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Letter Explaining Efforts by Madeira City Officials to Defraud the Duke Energy Company, Relocation of Electric Pole in Front of Vacant B&B Mower Property

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To: Caleb McCoy, Duke Energy <mailto:Caleb.McCoy@duke-energy.com>
Michael Clark, Duke Energy Michael.Clark@duke-energy.com
Melisa Adrien, Madeira Mayor madrien@madeiracity.com
Traci Theis, Madeira Councilwoman, ttheis@madeiracity.com
Thomas Moeller, Madeira City Manager, tmoeller@madeiracity.com

From: James R. Tepe, 7450 Baywind Drive, Cincinnati, Ohio 45242 jimandjant@gmail.com

MADEIRA WANTS THE POLE MOVED AGAIN FOR THE B&B OWNERS & THE SWING LINE GRILL

HISTORY: IN 1996, THE ELECTRIC POLE LOCATED ON THE NORTH SIDE OF THE RAILROAD AVE. RIGHT-OF-WAY (ROW) AT THE B&B MOWER AND HISTORIC DISTRICT JOINT PROPERTY LINE, WAS, AT THE DIRECTION OF THE CITY OF MADEIRA, RELOCATED 20 FEET TO THE EAST. THIS RELOCATION WAS AT THE EXCLUSIVE COST OF THE CINCINNATI GAS & ELECTRIC CO. (CG&E) TO ALLOW CREATION OF THE TWO-WAY ACCESS TO THE NEW PARKING LOT BEING CONSTRUCTED - BY THE CITY - FOR THE CITY- AND - FOR THE B&B MOWER PROPERTY OWNER.

NOW THE CITY WANTS THIS SAME ELECTRIC POLE RELOCATED AGAIN - ALL AT THE EXCLUSIVE COST OF DUKE ENERGY. THIS TIME IT IS TO RELIEVE THE B&B PROPERTY OWNER – AND / OR – TOM POWERS' SWING LINE GRILL OF ANY COSTS TO RELOCATE THE POLE, ALLOW SWING LINE GRILL TO BUILD THEIR BUILDING 5 FT. FROM THE ROW LINE, AND, RELOCATE THE POLE – THE SIDEWALK – AND POSITION THEIR NEW LANDSCAPING - **16 FT. SOUTH INTO THE 40 FT. ROAD ROW.**

EXISTING PARKING SPACES, NOW LOCATED ON THE SOUTHERN SIDE OF RAILROAD AVENUE, PRESENTLY PROTRUDE 8 FT. NORTH INTO THE SOUTHERN ROW LINE WHICH WOULD LEAVE ONLY 16 FT. FOR VEHICULAR TRAFFIC. THIS PROPOSED POLE RELOCATION WILL PERMANENTLY CAUSE RAILROAD AVE. TO BE A ONE-WAY-ROAD. A CURRENT LEGAL ACTION IN THE HAMILTON COUNTY COURT OF COMMON PLEAS, CASE A-1700706, IS CONTESTING THE CONTINUED ONE-WAY LIMITATION OF RAILROAD AVENUE BY THE CITY OF MADEIRA.

THE CITY NOW CONTENDS "THE UTILITY LINES ARE OVER PRIVATE PROPERTY AND IMPEDE THE FUTURE DEVELOPMENT OF THE LAND." ALSO, THE CITY CLAIMS, BECAUSE THERE IS NO RECORDED UTILITY EASEMENT FOR THE UNDERGROUND WIRING RUNNING THROUGH B&B'S PROPERTY DUE TO THE 1996 POLE RELOCATION, DUKE ENERGY NOW NEEDS TO CORRECT THIS SITUATION AT THEIR COSTS COMPLETELY. SOME BELIEVE DUKE ENERGY, THE PRESENT PUBLIC UTILITY, SHOULD NOT HAVE TO PAY FOR THIS SECOND POLE RELOCATION COST WHICH WILL EVENTUALLY BE PASSED ON TO ALL OF THEIR CUSTOMERS.

IN 1995, THE CINCINNATI GAS & ELECTRIC CO. (CG&E) COMPANY REPRESENTATIVE, ANITA GINDLING, CLEARLY BELIEVED THE CITY OWNED THE PROPERTY WHERE THE FUTURE CONDUITS, WIRING AND RELOCATED ELECTRIC POLE WERE TO BE INSTALLED. THE NOVEMBER 9, 1995 EMAIL FROM CG&E'S ANITA GINDLING TO MS. TAMMY SCHLAGBAUM OF PFLUM, KLAUSMEIER & GEHRUM (PKG) CARRIES THE SUBJECT LINE; 'CONDITIONS FOR PLACING UNDERGROUND CONDUIT BEHIND THE HOSBROOK HOUSE OWNED BY THE CITY OF MADEIRA'.

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THE NOV. 21, **1995** DRAWING BY PKG INDICATES THAT ALL WIRING, CONDUITS, AND THE RELOCATED POLE WERE TO BE PLACED ON PROPERTY OWNED BY THE CITY AS THIS DRAWING DOES NOT IDENTIFY ANY PROPERTY LINES. THE TWO DRAWINGS PREPARED BY BRANDSTETTER CARROLL, INC. (BCI) - (THE CITY'S ENGINEERING FIRM) FOR THIS "PARKING LOT EXPANSION – HOSBROOK HOUSE - PROJECT #95107 – NOV. **1995**", ALSO DO NOT DEFINE ANY PROPERTY LINES. INTERESTINGLY, THE B&B "FULL BUILDING FOOTPRINT", FOR SOME UNKNOWN REASON, WAS NOT SHOWN ON THE PKG DRAWING OR ON THE BCI DRAWINGS.

MOST IMPORTANTLY, IT SEEMS CLEAR THAT THE B&B BUILDING HAD NO LEGAL RIGHT IN 1996 - AND HAS NO LEGAL RIGHT IN 2017 - TO BE LOCATED WITHIN THE RAILROAD AVENUE RIGHT-OF-WAY WHERE IT PRESENTLY SITS. THIS, IN MY OPINION, DOES NOT APPEAR TO BE A SIMPLE UTILITY COMPANY /CG&E /DUKE ENERGY "OVERSIGHT" FOR NOT HAVING A RECORDED EASEMENT ACROSS PERCEIVED CITY OWNED PROPERTY, OR, FOR HAVING UTILITY WIRES HANGING ABOVE A BUILDING LOCATED IN THE PUBLIC ROAD ROW.

B&B MOWER SERVICE, INC. PURCHASED THE 7710 RAILROAD AVE. PROPERTY IN **1974**. THEY PURCHASED THE 7722 RAILROAD AVE. PROPERTY IN **1984**. IT IS UNKNOWN WHY THE B&B MOWER BUILDING HAS BEEN ALLOWED TO REMAIN PARTIALLY LOCATED WITHIN THE RAILROAD AVENUE ROW DURING THE LAST – "WHO KNOWS HOW MANY YEARS" - WITHOUT ANY CORRECTIVE ACTION BEING TAKEN BY THE CITY. IT IS ALSO UNKNOWN IF B&B MOWER PAID FOR THEIR PART OF THE **1996** PARKING LOT CONSTRUCTION COSTS. IT APPEARS THE CITY CONTRACTED AND PAID FOR ALL CONSULTING SERVICES, ENGINEERING SERVICES, PARKING LOT EXCAVATION, AND CONSTRUCTION COSTS IN **1996**.

PERHAPS THE CITY AGREED TO PAY ALL COSTS TO BUILD THE B&B NEW PARKING AREA IN EXCHANGE FOR B&B ALLOWING THE CITY TO ROUTE THEIR UNDERGROUND WIRES THROUGH THE B&B PROPERTY TO THE RELOCATED POWER POLE LOCATION SO TO CREATE THE MUTUALLY BENEFICIAL TWO-WAY INGRESS – EGRESS FOR THE NEW JOINT PARKING LOT. AGAIN, I DON'T BELIEVE DUKE ENERGY SHOULD BE HELD RESPONSIBLE TO CORRECT THIS SITUATION AT THEIR COST – AND LATER THE PUBLIC'S COST - WHEN THESE PROBLEMS HAVE CLEARLY BEEN CREATED BY THE CITY OF MADEIRA.

THIS IS A LIST OF AVAILABLE "EXHIBITS" THAT SUPPORT THE VALIDITY OF THE ABOVE STATEMENTS:

- 1) Exhibit A; The **1996** Aerial Photo before construction of the joint parking lot, shows the existing electric pole located at the point where the Railroad Avenue north right-of-way line and the joint property line meet. This joint property line separates the City of Madeira's Muchmore House property and the B&B Mower property known as 7710 Railroad Avenue. The existing pole must be moved as it is located right in the middle of the anticipated joint parking lot two-way ingress and egress to Railroad Ave. Exhibit A;
 - A) shows the B&B building addition located directly below the CG&E electric and phone wires.
 - B) shows the B&B building addition protruding into the Railroad Avenue right-of-way. The building addition was apparently constructed many years ago.
 - C) defines that the aerial photo "was taken prior to the parking lot construction" in 1996, "the yellow shaded area has temp. gravel", and, "the green shaded area was paved at B&B Mower cost'.
 - D) shows "the green shaded area" on the B&B property was only grass when this photo was taken,
 - E) the "grassy" area next to the B&B Building was soon to be constructed as a paved parking area providing new parking spaces for exclusive use by B&B Mower employees and customers.

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- 2) Exhibit B; On June 4, **1996**, Madeira Ordinance No. 96-47 was Passed authorizing the city to enter into a “Conveyance of a Non-Exclusive Parking Easement and Acceptance of Non-Exclusive Access Easement Agreement” – “so to promote and provide reasonable parking to serve businesses in the vicinity of Miami Avenue between Railroad Avenue and Laurel Avenue in the City of Madeira.”
- 3) Exhibits C-1, C-2, C-3; On August 6, **1996**, the City Manager of Madeira, Thomas Moeller, and Henry Schneider and Anita Schneider (DOVE LTD) consummated the Council Approved Agreement which allowed a one-way northern “roadway” / “alley” to be constructed so to allow traffic to flow to the north from Railroad Avenue, on City owned Muchmore House and Hosbrook House properties, and flow north across and through the Henry Schneider and Anita Schneider (DOVE LTD) property so to exit on Laurel Avenue. This Agreement also granted the Schneider Property Five (5) parking spaces within the future City Owned Parking Lot bordering the Schneider Property to the south (the Hosbrook House Property.)
- 4) Exhibit D; Partial March 8, **2016** drawing by BCI shows the B&B Mower western property line and the City’s Muchmore House and Hosbrook House eastern property line are the same “joint” property line running north of its starting point at the northern side of the 40 foot wide Railroad Avenue right-of-way. Property lines for these properties are the same now in **2017** as they were in **1995**.
- 5) Exhibits E-1, E-2; Approved City Council Minutes shows on June 4, **1996**, Madeira Ordinance No. 96-45 was Passed approving an Amendment in the Contract with Pflum, Klausmeier & Gehrum Consultants (PKG) for the Hosbrook House Parking Lot and Underground Conduit associated with the Miami Avenue Beautification Project.
- 6) Exhibits F-1, F-2; The November 21, **1995** letter from Tamara Schlagbaum of PKG to Bruce Brandstetter of Brandstetter Carroll, Inc. (BCI) the long time City Engineers, with the Subject: “Hosbrook House Parking Lot, Madeira, Ohio”. This letter included a drawing dated November 21, **1995** by PKG (F-2) and an email from Anita Gindling of Cincinnati Gas & Electric Co. (G-1, 2, 3, &4)
- 7) Exhibits G-1, G-2, G-3, G-4: Parts of Project 95197 Drawing prepared by BCI dated Nov., **1995** indicates:
 - A) G-1, G-2: “Provide parking block at each parking stall as per detail on sheet 3. A total of 26 parking blocks are required.” As 17 parking spaces were constructed on the City’s property, the other 7 parking blocks were required for the 7 new parking spaces on the B&B property.
 - B) G-3, G-4: the specific location of the “power pole to be relocated by others” and the suggested location of the “new utility pole location to be verified by CG&E by others.” As there are no property lines or right-of-way lines specified on the drawing, and, the city engineer shows the city’s proposed new utility pole location on the drawing, it appears CG&E placed the relocated pole exactly where the city requested. The new location appears to be “outside” of any lines indicating private property, and, inside the City Historic Property and road ROW. (Note: It is obvious that Exhibit F-2 drawing by PKG and Exhibit G-3 drawing by BCI were copied from the same drawing.)

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- 8) Exhibits H-1, H-2, H-3, H-4; The November 9, **1995** email from Anita Gindling of Cincinnati Gas & Electric Co. to Ms. Tammy Schlagbaum. The "Subject Line" of this email reads: "Conditions for placing underground conduit behind the Hosbrook House owned by the City of Madeira." It seems clear the Cincinnati Gas & Electric Co. representative believed the future underground conduit / wiring, running from the location of the new transformer / pad to the proposed relocated power pole on Railroad Ave., would be installed on property owned by the City of Madeira . It is common knowledge that Cities and Municipalities have substantial authority and power to dictate locations and relocations of utility poles and apparatus within city owned properties and right-of-ways. The City obviously requested the pole relocation in **1996** because it was located right in the middle of the "to-be" constructed Joint Access to the new parking lot from Railroad Ave..
- 9) Exhibit I; The June 12, **1996** "Transmittal" from Tamara Schlagbaum pf PKG to Bruce Brandstetter of BCI which included prints / drawings of the "Revised Underground Utility Plan.
- 10) Exhibit J; The June 17, **1996** "Addendum No. One, Hosbrook House Parking Lot, #95017" written by BCI advising the revised underground utility specifications so bidding contractors could properly quote the project.
- 11) Exhibit K; The July 18, **1996** "Preconstruction Meeting Minutes, Hosbrook House Parking Lot, #95017" written by BCI. The Contract was awarded to Schmacher Dugan Company (SDC). Work on the project was to begin on Aug. 15, **1996** and be completed by Nov. 24, **1996**. The Minutes also show that: "Cincinnati Gas & Electric still needs to move an electric pole on Railroad Ave." " Mr. Moeller and Mr. Frey (SDC) will both contact CG&E." It also reads: "The Contractor was given the names of contact people for B&B Mower, the Women's Club, and the Muchmore House."
- 12) Exhibit L; The November 11, **1996** \$4,050.00 "Change Order No. 1" relating to the City of Madeira's Hosbrook House \$32,707.00 original Parking Lot Contract issued to Schumacher Dugan dated August 6, **1996** which, after the "Change Order #1", totaled \$36,757.00 which included material and labor to:
 - A) Provide and install underground electric conduits from the "future" electric pole, being relocated to 20 feet east of the then existing pole, across B&B Mower's property, across the Muchmore House and Hosbrook House properties to a newly located ground mounted transformer / pad which was to serve both of the Historic Houses owned by the City of Madeira.
 - B) Provide and install parking lot paving throughout the entire Historic Property parking area being expanded because of the "Schneider Property Agreement"
 - C) Excavate and construct a totally new parking area on the B&B Mower property between the west side of B&B's building and their western-most property line - which is the joint property line between the B&B Property the Historic Property.
 - D) Exhibit L is a "Change Order" required so to "Fill existing cistern with gravel and remove concrete top", "remove 75 lineal feet of curb and backfill in front of B&B Mower Service", and, "undercut soft subgrade area and backfill with ODOT 301 Base".
 - E) It is obvious that the City of Madeira issued all Contracts and paid for all engineering services and construction costs for, what appears to be, the entire Hosbrook House Parking Lot Project. It is unknown if the B&B Mower property owner paid for paving of their new parking

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- 13) Exhibit M; The **2012** Aerial Photo:
 - A) shows the present location of the electric pole which was relocated sometime in late **1996**,
 - B) shows incorrect Railroad Ave. ROW Lines due to the fact that CAGIS (Hamilton County Engineer's Office) has plotted incorrect property lines along the Railroad Ave. side of the B&B properties.
- 14) Exhibits N-1, N-2; Further demonstration of incorrect Railroad Ave ROW Lines and B&B Property lines as plotted by CAGIS of the Hamilton County Engineer's Office.
- 15) Exhibit O; "Final Site Layout Plan / Survey" dated Sept. 21, **2016** prepared by Abercrombie & Associates showing the accurate / correct Railroad Ave. ROW lines corresponding to the B&B property lines.
- 16) Exhibits P-1, P-2, P-3; March 8, **2016** drawing of "Existing Conditions", prepared by the city's engineering co. BCI, which shows the exact location of the existing power pole in the Railroad Ave. ROW.
- 17) Exhibit Q; June 1, **2016** "Preliminary First Floor Plan" prepared by Wentz Design which shows, in their opinion and calculation, the "Existing Power Pole" location in the Railroad Ave ROW.
- 18) Exhibit R; June 17, **2016** Drawing by Wentz Design showing the new "Proposed Pole Locations" in the Railroad Ave. ROW as designed by Duke to provide electric to the City's Historic Houses and the Swing Line Grill.
- 19) Exhibit S; July 5, **2016** email from Michael Clark of Duke Energy to Greg Foote of ARC Building Group, Thomas Powers' Swing Line Grill anticipated contractor, which states: "Your customer would only be responsible for 40% of the charges to serve his building." "The additional cable between the two transformers and relocating the existing pole would be covered by Duke."
- 20) Exhibit T; Another July 5, **2016** from Michael Clark which states: "I would expect to have an anchor 12-15' from the base of that (south) pole." "We would just have to be sure that the anchor stayed within the City's property and did not encroach the railroad."
(Note: I have not seen a "12 – 15' anchor shown on any drawing relating to the Swing Line Grill. Looking at the minimal area south of the "support pole", there simply is not adequate area to place a 12 – 15' anchor cable and remain within the Railroad Ave. ROW as Duke Energy is requiring.)
- 21) Exhibit U; October 22, **2016** email from Tom Moeller, Madeira City Manager, to Michael Clark of Duke Energy stating: "In (Mr. Oppenheimer's) request, he asserts that Duke Energy should not be doing this at its cost." "As we discussed with you and the future property owner, Tom Powers, the utility lines are over private property and impede the future development of the land."
- 22) Exhibit V; Later on October 22, **2016**, Michael Clark responded to Tom Moeller and stated: "Duke Energy is only relocating facilities that are impeding the private property without an easement." "This work will be completed at no cost to the property owner."

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- 23) Exhibits W-1, W-2; Hamilton County Auditor's records showing (W-1) -- that the 7710 Railroad Ave. property was purchased by B&B Mower Service on June 19, **1994**, and, (W-2) -- that the 7722 Railroad Ave. property was purchased by B&B Mower Service on July 3, 1984.
- 24) Exhibit X; January 17, **2017** email from James R. Tepe responding to an email received from Mr. Greg Foote, President of ARC Building Group who represented that he has been working with Mr. Tom Powers for several years as the anticipated prime contractor for Mr. Powers on his Swing Line Grill project.
- 25) Exhibit Y; CAGIS Online Map dated March 7, 2017 showing a current aerial photo of the subject City and B&B parking lot as well as the exact location of the power pole that was relocated in late **1996**.

Respectfully submitted,

James R. Tepe
7450 Baywind Drive
Cincinnati, Ohio 45242
(513-791-0378)