 don't have any reason to challenge it. 10 Q. Okay. And that's at Exhibit 17. I'm 11 not trying to hide it from you. I want you to 12 be able to see it. It's just one page. 13 A. Oh. 14 Do you have the -- where he 15 informed council that he was not going to take 16 any further issue? 17 Q. It's his affidavit, Ms. Titus. 18 A. I mean, I -- 19 Q. Do you have any reason to dispute 20 the -- 21 A. I just don't remember that -- him 22 informing council that he was not going to 23 take any further action on it. 24 Q. Do you have any reason to dispute his</p>
<p>Margaret Titus</p> <p>Page 90</p> <p>1 as I could, get to the microphone and say this 2 matter is not on the agenda? 3 A. Exactly. That's what the tape says. 4 Q. And there wasn't any further 5 discussion of that lease. 6 A. Exactly. 7 Q. Isn't it true that there was a meeting 8 that was noticed on August the 15th where 9 there was a long protracted discussion about 10 the lease -- 11 A. Mm-hmm. 12 Q. -- before it was approved? 13 Isn't that correct? 14 A. Yes. 15 Q. All right. Now -- and your complaint 16 also talks about usurping the duties of the 17 city managers. I would like to go over that 18 quickly. 19 You believe the city manager has 20 done a good job while he has been here? 21 A. Mm-hmm. 22 Q. Do you consider him to be a 23 trustworthy person? 24 A. For the most part. I don't trust</p>	<p>Margaret Titus</p> <p>Page 92</p> <p>1 affidavit sitting here today? Or do you just 2 not remember? 3 A. I don't remember being informed of 4 that. 5 Q. Would you agree with me that under the 6 city charter and code the city manager cannot 7 approve a lease? Correct? 8 A. Without -- without council. Without 9 council. 10 Q. Right. It's the responsibility of 11 council -- 12 A. Right. 13 Q. -- ultimately, isn't it? 14 A. To approve it, yes. 15 Q. To approve the lease. 16 A. Exactly. 17 Q. I'm going to try to page through a few 18 of these pages. So if you give me a second. 19 A. Take your time. I've got till 10:30. 20 Q. That's right. Me too. 21 A. I might need a coffee but -- 22 Q. Would you -- I might need a coffee 23 too. 24 If you go to Exhibit 19.</p>

<p>Margaret Titus Page 93</p> <p>1 A. (The witness complied with counsel's 2 request.) 3 Q. I just wanted to have it read. 4 Can you go to the definition of 5 "meeting"? Do you see that? 6 MR. FRUYTIER: Which one is 7 that? 8 MR. KONKUS: Nineteen. 9 MR. WALTON: Tab 19, definition 10 of "meeting." 11 BY MR. WALTON: 12 Q. Do you see that? 13 A. Declaration of policy, Definitions, 14 FOIA, meeting. Okay. 15 Q. Got it. 16 And it says "meeting" means the 17 formal or informal gathering of a quorum of 18 the members of any public body for the purpose 19 of discussing or taking action on public 20 business either in person or by video- 21 conference. 22 Do you see that? 23 A. Yes. 24 Q. So in order for there to be a public</p>	<p>Margaret Titus Page 95</p> <p>1 Q. So in your complaint that you allege 2 that many townfolk are aware of a life-long 3 relationship or friendship between 4 Mr. Carden/Bud -- and Bud Fitzwater -- 5 remember that? 6 A. Yes. 7 Q. And do you know that from your own 8 personal knowledge? 9 A. Yes. 10 Q. Have you -- okay. Have you ever had 11 any conversations with Mr. Carden about his 12 relationship with Mr. Fitzwater? Did you ever 13 ask Mr. Carden what his relationship was with 14 Mr. Fitzwater? 15 A. I have seen them together and doing 16 things. And I have known them to be 17 business -- that's why it was Bud's 18 Automotive, named after -- he brought the 19 property from him. So, no, I haven't had -- I 20 have had conversation with Bud's neighbor, 21 Chris McKinley, who -- Uncle Joe told the 22 story of Preston going to live with them 23 and -- 24 Q. Okay. So -- so you got your</p>
<p>Margaret Titus Page 94</p> <p>1 meeting, there has to be a discussion. Isn't 2 that correct? 3 A. Yes. 4 Q. And regarding Councilman Fitzwater's 5 e-mail, which we discussed earlier -- what tab 6 is Councilman Fitzwater's -- 7 MS. DE LUCA: I think 8. 8 BY MR. WALTON: 9 Q. Councilman Fitzwater's e-mail, which 10 is at -- is Tab 8, if you go there. 11 A. (The witness complied with counsel's 12 request.) 13 Q. There was no discussion amongst 14 council about that e-mail. Isn't that right? 15 Because I stopped it. 16 A. Oh, well, I don't -- I -- I can't say 17 if that's right or not, because they could 18 have already done it before they -- they 19 already had the e-mail before you put this 20 out. So I cannot say that there was no 21 discussion. They could have discussed it 22 prior to you sending out your e-mail. 23 Q. Are you aware of any discussions? 24 A. No, I'm not aware of any.</p>	<p>Margaret Titus Page 96</p> <p>1 information from a hearsay source. 2 A. Well, not a hearsay. It was -- he 3 worked with the guy. 4 Q. This is a really simple question. 5 And the question is: Have you 6 ever had any conversations with Mr. Carden 7 about his relationship with -- with 8 Mr. Fitzwater? 9 A. No. I haven't asked him how he likes 10 him. 11 Q. Yeah. And on the flip side of that, 12 have you ever asked Councilman Fitzwater what 13 his relationship is with Preston Carden? 14 A. No. I don't go around asking what 15 their relationship is. 16 Q. So, ultimately, as a point of fact, 17 what you learned you've basically learned from 18 others. Is that correct? 19 A. It's Delaware City. Everybody knows 20 who's tight. Are they going to say they're 21 not? 22 Q. I don't know what they're going to 23 say, Meg. 24 A. I'm just saying.</p>

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1 Q. All right. So it also says that they
2 consider them as family. Where did you learn
3 that?
4 **A. Well, I have heard that from several**
5 **people, you know, because --**
6 Q. So who -- who are those people?
7 You said you heard it from
8 "several" people.
9 **A. Yeah. And I'm trying to think. I**
10 **think Ms. Snow did -- or one of --**
11 **THE WITNESS:** Cindy, was
12 somebody saying that they act like -- well,
13 Chris McKinley was one of them, because he
14 said --
15 **MR. WALTON:** Okay.
16 **THE WITNESS:** -- that --
17 **MR. WALTON:** Chris McKinley.
18 **THE WITNESS:** -- he felt him as
19 a brother.
20 **BY MR. WALTON:**
21 Q. Anybody else?
22 **A. Well, Fritz' father stood up there for**
23 **Preston and told me -- and told the whole**
24 **council.**

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1 Q. Besides your conversations with Mr. --
2 Mr. McKinley or Mrs. McKinley?
3 **A. Mister.**
4 Q. Mr. McKinley.
5 You don't have any other
6 knowledge. Is that correct?
7 **A. Well, I can't say that I don't,**
8 **because I see and hear. Everybody talks to**
9 **everybody. So, yes, over the years everybody**
10 **knows who has a relationship with each other**
11 **or a very good friendship.**
12 Q. My question --
13 **A. I can't say specific names and**
14 **specific dates.**
15 Q. Okay.
16 **A. So I can't say "no" to that because --**
17 Q. Do you have --
18 **A. -- I know that they've always been**
19 **friends.**
20 Q. This is a specific question I'm trying
21 to get answered, which is specifically: Do
22 you have any personal knowledge that
23 Mr. Carden lived with the Fitzwaters? Any
24 personal knowledge?

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1 Q. I'm speaking specifically regarding
2 Councilman Fitzwater.
3 **A. I can't remember who specifically.**
4 Q. Okay.
5 **A. It's just known. And people talk.**
6 **And I can't remember who said what.**
7 **Do they not --**
8 Q. So -- so you don't have personal
9 knowledge of it is my point.
10 **A. No. I don't have -- I mean, I have**
11 **had conversations but not like can remember**
12 **who said it.**
13 Q. Do you have any personal knowledge?
14 **A. Except for Chris McKinley.**
15 Q. Chris McKinley.
16 Is that it?
17 **A. Yes.**
18 Q. Okay. Who told you that -- that -- I
19 believe you testified -- or in your complaint
20 says that Mr. Carden lived with the
21 Fitzwaters.
22 **A. Chris McKinley.**
23 Q. That was from Chris McKinley?
24 **A. Mm-hmm.**

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1 **A. Did I see it?**
2 Q. Do you have any personal knowledge?
3 **A. No.**
4 Q. Thank you.
5 **A. Are you going to ask him if he did?**
6 **MR. FITZWATER:** You can.
7 **A VOICE:** I can too.
8 **MR. WALTON:** Wait.
9 **MR. EDWARDS:** Hold on.
10 **MR. WALTON:** Hold on.
11 **MR. EDWARDS:** Hold on.
12 **MR. WALTON:** Hold on. You're
13 going to get your opportunity to testify,
14 so --
15 **BY MR. WALTON:**
16 Q. All right. So is it your testimony
17 that -- that because Mr. Fitzwater parked a
18 truck that had campaign signs on Mr. Carden's
19 property that that's a disqualifying interest?
20 **A. No. It was all-inclusive. Just**
21 **everything bundled into one. How close? I**
22 **think he should have recused -- he should have**
23 **brought it up to you first, at least. And**
24 **then if you decided that he had too much**

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1 personal interest because of their business
2 dealings -- all the stuff bundled into one
3 little package -- they're friends -- their
4 long friendship -- and I was told that Preston
5 lived there when he was 18 and was no longer
6 allowed to live at home was taken in by them.
7 I was told that. And I had no reason to
8 believe it because he was -- was working with
9 his uncle. And if -- that was the story that
10 his uncle told. So I would -- I had no
11 reason. I didn't even ask for that.
12 Q. You know, I'm really trying to get
13 through this quickly. It's getting kind of
14 hard.
15 MR. KONKUS: It's clear to say
16 that if she were on the Senate floor she could
17 do a filibuster.
18 MR. WALTON: She could do a
19 filibuster, yes, Tim.
20 And -- and, you know, my friend,
21 Meg, I appreciate you taking the time with me
22 tonight. And I'm sorry this is painful for
23 you. And it's painful for me. But I have to
24 make a record.

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1 A. I think that's what caused all this
2 mess.
3 Q. Ultimately, do you know if the charter
4 allows the city council to lease property?
5 A very simple question.
6 A. Nope.
7 Q. Is that a yes or a no?
8 A. I do not know. I've looked for it.
9 But I do not know. And according to Dick's
10 affidavit, I asked him that question, I
11 believe.
12 Do you want me to keep it simple
13 or do you want me to look for that?
14 Q. No. I'll tell you what I'm going to
15 do.
16 A. I'm --
17 Q. It's clearly in the charter. So what
18 I'm going to do is I'm going to bring up that
19 section when I give my closing arguments,
20 ultimately --
21 A. Okay.
22 Q. -- just to speed this along a little
23 bit.
24 Okay?

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1 THE WITNESS: I understand. I'm
2 just trying to get it right -- to say what I
3 think to be --
4 MR. WALTON: I absolutely
5 understand that. All right?
6 BY MR. WALTON:
7 Q. In the complaint you talk about -- and
8 you say -- I'm going to try to quote it. You
9 say, "After reading the use of property in the
10 ethics code, it's my opinion that it should
11 not be leased to anyone at all."
12 Do you see that?
13 A. The Jefferson paper street?
14 Q. Yes, the Jefferson paper street.
15 A. That's what I mean.
16 Q. Okay. Does that mean that it's your
17 testimony that no property should be leased by
18 the city?
19 A. No. That that property shouldn't,
20 because it's a right of way and if he -- and
21 it's causing harm.
22 Q. And that's your opinion.
23 A. That's my opinion.
24 Q. Correct?

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1 And I'd like to talk to you sort
2 of lastly about something.
3 MR. KONKUS: Solicitor, if I
4 could --
5 MR. WALTON: Yes.
6 MR. KONKUS: -- if you got that
7 portion of the charter here, rather than
8 taking it from your lips --
9 MR. WALTON: Yeah. Sure.
10 MR. KONKUS: -- I would rather
11 have it read into the record by -- by her --
12 MR. WALTON: Sure.
13 MR. KONKUS: -- please.
14 MR. WALTON: That's fine.
15 If you give me a second.
16 MR. WALTON: Where is the
17 charter, do you know?
18 MS. DE LUCA: Twenty-two.
19 MR. WALTON: Thank you.
20 BY MR. WALTON:
21 Q. If you go to 22 -- right?
22 MR. KONKUS: Twenty-two, Megan.
23 THE WITNESS: Oh.
24 MR. WALTON: Section 2-01.

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1 **THE WITNESS:** Right.
2 **MR. WALTON:** Second paragraph.
3 At the beginning, it says, "The
4 City of Delaware City may," if you see that,
5 "have and use a corporate seal," on and on and
6 on. And we go down to -- there's a phrase in
7 the middle that says "and" -- "and may sell,
8 lease, mortgage and control such property or
9 utility as its interest may require..."
10 And previously I -- I read --
11 Ms. Titus and I talked about Section 9 of the
12 charter which deals with the city manager. If
13 you recall, I can get you that section. And
14 that section says the city manager has to get
15 council approval prior to executing a lease.
16 So the city council has the power to lease.
17 It's right in the charter.
18 **MR. KONKUS:** Do you see it?
19 **THE WITNESS:** Which one am I
20 supposed to read? The second? The City of
21 Delaware City?
22 **MS. FRUYTIER:** Just -- just --
23 **THE WITNESS:** Pardon me?
24 **MS. DE LUCA:** Eighteen is the

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1 August 10th. Correct?
2 **A. Yes.**
3 Q. And had an opportunity to speak at the
4 meeting on August 10th. Isn't that correct?
5 **A. Yes.**
6 Q. And say her peace about the lease.
7 Correct?
8 **A. And say her peace about the lease,**
9 **yes.**
10 Q. And you also had your opportunity to
11 say your peace about the lease at the
12 August 10th meeting.
13 **A. Yes.**
14 Q. So there was notice and there was an
15 opportunity to be heard. Isn't that correct?
16 **A. Notice from?**
17 Q. Notice --
18 **A. This -- this was presented at the**
19 **meeting -- this August 10th.**
20 Q. So there was notice at least to you
21 and Ms. Snow that the lease was going to be
22 discussed on August 10th. Isn't that correct?
23 Because you knew about it.
24 **A. Yeah. We knew in August, yes.**

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1 other one.
2 **MR. WALTON:** I just read it.
3 **THE WITNESS:** But he say he
4 wanted me to read it.
5 **MR. KONKUS:** No. That's fine.
6 He -- he read it into the record as opposed to
7 doing it by --
8 **THE WITNESS:** Okay.
9 **MR. KONKUS:** -- any other
10 technique.
11 **MR. WALTON:** Thankfully, we're
12 getting to the end here.
13 And I'll try to keep my voice
14 up, Ray.
15 **BY MR. WALTON:**
16 Q. So if you'll look at Exhibit -- and I
17 believe that's 25, Meg. And that's a letter
18 from Ms. Snow. Isn't that correct?
19 **A. Yes.**
20 Q. And that letter from Ms. Snow is dated
21 August the 10th?
22 **A. Yes.**
23 Q. And so Ms. Snow was aware that the
24 property was going to be leased as of at least

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1 Q. Exactly.
2 And you had an opportunity to be
3 heard at the August council meeting on that
4 issue. Isn't that correct?
5 **A. The only reason that she had an**
6 **opportunity to be heard is because I opened it**
7 **for -- I tried -- I made a motion to open it**
8 **for public comment. Two of the councilpeople**
9 **tried not to keep it -- not -- not the matter**
10 **be heard.**
11 Q. But at the end of the day, there was
12 notice and there was an opportunity to be
13 heard.
14 **A. Yes, there was.**
15 Q. Isn't that correct?
16 **A. Yes. There was.**
17 Q. Okay.
18 **A. I guess.**
19 **MR. WALTON:** I'm just going to
20 check my notes. And hopefully --
21 hopefully -- I'm done.
22 **MR. WALTON:** Barrett --
23 Mr. Edwards -- excuse me -- I'll just -- we
24 handed up our -- our ethics hearing exhibits,

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1 most of which are copies of things that are
2 already in the record. But just so if we
3 could mark that as an exhibit to -- to the
4 record.
5 **MR. EDWARDS:** Yep.
6 **MR. WALTON:** And I have no
7 further questions of Ms. Titus.
8 **THE WITNESS:** I'm still alive.
9 **MR. EDWARDS:** Sorry. I'm just
10 making some notes.
11 Okay. So that was the
12 cross-examination. So at this point does the
13 Board have any questions they would like to
14 ask Ms. Titus.
15 **MR. KONKUS:** Ms. Titus, you --
16 you mentioned that you saw at least one
17 placard allowing for what the code calls a
18 political association on the property. Did
19 you see how many placards at any time?
20 **THE WITNESS:** There was Bud
21 Fitzwater's sign on the paper street in the
22 ground and there was another one in the pickup
23 truck --
24 **MR. KONKUS:** Okay.

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1 **THE WITNESS:** -- on the paper
2 street.
3 **MR. KONKUS:** And there were no
4 other signs on the property?
5 **THE WITNESS:** Well, on Preston's
6 property there were signs. I -- you know, on
7 his own property on his side, there were --
8 there were also their political signs. But on
9 the paper street, I believe it was only
10 Mr. Fitzwater's signs on that -- right on that
11 section where they park the cars. The pickup
12 truck was there with the thing, and then the
13 little sign was stuck in the ground.
14 **MR. KONKUS:** Were there any
15 signs along the fence on Clinton Street on the
16 PSC storage area?
17 **THE WITNESS:** Mm-hmm.
18 **MR. KONKUS:** What signs did you
19 see there?
20 **THE WITNESS:** Natalie Green and
21 Kathy (phonetic) Johnson and Bud Fitzwater. I
22 think they -- I think -- I'm not sure his was
23 on the fence or not. But I know the other two
24 were banners.

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1 **MR. KONKUS:** What size banners?
2 **THE WITNESS:** Well, there was
3 one big banner for Ms. Green that was -- I
4 don't know -- three foot by, maybe, six foot
5 or something.
6 **MR. KONKUS:** Okay. All right.
7 I just wanted to make sure that that was
8 clear.
9 Also Counsel here towards the
10 end went over some things where he said notice
11 and opportunity was given. Do you understand
12 what he meant by "notice" and "opportunity"
13 is?
14 **THE WITNESS:** Not really.
15 I -- I see the letter. I know
16 that she did speak. The letter was sent to us
17 on August 10th. But I don't know what he
18 meant by "notice" and "opportunity." I mean,
19 yeah, we --
20 **MR. KONKUS:** It --
21 **THE WITNESS:** Go ahead. Sorry.
22 **MR. KONKUS:** If you were to use
23 the words "notice" and "opportunity," what
24 would they mean to you?

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1 **THE WITNESS:** Well, I thought he
2 meant we -- she knew about the lease, because
3 she had written the letter. The lease be --
4 coming up at that meeting again and the
5 opportunity to speak about it at the meeting,
6 because that's what -- isn't that what
7 "notice" and "opportunity" means?
8 **MR. KONKUS:** I just wanted to
9 know what you meant by "notice" and
10 "opportunity."
11 He kept -- the solicitor kept
12 mentioning the words over and over of "notice"
13 and "opportunity" in somewhat of a hostile
14 witness platform. And I just wondered if you
15 had any recollection in your own mind of the
16 words "notice" and opportunity," because I
17 didn't necessarily see that --
18 **THE WITNESS:** No. I --
19 **MR. KONKUS:** -- in your
20 compliant.
21 **THE WITNESS:** No. All I know is
22 that -- I thought he meant that she was
23 notified that it was being for lease and that
24 she had an -- we had an opportunity to speak

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1 at the meeting. That was on August 12th. And
2 her letter was written on the 10th.
3 **MR. KONKUS:** Okay. Any Board
4 member?
5 **MR. DILLIPLANE:** No.
6 **MR. FRUYTIER:** When -- when they
7 had executive session, you were absent one
8 day.
9 **THE WITNESS:** I --
10 **MR. FRUYTIER:** Is that when the
11 paper street was discussed, Max?
12 **MR. WALTON:** Yes. Just like it
13 said in the agenda. Just like it said in the
14 agenda, that's what was discussed.
15 **MR. FRUYTIER:** The three of
16 them?
17 **MR. WALTON:** I'm sorry, Ray.
18 May I pull up the agenda? because I don't want
19 to mislead you.
20 Ray, that's Tab 15. Yes, there
21 was an executive session. Yes, it was noticed
22 on the agenda -- Jefferson Paper Street Lease
23 potential executive session.
24 And to answer your question

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1 shouldn't.
2 **THE WITNESS:** Thank you.
3 **MR. WALTON:** Okay?
4 **THE WITNESS:** Thank you.
5 **MR. EDWARDS:** Are there any
6 other questions?
7 **MR. KONKUS:** Anything else,
8 Board members?
9 **MR. DILLIPLANE:** No. I'm good.
10 **MR. WALTON:** So --
11 **MR. EDWARDS:** Okay. If there's
12 no other questions, do you have any other
13 testimony or anything to present at this
14 point?
15 **THE WITNESS:** No, I guess not.
16 I think I've done all I can.
17 **MR. EDWARDS:** Okay. So --
18 **THE WITNESS:** It's in your
19 hands.
20 (The witness was excused.)
21 - - - - -
22 **MR. EDWARDS:** At this point
23 Mr. Walton will have an opportunity to call
24 whatever witnesses he decides to call and

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1 forcefully, it was done pursuant to
2 29 Del. Code 1004(b)(6), which is discussion
3 and content of documents quoted from the
4 definition of "public record." Just like it
5 says.
6 **MR. FRUYTIER:** And Megan was not
7 there that night?
8 **MR. WALTON:** That's correct.
9 Subsequently -- and I don't mean
10 to testify, Meg, but I don't think you'll --
11 subsequently I've given you -- I don't
12 remember the time frame -- the minutes and the
13 materials from that executive session.
14 Is that correct?
15 **THE WITNESS:** When I made my
16 first -- when I tried to make my first
17 complaint, I had asked Max for the minutes of
18 that meeting so I could be, like, clear. Of
19 course, you cannot discuss any of that. But I
20 just wanted to see what was --
21 **MR. WALTON:** Right.
22 **THE WITNESS:** -- what was there.
23 **MR. WALTON:** I just want to
24 protect you from saying anything you

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1 present testimony. And then, just like you,
2 he was able to cross-examine. You'll be able
3 to cross-examine any of his witnesses.
4 **MR. WALTON:** And I'm going to
5 have Ms. DeLuca take the witnesses, if
6 that's -- with the Board's approval.
7 **MR. KONKUS:** Any objection,
8 Board?
9 **MR. FRUYTIER:** Can we discuss
10 it?
11 **MR. KONKUS:** At some point --
12 you can ask whatever questions you want at any
13 point during -- you can even, you know, within
14 reason, for the court reporter's
15 consideration, try to -- try to make a wedge
16 if you have a counselor who keeps talking and
17 you want to ask a question and get
18 clarification of something. You can do that.
19 **MS. DE LUCA:** Are we ready?
20 **MR. WALTON:** Yeah.
21 **MS. DE LUCA:** Okay. So the city
22 is going to call Councilwoman Barrett.
23 **MR. FRUYTIER:** Just speak up
24 now.

<p>Margaret Titus Page 117</p> <p>1 MR. EDWARDS: All right. Can 2 you state your name for the record? 3 MS. BARRETT: Betty Barrett. 4 BETTY BARRETT, 5 the witness herein, having first been 6 duly sworn on oath, was examined and 7 testified as follows: 8 DIRECT EXAMINATION 9 BY MS. DE LUCA: 10 Q. Good evening. 11 Can you hear me okay? 12 A. Yes. 13 MS. DE LUCA: Can the Board hear 14 me okay? 15 MR. FRUYTIER: Yes, ma'am. 16 BY MS. DE LUCA: 17 Q. Okay. Councilwoman Barrett, how long 18 have you served on council? 19 A. Six years. Probably five, six years. 20 I was gone for one year. 21 Q. When were you gone for that year? 22 A. 2014. 23 Q. Okay. So when did you most recently 24 come back to council?</p>	<p>Margaret Titus Page 119</p> <p>1 work there. 2 Q. I'm sorry. 3 A. I'm sorry. 4 Q. Let's make that clear. 5 Do you have any political 6 relationships with Mr. Carden? 7 A. No. 8 Q. When you did run for council, did he 9 contribute to your campaign? 10 A. No. 11 Q. Do you know if he publicly supported 12 or backed your campaign? 13 A. That I couldn't tell you. 14 Q. Do you have any romantic relationship 15 with him? 16 A. No. 17 Q. Would you consider yourself friends 18 with Preston? 19 A. Acquaintance. Just a -- he's just a 20 customer that comes in the gas station. 21 Friends I hold dear to my heart. And I have 22 very few of those. 23 Q. Have you ever been to his house? 24 A. No.</p>
<p>Margaret Titus Page 118</p> <p>1 A. 2015? 2015. 2 Q. So a lot of the talk today has been 3 about a man named Preston Carden. Do you know 4 who he is? 5 A. He's a customer that comes into the 6 gas station where I work. 7 Q. And what's the gas station you work 8 at? 9 A. Valero. 10 Q. Other than him coming into your gas 11 station, do you know him outside of that 12 context? 13 A. No, I don't. 14 Q. I'm just going to go through a couple 15 different types of relationships -- 16 A. Okay. 17 Q. -- just to make sure. 18 Are you related to him? 19 A. No. 20 Q. Through marriage? 21 A. No. 22 Q. Do you share any business interests 23 other than him coming into your shop? 24 A. No. And it's not my shop. I just</p>	<p>Margaret Titus Page 120</p> <p>1 Q. Has he ever been to your house? 2 A. No. 3 Q. Have you ever shared a meal together? 4 A. No. 5 Q. How about his company PSC? How do you 6 know -- or are you aware of PSC as a company? 7 A. The owners of the gas station has 8 gotten Preston to do electrical work. But 9 other than that, no. 10 Q. So the owner of PSC -- I just want to 11 make sure I'm understanding you -- has gotten 12 PS- -- has gotten Preston to do electric work 13 at Valero? 14 A. Yes. My owners have hired him to do 15 work for the gas station. 16 Q. And you already said it's not your gas 17 station. 18 A. No, it's not. 19 Q. Okay. 20 A. I wouldn't own it. 21 Q. Do you personally, not your gas 22 station -- 23 A. Okay. 24 Q. Do you personally have any business</p>

<p>Margaret Titus Page 121</p> <p>1 relationships with PSC? 2 A. No. 3 Q. Have you ever had any kind of business 4 dealings with PSC? 5 A. No. 6 Q. Do you know if PSC made any donations 7 to your campaign? 8 A. No. 9 Q. Do you know if PSC ever publicly 10 supported or backed your campaign? 11 A. No. 12 Q. Okay. So we talked a lot about the 13 June 2016 meeting of council. 14 A. Yes. 15 Q. I just want to bring you back in time. 16 A. Okay. 17 Q. So are you aware that Mr. Carden 18 through his business, PSC, proposed to lease 19 Jefferson paper street from the city in June 20 of 2016? 21 A. I remember when it first started in 22 2012. And then it got tabled. We voted on 23 it. It got tabled for a little while longer. 24 He came in to the gas station, handed me a</p>	<p>Margaret Titus Page 123</p> <p>1 look up at me. 2 A. No. The one that he handed me was 3 filled in. Things were crossed off. And 4 there was a price up here. 5 Q. So that's your -- 6 A. You have -- 7 Q. -- recollection? 8 A. You have another copy of something 9 else? 10 MR. WALTON: I will -- I will 11 swear to you on a stack of Bibles that that's 12 the one I got from council. 13 MR. KONKUS: I'm sorry. We 14 don't accept the testimony of counsel. 15 MR. WALTON: I'm just saying 16 that's the one I got from council. 17 BY MS. DE LUCA: 18 Q. Councilwoman Barrett -- 19 THE WITNESS: It was marked. It 20 was marked. 21 BY MS. DE LUCA: 22 Q. So I'm just going to -- 23 A. Yeah. 24 Q. -- summarize.</p>
<p>Margaret Titus Page 122</p> <p>1 copy of the lease and said, "Could you bring 2 this before council again?" 3 Q. When was that? 4 A. I said, "Sure." 5 It had to be in June. 6 Q. Of which year? 7 A. This year. 8 Q. So June this year Preston comes into 9 the gas station and gives you a copy of -- 10 A. Yes. 11 Q. Of what? 12 A. The lease. 13 Q. Which -- the lease that -- I know 14 you haven't seen it yet. So let's go to 15 Exhibit 2. 16 THE WITNESS: Could I use yours? 17 MR. KONKUS: Mm-hmm. 18 MR. WALTON: Here. He needs it. 19 THE WITNESS: Oh, okay. 20 MR. WALTON: You can use mine. 21 THE WITNESS: Okay. 22 BY MS. DE LUCA: 23 Q. Take your time to read it. And when 24 you're finished reading it to yourself just</p>	<p>Margaret Titus Page 124</p> <p>1 Exhibit 2 does not look like the 2 lease that Preston brought in to you? 3 A. It looks like the same initial lease, 4 but there was -- it was filled in. There was 5 prices in there. 6 Q. Okay. Fair enough. 7 A. Yeah. 8 Q. So is this -- 9 A. And this is the one I dropped off at 10 the council table before our meeting. 11 Q. So Exhibit -- 12 A. But it had filled-in marks. 13 Q. So Exhibit 2 is almost the same -- 14 A. Yes. 15 Q. -- but not quite -- 16 A. Yeah. 17 Q. -- of what you brought to the June -- 18 A. Yes. 19 Q. -- council meeting? 20 A. Yes. 21 Q. Okay. Did you discuss the lease with 22 Preston when he came to your gas station in 23 June of 2016? 24 A. No. He just asked me if I could</p>

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1 **present it to the council that night of our**
2 **meeting. And I said yes.**
3 Q. Did you make any promises to discuss
4 it?
5 **A. No. I told him -- I said I would**
6 **present it to the council.**
7 Q. Okay. Did the council discuss the
8 lease on June 20th, 2016?
9 **A. I put a copy down in front of**
10 **everybody. Megan had made the remark: "Oh,**
11 **what is this? We've already voted against**
12 **this" or something like that. And I tried to**
13 **bring it up.**
14 **And Max stopped me and said,**
15 **"It's not on the agenda. We cannot talk about**
16 **it." I said, "Fine. We'll put it on the**
17 **agenda for the next month."**
18 Q. So it's fair to say that the lease was
19 not discussed at the June 20th --
20 **A. No.**
21 Q. -- 2016 meeting?
22 **A. No. It couldn't have been.**
23 Q. Okay. After the June 20th, 2016
24 council meeting, what happened next with

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1 regard to how council considered Mr. Carden's
2 proposed lease?
3 **A. We put it on the agenda. We had**
4 **discussed it. We had to go into an executive**
5 **session. It was tabled. Well, we came back**
6 **out of executive session. We -- I tabled it**
7 **for discussion for the next month with public**
8 **comment.**
9 Q. Okay. So when you say you put it
10 on the agenda, are you referring to the
11 July 18th, 2016 agenda?
12 **A. Yes.**
13 Q. And then when you say you had an
14 executive session, are you referring to
15 the executive session that took place on
16 July 18th?
17 **A. Yes.**
18 Q. Okay.
19 **A. And I had to come back out of the**
20 **executive session and table it for the next**
21 **month.**
22 Q. Okay. After that July 18th executive
23 session, was the lease discussed at a public
24 meeting?

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1 **A. Yes.**
2 Q. Was that the August 15th --
3 **A. Yes.**
4 Q. -- public meeting?
5 And was the Jefferson paper
6 street lease on that agenda?
7 **A. Yes.**
8 Q. Did you vote on the lease on the
9 August 15th meeting?
10 **A. Yes.**
11 Q. And did you vote in favor of the
12 lease?
13 **A. Yes, I did.**
14 Q. Was there public comment on the lease?
15 **A. Yes, there was.**
16 Q. Okay. So other than the meetings
17 we've already discussed -- the June 20th, the
18 July 18th and the August 15th meetings -- did
19 you personally ever meet with Councilperson
20 Fitzwater or Councilperson Green to discuss
21 the lease?
22 **A. No.**
23 Q. Again, same question. Other than
24 those three meetings we talked about --

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1 **A. No.**
2 Q. Let me ask the question.
3 **A. Okay.**
4 Q. Did you ever meet with Preston to talk
5 about the lease?
6 **A. No. Just the day that he presented it**
7 **to me and said, "Could you put that on council**
8 **for that meeting?"**
9 Q. And to the best of your
10 recollection --
11 **A. That's it.**
12 Q. -- do you remember how close to that
13 June 20th meeting it was?
14 **A. No.**
15 Q. That's fine.
16 So --
17 **A. I don't know if it was a week before**
18 **or two days before. I'm not sure.**
19 Q. That's fine.
20 But it was in June?
21 **A. Yes.**
22 Q. Okay. So just to recap, the first
23 time you saw the lease that was ultimately
24 approved in a different form was in June of

<p>Margaret Titus Page 129</p> <p>1 2016. 2 A. Right. 3 Q. And you never met privately with 4 Councilwoman Green or Councilwoman -- or 5 Councilman Fitzwater -- sorry -- to discuss or 6 negotiate the lease? 7 A. No. 8 Q. And you never met privately with 9 Mr. Carden to negotiate the lease? 10 A. No, I haven't. 11 Q. Okay. 12 A. Or, no, I didn't. 13 Q. So the complaint has an allegation 14 that -- and if you turn to Tab 1, you can 15 follow along. 16 The complaint says: At the last 17 meeting we all witnessed Council Member 18 Barrett interrupt Ms. Snow, rise up out of her 19 chair and lean across the council desk, 20 pointing and shouting as she proclaimed her 21 long-time friendship with Mr. Carden and how 22 well he takes care of his properties while 23 berating Ms. Snow for wanting access to her 24 property.</p>	<p>Margaret Titus Page 131</p> <p>1 A. No. 2 Q. Does he owe you anything? 3 A. No. 4 Q. Was any debt of Mr. Carden's released 5 in exchange for your vote in favor of his 6 lease? 7 A. No. 8 Q. Did you give Mr. Carden or his company 9 any kind of special treatment that the general 10 public could not have received? 11 A. No. 12 Q. Do you think you had a conflict of 13 interest in voting -- 14 A. No. 15 Q. -- to approve the lease? 16 A. No, I don't. 17 Q. And if you did have a conflict of 18 interest, would you have disclosed it? 19 A. If I did, yes. 20 Q. And would you have then disqualified 21 yourself if it was necessary? 22 A. Yeah, I would have. 23 MS. DE LUCA: Okay. I don't 24 have any more questions.</p>
<p>Margaret Titus Page 130</p> <p>1 Did I read that right? 2 A. Yes. 3 May I demonstrate what I did? 4 Q. Sure. 5 A. "Jill, I've known Preston for a long 6 time. And he is not a slumlord. He takes 7 care of his properties." 8 Q. Is that the extent of what you said at 9 the August meeting? 10 A. That was it. 11 Q. Did you raise your voice? 12 A. I can't raise my voice too much. 13 People -- I don't yell that well. 14 Q. Did you stand up? 15 A. No, I did not. I went up like this. 16 Q. Did you shout? 17 A. Not -- no. 18 Q. Okay. I just have a couple follow-up 19 questions. 20 A. I can't shout that loud. I can 21 scream. 22 Q. Do you owe Mr. Carden anything? 23 A. No. 24 Q. Any money?</p>	<p>Margaret Titus Page 132</p> <p>1 THE WITNESS: Okay. 2 MS. DE LUCA: Thank you. 3 MR. EDWARDS: Councilwoman 4 Titus, do you have any questions for 5 Councilwoman Barrett? 6 CROSS-EXAMINATION 7 BY MS. TITUS: 8 Q. Why wouldn't you have asked Preston 9 about the lease what he wanted when he gave it 10 to you? Like, why wouldn't you have had a 11 discussion with him? 12 A. Well, I know that it had been out 13 since 2012. And I thought maybe he just 14 wanted to bring it back up again. 15 Q. Why did you have -- why did you try to 16 pass it that night? You've been on council 17 long enough to know. Why on June the 20th did 18 you try to get it voted through right away? 19 A. I didn't try -- 20 Q. You made a motion. You made a motion 21 to have it voted on that night. 22 MS. DE LUCA: Objection. She's 23 arguing with the witness. 24 MS. TITUS: I'm sorry.</p>

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1 **MS. DE LUCA:** Let's let one
2 person talk at a time here.
3 **BY MS. TITUS:**
4 Q. Why did you make a motion to have the
5 lease voted on the very night that you
6 presented it?
7 **A. Well, I didn't know we had to have it**
8 **on the agenda to begin with.**
9 Q. But you made a motion to have it voted
10 on that night without any public knowledge,
11 any discussion. You had made a motion. And
12 the other two council people were ready to
13 vote on it right then without any formal
14 knowledge of it -- any former knowledge of it.
15 They obviously didn't know about it. And they
16 were ready to vote. And you made a motion to
17 vote on it at that June 20th meeting. How
18 does that happen?
19 **A. Because it had been on the books**
20 **for -- since 2012. And I figured, well, it's**
21 **about time we get it off the books. No**
22 **personal favors.**
23 Q. Did you -- when did you decide that
24 the land was up for lease again since we

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1 **MR. DILLIPLANE:** Plus you have
2 the affidavit.
3 **THE WITNESS:** Yeah.
4 I never knew -- I never knew
5 about those vacate letters.
6 **BY MS. TITUS:**
7 Q. I'm just -- my point is it had to have
8 been discussed with the other council members.
9 You made a motion to vote it through. You
10 know that's not how the system works. You've
11 been in council. You --
12 **MR. EDWARDS:** Okay. So at this
13 point you can ask her questions.
14 **MS. TITUS:** Oh.
15 **MR. EDWARDS:** You're kind of
16 getting over into testifying.
17 **MS. TITUS:** Well, I asked her
18 the question why she made a notice to have it
19 voted --
20 **THE WITNESS:** To pass the lease
21 for the paper street.
22 **BY MS. TITUS:**
23 Q. And did you not think it important
24 that it be discussed because it's a year old

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1 had -- the city -- the city -- your city had
2 three vacate letters? When did you --
3 **A. I didn't know about those vacate**
4 **letters. I never got copied on those vacate**
5 **letters. I never knew anything about them.**
6 **Did you?**
7 Q. Yes.
8 **A. I didn't get copies.**
9 **THE REPORTER:** One at a time,
10 please.
11 **THE WITNESS:** I didn't get
12 copied on them, Megan. I had no clue about
13 those vacate letters.
14 **BY MS. TITUS:**
15 Q. Do you think that before you made a
16 motion to have a lease pass through and voted
17 on that it should have been discussed with the
18 city manager and be -- and been found out that
19 there were vacate letters or anything?
20 **A. The manager said it was up to the**
21 **council to deal with the problem.**
22 Q. When?
23 **A. A couple years -- well, it was this**
24 **past year. Maybe two years ago.**

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1 and nothing is the same -- the same -- no
2 one -- the attorney shouldn't have looked it
3 over or done anything. You didn't think it
4 was important enough, because it's been so
5 contentious, that anybody else should be
6 notified or the attorney shouldn't be looking
7 at it to see are you a -- that it was proper
8 for the city? Or you didn't think it was
9 important enough to be examined for the city's
10 best interest before you were going to vote it
11 through?
12 **A. I thought it was because it was**
13 **scratched out on a couple of things and the**
14 **prices were already being filled in. So I**
15 **figured the attorney had already looked at it.**
16 Q. That's a shame.
17 **MS. DE LUCA:** I just have a
18 couple of follow-up questions, if you're done.
19 **MS. TITUS:** I guess I am done,
20 because I don't know what to even say to that.
21 **REDIRECT EXAMINATION**
22 **BY MS. DE LUCA:**
23 Q. Councilwoman Barrett, just to clarify
24 some things, you didn't vote on June 20th, did

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1 you?
2 **A. No.**
3 Q. And there was a public meeting on
4 August 15th, was there not?
5 **A. Yes.**
6 Q. And the agenda stated that there was
7 going to be a vote on the paper lease --
8 **A. Yes.**
9 Q. -- paper street lease?
10 And that agenda gave members of
11 the public notice that they could come to this
12 meeting and hear testimony or make comments
13 about the paper street lease?
14 **A. Yes.**
15 Q. And that was their opportunity to
16 attend. Correct?
17 **A. Yes.**
18 **MS. DE LUCA:** Okay. Thank you.
19 **THE WITNESS:** Mm-hmm.
20 **MR. KONKUS:** Board members, any
21 questions?
22 **MR. DILLIPLANE:** No.
23 **MR. FRUYTIER:** Can I make
24 comments?

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1 **THE WITNESS:** Fine.
2 **MR. KONKUS:** You testified that
3 Preston brought this lease to you.
4 **THE WITNESS:** Yes.
5 **MR. KONKUS:** You had no
6 discussions about it?
7 **THE WITNESS:** No. He --
8 **MR. KONKUS:** Did you ask him why
9 he brought it to you?
10 **THE WITNESS:** No.
11 **MR. KONKUS:** You knew the lease
12 had been around since 2012?
13 **THE WITNESS:** Yeah.
14 **MR. KONKUS:** You never followed
15 it after that?
16 **THE WITNESS:** It's been tabled
17 quite a few times.
18 **MR. KONKUS:** It never occurred
19 to you in your mind, having as many years on
20 the council, that he was going around and
21 doing the end run? That never occurred to
22 you?
23 **THE WITNESS:** No. No, it
24 didn't.

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1 **MR. KONKUS:** You can make a
2 comment, sure.
3 **MR. FRUYTIER:** I -- I -- I feel
4 it's very hard to believe that Preston would
5 have stopped by your gas station and said,
6 here, bring this up in the meeting again
7 without any discussion whatsoever.
8 **THE WITNESS:** No.
9 **MR. FRUYTIER:** I don't buy that.
10 **THE WITNESS:** I knew it was --
11 Ray, it's been on the book since 2012.
12 **MR. FRUYTIER:** I know how long,
13 because I go to the meetings. But I still
14 can't see Preston walking up and saying, here,
15 bring that up at the next meeting.
16 **THE WITNESS:** He bought a cup of
17 coffee.
18 **MR. FRUYTIER:** You guys had to
19 discuss it.
20 **THE WITNESS:** No. I'm sorry.
21 **MR. KONKUS:** I have a couple of
22 questions, then.
23 **THE WITNESS:** That's fine.
24 **MR. KONKUS:** You -- pardon?

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1 **MR. KONKUS:** Okay. You
2 testified that no one -- that you didn't
3 negotiate the lease with him. You never
4 attempted to negotiate any part of that lease.
5 Correct?
6 **THE WITNESS:** With him
7 personally?
8 **MR. KONKUS:** With --
9 **THE WITNESS:** No.
10 **MR. KONKUS:** You said that as
11 far as you know none of your council members
12 tried to negotiate that lease with him.
13 **THE WITNESS:** I couldn't answer
14 for them.
15 **MR. KONKUS:** Wasn't it your
16 testimony that none of you -- you said, "So no
17 one negotiated the lease." That's what you
18 said just a minute ago.
19 **THE WITNESS:** I didn't negotiate
20 it. I don't know whether they did or they
21 did.
22 **MR. KONKUS:** Can you go back to
23 a question earlier that was asked for Megan?
24 Can we go off the record while you find it --

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1 her testimony?
2 **THE WITNESS:** I never talked to
3 them about it, if that's what you're
4 gathering.
5 **MR. KONKUS:** No. That wasn't
6 the question.
7 **THE WITNESS:** Okay.
8 **MR. KONKUS:** The question was
9 that you testified that no one negotiated the
10 lease. You knew that the city manager had
11 turned it over to you at some point.
12 **THE WITNESS:** He gave the
13 council direction "Do what you want." It --
14 council had to vote on it.
15 **MR. KONKUS:** I'm with you. But
16 I'm trying --
17 **THE WITNESS:** Yeah.
18 **MR. KONKUS:** -- to find out who,
19 if anyone -- it appears no one -- negotiated
20 with Carden.
21 **THE WITNESS:** The attorneys for
22 each other. Glasgow (phonetic) and Walton,
23 they're -- they're the ones that did the
24 draft.

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1 **MR. FRUYTIER:** As many meetings
2 as I went to, I never heard of \$300 mentioned.
3 **THE WITNESS:** Well, that's what
4 was on my -- the paper. Did something happen
5 in the year I was gone?
6 **A VOICE:** Nope.
7 **MR. KONKUS:** That would have
8 been a question to ask prior to voting on it.
9 So at this point it appears that no one
10 negotiated anything and that you didn't ask
11 Preston why after all this time he brought it
12 to you.
13 **THE WITNESS:** No. I didn't.
14 **MR. KONKUS:** Okay. All right.
15 I have no further questions.
16 Anybody on the Board?
17 **MR. DILLIPLANE:** Negative.
18 **MR. KONKUS:** Megan, do you have
19 any more cross-examination?
20 **MS. TITUS:** No thank you.
21 **MR. KONKUS:** Ray.
22 **MR. FRUYTIER:** I just feel the
23 whole thing has been friendshipped all along,
24 that the new counselor in the last election

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1 Am I right, Max?
2 **MR. WALTON:** I'm sorry. I can't
3 jump up and talk.
4 **THE WITNESS:** Oh. Well, okay.
5 They're the ones that went back
6 and forth.
7 **MR. KONKUS:** So, in truth, you
8 don't know that. If anybody said, no, you pay
9 600 a month. The other one says, no, you're
10 going to pay 550. You have no idea of the
11 negotiations.
12 **THE WITNESS:** All I know it was
13 like \$300 on the top of that lease that he
14 handed me.
15 **MR. KONKUS:** Okay.
16 **THE WITNESS:** Yeah.
17 **MR. FRUYTIER:** He could have put
18 that up there just to put it in your mind that
19 that's what you were going to go for then.
20 **THE WITNESS:** But no. Because
21 at one time it was 600, Ray. And then they
22 came back to council at one point -- I don't
23 know -- I can't remember what month or what
24 year. It was 300.

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1 said we got to get this good ol' boy stuff out
2 of the system and we're going to run. And
3 that's exactly what they did is what -- just
4 this example that we're going through now.
5 Friendshipped.
6 **MR. EDWARDS:** So at this point,
7 I think, if there is any questions -- as soon
8 as all the witnesses have testified, then the
9 Board can discuss this and give, you know,
10 their --
11 **THE WITNESS:** Accusations.
12 **MR. EDWARDS:** -- assessments of
13 evidence that has been presented at that
14 point.
15 So is there anything else for
16 Councilwoman Barrett?
17 **MS. DE LUCA:** No. That's all.
18 Thanks.
19 **MR. EDWARDS:** Okay.
20 **MS. TITUS:** No. 17.
21 (The witness was excused.)
22 - - - -
23 **MS. DE LUCA:** The city is going
24 to call Councilwoman Green next.

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1 **MR. EDWARDS:** Can you state your
2 name for the record?
3 **MS. GREEN:** Natalie Green.
4 **NATALIE GREEN,**
5 the witness herein, having first been
6 duly sworn on oath, was examined and
7 testified as follows:
8 **DIRECT EXAMINATION**
9 **BY MS. DE LUCA:**
10 Q. So some of these questions may sound
11 familiar. But, Councilwoman Green, how long
12 have you served on council?
13 **A. I just -- just was sworn in in June.**
14 Q. Was there election for -- I'm sorry.
15 Did you run in the June election of this
16 year --
17 **A. Yes.**
18 Q. -- for council?
19 **A. Yes.**
20 Q. Did anyone else run in that election?
21 **A. Yes. Beth Konkus, Bud Fitzwater,**
22 **Megan Titus and Kathy Johnson.**
23 **MS. TITUS:** The election --
24 **THE WITNESS:** Kathy Johnson.

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1 Q. Okay. Would you consider yourself a
2 friend of Preston Carden?
3 **A. No. He's all right. He's a nice guy.**
4 **I mean, I'm not friends with him. We don't**
5 **have much in common, I don't think.**
6 Q. Are you related to him through blood?
7 **A. No.**
8 Q. Are you related to him through
9 marriage?
10 **A. No.**
11 Q. Do you have any business relationships
12 with Preston Carden?
13 **A. No.**
14 Q. Do you share any business interests
15 with Preston?
16 **A. No.**
17 Q. Do you have any political
18 relationships with Preston?
19 **A. No.**
20 Q. Do you have any romantic relationship
21 with Preston?
22 **A. No.**
23 Q. Have you ever been to his house?
24 **A. No.**

Margaret Titus Page 146

1 **MS. TITUS:** The election was in
2 April.
3 **MS. DE LUCA:** Thank you.
4 **BY MS. DE LUCA:**
5 Q. So the election of April, is that the
6 election that you ran in against --
7 **A. Yes.**
8 Q. -- the individuals you just mentioned?
9 **A. Yes.**
10 Q. So is it safe to say that those
11 individuals, including -- I'm sorry -- Johnson
12 or --
13 **A. Yes. Kathy Johnson.**
14 Q. Kathy Johnson, Beth Konkus --
15 **A. Mm-hmm.**
16 Q. -- and anybody else did not make it on
17 council?
18 **A. No. That was it.**
19 Q. Okay. So, again, we're going to talk
20 a little bit about Preston Carden.
21 How do you know Mr. Carden?
22 **A. From being in Delaware City. I've**
23 **lived here all my life. I've known him since**
24 **he came to Delaware City.**

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1 Q. Has he ever been to your house?
2 **A. Yes.**
3 Q. How many times?
4 **A. Once.**
5 Q. And what was that for?
6 **A. I had him look at an electrical wire**
7 **going from one side of my house to the other**
8 **to see how much it would cost to get fixed.**
9 **And that was it.**
10 Q. And when was that?
11 **A. That was four or five years ago.**
12 Q. Okay.
13 **A. It's still not fixed.**
14 Q. Okay.
15 **A. It was okay, though.**
16 Q. Have you ever shared a meal together?
17 **A. No.**
18 Q. Has he ever donated to your campaign?
19 **A. Yes.**
20 Q. How much?
21 **A. Maybe a couple hundred bucks.**
22 Q. Did --
23 **A. I'm sorry. Go ahead.**
24 **I was just going to say there**

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1 was a few businesses that donated to my
2 campaign.
3 Q. So just to summarize, you said Preston
4 donated a couple hundred dollars?
5 A. Yes.
6 Q. And did anybody else donate to your
7 campaign?
8 A. Yes.
9 Q. How many other people?
10 A. My brother did. And there was four
11 other business owners that -- if I could, I
12 would rather not say who so that they don't
13 start getting any slack for being a supporter
14 of mine.
15 Q. But there were others --
16 A. Yes.
17 Q. -- other than Preston?
18 A. Yes.
19 Q. Okay. Do you know if Mr. Carden
20 publicly supported your campaign?
21 A. He let me put signs on his property.
22 Q. Did anyone else let you put signs on
23 their properties?
24 A. Yes. The liquor store where Megan

Margaret Titus Page 151

1 the lease that we've been talking about all
2 night.
3 A. Mm-hmm.
4 Q. Prior to June of 2016, were you aware
5 that Mr. Carden was proposing to lease the
6 Jefferson paper street?
7 A. Yes.
8 Q. Can you explain that?
9 A. Sure. Back when it first came out --
10 it was a few months after it first came out, I
11 think, when he first made -- and there was
12 this selling offer thing that it might be
13 sold. We flipped out about that. And then
14 that was squashed. And it looked like nothing
15 was going to happen.
16 And then I think that, maybe the
17 first time he went for the lease, that's when
18 we started getting interested in the meetings
19 to find out, because we went off of rumor and
20 actually -- I don't want to say "attacked"
21 him. But kind of maybe not harassed either.
22 But we made complaints about -- because we
23 didn't want those woods -- there's woods that
24 cuts off the street. Like it's not a full

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1 Titus took my sign and brought it to the town
2 hall.
3 Q. Let's not get into things that I
4 haven't asked you about.
5 A. Okay.
6 Q. How about the company PSC? Are you
7 familiar with that company?
8 A. Yes.
9 Q. Do you know that Preston is part of
10 it?
11 A. Preston is the owner.
12 Q. Do you have any business relationships
13 with PSC?
14 A. No.
15 Q. Do you share any business interest
16 with PSC?
17 A. No.
18 Q. Do you have any political
19 relationships with PSC?
20 A. No.
21 Q. Did PSC make any donations to your
22 campaign?
23 A. No.
24 Q. Okay. So I want to talk to you about

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1 access street. There's woods there. And we
2 didn't want that cut down, because Kelly's
3 mother -- my friend Kelly, her mother owned
4 the house two doors down. Plus the neighbors
5 also didn't want the street opened. Ninety
6 percent of the houses around. So we were
7 flipping out about that.
8 Q. And when was this? What year?
9 A. 2015 is when it really started
10 exploding. And then that was the first time I
11 ever, I think, even approached -- me and Kelly
12 approached Preston about it. And -- and he
13 straightened us out about the woods. That --
14 that was never his intention to make that a
15 full access street or anything like that. He
16 just wanted to lease it for convenience.
17 Q. When you say you went over to
18 Preston --
19 A. We went on the property.
20 Q. You went on the property?
21 A. Yeah.
22 Q. When was that?
23 A. To investigate.
24 Like 2014.

<p>Margaret Titus Page 153</p> <p>1 Q. So this was before even 2015? 2 A. Oh, yeah, yeah. 3 Q. And did Preston at that time mention 4 any interest in leasing the property? 5 A. No. We just came straight to him and 6 said, "Are you trying to chop down them woods 7 and open up that street?" And he said, "No. 8 I have no intention of doing that." And we 9 left him alone. 10 Q. So the conversations at that point in 11 time, is it fair to say they were about the 12 woods or the maintenance of the property? 13 A. Yes. Because there had been a rumor 14 started that said he was chopping the woods 15 down and that he wasn't allowed to chop the 16 woods down. We told him he wasn't allowed to 17 chop the woods down. And he had permission to 18 clean up the woods from the prior manager, 19 Paul Morrow (phonetic). 20 Q. So just to recap, there wasn't any 21 discussions about the lease? 22 A. No, no, no. 23 Q. I'm talking prior to June of 2016. 24 A. No, no. There wasn't.</p>	<p>Margaret Titus Page 155</p> <p>1 Councilwoman Barrett after June 20th, 2016? 2 A. No. 3 Q. Did you ever discuss the lease with 4 Councilman Fitzwater after the June 20th, 2016 5 meeting? 6 A. No. 7 Q. Did you have any meetings with 8 Councilwoman Barrett or Councilman Fitzwater? 9 A. No. 10 Q. I don't know why that's so hard for me 11 to say. 12 Is it your recollection that at 13 the June 20th, 2016 hearing there was a 14 tabling or there wasn't any vote on the lease? 15 A. Correct. 16 Q. And is it also your recollection that 17 in July of 2016 there was an executive session 18 to discuss the lease? 19 A. Yes. 20 Q. And, then, is it also your 21 recollection that in August of 2016 there was 22 a public meeting on the topic of the lease? 23 A. Yes. 24 Q. And did you attend that meeting?</p>
<p>Margaret Titus Page 154</p> <p>1 Q. When was the first time you saw the 2 lease that was proposed to city council? 3 A. June -- it was like the end of the 4 month. June meeting. I would say about 5 June 18th, 20th. I can't remember the exact 6 date of the meeting. 7 Q. Can we agree it's June 20th, 2016? 8 A. Yes. 9 Q. I believe earlier there was some 10 discussion about talk or chatter that happened 11 at that June 20th meeting that was not 12 recorded on the minutes. Did you say anything 13 about the lease that you're aware of that are 14 not recorded in the minutes from that 15 June 20th meeting? 16 A. That I said anything about the lease? 17 No. I just found out about the lease then. I 18 didn't say anything about it. 19 Q. Okay. After June 20th did you ever 20 discuss the lease with Mr. Carden? 21 A. After June 20th? 22 Q. 2016. 23 A. No. 24 Q. Did you ever discuss the lease with</p>	<p>Margaret Titus Page 156</p> <p>1 A. Yes. 2 Q. And did you vote at that meeting? 3 A. Yes. 4 Q. And did you vote on the topic of the 5 lease? 6 A. Yes. 7 Q. And how did you vote? 8 A. I voted for it. 9 Q. Okay. And there was public comment 10 available at that meeting? 11 A. Yes. 12 Q. So other than these public meetings, 13 did you ever discuss this lease with anyone? 14 A. What do you mean? After the meetings 15 or -- 16 Q. Other than the June 20th, July 18th 17 and August 15th, 2016 meetings of council, did 18 you discuss the lease with anyone? 19 A. Oh, no. 20 Q. So, again, just to recap, it sounds 21 like you testified today that the first time 22 you saw the lease was at the June 20th, 2016 23 meeting. 24 A. Yes.</p>

<p>Margaret Titus Page 157</p> <p>1 Q. And you've never privately met with 2 Councilwoman Green or Councilman Fitzwater to 3 discuss or negotiate the lease? 4 A. No. 5 Q. And you've never had any private 6 meetings with Mr. Carden to negotiate the 7 lease? 8 A. No. 9 Q. Again, do you owe Mr. Carden anything? 10 A. No. 11 Q. Did you make him any promises after 12 you -- before you got elected? 13 A. No. 14 Q. Did you make him any promises after 15 you got elected? 16 A. No. 17 Q. Do you feel that you had a conflict of 18 interest in voting at the August meeting? 19 A. No. Not at all. 20 MS. DE LUCA: Okay. That's all 21 I have. Thanks. 22 THE WITNESS: Sure. 23 MR. EDWARDS: Do you have any 24 questions?</p>	<p>Margaret Titus Page 159</p> <p>1 anything and say, okay, here's a lease. Let's 2 just vote this in. Is that what you're 3 saying? That you -- 4 A. As soon as -- 5 Q. -- thought that was okay? 6 A. I'm sorry. I thought you were done. 7 As soon as the lease was handed 8 to me, I started to read on the lease and 9 realized it was the same argument that's been 10 ongoing for four years. 11 Q. Are you an attorney? You had a copy 12 of the prior lease? 13 A. I read it and can comprehend what I'm 14 reading. 15 Q. So you saw this lease and knew that 16 everything was fine, that you could just vote 17 that through. And all the conditions and 18 terms that were on this lease, that was fine? 19 A. Yes. Because officials were involved 20 in the drafting of that lease, as well through 21 public hearings -- 22 Q. No. 23 A. -- prior to -- yes. 24 From 2012 until this date, yes,</p>
<p>Margaret Titus Page 158</p> <p>1 MS. TITUS: Yes. 2 CROSS-EXAMINATION 3 BY MS. TITUS: 4 Q. If you had no knowledge of the lease 5 prior to June 20th, why when Councilwoman 6 Barrett made a motion to accept the revised 7 lease -- why did you second the motion to 8 vote -- to vote on the lease if you had no 9 knowledge and you knew what -- didn't know 10 what was in it, what it was about or -- 11 A. I had -- 12 Q. Why did you second the motion? 13 A. Because I had prior knowledge from 14 council meetings and public hearings. In 15 continuance with it, I also asked outside 16 questions when I wasn't council or had no 17 intention on running for council because I was 18 asking on behalf of my neighbors -- actually, 19 my neighbors in town's relatives to find out 20 if neighbors were okay with this going on. 21 Q. This is a city to be run. So you 22 would just not think that the attorney or the 23 city manager or anybody needs to look at this 24 lease and -- so you have no knowledge of</p>	<p>Margaret Titus Page 160</p> <p>1 there has been an ongoing discussion about the 2 lease and what was wanted from the lessee, 3 which would be PSC Property. 4 Q. That lease was drafted by Preston 5 Carden's attorney. 6 A. It doesn't matter. It's been 7 discussed repeatedly for four years. There 8 has been public comment. I have made public 9 comment on it. I think everybody in town has 10 made public comment on it. It's been going on 11 since 2012. 12 Q. At the August 12th meeting, did you 13 vote for public comment so that people could 14 discuss this lease? 15 A. That might have been one of the 16 meetings I voted no. 17 Q. Right. 18 A. Okay. 19 Q. So you did not want the public to 20 discuss the lease at all. So it would have 21 been executive session July 18th. 22 A. Are you asking me a question or 23 arguing? 24 Q. Yes.</p>

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1 Did you not want the public to
2 discuss it?
3 **A. No. It's been ongoing for four years.**
4 **What more is left to be said?**
5 **MS. TITUS:** Okay. That's it.
6 **MR. KONKUS:** I'm curious how you
7 knew that the lease that you got in your hand
8 three minutes before that was the same exact
9 lease.
10 **THE WITNESS:** Same exact lease
11 as what?
12 **MR. KONKUS:** That's exactly my
13 point, ma'am.
14 You said if they threw this at
15 you --
16 **THE WITNESS:** I'm sorry. You
17 didn't let me answer.
18 By flipping through the lease
19 that she had handed me, it looked like
20 discussions already prior to, with my
21 experience from coming to town council
22 meetings of the four-year ongoing saga, let's
23 call it, of paper street.
24 **MR. KONKUS:** You must be

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1 **MR. KONKUS:** You got elected in
2 May.
3 **THE WITNESS:** Okay.
4 **MR. KONKUS:** Right?
5 **THE WITNESS:** What's your point?
6 **MR. KONKUS:** I find your answers
7 unbelievable, because you don't listen --
8 **THE WITNESS:** The April -- the
9 April election was canceled. Remember?
10 **MR. KONKUS:** I don't remember.
11 **THE WITNESS:** Okay.
12 **MR. KONKUS:** I do remember you
13 were not elected in --
14 **THE WITNESS:** I said I was
15 called in.
16 **MR. EDWARDS:** Guys, one at a
17 time. All right?
18 **MR. KONKUS:** I remember the
19 question that she asked: Were you elected in
20 June?
21 **THE WITNESS:** I said I was sworn
22 in then.
23 **MR. KONKUS:** That's not what you
24 said.

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1 particularly intelligent, because the city
2 counselor -- city solicitor handed it here to
3 us, thinking that he had the same lease, and
4 it wasn't the same lease. And it took me six
5 minutes to go through and compare them.
6 **MS. DE LUCA:** Excuse me,
7 Board Member Konkus, can I please just ask a
8 clarifying question?
9 **MR. KONKUS:** I need to ask a
10 clarification question. How -- how did she
11 know it was the same lease?
12 **MS. DE LUCA:** I don't --
13 **MR. KONKUS:** Because I find her
14 answers unbelievable.
15 I find your answers
16 unbelievable. Because she says: Were you
17 elected in June? And you said yes. You know
18 you got elected in April -- during that May
19 election.
20 **THE WITNESS:** I'm sorry. That
21 was postponed. Remember that?
22 **MR. KONKUS:** That was the March
23 election.
24 **THE WITNESS:** Yeah.

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1 **THE WITNESS:** That is what I
2 said.
3 Can you go back to it?
4 **MR. KONKUS:** No.
5 The next question was: Do you
6 have a political association with Carden? You
7 said no.
8 **THE WITNESS:** I don't.
9 **MR. KONKUS:** He gave you \$200,
10 you just testified.
11 **THE WITNESS:** He donated along
12 with everybody else. That doesn't make me a
13 political affiliation with him.
14 **MR. KONKUS:** It makes a
15 political association. Doesn't it?
16 **THE WITNESS:** No. It makes a
17 donor.
18 **MR. KONKUS:** Now I understand
19 why you answer questions and why you thought
20 you saw the same lease.
21 **THE WITNESS:** I didn't see any
22 lease prior to that lease. So I don't know if
23 it's the same lease as whatever lease -- other
24 than that one you're talking about.

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1 **MR. KONKUS:** Time expired --
2 **THE WITNESS:** I'm saying the
3 ongoing four years of this saga. I felt I
4 knew enough to say, okay, if the attorneys
5 went through this lease -- they know more than
6 I do legal-ese. It's been okayed. Let's
7 rule -- let's do what we have to do.
8 **MR. KONKUS:** Well, had it been
9 approved legal-ese?
10 **THE WITNESS:** Under the
11 executive hearing, yes.
12 **MR. KONKUS:** On June 20th when
13 you seconded the motion, had it been approved
14 legally?
15 **THE WITNESS:** I don't know.
16 That I don't know.
17 **MR. KONKUS:** You just said it
18 had been approved.
19 **THE WITNESS:** As far as I
20 know --
21 **MR. EDWARDS:** Hold on, guys.
22 One at a time.
23 **THE WITNESS:** -- it was a legal
24 lease sitting right in front of me.

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1 questions?
2 **MS. TITUS:** Yes. I have another
3 question.
4 **BY MS. TITUS:**
5 Q. What other donors donated to your --
6 **MS. DE LUCA:** Objection.
7 **THE WITNESS:** Do I have to --
8 **MS. DE LUCA:** She has no reason
9 to answer that question. It is irrelevant at
10 this point.
11 **MR. EDWARDS:** I think that seems
12 correct. I mean, if there's any relevance --
13 she has already -- she has already commented
14 in terms of Mr. Carden. So all the other
15 donors -- I'm not sure how that applies.
16 **MS. DE LUCA:** The only
17 clarifying question that I would ask, if I
18 may --
19 **REDIRECT EXAMINATION**
20 **BY MS. DE LUCA:**
21 Q. I just want to make sure I understand.
22 Other than the June 20th meeting
23 when you were presented with that lease, had
24 you seen any other lease before that --

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1 That was as much as I know of
2 it. There was a legal lease that had been
3 brought up prior to. Because I said, "What is
4 this?"
5 **MR. EDWARDS:** Okay.
6 **THE WITNESS:** And they said it
7 was the lease that was brought up --
8 **MR. EDWARDS:** Okay. So here's
9 how it works. Someone asks a question.
10 Someone answers. All right? You can't be
11 going back and forth on top of each other. So
12 a clear answer and a clear question. So --
13 **MR. KONKUS:** The clear question
14 is: How much time expired from the time you
15 were handed that at the meeting until the time
16 you seconded the motion?
17 **THE WITNESS:** Not much time.
18 **MR. KONKUS:** In that time you
19 recognized this to have been passed through
20 legal hands, approved, and be the same exact
21 lease that they had been discussing for four
22 years prior?
23 **THE WITNESS:** Yes.
24 **MR. EDWARDS:** Any more

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1 **A. No.**
2 Q. I'm sorry. I wasn't finished.
3 **A. Oh, I'm sorry.**
4 Q. Had you seen any other lease for the
5 Jefferson paper street proposed by Mr. Carden?
6 **A. No.**
7 Q. So there wasn't any other lease? It
8 was just at the June 20th meeting?
9 **A. Yes.**
10 **MR. EDWARDS:** All right. Are
11 there any more questions?
12 **MS. TITUS:** Yes.
13 **RE CROSS EXAMINATION**
14 **BY MS. TITUS:**
15 Q. If you had never seen another lease --
16 how would you know that is the same lease if
17 you had never seen the other leases that were
18 involved?
19 **A. Because --**
20 Q. You just said that they looked like
21 the same leases you had seen when you came to
22 council meetings.
23 **A. No. That I had heard of through**
24 **experience of being in the public meetings.**

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1 Q. You can't --
2 **MR. EDWARDS:** You've got to let
3 her finish.
4 **MS. TITUS:** Okay.
5 **MR. EDWARDS:** You've got to let
6 her finish.
7 **THE WITNESS:** At the public
8 meetings there was details discussed on the
9 lease on what was proposed, what was argued
10 about, what was put down, what was suggested,
11 what was this, that, and the other thing.
12 That's what I went off of.
13 What he was looking to lease,
14 what that business was looking to lease -- I
15 had already been clear on what they were
16 looking to lease and what it was about.
17 I didn't see a lease, per se,
18 prior to that lease on the June 20th is what
19 I'm saying.
20 **BY MS. TITUS:**
21 Q. So you just said that at other public
22 meetings the details and specifics of a lease
23 were discussed in the public meetings. So,
24 then, why on July 18th did you have to discuss

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1 **executive session. Max, our city solicitor,**
2 **called it into executive session.**
3 **MS. DE LUCA:** Objection. We
4 cannot talk about what was discussed or was
5 not discussed at the executive session on
6 July 18th.
7 **MS. TITUS:** We're not asking you
8 to discuss --
9 **MS. DE LUCA:** You're asking her
10 a question and she is answering. She's
11 starting to answer them. You can't be --
12 **MS. TITUS:** Oh. You're telling
13 her. Okay.
14 **MS. DE LUCA:** You have to stay
15 away from that topic.
16 **THE WITNESS:** Okay.
17 **MR. EDWARDS:** Any more
18 questions?
19 **MS. TITUS:** No thank you.
20 **MR. EDWARDS:** Okay. If there is
21 no more questions for Councilwoman Green, you
22 can have a seat.
23 **THE WITNESS:** Thank you.
24 (The witness was excused.)

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1 this particular lease in executive session
2 since prior to that you have heard counsel
3 discuss other leases out in open meetings?
4 **A. Because it wasn't on the agenda.**
5 **MS. DE LUCA:** Objection. She
6 can't testify as to what has come up in
7 executive session.
8 **THE WITNESS:** No. She asked why
9 I didn't --
10 **MS. TITUS:** Why --
11 **THE WITNESS:** -- know that.
12 And I said because it was -- it
13 was stopped and it wasn't brought up on the
14 agenda. So it was --
15 **MS. TITUS:** My --
16 **THE WITNESS:** -- bam, executive
17 hearing.
18 **BY MS. TITUS:**
19 Q. My question was why this lease had to
20 be discussed in executive session when other
21 leases were able to be discussed out in the
22 public.
23 **A. Because it was brought up and it was**
24 **not an agenda item. So Max called it into**

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1 - - - -
2 **MS. DE LUCA:** All right. We
3 call Councilman Fitzwater.
4 **MR. EDWARDS:** Can you state your
5 name for the record?
6 **MR. FITZWATER:** Paul Denver
7 Fitzwater, III, or Bud Fitzwater.
8 **PAUL DENVER FITZWATER, III,**
9 the witness herein, having first been
10 duly sworn on oath, was examined and
11 testified as follows:
12 **DIRECT EXAMINATION**
13 **BY MS. DE LUCA:**
14 Q. Councilman Fitzwater, how do you know
15 Preston Carden?
16 **A. I have known Preston Carden for a long**
17 **time. I've worked for him right out of high**
18 **school. I leased a bar from him. And since,**
19 **like I said, I was in school, he was friends**
20 **of my father -- or is friends of my father.**
21 Q. So you say you worked for Preston.
22 When was that?
23 **A. It was the day after I told my parents**
24 **I was quitting school. So my dad woke me up**

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1 **and took me and dropped me off at his shop.**
2 **So that was probably '99. And I think I only**
3 **made it about eight months working for him.**
4 Q. Have you worked for him since?
5 **A. I have not.**
6 Q. How about the lease you mentioned
7 earlier? When did you lease any -- you said a
8 bar?
9 **A. Yeah. It was -- it wasn't a -- well,**
10 **I guess it was a bar. Right? It was in**
11 **pretty bad shape. But 92-94 Clinton Street.**
12 **I don't know if he bought it or if him and a**
13 **partner bought it. I don't recall the actual**
14 **terms of the lease. But my father and I went.**
15 **And I believe the liquor license was in my**
16 **name. But I leased the property from him or**
17 **from the company, either PSC or -- I don't**
18 **know what the other company was called. But**
19 **we leased it for approximately three and a**
20 **half years.**
21 Q. And when was that?
22 **A. 2001 and maybe 2004-5ish.**
23 Q. Do you currently lease any property
24 from Preston?

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1 friend. Like, I'm sure a line of questioning
2 you're going to head down. Or if anyone else
3 wants to ask me, I can clear that all up for
4 you.
5 **BY MS. DE LUCA:**
6 Q. Well, let's just ask.
7 **A. Mm-hmm.**
8 Q. Has Mr. Carden ever lived with you?
9 **A. Not to my knowledge, no.**
10 Q. The complaint alleges there have been
11 many business
12 connections/dealings/partnerships/leases
13 between Mr. Carden and Bud Fitzwater for many,
14 many years.
15 So let's break that down.
16 **A. Mm-hmm.**
17 Q. Do you currently have any business
18 connections with Mr. Carden?
19 **A. I do not.**
20 Q. Did you ever have any business
21 connections with Mr. Carden?
22 **A. I did.**
23 Q. And what was that business connection?
24 **A. There was the lease property that I**

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1 **A. I do not.**
2 Q. Do you currently lease any property
3 from PSC?
4 **A. I do not.**
5 Q. So this complaint makes a number of
6 allegations against you.
7 **A. Indeed.**
8 Q. So let's walk through them. Let's
9 walk through them one at a time.
10 **A. Mm-hmm.**
11 Q. The complaint describes your
12 relationship with Mr. Carden as a life-long,
13 close, personal relationship. Would you
14 describe your relationship with Mr. Carden
15 that way?
16 **A. I would not.**
17 Q. Why not?
18 **A. Because I'm not the close, personal**
19 **friend, like -- she's right. It is one of the**
20 **Paul -- I'm the III.**
21 **THE REPORTER:** I'm sorry.
22 **THE WITNESS:** Oh, I'm sorry. My
23 father's name is the same as mine. They have
24 been friends. But he's been my father's

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1 **spoke of.**
2 Q. Other than the lease property, did you
3 have any other business connections?
4 **A. No.**
5 Q. Do you currently have any business
6 dealings with Mr. Carden?
7 **A. I do not.**
8 Q. I'm not sure how you would distinguish
9 connections from dealings. But if you are,
10 what's the distinction in your mind between a
11 business connection and a business dealing?
12 **A. Business, in general, would be some**
13 **transaction of money. So if there's a money**
14 **lease or we were partners in something,**
15 **there's nothing like that. I have never**
16 **leased, rented, purchased, exchanged or bought**
17 **together anything with him.**
18 Q. Other than the lease that you already
19 mentioned?
20 **A. That's correct.**
21 Q. And other than your eight-month
22 employment with Mr. Carden?
23 **A. He's not the easiest person to work**
24 **for. But at that time I was young.**

<p>Margaret Titus Page 177</p> <p>1 Q. How about partnerships? Are you 2 currently in a partnership with Mr. Carden? 3 A. Not now, nor have I ever been. 4 Q. Other than what we've already 5 discussed, is there any reason to believe why 6 you -- Ms. Titus would think you have a close, 7 personal relationship with Mr. Carden? 8 A. Chris McKinley apparently has a lot of 9 opinions of my family's relationships. 10 Q. So let's talk about Mr. McKinley. 11 Who is Mr. McKinley? 12 A. He's my neighbor. He's retired. 13 Q. Okay. Do you speak with Mr. McKinley? 14 A. Very seldom. Apparently, I need to 15 speak to him more. But very seldom do I speak 16 with him. 17 Q. Do you ever talk about Preston Carden 18 with Mr. McKinley? 19 A. To my knowledge, we have never spoke 20 about that -- about Mr. Carden. 21 Q. Okay. What about Bud's Automotive? 22 That was mentioned earlier. What is Bud's 23 Automotive? 24 A. It was -- now, I don't know if my</p>	<p>Margaret Titus Page 179</p> <p>1 complaint false? 2 A. Absolutely. 3 Q. The complaint also says that your 4 pickup truck was parked on the paper street 5 during the election with a billboard for his 6 campaign and afterward it was parked there for 7 sale. Have you ever parked a vehicle on 8 Jefferson paper street? 9 A. I have. 10 Q. And when? 11 A. Around the election time I parked it 12 there. I have actually sold quite a few cars 13 on that corner. I was under the impression it 14 was part of -- because the Steadfast, or Bud's 15 Automotives, parks his cars there. So I 16 thought that was his -- his property as well. 17 Q. Who owns the Jefferson -- who owned 18 Jefferson paper street at the time? 19 A. I didn't know at the time. 20 Apparently, the town did. I didn't realize it 21 was town property. 22 Q. Did you ask anyone to park there? 23 A. No. No one really said anything, so I 24 just parked there.</p>
<p>Margaret Titus Page 178</p> <p>1 father was a partner on paper when they did 2 it. But he helped his friend, Chris Corbett 3 (phonetic) lease and open a body shop. Chris 4 was -- had lost his job and had just moved 5 to -- not Delaware City but down the road. 6 And my dad had mentioned that when he owned 7 the building before Preston bought it that it 8 was called Bud's Automotive and that name 9 might help draw people into maybe think, you 10 know, he was associated. But he helped Chris 11 get that business off the ground. So in the 12 beginning it was to attract business. And 13 then as my father stepped away and Chris went 14 on his own, he changed the name. 15 Q. Other -- 16 A. But I had no affiliation with it other 17 than I have crappy cars, like a lot of people 18 in town. So -- 19 Q. Okay. 20 A. I did, you know, pay to go there as a 21 customer. 22 Q. So if you never lived with Preston and 23 he never lived with you, to your knowledge, 24 isn't that -- isn't that allegation in the</p>	<p>Margaret Titus Page 180</p> <p>1 Q. Did you ask Preston? 2 A. I did not. 3 Q. Did you put your -- I'm sorry. 4 There was talk about political 5 signs. Did you make political signs or have 6 political signs made for your campaign? 7 A. I did. 8 Q. And where did you place those signs? 9 A. I probably only placed a few out. I 10 didn't place the ones on that property. My 11 father did. And I had -- I was pretty lazy 12 with the signs. I think I did my yard and 13 three neighbors' yards and the Crabby Dick's 14 corner and then Paul Pratt's (phonetic). 15 My father and a few other people 16 kept stopping by and picking signs up and 17 putting them out. So I wasn't aware of where 18 they all were. 19 Q. Okay. 20 A. And I did have -- I personally hung a 21 banner on the property adjacent to Kathy's 22 Crab House -- 23 Q. Okay. 24 A. -- which was owned by Preston.</p>

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1 **I did ask permission for that.**
2 Q. Okay. The complaint also says a few
3 years ago you helped clean up the property for
4 Mr. Carden. Did you ever clean away -- or
5 clear away debris on the Jefferson paper
6 street?
7 **A. I did. And it was because Chris**
8 **said that he had to get cars moved before**
9 **Delaware City that weren't tagged.**
10 Q. When was this?
11 **A. This was right before Delaware City**
12 **Day.**
13 Q. And who is Chris in this situation?
14 **A. Chris Corbett is the owner of**
15 **Steadfast Automotive, or Bud's Automotive.**
16 Q. Did Mr. Carden ask you to clean them?
17 **A. He did not.**
18 Q. Have you ever cleaned up debris in
19 other parts of the city?
20 **A. Anytime I walk somewhere I used to**
21 **pick cans up on the way home, or the**
22 **cigarettes.**
23 Q. Did Mr. Carden donate to your campaign
24 for council?

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1 **A. No. I paid for everything myself.**
2 Q. Did he publicly support your campaign,
3 to your knowledge?
4 **A. Other than allowing me to put signs on**
5 **his property, I don't know. I don't believe**
6 **he voted. Actually, I'm positive he wasn't**
7 **able to vote due to the zoning.**
8 Q. Have you ever been to Preston's house?
9 **A. I have.**
10 Q. How many times?
11 **A. Two. They were brief. Once my dad**
12 **took me there when he wasn't -- I guess he was**
13 **away -- to look at a race car he was building.**
14 **And the second time was I was in the car with**
15 **my father when he dropped off a piece of a**
16 **fence.**
17 Q. Have you ever gone out to get a drink
18 together?
19 **A. Yes.**
20 Q. How many times?
21 **A. Not -- not together. Like not that we**
22 **had a personal relationship like these other**
23 **ones. But never two. It's always been my dad**
24 **is with us. I don't think I've ever been with**

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1 **him with -- without my father being there.**
2 Q. So is it fair to say you would run
3 into him at different places if you were going
4 out to drink or --
5 **A. Yeah. I believe even -- yeah. So**
6 **without my father at Brandon Lewinsky's I**
7 **think one time.**
8 Q. Okay.
9 **A. As I had with anybody that patrons --**
10 **or patronizes Lewinsky's or Crabby Dick's.**
11 Q. Are you related to Mr. Carden?
12 **A. Not to my knowledge.**
13 Q. Would you consider him family, like
14 the complaint describes?
15 **A. I consider him a very close friend of**
16 **my father's. If he needed something, I would**
17 **try to help him.**
18 Q. You said a very close friend of your
19 father's.
20 **A. Mm-hmm.**
21 Q. Is he a very close friend of yours?
22 **A. Not very close, no. If he was on the**
23 **side of the road, I would stop and help him**
24 **change a tire, as I would Ray or Jill or John**

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1 **or Dale.**
2 Q. And does your father have any say on
3 how you vote on council?
4 **A. Unfortunately, he does not for him.**
5 **No. Different -- very, very different**
6 **opinions.**
7 Q. So based on this, is it safe to say
8 that the complaint is wrong again -- that
9 there is no close, personal relationship with
10 you and Mr. Carden?
11 **A. I would agree that it's no closer than**
12 **anyone else in town.**
13 Q. And so that's a -- and so there's no
14 conflict of interest that would disqualify you
15 from voting at all?
16 **A. I didn't believe so at the time, nor**
17 **do I believe so now.**
18 Q. Okay. How about PSC? Do you have any
19 business relationship with PSC?
20 **A. No.**
21 Q. Does -- did PSC make any donations to
22 your campaign?
23 **A. No.**
24 Q. Did PSC support your campaign in any

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1 way?
2 **A. I have no idea.**
3 Q. So, again, no business or financial
4 relationship between you and PSC that would
5 warrant your -- that would warrant you
6 disclosing it?
7 **A. No.**
8 Q. When was the first time you remember
9 seeing the lease that was proposed by
10 Mr. Carden to the city council?
11 **A. The first time -- I don't know what**
12 **the date. I mean, whatever the order of the**
13 **meetings are. The meeting where Ms. Barrett**
14 **placed in front of me prior to the meeting**
15 **beginning was the first time I saw the lease.**
16 Q. And I think there was a quote of you
17 saying something about "We've seen this
18 before."
19 **A. I did not say that. Ms. Titus was the**
20 **first person that I heard say anything about**
21 **the lease. She said to Ms. Barrett -- or**
22 **after Ms. Barrett handed it to her, I received**
23 **mine. And she said, "I don't know why we're**
24 **looking at this. We already voted on it."**

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1 **first about it on the telephone. And I wasn't**
2 **aware of a lot of the stuff he was asking. So**
3 **I went to Preston and asked him to walk me**
4 **through what the lease was or what his goals**
5 **were. So I did speak to him at that point.**
6 **And then I spoke to Ms. Snow next by**
7 **telephone. And I think maybe Ray a couple**
8 **more times.**
9 Q. When you say you spoke with
10 Mr. Preston -- I'm sorry -- with Mr. Carden
11 about what the lease was or what goals he had,
12 what did that discussion entail?
13 **A. What -- and I said, "I don't know what**
14 **this lease is. Can you please clarify this**
15 **for me?"**
16 **So he walked me through where**
17 **the property line was and where the street is**
18 **and talked about the right of way and the**
19 **buildings and just basically clarified**
20 **everything that everyone else apparently knew.**
21 **I really kind of kept my head in the sand, I**
22 **guess, until I was on council, but I wasn't**
23 **aware of a lot of the stuff that was going on**
24 **with that street.**

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1 Q. I'm sorry. Who said that?
2 **A. Megan Titus said that.**
3 Q. Okay. So do you recall saying this
4 should have taken place a long time ago?
5 **A. Never do I recall saying that. I**
6 **would love to hear that tape that she**
7 **alleged -- I apologize for my outburst**
8 **earlier, but I was -- I am very glad I get to**
9 **sit here now, until, I guess, Tim gets his**
10 **shot at me.**
11 Q. And, again, the lease was not
12 discussed at the June 2016 meeting?
13 **A. That's the first one? No, I didn't**
14 **discuss it.**
15 Q. It wasn't voted on by council at the
16 June 20th meeting?
17 **A. I didn't vote on it.**
18 Q. After you became a council member, did
19 you ever discuss the lease with Mr. Carden?
20 **A. Yes.**
21 Q. When?
22 **A. It was after we first received the**
23 **lease. And I believe the first person -- just**
24 **to get a timeline, I believe I spoke to Ray**

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1 Q. Did you make him any promises in that
2 discussion?
3 **A. No.**
4 Q. Did he ask you to vote on it?
5 **A. No.**
6 Q. Did you discuss the lease with
7 Councilwoman Barrett before the June 20th
8 meeting?
9 **A. No.**
10 Q. Did you discuss the lease with
11 Councilwoman Barrett after the June 20th
12 meeting?
13 **A. No.**
14 Q. Just so we're clear, outside of
15 council meetings.
16 **A. No.**
17 Q. Okay. Did you discuss the lease with
18 Councilwoman Green before the June 20th
19 meeting?
20 **A. No.**
21 Q. And did you discuss the lease with
22 Councilwoman Green outside of council meetings
23 after the June 20th meeting?
24 **A. Nope. The only people I have**

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1 **discussed that with outside of council is Ray,**
2 **Preston and Jill.**
3 Q. And have we already discussed what --
4 **A. Maybe Mr. Veasey (phonetic) in person.**
5 **Not in a meeting.**
6 Q. Mr. Veasey?
7 **A. I believe it's Ray's brother-in-law.**
8 **A VOICE:** Right here.
9 **MR. KONKUS:** Right there.
10 **THE WITNESS:** Yeah. Sorry.
11 Yeah. He had concerns about the street going
12 through. And he was worried about that and
13 had other concerns about a light. But I feel
14 like -- I don't know when my number became
15 public. But I had a lot of attention after
16 the paper -- that first initial night. So I
17 went to people that were involved. I know
18 Jill, Preston. Well, I didn't know Jill. I
19 do now. But it seemed like the main
20 players. Mr. Veasey had touched it. So I got
21 their opinions and I tried to compile and go
22 from there.
23 **BY MS. DE LUCA:**
24 Q. So other than the discussion we had

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1 comments?
2 **A. I did.**
3 Q. Did you consider the public comments?
4 **A. I did.**
5 Q. So, again, just to recap, the first
6 time you became aware of this proposed lease
7 was on the June 20th, 2016 meeting. Right?
8 **A. The meeting where Betty handed it out,**
9 **yes.**
10 Q. You didn't have any discussions
11 outside of council meetings with Councilwoman
12 Green or Councilwoman Barrett about the
13 20th -- or about the lease?
14 **A. I did not.**
15 Q. You didn't have any discussions with
16 Mr. Carden about the lease other than --
17 **A. Him -- him describing -- correct.**
18 Q. Other than -- I'm just going to -- for
19 the record, other than the conversation you
20 talked about where you asked about his goals.
21 **A. That's correct.**
22 **MS. DE LUCA:** Okay. That's all
23 I have.
24 **MR. EDWARDS:** Councilwoman

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1 earlier about your discussion with Mr. Carden
2 about what the lease was and what goals he
3 had, did you have any other discussions with
4 Mr. Carden about the lease?
5 **A. No. Not prior to it being approved.**
6 Q. Do you mean after then?
7 **A. After it was approved, I asked, you**
8 **know, if there was anything he would do -- you**
9 **know, since the lease was approved, I talked**
10 **to Jill several times since then. And I said,**
11 **you know, would you be willing to do anything**
12 **else? Terminate the lease if we could get a**
13 **road put through? I was just trying to look**
14 **at other options. But this was post vote.**
15 Q. Okay. At the August 15th, 2016
16 meeting, did you vote in favor of the lease?
17 **A. Is that the date we voted on it?**
18 Q. To the best of your recollection.
19 **A. If that's the one where it passed,**
20 **then, yes, I voted in favor.**
21 Q. And was there public comment on the
22 lease at that time?
23 **A. There was public comment, yes.**
24 Q. And did you listen to the public

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1 Titus.
2 **MS. TITUS:** Yes.
3 **CROSS-EXAMINATION**
4 **BY MS. TITUS:**
5 Q. So you said that you sold many cars on
6 that corner lot. And you thought that Preston
7 owned that corner lot?
8 **A. That's not true.**
9 Q. I'm asking.
10 **A. No. I didn't -- I didn't think that.**
11 Q. Who did you think owned that lot?
12 **A. I thought that it was part of the**
13 **automotive business.**
14 Q. But does the automotive business own
15 his lot or does Preston own his -- so --
16 **A. He leases it.**
17 Q. He leases his lot from Preston? He
18 leases that shop from Preston?
19 **A. I would assume so, yes.**
20 Q. Okay. So, then, you thought that that
21 whole strip there belonged to the automotive?
22 **A. I thought maybe -- I don't know the**
23 **exact name. But definitely the corner. And I**
24 **guess six or seven spots, it looks like.**

<p>Margaret Titus Page 193</p> <p>1 Q. And so that automotive -- he -- does 2 he use that corner -- that area -- for storing 3 his cars for his business and -- and that -- 4 and allow people to sell cars on that 5 property? 6 A. I would assume he does. I don't know 7 his business. 8 Q. Did you ask him to sell your car on 9 that property? 10 A. No. I just parked it there. 11 Q. And so you did not know that that 12 was -- you didn't know that was city property? 13 A. No. 14 Q. And -- but you knew that was Preston's 15 property? 16 A. I knew that -- to my knowledge, I 17 thought that Chris Corbett was leasing that. 18 I don't know what -- 19 Q. Leasing that section there in the 20 front or leasing the whole property? 21 A. I thought the street. 22 Q. So where Preston parks all his stuff 23 back there, you thought that the automotive 24 was leasing that whole Jefferson paper street?</p>	<p>Margaret Titus Page 195</p> <p>1 question. 2 Did you negotiate any portion of 3 that lease prior to it being voted on with 4 Preston? 5 THE WITNESS: No. 6 MR. KONKUS: Did you know that 7 Natalie had not negotiated any portion of that 8 lease prior to the vote? 9 THE WITNESS: No. 10 MR. KONKUS: Did you know Betty 11 had not negotiated that lease? 12 THE WITNESS: No. 13 MR. EDWARDS: Did you know 14 Mr. Malinowski had not negotiated any portion 15 of that lease? 16 THE WITNESS: No. 17 MR. EDWARDS: Did you know that 18 the mayor had never negotiated that lease? 19 THE WITNESS: No. 20 MR. KONKUS: Or that -- so I 21 guess that lease wasn't negotiated. 22 THE WITNESS: I didn't vote on 23 the lease until it was -- went through all the 24 processes until I spoke with everyone that I</p>
<p>Margaret Titus Page 194</p> <p>1 A. That's incorrect. 2 Q. I'm asking you. 3 A. And I told you six to seven. Please 4 listen to me. Six to seven spots is what I 5 assumed. 6 Q. Okay. 7 A. If you'd like to talk to me, I'd love 8 to talk to you. But please don't raise your 9 voice to me. And I will not do it to you. 10 Q. I was not trying to raise my voice. I 11 was just trying to understand. I thought I 12 asked you a question. I'm not raising my 13 voice to you. I'm loud because I can't hear. 14 Okay. I guess that -- you -- 15 you did ask for public comment on that 16 meeting. 17 Okay. Thank you. That's 18 enough. 19 MR. EDWARDS: All right. Is 20 there any follow-up? 21 MS. DE LUCA: I have no 22 follow-up. 23 MR. EDWARDS: Okay. The Board. 24 MR. KONKUS: Yeah. Just a</p>	<p>Margaret Titus Page 196</p> <p>1 thought was involved in the process. I never 2 voted, seconded, anything until that time. 3 MR. KONKUS: That's why I'm 4 being kind. You didn't nominate it, you 5 didn't make the motion, and you didn't second 6 it. 7 THE WITNESS: And I'm the one 8 getting the most attacked of anyone in this 9 whole process. 10 MR. KONKUS: That's okay. 11 THE WITNESS: So I'm very 12 surprised that you're not going at me too. 13 MR. KONKUS: Sir, you have a 14 pink tie. I'm going to leave you alone. 15 THE WITNESS: I appreciate it. 16 MR. KONKUS: The other -- the 17 other question I had was: You do -- you did 18 say you had negotiated the lease in the past 19 with Preston. 20 THE WITNESS: I don't know if 21 anyone else has done it. But there's not much 22 negotiation. It was: This is what it is. I 23 believe that's why we left. It was a 24 commercial lease. So there was --</p>

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1 **MR. KONKUS:** Was it a triple net
2 lease?
3 **THE WITNESS:** I don't know the
4 terms of it. I was very young at the time.
5 But it worked out for me. And I was ready to
6 move on. For the same reasons I'm ready to
7 move on through council. This town gets
8 tiring after times. So I had business for,
9 you know, three or four years and I was ready
10 to move on.
11 **MR. KONKUS:** Did the terms of
12 the lease that you saw for the paper street
13 seem like the same types of terms that you
14 signed for for 92 to 94 Clinton?
15 **THE WITNESS:** I can't recall
16 that lease. I really can't.
17 **MR. KONKUS:** Okay. That's fair
18 enough.
19 But you have observed Preston's
20 business dealings in town?
21 **THE WITNESS:** I assume. I know
22 he has partners and -- as many people, I
23 assume I know his business dealings. But I
24 really don't know all of them.

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1 - - - - -
2 **MR. EDWARDS:** So at this point
3 it is your opportunity to give your closing
4 remarks.
5 Councilwoman Titus, if you'll do
6 so. And then Mr. Walton will get his chance.
7 **MS. TITUS:** I would say that you
8 have everything before you, Board, that can be
9 possible to be in front of you to make your
10 decisions. I would say -- I would strongly
11 ask you, if you wouldn't mind, to go to the --
12 to come back to the town hall, because we're
13 in the town hall, and to get the tran- --
14 listen to the tape from the June 20th meeting,
15 which I am 99.9 percent positive that
16 Mr. Fitzwater at the time when Betty brought
17 it to the attention -- or tried to have it
18 vote -- made the motion to vote it in and
19 Natalie seconded it -- then Mr. Fitzwater
20 said, "This should have been done a long time
21 ago," or something to that effort, which means
22 that he had knowledge, discussed or whatever.
23 Or maybe he just thought it should be end --
24 done -- done in with.

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1 **MR. KONKUS:** Okay. We'll leave
2 that. Thank you.
3 **MR. EDWARDS:** Any other
4 questions from the Board?
5 **MR. DILLIPLANE:** None.
6 **MR. EDWARDS:** Any other
7 questions at all for Councilman Fitzwater?
8 All right.
9 **MS. DE LUCA:** We don't have any
10 more questions.
11 **MR. EDWARDS:** Okay.
12 Yeah.
13 So it appears --
14 **THE WITNESS:** I'm going to stay
15 here, if I can.
16 Can I stay?
17 **MR. EDWARDS:** You -- you're more
18 than welcome to sit back if you are
19 comfortable there in the hot seat.
20 **THE WITNESS:** Thank you.
21 **MR. EDWARDS:** You're more than
22 welcome to stay in the hot seat. You won't be
23 asked any more questions.
24 (The witness was excused.)

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1 Irregardless of what -- this is
2 not a responsible, ethical way to run a city
3 and do important things with leases like this.
4 And nothing I ever did was under the table or
5 flying or trying to pass this through or get
6 it without public discussion. And that's the
7 way we need. It's your decision how this town
8 is going to be run -- transparently or
9 underhandedly. And if -- and -- and be called
10 accountable for the actions that you take.
11 This could result in extreme
12 financial hardship with a lawsuit pending. I
13 mean, it could be -- it could be bad,
14 especially when you look at the evidence and
15 the variances where the town says that the --
16 the street will not be compromised. It will
17 not relinquish control of the street. And
18 then we have councilpeople that are not
19 researching what it is. It's not because we
20 didn't want Preston to have his way. It's
21 because we want to make sure that Ms. Snow's
22 family and their property is also valued and
23 it's fair and equal to all people.
24 And that's all I have to say.

<p>Margaret Titus</p> <p>Page 201</p> <p>1 It's on you. I've done my job. I don't -- 2 I'm not hateful to you. I am not hateful to 3 anybody. I simply think that this was wrong 4 and I had to bring it -- I had to bring it 5 forth. 6 MR. FITZWATER: I'm not allowed 7 to ask a question, right, to Megan? 8 MR. WALTON: The evidence is 9 closed. 10 MR. FITZWATER: Okay. 11 MR. WALTON: I'm sorry. 12 MS. TITUS: You can ask me. You 13 can call me anytime and ask me a question. 14 MR. WALTON: We've heard a lot 15 of testimony tonight. I started off with five 16 basic points. And, if you recall, when I made 17 my opening statement, there were five points. 18 Right? 19 And one of the big issues was 20 whether or not the council members violated 21 the ethics code by negotiating with Mr. Carden 22 behind closed doors. The evidence presented 23 is absolutely, flatly no. Councilwoman Green, 24 Councilman Fitzwater testified that they never</p>	<p>Page 202</p>	<p>Margaret Titus</p> <p>Page 203</p> <p>1 the Superior Court or the Court of Common 2 Pleas doesn't have jurisdiction, this Board 3 likewise does not have jurisdiction. 4 Fourth, I think we have 5 established that the thought that there was a 6 close, personal relationship and a friendship 7 that was sufficient to -- that -- the 8 testimony demonstrates that is insufficient 9 here to create an ethical requirement for 10 recusal. 11 And, Ray, I note that in our -- 12 in our papers I cite a U.S. Supreme Court 13 case. Right? And I'm going to quote. The 14 United States Supreme Court has held that 15 friendship is, quote, traditionally not a 16 ground for recusal when official action is at 17 issue, close quote. 18 The ethics rule -- and, then, 19 this is not a Supreme Court case, so I don't 20 want to be accused of going there. But the 21 ethical rules must be applied with caution, as 22 local governments would be seriously 23 handicapped if ever -- if every possible 24 interest, no matter how remote and</p>
<p>Margaret Titus</p> <p>Page 202</p> <p>1 saw the lease before the meeting. And there 2 was no -- there is zero testimony that shows 3 in any respect that there was negotiation 4 behind closed doors. 5 Second, contrary to the 6 arguments, there is no general practice 7 established for entering into a lease in the 8 town. The town code -- or the town charter 9 requires the council to approve the lease. 10 And I cite you to the affidavit of the city 11 manager. And there can't be any ethics 12 violation for a violation of law under -- is a 13 law that requires an additional process or 14 more process that was due. 15 Third -- and I'm going to say 16 this again. And I know I told you I'd bring 17 it up at the end. If you look at the FOIA 18 law, Section 1005, at the end of the day, you 19 don't have jurisdiction. This Board doesn't 20 have jurisdiction to determine if FOIA was 21 violated. That is solely a determination that 22 can be made by, one, the Court of Chancery 23 and -- at the end of day, two, the attorney 24 general can make a recommendation. Again, if</p>	<p>Page 204</p>	<p>Margaret Titus</p> <p>Page 204</p> <p>1 speculative, would serve as a disqualification 2 of an official. And those cases are in our 3 motion to dismiss before. And they're also 4 here today. 5 The -- ultimately, I think it's 6 proven, without a shadow of a doubt, that 7 Mr. Carden didn't live with Mr. Fitzwater -- 8 that there's no close personal relationship -- 9 and, at the end, regarded sort of the 10 unfairness. And I think at the end of the day 11 that's what we're doing here. 12 And I decided I would bring with 13 me a case. And I don't usually bring a case 14 to a proceeding like this. But I'm going to 15 hand one out. And I'll read something to you. 16 And it's an old one. It's a case from the 17 Delaware Supreme Court from 1957 -- I'm 18 sorry -- if I could. And I'll read you a 19 piece of it, because it's important. And I 20 think that some of the things here we are 21 talking about that was political. 22 And if you flip over -- and I'm 23 going to read this to make sure it's part of 24 the record. But if you flip over. At the</p>

<p>Margaret Titus</p> <p>Page 205</p> <p>1 very bottom of page 4 of this case. All 2 right? 3 And it talks about -- if you 4 read at the bottom in italics, it says, 5 Colorable Legislation. And I'm going to read 6 it. In the case, the Supreme Court said -- 7 the Delaware Supreme Court said: It is 8 asserted that the act was not passed for the 9 bona fide purpose of reorganizing the 10 Department, but for political purposes only; 11 i.e., to wrest control of the Department from 12 the Republican Party, and confer control upon 13 the Democratic Party; and that such is an 14 exercise of arbitrary power and is void. 15 The Court goes on to say: But 16 where is there to be found in our constitution 17 any prohibition against the passage of 18 legislation for political motives? Relator's 19 argument ignores the fundamental principle 20 that absent a constitutional inhibition, the 21 power of the legislature as the repository of 22 the legislative power with its broad and ample 23 sweep, has full and unrestrained authority to 24 exercise its discretion in any manner that it</p>	<p>Page 205</p>	<p>Margaret Titus</p> <p>Page 207</p> <p>1 of testimony. 2 Because at the end of the day, 3 the ethics code wasn't violated. You may not 4 agree with council's decision. I said this 5 from the beginning. But you're a judge. 6 You're a judge to determine whether or not the 7 ethics code has been violated. 8 And there is no specific 9 provision of this ethics code that Mr. Titus 10 has proven and met her burden of proof that 11 ultimately an ethics violation occurred. Not 12 a single one. And Ms. DeLuca and I have 13 walked through all of the different elements 14 and pieces of the code. 15 So at the end of the day, 16 whether or not you like the lease decision or 17 not, it's not an ethical violation. There's 18 no ethical violation proven. 19 Thank you for your time. 20 And I thank you, guys, 21 seriously, for your service for being here. 22 This has been a long time. I know I'm tired. 23 So I just want to thank you. 24 And I would say that Ms. Titus</p>
<p>Margaret Titus</p> <p>Page 206</p> <p>1 sees fit in its wisdom or even folly to adopt. 2 So at the end of the day -- the 3 Court goes down -- he says: There is no 4 provision in our Constitution that prevents a 5 political party from dominating the General 6 Assembly from passing legislation for 7 political motives. It may be doubted that 8 such a provision existed in any state. And no 9 court may properly inquire into such matter 10 for the members of the General Assembly are 11 responsible in this respect to their 12 constituents only, not to the courts. For 13 abuses of political power by the legislature 14 acting within its authority, the only redress 15 is an action at the polls. Our courts have 16 repeatedly said so. 17 So the question that I think was 18 raised, it was ultimately a fairness question. 19 And my point is really simple. The ethics 20 code is not about that. It's whether or not 21 there's a conflict of interest. The ethic 22 code says -- says there are particular rules 23 they have to live by. And we have a long 24 standard here. Ms. DeLuca and I put on a lot</p>	<p>Page 206</p>	<p>Margaret Titus</p> <p>Page 208</p> <p>1 thanks you too. 2 I didn't mean to -- 3 MS. TITUS: I do. 4 MR. WALTON: So thank you. 5 MR. EDWARDS: Ms. Titus, do you 6 have anything else additional? 7 MS. TITUS: I do. 8 Again, ethical -- moral or 9 good -- morally good or correct, avoiding 10 activities or organizations that do harm to 11 people or the environment. 12 Also what Ms. Snow said in her 13 testimony about the conduct of being -- not 14 looking shady to the town and bringing on 15 that -- what was that? I can't even ask her 16 now -- what she read about how it's supposed 17 to be. That's ethical. 18 Max is telling you the law. 19 Yes, that's the law. This is not a court of 20 law. This is an ethics hearing. You are 21 supposed to determine whether their actions 22 were ethical. 23 And I can go through that whole 24 code. And I see things -- the fair and equal</p>

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1 treatment -- Ms. Snow and her family are not
2 being treated equally and fair.
3 And that's it. It's up to you
4 guys. I respect your decision.
5 I'm done.
6 **MR. EDWARDS:** Okay. So at this
7 point all the testimony has been given. And
8 so the Board is free to deliberate.
9 **MR. KONKUS:** I think,
10 Mr. Barrett, given the advanced hour and the
11 fact that one Board member wants to --
12 **MR. DILLIPLANE:** My wife has --
13 my obligation has been alleviated. My wife
14 came to get the car.
15 **MR. KONKUS:** Well, damn. See,
16 because if they didn't -- now we can stay here
17 until 2 a.m.
18 **MR. FRUYTIER:** I'll just make a
19 statement.
20 I have a hard time believing
21 that, because your -- your father's close
22 association with Carden, you don't have that
23 same closeness to the bar, to that business
24 down there.

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1 worked -- that's my father's business. My dad
2 worked for Amtrak for four years. I can't
3 drive a train.
4 **MR. WALTON:** Hold on, hold on.
5 Okay. I'm gonna -- I'm gonna to
6 stick up for Barrett here. I don't mean to
7 jump on the Board's deliberations, but we
8 can't -- at some point in time this hearing
9 has to end. And it ended.
10 **MR. DILLIPLANE:** Understood.
11 **MR. WALTON:** And -- and so we --
12 from the audience -- Bud, Meg, anybody else --
13 we cannot say anything.
14 **MR. KONKUS:** So let me help.
15 This is what I think. This is
16 between us.
17 **MR. DILLIPLANE:** They're not
18 here.
19 **MR. KONKUS:** They're Judge Judy
20 people. They don't really count.
21 **MR. EDWARDS:** That's exactly
22 right. It's almost though you're in a glass
23 cage right now --
24 **MR. FRUYTIER:** Right.

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1 **MR. EDWARDS:** So I'm just -- I'm
2 just going to say one thing. So you can --
3 everything you're saying is fine. But at this
4 point you're deliberating amongst yourselves.
5 **MR. FRUYTIER:** Ourselves.
6 **MR. EDWARDS:** So you're not
7 going to be asking questions or directing
8 comments to the audience. So you can keep
9 going on that train of thought. I'm sorry.
10 **MR. KONKUS:** You're fine, Ray.
11 You've just got to --
12 **MS. TITUS:** May I ask a
13 question?
14 **MR. EDWARDS:** No, you cannot.
15 **MR. KONKUS:** You cannot.
16 **MR. WALTON:** We're done.
17 **MS. TITUS:** I can't ask him?
18 **MR. WALTON:** We're done.
19 **MR. KONKUS:** It's done.
20 **MR. FRUYTIER:** Natalie worked
21 for your father.
22 **MR. KONKUS:** You can't talk to
23 him.
24 **MR. FITZWATER:** I don't know who

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1 **MR. EDWARDS:** -- and everybody
2 is watching.
3 **MR. KONKUS:** I -- I look at what
4 Max has presented as obfuscation of the facts
5 through citations. He has overwhelmed us with
6 court stuff that is so much about the legal
7 side and not so much about the neighborhood
8 side.
9 And this is kind of where I'm
10 leaning after hearing the testimony. I've
11 kind of changed some thoughts over the past
12 two hours.
13 But when you read our code,
14 we've got some pretty open-ended things in our
15 ethics code. For instance, let's just talk
16 about Mr. Fitzwater. Even though he isn't a
17 close and personal friend, through the
18 testimony, of Preston Carden, Preston bought
19 that property from his father. And
20 Mr. Fitzwater worked for Preston for a while.
21 Mr. Fitzwater rented a special property in the
22 commercial district. And so those
23 associations alone should have given him
24 reason to stand up and say: You know what?

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1 I'm going to have this -- it's going to look
2 like a shady deal. So let me tell everybody
3 what the hell I am. And then I'll still vote
4 on it. But I'm not going to recuse myself. I
5 want to make sure everybody knows where I am.
6 And I don't believe an ounce of
7 Betty's testimony. I know -- because I was
8 sitting there. I saw her jump up and point
9 her finger in a threatening manner that under
10 UC MJ would have been a chargeable offense.
11 And she pointed her finger like this at Jill.
12 And she said, "I don't know what's wrong with
13 you." That's what I saw.
14 **MR. EDWARDS:** Okay. Well,
15 you're only allowed to consider what has been
16 presented at the hearing.
17 **MR. KONKUS:** But I'm just
18 saying -- I'm telling you why I'm not -- I
19 discounted anything Betty said, because that
20 wasn't what I saw.
21 **MR. TITUS:** I didn't present --
22 **MR. KONKUS:** And she did
23 present.
24 **MR. EDWARDS:** Again,

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1 **MR. KONKUS:** Okay.
2 **MR. WALTON:** We closed the
3 record. Nobody has to leave the record open
4 or anything like that. Ultimately, that's --
5 **THE REPORTER:** I can't hear. I
6 can't hear him.
7 **MR. EDWARDS:** He can't hear you.
8 Can you restate that for the
9 record?
10 **MR. WALTON:** My objection is
11 that this matter -- we came here. We had a
12 hearing. The record is closed. Nobody asked
13 for it to be left open, to my knowledge. So,
14 therefore, I object.
15 But at the end of the day, it's
16 Mr. Edwards' decision, not mine. I just
17 wanted to lodge my objection for the record.
18 Thank you.
19 **MS. TITUS:** I object to his
20 objection. I read the instructions, and it
21 did not say that they had a specific time to
22 deliberate. It said "in good time" or "as
23 soon as possible." So I did not see that they
24 had to decide this at any specific time in our

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1 Councilwoman Titus --
2 **MR. FITZWATER:** Should we leave
3 while they deliberate?
4 **MR. KONKUS:** The -- the point
5 is -- the point is is we didn't call Preston.
6 We didn't call Preston. And there was no
7 testimony. We were all sitting there. We
8 know what we saw. We know what we heard. I
9 would like to go listen to this tape.
10 **A VOICE:** A violation is worth
11 all this?
12 **MR. KONKUS:** I would like to
13 hear if what she has on this tape has -- has
14 credence?
15 Not tonight.
16 **MR. FRUYTIER:** Can this be
17 tabled and us investigate?
18 **MR. KONKUS:** Recessed?
19 **MR. FRUYTIER:** Recessed.
20 **MR. WALTON:** I'm going to place
21 an objection because -- and I don't mean to
22 step out of line. I'm trying to go by the
23 rules. We are here to set testimony. We made
24 our testimony.

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1 ethics code rules.
2 **MR. EDWARDS:** Your -- your
3 objection is noted.
4 **MS. TITUS:** Thank you.
5 **MR. EDWARDS:** Okay. At -- at
6 this point I think that you can -- you've
7 heard testimony as to what may or may not be
8 on that tape. And I think you can certainly
9 give the testimony that you've heard about
10 that due weight.
11 **MR. KONKUS:** Well, for fear of
12 giving any due weight anymore --
13 **MR. FRUYTIER:** So you're saying
14 even if we got to listen to that thing it
15 wouldn't change anything what was just said?
16 **MR. EDWARDS:** Well, I'm saying
17 you've heard what Councilman Fitzwater
18 recalled from the meeting. You've heard what
19 Councilwoman Titus recalled from the meeting.
20 And that's the evidence that's in the record
21 right now.
22 **MR. KONKUS:** I would like to
23 make a motion that we recess, at least for
24 a -- a comfort break.

<p>Margaret Titus Page 217</p> <p>1 MR. FRUYTIER: I second. 2 MR. KONKUS: Can we re-meet here 3 in 15 minutes? 4 MR. DILLIPLANE: Is that 5 allowable? 6 MR. EDWARDS: It's allowable. 7 I would strongly advise the 8 Board not discuss anything with anyone. 9 MR. DILLIPLANE: Well, there's 10 only one hole. 11 MR. KONKUS: And we can open 12 that back door and get some air in. 13 MR. EDWARDS: Is there a second 14 to the motion? 15 MR. DILLIPLANE: Yes. 16 MR. FRUYTIER: I did second. 17 MR. KONKUS: All approved? 18 All ayes? 19 MR. DILLIPLANE: Yes. 20 MR. FRUYTIER: Yes. 21 MR. KONKUS: Okay. 22 MR. EDWARDS: So we'll come 23 back -- 24 MR. DILLIPLANE: In 15 minutes.</p>	<p>Margaret Titus Page 219</p> <p>1 speak frankly -- as frank as we can be civil. 2 But I have to tell you why I 3 accept certain testimony and I reject other 4 testimony. That's all I'm saying. 5 MR. DILLIPLANE: All right. 6 Question No. 1. Has Megan met her obligation 7 to prove beyond a shadow of a doubt or a 8 preponderance of the evidence that these 9 infractions occurred? Yes or no? 10 MR. KONKUS: Well, I think you 11 have to go through each of the infractions. 12 And I'm not sure that they marry up to exactly 13 what the solicitor has written down. The 14 solicitor has done a lot of work. And he has 15 a team of people who have gone and made sure 16 that he solicited the things out of the -- out 17 of her complaint that he could prove or that 18 he would like to prove. 19 But there are other things that 20 Megan brings up that are -- have not been 21 discussed. So we can go through Megan's 22 complaint page by page and -- and see count by 23 count. And it's even tougher because it's 24 person by person. You can't put all three</p>
<p>Margaret Titus Page 218</p> <p>1 MR. EDWARDS: -- in 15 minutes. 2 That'll be approximately 10:40. 3 (A recess was taken.) 4 ----- 5 MR. KONKUS: We are back in 6 business. 7 The issue we have here is how 8 this Board deliberates. And we are a 9 public -- there's nothing in our code that 10 allows us to deliberate in private. You're 11 welcome to find something in there that says 12 we have -- we can do that. 13 The second thing is is we can 14 always call another meeting to do our 15 deliberation after mulling over the evidence. 16 I know that all the legal counsel began to 17 object. But what they're asking us to do in a 18 public forum is do nothing less than what a 19 judge does with all his clerks after a trial 20 alone and then 15 months later they issue a 21 finding or an opinion. 22 But we are to do this in front 23 of all of the respondent and the complainant 24 together and the world. And so we either</p>	<p>Margaret Titus Page 220</p> <p>1 together. 2 MR. DILLIPLANE: Yes or no? 3 MR. KONKUS: If what you're 4 asking me is: Is there enough to dismiss it? 5 No. Hell no. Not at all. I think she's done 6 a great job of presenting certain facts. I 7 think Solicitor Walton, you know, as usual, is 8 over the top. But, understand, he's a 9 professional at this. This is what he does 10 every hour of every day. Even when he's 11 debating with his wife what should go on here 12 or there. It is still the same thing. I mean 13 that. His brain just works that way. And 14 when he slips, he's got a staff behind him 15 that says "no." 16 Just -- so we can do it in a 17 systematic format. And if we do that, I 18 recommend we do it on another night and go 19 through there, because this will go on for an 20 hour. 21 MR. DILLIPLANE: It's up to you. 22 It makes no difference to me whether we debate 23 it now or come back and debate it later. 24 MR. KONKUS: What are your</p>

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1 thoughts, Ray?
2 **MR. DILLIPLANE:** It seems you've
3 got a lot of things on your mind.
4 How about you, Ray?
5 **MR. FRUYTIER:** I think there's a
6 lot of things on my mind. And I think we
7 should do what Tim suggests.
8 **MR. KONKUS:** Exactly which
9 suggestion are you going after?
10 **MR. FRUYTIER:** We should --
11 **MR. KONKUS:** Do it on another --
12 on a cooler night when we're fresh?
13 **MR. FRUYTIER:** Yes.
14 **MR. DILLIPLANE:** How are we
15 allowed to do that?
16 **MR. EDWARDS:** Okay. So I
17 don't -- I mean, I'll certainly entertain any
18 objections, I suppose. But I don't think
19 there's anything wrong with adjourning the
20 meeting to have your deliberations on another
21 night. However, I -- it's my job to point out
22 a couple things. Right?
23 So, number one, if you wait
24 until another night, you can't discuss this

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1 The longer you wait to have this deliberation,
2 you know, the testimony that you've heard can
3 change in your mind. You forget what was
4 said. And so I guess I would just recommend
5 against waiting too long just because, you
6 know, just like anything --
7 **MR. DILLIPLANE:** Do we have to
8 set a meeting ten days in advance as other
9 meetings are? Seven?
10 **MR. KONKUS:** I raise a question.
11 You said "adjourn." Why can't we recess and
12 avoid the -- the seven-day rule?
13 **MR. EDWARDS:** So --
14 **MR. KONKUS:** I have stumped the
15 lawyers.
16 **MR. EDWARDS:** We may be
17 splitting hairs a little bit. Do you have --
18 I mean, clearly -- clearly, the best thing to
19 do under the Freedom of Information Act is to
20 wait seven days. I mean, there's -- there's
21 no denying that.
22 **MR. KONKUS:** Well, then, that's
23 what we would do. I mean, if we -- if we
24 select to do that, that's what we'll do.

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1 amongst yourselves. If this were -- I don't
2 really want to go down this path too far. But
3 if this were a Board of five, two of you could
4 discuss it without being a quorum. I will
5 still highly recommend against it. But this
6 is a Board of three. So even two of you
7 discussing this --
8 **MR. DILLIPLANE:** Is a quorum.
9 **MR. EDWARDS:** -- is a quorum.
10 So there can be absolutely no
11 discussions amongst yourselves. There can be
12 absolutely no discussions with any other
13 party. If you have questions individually,
14 you can certainly call me.
15 And so -- and so you just
16 can't -- I mean, I certainly understand the
17 desire to not, at nearly eleven o'clock, you
18 know, launch --
19 **MS. GREEN:** Well, that just
20 happened out front.
21 **MR. EDWARDS:** Now -- well --
22 now, the other thing that I would say is, in
23 terms of having it another night, you heard
24 the testimony now. It's fresh in your mind.

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1 **MR. EDWARDS:** And so I think
2 that we can wait seven days from now and we'll
3 do it on Thanksgiving. Clearly, that's not
4 going to work. Right?
5 **MR. FITZWATER:** Then we have to
6 pay everyone to come back.
7 **MR. DILLIPLANE:** That's correct.
8 **MR. KONKUS:** We can't discuss it
9 among ourselves. And since she filed the
10 first complaint, all we've said to one another
11 is: "How is the weather? Have you gone out
12 for a walk, Tim?" I mean --
13 **MS. GREEN:** Yeah, right.
14 **MR. KONKUS:** That's all we've
15 talked about.
16 **MR. DILLIPLANE:** That's all
17 we're allowed to talk about.
18 **MR. KONKUS:** That's all we're
19 allowed to talk about.
20 So here's a question for you.
21 When will the transcripts be
22 available?
23 **MR. WALTON:** Mr. Wilcox, I did
24 say -- I swear to you I had no idea.

<p>Margaret Titus Page 225</p> <p>1 (The reporter asked to go off 2 the record.) 3 (A brief discussion was held off 4 the record.) 5 MR. EDWARDS: So I think at this 6 point you have everything in front of you in 7 terms of whether or not to make a decision 8 now. 9 MR. KONKUS: Okay. Fiscal 10 responsibility. Let's drive on and look at 11 Megan's complaint, then, line by line so we 12 can see if she met the burden of proof. 13 MR. DILLIPLANE: Okay. 14 MR. EDWARDS: Now, as we go 15 through and do that, I'm, you know, going to 16 do my best to sit here and not say anything. 17 But the one thing that I'll point out is that 18 any finding of the Board tonight must be with 19 regards to a violation of the ethics code. 20 And so there can't be any, you know, we think 21 this is wrong, we think it was unethical. 22 Thinking that something is unethical is pretty 23 much irrelevant here. All right? What it has 24 to be is something that's in the code here</p>	<p>Margaret Titus Page 227</p> <p>1 Preston at the time that the lease was made? 2 Is that the correct way to 3 phrase that for everybody? 4 MR. DILLIPLANE: I think so. 5 MR. KONKUS: Did -- did you feel 6 that there was any financial interest? 7 MR. DILLIPLANE: No. 8 MR. FRUYTIER: No, no. 9 MR. KONKUS: Any personal 10 interest? 11 MR. DILLIPLANE: No. 12 MR. FRUYTIER: I'm -- 13 MR. DILLIPLANE: Based on the 14 testimony we've heard, I'd say no. 15 MR. KONKUS: Now, I'll go 16 through the personal interest as well, because 17 it's defined as blood or marriage or from 18 close business or political association 19 whether or not there is any financial interest 20 involved. 21 And I -- I understand Ray's 22 dilemma here, because a close business is -- 23 it was past. But Bud mentioned that he did 24 have a business relationship. And I -- and</p>
<p>Margaret Titus Page 226</p> <p>1 that the code has defined as unethical. All 2 right? And so I'll just -- again, as I think 3 I've said in the past, the result of this 4 makes no difference to me. The process of 5 what I'm here for -- I'm here to make sure the 6 process is appropriate and that whatever 7 result comes out of it will be upheld in 8 court. And so we just need to make sure that 9 any findings are based on violations of the 10 code itself. 11 That's my piece. 12 MR. KONKUS: Perhaps the smart 13 way to do it, then, is go through our city 14 code. And so you can take -- and if you look 15 at page 107, Section 1-26, it gives you some 16 pretty big umbrella statements. No -- any 17 personal elected or appointed or retained by 18 public office or municipality, whether paid 19 full time or part time -- it goes through the 20 definitions. And it includes what is the 21 financial interest. 22 Does anyone believe that any of 23 the three council members had any financial 24 interest other than their council duties with</p>	<p>Margaret Titus Page 228</p> <p>1 I -- and I mentioned before we all now would 2 stand up and say, hey, I've done business with 3 Preston in the past. 4 MR. DILLIPLANE: It's a small 5 town. 6 MR. KONKUS: It's a small town. 7 MR. DILLIPLANE: It's a small 8 town. So chances are that most everybody has 9 done something with someone else in this town. 10 I have rented stuff from Preston myself. I've 11 rented space from him twice. Okay? That's a 12 past business relationship. It will not cloud 13 my decision for or against this. It's a 14 separate issue. And I think the same thing is 15 true with him. 16 MR. KONKUS: Your thoughts on 17 that? 18 MR. FRUYTIER: My thoughts -- 19 they keep trying to shut me down. There's 20 friendship there. And that's what took it 21 through. Yeah, we'll all stick together. And 22 that's how it was put together. And you 23 cannot change my mind on that. 24 MR. KONKUS: Okay. I'm kind of</p>

<p>Margaret Titus Page 229</p> <p>1 inclined to agree with Ray on that because we 2 are a small town. And whether or not we want 3 to admit it, we should at least stand up and 4 announce it before we vote on what Megan has 5 called a "sweetheart" deal. Whether or not 6 it's a sweetheart deal, that's not up for 7 discussion at this point. 8 MR. DILLIPLANE: And the lease 9 is a done deal. A lot of this stuff we heard 10 tonight is dissatisfaction about the lease. 11 But that's not the issue. 12 MR. KONKUS: Right. 13 MR. DILLIPLANE: The lease is 14 done. 15 MR. KONKUS: Mm-hmm. 16 MR. FRUYTIER: That's done. 17 MR. DILLIPLANE: The issue is 18 about how it got there. 19 MR. KONKUS: Exactly. 20 And what Ray so eloquently 21 said -- and I'd like to -- that I second him 22 is that it was through -- although the 23 testimony doesn't directly look to a 24 personal -- a deep personal relationship, it</p>	<p>Margaret Titus Page 231</p> <p>1 along. At same time we'll have a formal vote. 2 And at the time that you'll have a formal 3 vote, you'll need to state the reasoning for 4 everything that you're voting for in terms of 5 this person said this and I believe them. 6 This person said this. And so keep going. 7 MR. KONKUS: Yes. Exactly. 8 MR. DILLIPLANE: Understood. 9 MR. KONKUS: Thank you, sir. 10 MR. EDWARDS: Mm-hmm. 11 MR. KONKUS: The next one is 12 what a person constitutes. And here they're 13 talking about firms and business and so forth. 14 But in our dealings we're just dealing with 15 Preston, the man, and PSC and the individual 16 council members. 17 Fair and Equal Treatment is the 18 next section, Section 1-27. It says: 19 Impartiality. No official or employee shall 20 grant or make available to any person any 21 consideration, treatment, advantage or favor 22 beyond that which is the general practice to 23 grant or make available to the public at 24 large.</p>
<p>Margaret Titus Page 230</p> <p>1 doesn't say it has to be that. A close 2 personal relationship or political association 3 or close business. 4 So we're -- we have 2 to 1 on 5 that count. 6 MR. DILLIPLANE: Okay. 7 MR. KONKUS: Is that -- is that 8 fair to say? 9 MR. DILLIPLANE: Why don't you 10 write it down someplace. 11 MR. KONKUS: I'm going to keep 12 track of it. 13 And this is Section 1-26, 14 paragraph E. 15 MR. DILLIPLANE: Now, what about 16 the monetary piece that we discussed? 17 MR. KONKUS: The monetary piece 18 was no. Correct? 19 MR. FRUYTIER: Correct. 20 MR. KONKUS: Thank you for 21 reminding me to start with that. 22 MR. EDWARDS: So I think, as 23 you're writing that down, the process that 24 you're going through is fine. Keep going</p>	<p>Margaret Titus Page 232</p> <p>1 I think this distills down to 2 what Solicitor Walton was saying about an RFP, 3 the request for proposal. Although he has 4 stated over and over again the code doesn't 5 require anyone in town to ever do an RFP, in 6 my mind, how are you guaranteeing you're not 7 leaving money on the table? How are you 8 guaranteeing you don't have the best possible 9 use and income from a property? And what 10 jurisdiction doesn't go through an RFP process 11 when you're going to tie up a piece of land 12 for as long as we've tied it up? 13 MR. DILLIPLANE: I've lived in 14 this town or I've had property in this town 15 now for seven years and lived here full time 16 for four. And this topic of the paper street 17 comes up about as often as changing the sign 18 ordinances. You know, it's like -- 19 MR. KONKUS: Yeah. 20 MR. DILLIPLANE: It's like 21 talking about the 700-pound gorilla in the 22 room. It just doesn't go away. 23 So in what Council Member Green 24 said, there's a lot of history on this. And</p>

<p>Margaret Titus Page 233</p> <p>1 whether you wanted to know or what specifics 2 you knew, you picked up an awful lot of them 3 over the course of time because of all this 4 history that it has. 5 Personally, I'm glad to see the 6 city getting some money for the use of the 7 land. If it got leased at less that rate, 8 that was up to them. Why we in Delaware are 9 in such a real estate slump I don't 10 understand. But nothing here seems to sell or 11 rent for what it should. I think you'd be in 12 agreement with that. Just look at all the 13 empty properties around. So one part of me 14 says that we were fortunate to get someone who 15 was willing to pay for the use of the land and 16 keep it up. 17 MR. FRUYTIER: But how it was 18 done. 19 MR. KONKUS: And that was -- 20 we're not questioning -- I, maybe, framed it 21 incorrectly. Is this something that was 22 impartially done because we're a small town 23 and we all know Preston? 24 MR. DILLIPLANE: I believe it's</p>	<p>Page 233</p>	<p>Margaret Titus Page 235</p> <p>1 employee shall grant or make available to any 2 person any consideration, treatment, or 3 advantage or favor beyond that which is the 4 general practice to grant or make available to 5 the public at large. 6 So it's not the fact that we are 7 below market -- fair market value on it. And 8 it's -- it's just the fact that: Is this a 9 lease that would -- Preston -- because of 10 Preston -- as opposed to saying at one point: 11 Who else would benefit from this land? Hey, 12 Jill, would you like to lease this? And if 13 nothing else, you're protecting yourself from 14 Preston's extension of his property. 15 Shall we come back to this? 16 MR. DILLIPLANE: I feel like I 17 want to ask Preston something. 18 MR. KONKUS: I don't think you 19 can. 20 MR. DILLIPLANE: He's not a 21 witness. I understand. But I just want to 22 ask him a question about the land itself. 23 Is that allowable or not? 24 MR. EDWARDS: I don't think so.</p>
<p>Margaret Titus Page 234</p> <p>1 impossible in a town this size to be 2 completely impartial in much of anything. 3 It's just not possible. Too many people know 4 too much about everybody else's business, 5 whether they want to know it or not. So being 6 completely impartial, not possible. 7 In a town being 10,000 or 8 100,000 people, yeah, because they don't know 9 each other. But we do know each other. So 10 being completely impartial (phonetic) -- 11 partial -- pardon me -- is impossible. 12 MR. KONKUS: So the question 13 goes back to, then: Would we have gotten the 14 same amount of money with less destruction to 15 the property if we had rented it to Jill 16 Snow -- offered it to Jill and rented it to 17 her as an adjacent parcel to her land? 18 MR. DILLIPLANE: Did Jill ever 19 offer to rent it? 20 MR. KONKUS: She didn't know 21 that was for rent. That's the whole point of 22 this. 23 A VOICE: She did too. 24 MR. KONKUS: No official or</p>	<p>Page 234</p>	<p>Margaret Titus Page 236</p> <p>1 At this point the hearing is closed. 2 MR. DILLIPLANE: That's fine. 3 MR. KONKUS: And that's why 4 they pointed at you. Because these people are 5 not here, unfortunately, but they are. 6 I hear your phone is calling 7 you. 8 So -- 9 MR. FRUYTIER: The last meeting 10 we had -- city council meeting -- Bud even 11 brought up the point about -- we were kind of 12 discussing this. We got to stop this 13 bullshit -- everybody saying I don't like you 14 or you like me. And he talked to everybody in 15 that council and everybody in the room. And 16 he sounded very sincere at that time. Because 17 he knows what went on and he knows what's 18 going on. 19 MR. KONKUS: Well, you know, you 20 bring up a really good point. And I'm kind of 21 glad we're doing it tonight, because I would 22 have forgotten this. 23 One of the things that Bud did 24 say under oath while giving testimony was that</p>

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1 he went to Preston as a peacemaker. We never
2 got his motivations for doing that, but I take
3 folks when they do that as leadership and
4 ultraistic in trying to make -- do the
5 negotiations after the fact. It should have
6 been done before the fact. That's just what I
7 took that testimony as. I didn't know that
8 that had occurred. But just the fact that Bud
9 walked over to Preston and said, "Is there a
10 better way that we can do this?" tells me
11 that -- that I would vote maybe Preston did
12 get this quickly and it was not as impartial
13 as it should have been. Just that -- that
14 testimony alone.
15 Your thoughts?
16 **MR. DILLIPLANE:** Well, they had
17 given him three notices to vacate. Right?
18 And there was supposed to be another meeting
19 to enforce --
20 **MR. FRUYTIER:** The eviction.
21 **MR. DILLIPLANE:** -- the
22 eviction.
23 And, instead, the lease took
24 place. So that's like an 11th-hour save, is

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1 **MR. KONKUS:** Section 1-28. The
2 big title of the whole section is Conflict of
3 Interest. Bowlegs A, Financial or Personal
4 Interest. And it's further defined this way:
5 No official or employee, either on his own
6 behalf or on behalf of any other person, shall
7 have financial or personal interest in any
8 business or transaction with any public body
9 in the municipality unless he shall first make
10 public disclosure of the nature and extension
11 of such interest.
12 I don't believe that's in play.
13 **MR. DILLIPLANE:** I don't either.
14 **MR. KONKUS:** I had read it in
15 advance.
16 **MR. FRUYTIER:** Yeah.
17 **MR. KONKUS:** Okay. This one
18 might be in play.
19 **MR. EDWARDS:** So I'm going to
20 interject here.
21 **MR. KONKUS:** Yes, sir.
22 **MR. EDWARDS:** So on the first
23 page, we spoke about financial and personal
24 interests. Right? And those were actually

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1 it not?
2 **MR. FRUYTIER:** Yes.
3 **MR. KONKUS:** Well played. Well
4 played.
5 **MR. DILLIPLANE:** All right.
6 Question mark on the impartiality.
7 What's next?
8 **MR. KONKUS:** I think there's two
9 question marks and one yes. But we'll come
10 back to it.
11 The next one I don't think is in
12 play at all. And that's Use of Public
13 Property. And it has to do with, you know,
14 trucks, phones, the buildings, land and that
15 sort of thing.
16 **MR. DILLIPLANE:** No.
17 **MR. KONKUS:** So I'm set to
18 ignore it.
19 We are now on Section 1-27(C),
20 Use of Public Time. I don't think that's in
21 play.
22 **MR. DILLIPLANE:** It is not.
23 **MR. KONKUS:** Agreed, sir?
24 **MR. FRUYTIER:** Agreed.

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1 definitions that we were talking about. Those
2 are not actual violations themselves.
3 **MR. KONKUS:** Right.
4 **MR. EDWARDS:** Okay. And so
5 just -- I know that people had some thought on
6 those. Just keep in mind that those -- you
7 can't find a definition -- you can't find a
8 violation based on a definition. So how that
9 is --
10 **MR. KONKUS:** Right.
11 **MR. EDWARDS:** -- used within the
12 context somewhere else.
13 **MR. KONKUS:** When I go back and
14 I read this again, I think I made a mistake,
15 because the emphasis is: Unless he shall
16 first make full public disclosure of the
17 nature and extent. So I'll reread that
18 section. I apologize.
19 Financial or Personal Interest.
20 No official or employee, either on his own
21 behalf or on the behalf of another person,
22 shall have any financial or personal interest
23 in any business or transaction with any public
24 body or municipality unless he shall first

<p>Margaret Titus Page 241</p> <p>1 make public disclosure. 2 And that's correct. We don't -- 3 that's -- stick with us, Counselor. I think 4 you'll see where that definition does pop up 5 later. 6 MR. EDWARDS: I'm not denying 7 that. I'm just -- 8 MR. KONKUS: Okay. 9 MR. EDWARDS: -- making sure 10 that -- 11 MR. KONKUS: That Section A is 12 not in play. 13 MR. DILLIPLANE: What we're 14 doing is we're trying to attack it in some 15 kind of organized form. 16 MR. KONKUS: Yeah. 17 Next is B, Disclosure and 18 Disqualification. Whenever the performance of 19 official duties shall require any official or 20 employee to deliberate and vote on any matter 21 involving his financial or personal interest, 22 he shall publicly disclose the nature and 23 extent of such interest and disqualify himself 24 from participating in deliberations as well as</p>	<p>Margaret Titus Page 243</p> <p>1 or form. 2 MR. FRUYTIER: No. 3 MR. KONKUS: E, Confidential 4 Information. And there's two bowlegs under 5 that. 6 Bowleg 1 under Confidential 7 Information: No official or employee shall 8 engage in any activity beyond the scope of 9 such public position which might reasonably be 10 expected to require or induce such official or 11 employee to disclose confidential information 12 acquired by reason of such public position, 13 including, but not limited to, matters 14 discussed in executive session. 15 MR. DILLIPLANE: No. 16 MR. FRUYTIER: No. 17 MR. KONKUS: No. 18 Bowlegs 2 under Confidential 19 Information: No official or employee shall, 20 beyond the scope of such public position, 21 disclose confidential information gained by 22 reason of such public position, nor shall such 23 official or employee use such information for 24 personal gain or benefit.</p>
<p>Margaret Titus Page 242</p> <p>1 in voting. 2 Now, that's -- and you're 3 welcome to read along with me on this, folks. 4 MR. DILLIPLANE: Megan did that. 5 MR. KONKUS: Megan did that. 6 Megan recused herself and went and sat down. 7 MR. DILLIPLANE: The others had 8 no financial interest. 9 MR. KONKUS: Interest in it. 10 Incompatible Employment I don't 11 think is an issue here. We can skip C in its 12 entirety. 13 MR. DILLIPLANE: No. 14 MR. FRUYTIER: No. 15 MR. KONKUS: Gifts and Favors. 16 No official or employee shall accept any gift, 17 whether in the form of money, thing, favor, 18 loan or promise, that would not be offered or 19 given to him, if he were not an official 20 employee. 21 MR. DILLIPLANE: We've heard no 22 testimony to support that in any way, shape or 23 form. 24 MR. KONKUS: In any way, shape</p>	<p>Margaret Titus Page 244</p> <p>1 It's not been accused. 2 MR. DILLIPLANE: None of them 3 got any personal -- 4 MR. FRUYTIER: No. 5 MR. DILLIPLANE: -- benefit out 6 of this whatsoever. 7 MR. KONKUS: Okay. Now we 8 leave Confidential Information and we go to 9 Bowlegs F, Contracts Voidable by City. And I 10 don't think this -- this is -- here, I'll read 11 it to you. You tell me if you think there's 12 any applicability. 13 Contracts Voidable by City: In 14 addition to any other penalty provided by law, 15 any contract entered into by a city agency in 16 violation of this subchapter shall be voidable 17 by the city; provided, that in determining 18 whether or not any court action shall be taken 19 to avoid such a contract pursuant to the 20 subsection -- and it goes on. 21 MR. DILLIPLANE: Not applicable. 22 MR. KONKUS: It's not applicable 23 because it's talking about somebody illegal 24 using their authority.</p>

<p>Margaret Titus Page 245</p> <p>1 MR. FRUYTIER: No. 2 MR. KONKUS: Delaware City 3 Ethics Policy. And we're going to go to -- 4 there's two paragraphs that preface it. And 5 those two paragraphs are where the standards 6 of personal integrity, truthfulness, honesty 7 and fairness carry out public duties; the 8 avoidance of improprieties in their roles as 9 public servants comply with all applicable 10 laws and shall not use their city position or 11 authority improperly for personal gain. 12 MR. DILLIPLANE: There was no 13 personal gain. 14 MR. KONKUS: Right. 15 MR. DILLIPLANE: So no to that 16 one. 17 MR. KONKUS: Right. And this is 18 the preface. 19 The next paragraph in the 20 preface is this: The City of Delaware City 21 and all officials and employees share 22 commitment to ethical conduct and service to 23 the City of Delaware City. This Article IV 24 has been created to ensure all officials and</p>	<p>Margaret Titus Page 247</p> <p>1 pertain. 2 MR. KONKUS: Right. 3 Okay. And this goes on. 4 There is -- there is under 5 Section 1-29, bowleg alpha, a paragraph under 6 No. 4, City Council Meetings, in which it 7 says: Making the public feel welcome is an 8 important part of the democratic process. No 9 prejudice or disrespect should be evident on 10 the part of individual council members toward 11 an individual participating in a public forum. 12 And it goes on. 13 But I just want to make sure 14 that you were aware that in that section that 15 existed. 16 MR. DILLIPLANE: If we're 17 applying it to the night of the meeting where 18 the vote was taken, that was a pretty 19 tempestuous night. Tempers ran high across 20 the Board. 21 MR. KONKUS: Yeah. 22 MR. EDWARDS: Again, your 23 decision needs to be based on the evidence 24 presented.</p>
<p>Margaret Titus Page 246</p> <p>1 employees have clear guidelines for carrying 2 out the responsibilities in their 3 relationships with each other, the citizens of 4 Delaware City, and all other private and 5 governmental entities. 6 Just boilerplate. 7 MR. FRUYTIER: Okay. 8 MR. KONKUS: City Council 9 Relationships and -- first one -- this is 10 paragraph -- correction -- Section 1-29, 11 bowlegs alpha, (1), Intra-Council 12 Relationships: The mayor and city council 13 (hereinafter referred to as the "Council") act 14 as the legislative branch of the city and make 15 laws that impact all residents. In doing so, 16 certain types of conduct are beneficial and 17 certain types are destructive. The council is 18 responsible to take the high road on 19 intra-council conduct and treat other elected 20 members as they would like to be treated. 21 And this goes on into the -- 22 it's the hugfest portion of the -- of this 23 code. 24 MR. DILLIPLANE: It doesn't</p>	<p>Margaret Titus Page 248</p> <p>1 MR. DILLIPLANE: I understand 2 that. 3 MR. KONKUS: This evidence was 4 part of the package. 5 MR. DILLIPLANE: Betty Barrett 6 said she demonstrated in one fashion. Colonel 7 Konkus's reminiscence of that event is 8 different, as is mine. We were all there. 9 I almost want to let that pass 10 because of the temperament of the night, but 11 it's -- 12 MR. KONKUS: Let's return to it, 13 because it does bring up a question. 14 You know, I'm glad -- 15 MR. FITZWATER: Thank you guys 16 for your time. 17 MR. KONKUS: I'm glad that you 18 remember what happened. I -- I didn't know if 19 anybody else -- 20 MR. DILLIPLANE: Yeah. I sat in 21 front of Betty two rows back. 22 MR. KONKUS: Okay. 23 Okay. Then 5 are the sanctions. 24 And, of course, the sanctions are: Council</p>

<p>Margaret Titus Page 249</p> <p>1 behavior in council meetings and outside of 2 council meetings is subject to sanctions as 3 set -- 4 MR. DILLIPLANE: I don't think 5 we're worried about that, are we? 6 MR. KONKUS: -- set forth in 7 this Code of Conduct. 8 No. It'll be -- ultimately, 9 if there's anything, that's what will come 10 from it. But it doesn't describe what those 11 sanctions are yet. It's later in the code. 12 MR. DILLIPLANE: Okay. First we 13 have to find -- 14 MR. KONKUS: Yes. 15 MR. DILLIPLANE: -- for the 16 sanctions to even get worried about. 17 MR. KONKUS: Yeah. 18 Section 1-29(B), Ethics Policy. 19 MR. EDWARDS: Now, just make 20 sure we don't gloss over anything. Under 5, 21 that second sentence there: Council member 22 conduct in and out of council meetings must be 23 in compliance with the open meeting laws of 24 the Delaware Code. That's the reference that</p>	<p>Margaret Titus Page 251</p> <p>1 personal gain or inappropriate influence will 2 not be tolerated and it is prohibited. 3 The next paragraph: All 4 officials and employees shall obey and observe 5 the letter and spirit of the Constitution of 6 the United States, the Constitution of the 7 State of Delaware, and all federal, state and 8 local laws, codes, ordinances and regulations. 9 Those are the boilerplate 10 statements of the ethics policy. 11 Section 1-29(C) -- bowlegs C -- 12 Conflicts of Interest. I don't believe we had 13 a conflict of interest raised in this. 14 MR. DILLIPLANE: We did not. 15 MR. KONKUS: Counselor Barrett, 16 do you see where we need to go through the 17 conflicts of interest? Do you remember any 18 conflicts of interest being raised? 19 MR. DILLIPLANE: I do not. 20 How about you, Ray? 21 MR. EDWARDS: Well -- so keep in 22 mind that there is two similarly titled. 23 Section 1-28 is Conflicts of Interest. And 24 that's the financial or personal interest.</p>
<p>Margaret Titus Page 250</p> <p>1 there some debate about, so -- 2 MR. KONKUS: Thank you for 3 pointing that out. 4 MR. EDWARDS: If you skip over 5 that sentence, it's not going to be found 6 anywhere else, so -- 7 MR. KONKUS: Right. 8 MR. DILLIPLANE: Is that a FOIA 9 point? 10 MR. KONKUS: That's -- well, 11 that's one of them. It's under Section 5. 12 Correction. Paragraph 5 of Section 1-29, 13 bowlegs A. 14 Okay. Section 1-29, bowlegs B 15 gives a two-paragraph statement of the ethics 16 policy: It is the policy of Delaware City to 17 uphold, promote, and demand the highest 18 standard of ethical behavior from all 19 officials and employees, including its mayor, 20 members of city council, officials, 21 individuals appointed to serve on city boards 22 and commissions, and staff. Honesty, 23 integrity and fairness are hallmarks of public 24 service. Use of one's office or position for</p>	<p>Margaret Titus Page 252</p> <p>1 And then there's this 1-29, also Conflicts of 2 Interest. And so I'm not sure why they're 3 similar titles. This one -- it simply 4 references the prior -- shall adhere to all 5 standards in 1-27 and 1-278 (sic). 6 There is a paragraph: No 7 official or employee shall acquire a financial 8 or personal interest in any private entity -- 9 I'm not sure we've heard necessarily anything 10 about that. 11 MR. DILLIPLANE: I didn't hear 12 any testimony to that fact. 13 MR. EDWARDS: There is here 14 talking about employment issues. There's no 15 allegations about employment. 16 MR. KONKUS: I would go to the 17 last paragraph in that section which does have 18 slight relevance because it points to the 19 things -- is where I've gotten the words from 20 about requesting an advisory opinion, although 21 I haven't used those words. 22 It says: In situations where 23 officials and employees have questions about 24 the applicability of the ethical standards of</p>

<p>Margaret Titus Page 253</p> <p>1 the Delaware City Code or the provisions of 2 other Delaware conflicts of interest laws or 3 any other questions regarding a possible 4 conflict, that person may seek the advice of 5 the city solicitor or whether a conflict of 6 interest exists may seek the advisory opinion 7 of the Board of Ethics (sic). And officials 8 and employees are also strongly encouraged to 9 avoid involvement in situations where the 10 conduct is not a technical conflict of 11 interest, but where active participation might 12 raise the perception of undue influence or 13 impropriety. 14 I believe Megan had referenced 15 to a similar section, although not that exact 16 section in her -- in her complaint. 17 MR. EDWARDS: So the only -- and 18 just because you asked, the only thing that 19 was actually raised that I can definitely 20 point my finger on -- in the second 21 paragraph -- when a conflict of interest 22 arises, the officials and employees must 23 immediately refrain from participating in any 24 manner in the city's decision-making process</p>		<p>Margaret Titus Page 255</p> <p>1 No official -- and I'm looking 2 in the center of the -- the -- the second 3 paragraph. No official or employee shall 4 accept other employment, any compensation, 5 gift, payment of expenses or any other thing 6 of monetary value under circumstances in which 7 such acceptance may result in the following: 8 One, impairment of independence of judgment in 9 the exercise of official duties; two, an 10 undertaking to give preferential treatment to 11 any person or entity; three, the making of a 12 governmental decision outside official 13 channels; or, four, an adverse effect on the 14 confidence of the public in the integrity of 15 the government of the state. 16 And here ends the first lesson, 17 which now we go into the organization makeup/ 18 composition of this Board and how we do our 19 business. 20 So through this, then, our -- 21 our decision is fairly simple, then, on the 22 impropriety in ethical behavior, not the 23 discussion of whether we got the best deal but 24 how that deal was reached.</p>
<p>Margaret Titus Page 254</p> <p>1 relating to that issue. The officials and 2 employees should not participate in any 3 discussions of the matter, nor vote on the 4 matter. Likewise, the officials and employees 5 should not provide any opinion or suggest any 6 conduct to be taken by any member of the city 7 council. 8 I think that was raised at one 9 point, not with respect to Council Members 10 Green, Fitzwater and Barrett, but with respect 11 to Councilwoman Titus. I'm just -- that's the 12 only context in which, I think, that was 13 brought up. 14 MR. KONKUS: Thank you. 15 MR. EDWARDS: Mm-hmm. 16 MR. KONKUS: Section 1-29, 17 bowlegs D is labeled Acceptance of Gifts or 18 Other Consideration for Public Action. 19 MR. DILLIPLANE: Not applicable. 20 MR. KONKUS: Not applicable 21 except for the way they word a -- a listing. 22 You would think it's not applicable unless 23 you -- you have certain ways of looking at 24 the -- at what "compensation" might mean.</p>		<p>Margaret Titus Page 256</p> <p>1 And we go back to our previous 2 points. I don't think we've -- 3 MR. DILLIPLANE: We had a couple 4 of them we put question marks in return. 5 MR. KONKUS: Mm-hmm. 6 MR. DILLIPLANE: And they are? 7 MR. KONKUS: 1-27(a), 8 Impartiality. It's under Section 1-27, Fair 9 and Equal Treatment, bowlegs A, Impartiality: 10 No official or employee shall grant or make 11 available to any person any consideration, 12 treatment, advantage or favor beyond that 13 which is the general practice to grant or make 14 to the public at large. 15 And even though we're not 16 debating the quality of the lease, we're 17 debating how we got to a single lease with a 18 single person on a piece of public land. 19 MR. FRUYTIER: Yes. 20 MR. KONKUS: I'm -- I'm ready to 21 vote that -- that I don't think it was 22 necessarily impartial. 23 MR. DILLIPLANE: We have to make 24 a motion on that, I think.</p>

<p>Margaret Titus Page 257</p> <p>1 Do we not, Mr. Barrett? 2 MR. EDWARDS: Yeah. So -- 3 MR. DILLIPLANE: And you can 4 word the motion. 5 MR. KONKUS: If we do that, then 6 don't we go back and motion the other one? I 7 thought we were going to give our decision. 8 MR. EDWARDS: So what we can 9 do -- we can do this one of two ways. We can 10 go through right now and -- again, you can 11 kind of discuss. Then -- then, at the end of 12 the discussion, you can have a motion to find 13 that -- to find -- well, it wouldn't be a -- 14 not -- it wouldn't be a negative motion. 15 But if you were to find that 16 violations had occurred, there would be a 17 motion to find that violation of 1-27(a), for 18 example, purposes had been violated by Council 19 Members X, Y and Z. And then you can state 20 your reasons. And you can just at the end do 21 a list of all those. Do them one by one, so 22 you just have your motions at once. 23 Or if you want to go through 24 these one at a time and do a motion now, you</p>	<p>Margaret Titus Page 259</p> <p>1 motion. 2 Well, if you want to discuss it, 3 you'll want to have a motion right here. 4 MR. DILLIPLANE: How do I word 5 this? 6 MR. KONKUS: I move to find 7 the three council members in violation of 8 Section 1-27, Fair and Equal Treatment, 9 bowlegs A. 10 MR. DILLIPLANE: Okay. That's a 11 motion. 12 MR. FRUYTIER: I'll second that. 13 MR. DILLIPLANE: Since this is a 14 three-person quorum, is he allowed to make a 15 motion -- 16 MR. EDWARDS: Yes. 17 MR. DILLIPLANE: -- as 18 chairperson? 19 MR. EDWARDS: Yeah. 20 MR. DILLIPLANE: I know some of 21 our other units are not allowed to. 22 MR. EDWARDS: No. I think 23 that's allowable. 24 MR. FRUYTIER: I'll second that.</p>
<p>Margaret Titus Page 258</p> <p>1 could do all the explanation, tie that one up, 2 and then move onto the next. 3 MR. DILLIPLANE: That might be 4 the best way. 5 MR. KONKUS: All right. Let's 6 do it that way, then. 7 Is that -- you're in agreement. 8 Right? 9 MR. DILLIPLANE: You're in 10 agreement with that? 11 MR. FRUYTIER: Okay. 12 MR. KONKUS: Okay. So let's 13 look at, then, Section 1-27, Impropriety, 14 Section A -- correction -- Impartiality. 15 MR. EDWARDS: Correct. 16 MR. KONKUS: No official or 17 employee shall grant or make available to any 18 person or any consideration, treatments, 19 advantage or favor beyond that which is 20 general practice to grant or make available to 21 the public at large. 22 Tim, I think you're in dissent. 23 Would you like to go first? 24 MR. EDWARDS: We need to have a</p>	<p>Margaret Titus Page 260</p> <p>1 MR. EDWARDS: All in favor, say 2 "aye." 3 All: Aye. 4 MR. KONKUS: Nay? 5 "Ayes" have it unanimous. 6 MR. EDWARDS: Okay. Now, with 7 each one, you need to state exactly your 8 reasons based on that testimony why you 9 believe this was violated. 10 MR. KONKUS: I believe it was 11 violated in that I don't believe any other 12 person had an opportunity to -- to bid on the 13 property and that if anybody else bid on the 14 property they would not have gotten it at the 15 price or terms that were granted to -- to 16 Mr. Carden. 17 MR. FRUYTIER: Yes. 18 MR. DILLIPLANE: I agree with 19 that. I'll add the stipulation that the -- it 20 may -- it is unethical. But I think there 21 were also some errors in judgment made that 22 were compounded. 23 MR. EDWARDS: Would you expound 24 on those?</p>

<p>Margaret Titus Page 261</p> <p>1 MR. DILLIPLANE: Well, for 2 instance, Mr. Fitzwater should have, upon 3 reviewing the lease, said, "Hey, are we 4 completely in compliance here? Should we be 5 offering it to someone else?" If he didn't 6 know, he should have spoken up and, at least, 7 taken care of his doubts on the issue. 8 It's difficult to know exactly 9 what everybody knew about the lease since this 10 is such an ongoing, ongoing thing. But 11 Councilperson Green would have probably passed 12 the lease blindly without knowing more about 13 it from her testimony. 14 MR. KONKUS: I think a lot of 15 the -- what -- what you called the -- I 16 believe you called it errors in judgment. 17 MR. DILLIPLANE: Errors in 18 judgment. 19 MR. KONKUS: Were partially 20 because it was a brand new council. 21 MR. DILLIPLANE: Yes. 22 MR. KONKUS: And they had the 23 enthusiasm to do and show the old council they 24 would --</p>	<p>Margaret Titus Page 263</p> <p>1 perpetrated here to warrant an investigation 2 at that level on a criminal aspect, then she 3 can bring it to their attention. I really 4 don't think it's within our scope. Even 5 though it may be messy -- match under the 6 ethics, I really don't think it's in our 7 scope. 8 MR. KONKUS: I -- I have no 9 problem with that at all. I have -- there is 10 no additional good to be gathered from any 11 further discussion, I don't think. 12 MR. DILLIPLANE: No. 13 MR. KONKUS: I mean, would it 14 be -- 15 MR. EDWARDS: So if -- 16 MR. DILLIPLANE: What is the 17 statement we need to make to put the rest to 18 bed? 19 MR. EDWARDS: So at this point 20 I'll just read -- this is from -- I don't know 21 what section we are on -- I'm sure you're have 22 seen these sections go on for like five pages. 23 All right. This is 24 Section 1-29(E). It says: A violation of any</p>
<p>Margaret Titus Page 262</p> <p>1 MR. DILLIPLANE: Get something 2 done that had not been done heretofore. 3 MR. KONKUS: But not only get it 4 done but get it done with Preston. That was 5 the key part, in my mind. We are going to 6 show everybody in town who our favorites are 7 and we're going to -- we're going to protect 8 them. That's what I think. 9 MR. FRUYTIER: Yeah. Agreed. 10 MR. KONKUS: Now, my question to 11 you, Mr. Barrett -- Mister -- sorry -- 12 Mr. Edwards -- 13 MR. EDWARDS: You have no idea 14 how many times a day people call me 15 "Mr. Barrett" continually. But, 16 nevertheless -- 17 MR. KONKUS: I think we've done 18 our job. We found one count. Why beat the 19 farts out of this dead horse? 20 MR. EDWARDS: That's your call 21 to make. 22 MR. DILLIPLANE: The FOIA thing, 23 I believe what Max said. That's up to the 24 state. If Megan feels that there was enough</p>	<p>Margaret Titus Page 264</p> <p>1 provision of Delaware City's ethical standards 2 should raise questions of conscience for the 3 official or employee as to whether voluntary 4 resignation or other action is indicated to 5 promote the best interest of the city. In 6 enforcing the ethical standards of 7 Delaware City, the Board may reprimand or 8 censure the elected or appointed official -- 9 appointed employee or official. And then it 10 talks about for rank and file employees, which 11 doesn't apply here. It talks about for 12 appointees to boards or commissions, which 13 doesn't apply here. 14 So if a violation has been 15 found, I think the next step would be whether 16 or not the Board feels that -- I'm not even 17 sure without looking up in a dictionary the 18 difference between a "reprimand" or a 19 "censure." 20 MR. DILLIPLANE: I thought a 21 reprimand or -- excuse me -- a censure -- a 22 political censure is a slap on the wrist. 23 MR. EDWARDS: And I'm not sure 24 if a reprimand is two slaps on the wrist.</p>

<p>Margaret Titus Page 265</p> <p>1 MR. DILLIPLANE: More or less. 2 In regard to the reprimand or 3 the censure, would it not be best to learn 4 from this and move on? 5 Tim. 6 MR. KONKUS: I think -- I 7 don't -- yeah. I don't -- I don't -- 8 MR. DILLIPLANE: We're talking 9 about amateur people who do this out of the 10 goodness of their heart, more or less, to take 11 care of their neighbors. 12 MR. KONKUS: Right. 13 MR. DILLIPLANE: We're not pros. 14 We're amateurs at this. I come from 15 New Jersey where politicians have made 16 scandalism an art form. So my feeling is: 17 Learn from it. Move on. 18 MR. EDWARDS: And so I think at 19 this point there has been a motion that's made 20 to find a violation of 1-27(A). And so if the 21 Board wants to leave it at that and not take 22 any further action and find any further 23 violations, we can have a motion to adjourn. 24 If there is someone who had like to exercise</p>	<p>Margaret Titus Page 267</p> <p>1 instruction that directs them to the ethics 2 policy that tells them when they -- when -- 3 realizing it's a small town and that when 4 their emotions get the best of them, because 5 that's what we both -- we all agreed that that 6 was what we -- we -- we felt in that room -- 7 that they, you know -- 8 MR. FRUYTIER: I get the 9 intention. 10 MR. KONKUS: Just a letter of 11 instruction. Neither a censure nor a 12 reprimand but a letter of instruction that 13 says, you know, re-read the code and remember 14 that we don't stand up and point fingers at a 15 speaker who just wants to protect her land, 16 you know, and that -- and that when we think 17 that -- that we want to do -- if you're going 18 to do something as a politician, sitting there 19 with a vote, because it can make you feel 20 good, it's probably the wrong decision. 21 MR. FRUYTIER: I'd go along with 22 that. 23 MR. EDWARDS: So what we can do 24 is we can have a motion to distribute the</p>
<p>Margaret Titus Page 266</p> <p>1 authority to reprimand or censure, then there 2 can be a motion to that effect. 3 MR. FRUYTIER: I feel if 4 something is not done it'll -- it'll keep 5 happening. It won't stop. They got away with 6 it this time. 7 MR. KONKUS: Ray, you could go 8 with that except for the fact that we have 9 invested here just in this Board room six of 10 our hours in life. 11 I mean, what would you -- what 12 would you like to see? 13 MR. DILLIPLANE: Me or him? 14 MR. KONKUS: It's up to Raymond. 15 MR. FRUYTIER: They should have 16 some type of reprimand somehow. I don't know 17 how to put it in any other words than that. 18 They should be reprimanded for what they did. 19 They know what they did, no matter what was 20 said here tonight. 21 MR. KONKUS: May I offer an 22 alternative that's not in our code? 23 MR. DILLIPLANE: Go right ahead. 24 MR. KONKUS: A letter of</p>	<p>Margaret Titus Page 268</p> <p>1 final decision of this meeting, which will 2 have the motions included in it, to the three 3 members of council with a cover letter 4 instructing them to review the opinion. We 5 can include the ethics code with that and 6 basically just do a brief instruction that the 7 Board has recommended that in order to avoid 8 future issues like this that they review the 9 ethics code. 10 MR. DILLIPLANE: And conform. 11 MR. FRUYTIER: Yes. 12 MR. KONKUS: Are we in 13 agreement? 14 MR. FRUYTIER: Yes. I would 15 say. 16 MR. KONKUS: That was a perfect 17 motion. Thank you, Mr. Edwards. 18 MR. DILLIPLANE: May we use your 19 motion? 20 MR. EDWARDS: You may. It's 21 kind of long and rambling. But, yes, you may. 22 MR. DILLIPLANE: That's okay. 23 Do you want to clean it up, 24 then?</p>

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1 **MR. EDWARDS:** As long as my
 2 recording is still going, it should be good.
 3 **MR. DILLIPLANE:** The recording
 4 is going. He's typing away.
 5 **MR. KONKUS:** I'm in favor of
 6 Mr. Edwards' --
 7 **MR. DILLIPLANE:** I'll make that
 8 motion.
 9 **MR. KONKUS:** Okay.
 10 **MR. FRUYTIER:** I'll second.
 11 **MR. KONKUS:** All in favor, say
 12 "aye."
 13 **ALL:** Aye.
 14 **MR. KONKUS:** Let the record show
 15 it was unanimously approved.
 16 And, with that, I want to thank
 17 the public, I want to thank the claimant, and
 18 I want to thank the respondents for their time
 19 here today.
 20 And this meeting is hereby -- do
 21 we have a motion to adjourn?
 22 **MR. DILLIPLANE:** I make a motion
 23 to adjourn.
 24 **MR. FRUYTIER:** And I'll second


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1 it.
 2 **MR. KONKUS:** All in favor, say
 3 "aye."
 4 **ALL:** Aye.
 5 **MR. KONKUS:** We are adjourned.
 6 (The hearing adjourned at
 7 11:35 p.m. this same evening.)
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 14 Opening Statement by Mr. Walton PAGE 14
 15
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1 C E R T I F I C A T E
 2 STATE OF DELAWARE:
 3 NEW CASTLE COUNTY:
 4 I, Robert Wayne Wilcox, Jr., a Registered
 5 Professional Reporter, within and for the
 6 County and State aforesaid, do hereby certify
 7 that the foregoing hearing was taken before
 8 me, pursuant to notice, at the time and place
 9 indicated; that said witness was by me duly
 10 sworn to tell the truth, the whole truth, and
 11 nothing but the truth; that the testimony of
 12 said witness was correctly recorded in machine
 13 shorthand by me and thereafter transcribed
 14 under my supervision with computer-aided
 15 transcription; that the foregoing hearing is a
 16 true record of the testimony given by the
 17 witness; and that I am neither of counsel nor
 18 kin to any party in said action, nor
 19 interested in the outcome thereof.
 20 WITNESS my hand and official seal this
 21 16th day of November A D 2016
 22 
 23 _____
 24 Robert Wayne Wilcox, Jr., RPR

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