

The Law Firm of Curt C. Hartman

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VIA ELECTRONIC MAIL (*bfox@ralaw.com*)

Brian Fox
City Solicitor, City of Madeira
Roetzel & Andress
625 Eden Park Drive, Suite 450
Cincinnati, Ohio 45202

Re: Request for Initiation of Civil Action Pursuant to R.C. 733.56 *et seq.*

Dear Mr. Fox:

This law firm represents Kim Heath, a citizen and taxpayer within the City of Madeira and on whose behalf this taxpayer-demand letter is being tendered with respect to the abuse of corporate powers of the municipal corporation, as well as the execution or performance of a contract made in behalf of the City of Madeira in contravention of the laws or ordinance governing it. Thus, as developed below, and on behalf of Ms. Heath, we hereby make demand upon you, pursuant to Ohio Revised Code §§ 733.56 to 733.61 and the common law, to make application in the name of the municipal corporation to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers and the execution or performance of a contract made in contravention of the laws or ordinance governing it.

During the course of its meeting on June 24, 2024, the Madeira City Council entered into an executive session purportedly to “consider the purchase of property for public purpose or to consider the sale of property, given that premature disclosure of such information would give an unfair competitive advantage to a person whose personal or private interests are averse [sic] to the general public’s interest.” Upon the Madeira City Council resuming the public session, Mayor Moormann announced that “there is a real estate item that emerged from the executive session that we just had and that will be added as an item under the new business portion of our agenda.”

Later in the meeting, the Madeira City Council considered as part of new business a matter which the meetings minutes described as “Real Estate from Executive Session” and which Mayor Moormann described as “the real estate issue that we came back from after discussions in executive session.” At that stage, a motion was made “to commence the process to transfer 7010 and 7014 Miami Avenue to the community improvement corporation for economic purposes.” Without any public discussions on the motion (as discussions on the proposal had already occurred in the executive session), the motion unanimously passed.

In furtherance of the foregoing, and at its meeting on July 22, 2024, the Madeira City Council considered and adopted Ordinance No. 24-06 which was entitled Approving the Transfer of Properties Located at 7010 and 7014 Miami Avenue to the Community Improvement Corporation of Greater Cincinnati, Inc. I would note the meeting minutes appear to identify this as Ordinance No. 24-05 vice Ordinance No. 24-06, as well as that a pre-meeting memorandum indicated that, when the packages for the meeting were assembled, Ordinance No. 24-06 was not available. What ultimately became Ordinance No. 24-06 allowed for the transfer of the City-owned property at 7010 and 7014 Miami Avenue to the community improvement corporation. At the outset of consideration at the meeting of July 22, 2024, of what ultimately became Ordinance No. 24-06, City Manager Norton-Smith directly tied this ordinance to the foregoing direction provided by the Madeira City Council at its meeting of June 24, 2024, which, in turn, was the result of the executive session held at that same meeting.

Subsequently, at its meeting of August 26, 2024, the Madeira City Council amended Ordinance No. 24-06 (even though it was identified at the meeting of and in the minutes of the meeting of July 22, 2024, as Ordinance No. 24-05) through enactment of Ordinance No. 24-08 which, apparently, the latter simply changed the nature of the transaction from a purchase/sale agreement to a donation from the City of Madeira to the Community Improvement Corporation of Greater Cincinnati, Inc.

Even though you publicly pronounced at the meeting of the Madeira City Council on August 26, 2024, that there were no public meeting issues with the foregoing process, that is not the case. Specifically, when conducting its initial discussion in the executive sessions concerning the disposition of the properties at 7010 and 7014 Miami Avenue, the Madeira City Council and its members clearly violated Madeira Codified Ordinance § 30.02(B) which concerns the permissible reasons for executive sessions.

As Mayor Moormann announced during the course of the meeting of the Madeira City Council held on June 24, 2024, the executive sessions held during the course of that meeting involved discussions concerning the disposition of the subject properties. The ensuing actions by the Madeira City Council cited above, as well as potential future actions, all derive from the discussions had during that executive session.

Through its meeting minutes from June 24, 2024, the Madeira City Council contends that matters relating to the disposition of municipal property was to “consider the purchase of property for public purpose or to consider the sale of property, given that premature disclosure of such information would give an unfair competitive advantage to a person whose personal or private interests are averse [sic] to the general public’s interest.” However, the applicable provision of Madeira Codified Ordinance § 30.02(B) is not as broad. In pertinent portion, Madeira Codified Ordinance § 30.02(B) allows for the Madeira City Council to meeting in executive sessions but only to consider “the sale of property *at competitive bidding*, if premature disclosure of information would give an

unfair competitive or bargaining advantage to a person whose personal or private interest is adverse to the general public interest.” (Emphasis added.)

Considering certain public pronouncements and the nature of the ensuing actions undertaken by the Madeira City Council with respect to 7010 and 7014 Miami Avenue, it appears highly suspect whether, at the time of the subject executive session, there actually was information the premature disclosure of which would give an unfair competitive or bargaining advantage to a person whose personal or private interest is adverse to the general public interest. Nonetheless, it is undisputedly clear that the discussions relating to the sale of the foregoing properties did not involve a sale of municipal property *at competitive bidding*. And, thus, the executive session was illegal and all ensuing actions, including any contracts or forthcoming contracts relating to the property, were the direct result thereof.

Thus, as a taxpayer and resident in the City of Madeira, and pursuant to Ohio Revised Code §§ 733.56 to 733.61 and the common law, Ms. Heath hereby requests and demands that you, as the City Solicitor for the City of Madeira, make application, in the name of the municipal corporation, to a court of competent jurisdiction for an order of injunction to restrain the abuse of corporate powers, as well as to restrain the execution or performance of a contract made in behalf of the City of Madeira in contravention of the laws or ordinance governing it. Specifically, such relief should be directed to restraining the illegal executive session itself and invalidating/restraining the ensuing actions/contracts resulting from the illegal executive session.

Please let me know promptly if you will make the requested application to a court of competent jurisdiction and I will, in turn, inform Ms. Heath of your determination.

Sincerely,

/s/ Curt C. Hartman

cc: Jeffrey Forbes, Esq. (*JDForbes@woodlamping.com*)
Community Improvement Corporation of Greater Cincinnati, Inc.