

December 11, 2024

The Law Firm of Curt C. Hartman
Attn: Curt Hartman
7394 Ridgepoint Drive, Suite 8
Cincinnati, Ohio 45230

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

Dear Mr. Hartman:

The purpose of my writing is to respond to your Taxpayer Demand arguing the City of Maderia, Ohio allegedly abused its corporate powers by adjourning into Executive Session on June 24, 2024, and subsequently approving Ordinance Nos. 24-06 and 24-08 on July 22, 2024 and August 26, 2024, respectively. For the reasons that follow, I will not be making the requested application to a court of competent jurisdiction because there was no abuse of corporate powers and the contracts pertaining to 7010 and 7014 Miami Avenue were publicly deliberated, debated, and approved during the Special Meeting of City Council that occurred on November 4, 2024.

In the Taxpayer Demand, you argued City Council must have violated Madeira Codified Ordinance § 30.02(B) and improperly adjourned into Executive Session on June 24, 2024 because Councilmembers could not have considered the sale of property at competitive bidding given that the properties were not ultimately competitively bid (“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”). You also argued that the motion Council passed – “to commence the process to transfer 7010 and 7014 Miami Avenue to the community improvement corporation for economic purposes” was not proper given the lack of public discussions on the motion, ultimately concluding Ordinance Nos. 24-06 and 24-08 were derivative of the June 24th Executive Session.

As an initial matter, you isolated the real estate ground without mentioning the numerous other grounds cited by City Council in their motion for entering into the June 24th Executive Session. Councilmembers also motioned to adjourn into the June 24th Executive Session “to confer with legal counsel for the city concerning disputes involving the city that are subject of pending, possible or imminent court action, or to discuss legal opinions of the Law Director on such matters that could reasonably involve future litigation.”¹ Your Taxpayer Demand, alone, serves as evidence of the merits of adjourning for that purpose. Additionally, you cannot possibly know what City Council discussed during the June 24th Executive Session. Without revealing

¹ See, Madeira Ord. 30.02(B).

confidential conversations protected by Ohio law, I'll submit it is possible to adjourn for the purpose of considering a method of sale without subsequently utilizing the same. Moreover, the motion you argued was the consequence of an allegedly improper adjournment – i.e., “to commence the process to transfer 7010 and 7014 Miami Avenue to the community improvement corporation for economic purposes” – was legally toothless as no actual legislation related to the conveyances was included or approved by that motion on June 24th.² That didn't occur until July 22, 2024.

Your Taxpayer Demand further engages in revisionist history by ignoring the numerous public discussions and deliberations that occurred during the July 22nd and August 26th Regular Meetings of City Council, as well as the entire Special Meeting of City Council on November 4th. For example, the public deliberations that follow occurred during those three meetings:

- **Regular Meeting of City Council on July 22, 2024** – During the July 22nd Meeting, Mr. Oppenheimer complained about the secrecy of community improvement corporations and demanded charter language be included in the purchase and sale agreement (*July 22nd Transcript: 10:50-13:20*), and there's a lengthy discussion between Mr. Norton-Smith and Councilmembers about the conveyances (*July 22nd Transcript: 50:20-1:01:13*) – all occurring prior to voting to approve Ordinance No. 24-06.
- **Regular Meeting of City Council on August 26, 2024** – During the August 26th Meeting, Mr. Oppenheimer requested Council table the legislation and shared the opinion of the Madeira Historical Society (*August 26th Transcript: 7:20-12:00*), and Councilmembers Junger and Schaffer debated the timing of enacting the legislation, as well (*August 26th Transcript: 53:22-1:00:05*).³

² Evidence that a public body deliberated on a public issue in executive session does not automatically result in invalidation of a resolution. “Besides the act of deliberation, there must be proof of causation.” *Springfield Local*, 106 Ohio App.3d at 865, 667 N.E.2d 458. Thus, there must be evidence in the record that the public body arrived at its decision on the matter as a result of the nonpublic deliberations. *Id.* at 863–864, 667 N.E.2d 458. *Piekutowski v. S. Cent. Ohio Educ. Serv. Ctr. Governing Bd.*, 2005-Ohio-2868, ¶ 22, 161 Ohio App. 3d 372, 381, 830 N.E.2d 423, 430.

³ In *Moraine v. Bd. of City Commrs. of Montgomery Cty.* (1981), 67 Ohio St.2d 139, 145, 423 N.E.2d 184, the Supreme Court of Ohio observed that “the intent of the Sunshine Law, that deliberations concerning public issues be made public, could not be further served by invalidating a decision insofar as such deliberations were laid before the public eye.” “A decision by a public body will not be invalidated on the ground that Ohio's Sunshine Law was violated where there is no evidence that a resolution, which was adopted in an open meeting, resulted from deliberations in a meeting not open to the public.” *Theile v. Harris*, 1st Dist. No. C–860103, 1986 Ohio App. LEXIS 7096, at *19; 1986 WL 6514; *State ex rel. Jones v. Sandusky City Schools*, 6th Dist. No. E–OS–041, 2006–Ohio–188, at ¶ 18 (“[a]ppellant's complaint fails to allege that the Board's decision not to renew his employment contract resulted from 'nonpublic deliberations' made in the Board's executive session. Therefore, appellant did not state a violation of Ohio's Sunshine Law upon which relief could be granted, and appellant's * * * argument is without merit”). The mere fact an issue of public concern is raised in closed session does not necessarily mean the action was deliberated. *Greene Cty. Guidance Ctr., Inc. v. Greene–Clinton Community Mental Health Bd.* (1984), 19 Ohio App.3d 1, 5, 482 N.E.2d 982. “Evidence

- **Special Meeting of City Council on November 4, 2024** – You’ve completely ignored the existence of the Special Meeting that was held on November 4, 2024.⁴ The agenda for that *entire* meeting concerned only the conveyances at issue (*November 4th Transcript*: 0:00 – 57:36). Numerous people objecting to the conveyances were provided time to speak and contest the policy of utilizing these properties for economic development purposes. Each of the ordinances (No. 24-10, No. 24-11, No. 24-12, and No. 24-13) were publicly available in advance of the meeting and Ordinance No. 24-13 expressly included the following:

“Previous Measures. This Ordinance 24-13, in concert with Madeira Ordinances Nos. 24-10, 24-11, and 24-12, shall be considered legally determinative for purposes of documenting the City’s donation of the two properties located at 7010 and 7014 Miami Avenue (Hamilton County Parcel Nos. 525-0002-0059-00 and 525-0002-0057-00) to the Community Improvement Corporation of Greater Cincinnati, Inc., as well as authorizing the Community Improvement Corporation of Greater Cincinnati, Inc.’s corresponding sale of both properties to W Four LLC (pursuant to the terms of that certain Real Estate Purchase Agreement).”

Relatedly, there were also numerous references to the economic development project involving 7010 and 7014 Miami Avenue in the publicly distributed City Manager’s Reports during the subject months, and constituents sent numerous letters objecting to, and supporting, City Council’s decision to utilize the two parcels for economic development.

So even if some reviewing Court ignored the public deliberations that occurred during open meetings of City Council on July 22nd and August 26th (which would’ve immunized the allegedly problematic adjournment on June 24th) and agreed with your argument that Ordinance No. 24-06 and Ordinance No. 24-08 were somehow “fruit of the poisonous tree” from the June 24th Executive Session ... it remains inarguable that Council planted an entirely new tree on November 4th.⁵

that a public body deliberated on a public issue in executive session does not automatically result in invalidation of a resolution. ‘Besides the act of deliberation, there must be proof of causation.’ * * * Thus, there must be evidence in the record that the public body arrived at its decision on the matter as a result of the nonpublic deliberations.” *Piekutowski v. S. Cent. Ohio Edn. Serv. Ctr. Governing Bd.*, 161 Ohio App.3d 372, 830 N.E.2d 423, 2005–Ohio–2868, at ¶ 22 (citation omitted). *Stainfield v. Jefferson Emergency Rescue Dist.*, 2010-Ohio-2282, ¶¶ 34-36

⁴ See attached *November 4, 2024 Meeting Minutes*.

⁵ Besides the act of deliberation, there must be proof of causation. The Supreme Court of Ohio has held that “public access” is a defense to a claim of noncompliance with the open-meeting requirement. *State ex rel. Randles v. Hill* (1993), 66 Ohio St.3d 32, 35, 607 N.E.2d 458, 461. In *Randles*, the court considered physical access to a meeting. The Supreme Court has also considered public access in the context of causation and has agreed that “the intent of the

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The bottom line is, I do not believe your Taxpayer Demand is meritorious. Accordingly, I will not be making the requested application to a court of competent jurisdiction because there was no abuse of corporate powers by City Council and the contracts pertaining to 7010 and 7014 Miami Avenue were deliberated, debated, and approved during the Special Meeting that occurred on November 4, 2024. If you have any questions, you may reach me at 513-288-3065.

Very truly yours,



Brian W. Fox

*City Solicitor/Law Director for the City of
Madeira, Ohio*

Sunshine Law, that deliberations concerning public issues be made public, could not be further served by invalidating a decision insofar as such deliberations [are] laid before the public eye.” *Moraine*, 67 Ohio St.2d at 145, 21 O.O.3d at 92, 423 N.E.2d at 188. Public access to, and debate of, the subject of deliberations may militate against a finding of the causal connection. Where the subject matter of deliberations is an issue of public concern and debate, the mere fact that the subject is raised at an executive session is insufficient to prove that the action was “deliberated to the extent that it was the cause of the public resolution.” *Greene Cty. Guidance Ctr., Inc. v. Greene–Clinton Community Mental Health Bd.* (1984), 19 Ohio App.3d 1, 5, 19 OBR 46, 50, 482 N.E.2d 982, 986. *Springfield Loc. Sch. Dist. Bd. of Edn. v. Ohio Assn. of Pub. Sch. Emp. Loc. 530*, 106 Ohio App. 3d 855, 865–66, 667 N.E.2d 458, 465 (1995).