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December 8, 2015

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

RE: City of Madeira - Request for Initiation of Civil Action

Dear Curt:

As of December 1, 2015, I have appointed Interim Law Director for the City of Madeira. Your letter of November 30, 2015, has been forwarded to me for response.

As you stated, Ordinance No. 15-30, adopted by City Council on November 9, 2015, authorizes the sale of a portion of the property referred to as the Muchmore House. This was done after a thorough review of the relevant provisions of the Madeira City Charter and other relevant laws, ordinances, and documents.

As you have indicated, Article XVI of the Charter states as follows:

The City of Madeira was deeded and assumed ownership of the "Hosbrook House" located at 7014 Miami Ave. and the "Muchmore House" located at 7010 Miami Ave. In addition to these two properties the City also has ownership of the historic Railroad Depot located at 7701 Railroad Ave. These three important and historic properties are to be preserved, protected, and left standing on the same ground that the structures were built upon. These three historic structures will be included in the "Historic District".

As you can see, there is no express prohibition against selling any portion of the identified properties. The only requirement is that the properties be "preserved [and] protected."

Preservation and protection can be, and are being, achieved through other legislative measures. More specifically, the Charter provision also created the Historic District. City Council approved legislation after the passage of the Charter Amendment which created the Madeira Historical Preservation Commission (MHPC). One of the responsibilities of the MHPC is to recommend standards and regulations which will oversee the future of the properties. City Council is in the process of reviewing those standards in order to finalize them so they can be enforced by the MHPC. While it is possible that the Historic Preservation Commission may one day recommend further restrictions on the properties in the Historic District, no such regulations exist at this time. So again, there is no express restriction that would prohibit the City from selling any portion of the property. The strict and specific purpose of the proposed standards and regulations are to "preserve" and "protect" the properties located within the Madeira Historic District. As such, the only requirement of the Charter (to preserve and protect) is being fulfilled.

Next we examined the 2012 Muchmore Historic Area legislation. This legislation specifically retains the right to convey some of the property as long as it meets the two main goals of the legislation: respect the historical significance of the property and assist in business development. This ordinance is an example of the theme of restraint that exists around these properties. However, there is no express restriction that would prohibit the City from selling the property.

Finally, we examined the deeds and accompanying letters of donation that the City received when initially acquiring the properties. There are no restrictions that came in the deeds when the City acquired the property. The most that accompanied the deeds is the letter from Cleo Hosbrook expressing her hope about the preservation of the buildings. Again, while this may support the theme of restraint and the hope and expectation of preservation, it is not a specific legal requirement. Therefore, there is no express restriction in the conveyance documents that would prohibit the City from selling the property or subdividing it for additional public parking.

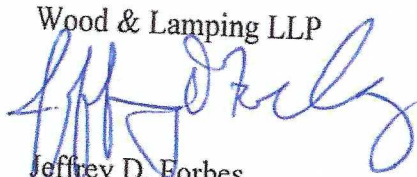
Your letter also questions whether the existing parcel is conforming to the Zoning Code. The parcel is located within the Main Street Core District. There are no lot/area limitations; therefore, the reduction in the area of the lot would not make the lot non-conforming. As well, building setbacks within the MSC District are 5 ft.; the proposed reduction in the size/area of the lot will not cause there to be a non-conforming building setback issue.

Based on the foregoing, I do not believe that Madeira City Council abused its corporate authority in enacting Ordinance No. 15-30. As such, I am declining to initiate a civil action pursuant to R.C. 733.56 *et seq.*

Curt C. Hartman
December 8, 2015
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Very truly yours,

Wood & Lamping LLP

A handwritten signature in blue ink, appearing to read "Jeffrey D. Forbes". The signature is stylized and cursive.

Jeffrey D. Forbes
Interim Law Director

cc: Tom Moeller, City Manager

2229745.1

Resident files complaint against Madeira

Marika Lee, mlee1@communitypress.com 11:15 a.m. EST December 29, 2015



(Photo: Marika Lee/ The Community Press)

A Madeira resident is accusing the city of Madeira of violating the city charter because of its plans to sell a piece of the Historic District to a developer.

Resident Doug Oppenheimer filed a complaint with the Hamilton County Court of Common Pleas asking for a declaratory judgment and injunction stopping the city from selling a piece of the Muchmore House property ([/story/news/local/madeira/2015/11/12/madeira-one-step-closer-new-restaurant/75581488/](http://story/news/local/madeira/2015/11/12/madeira-one-step-closer-new-restaurant/75581488/)) to Paxton's Grill co-owner Tom Powers, who is looking to open a similar restaurant at the old B&B Mower site.

Oppenheimer said in court documents that the city is violating Article XVI of the charter, which created the Madeira Historic District. The article was added as a result of Issue 13 being passed by Madeira voters in November 2014 election. Oppenheimer was part of the group of residents responsible for getting it onto the ballot.

Madeira Interim Law Jeffrey Forbes filed a response to Oppenheimer's initial request for an injunction and stated the city has not violated the article by passing the ordinance to sell the land to Powers. City Manager Tom Moeller said the city is still finalizing the contract.

Oppenheimer pointed out that the contract, which was part of Ordinance 15-30 passed by city council Nov. 9, has blank spaces for how much land will be sold. Moeller acknowledged that council approved the contract "in a form substantially the same" as the ones attached to the council packet, because the amount of land will not be determined until Powers closes on the B&B Mower site.

Powers plans to turn the site into a \$1 million to \$1.2 million restaurant called Swing Line Grill. He also plans to turn the land surrounding it into a public parking lot that he will sell back to the city. The contract for that sale was also a part of Ordinance 15-30.

Oppenheimer is asking the court to issue a declaratory judgment that makes Article XVI prohibit, restrict or limit the city from moving forward with the sale. He is also asking for an injunction to stop the city and Moeller from moving forward with the sell outlined in the ordinance or any deed transferring of Muchmore property land.

The city has yet to file a response to the complaint.

Want to know more about what is happening in Madeira? Follow Marika Lee on Twitter: [@ReporterMarika](https://twitter.com/ReporterMarika) (<https://twitter.com/ReporterMarika>)

Article XVI of Madeira city charter:

The City of Madeira was deeded and assumed ownership of the "Hosbrook House" located at 7014 Miami Ave. and the "Muchmore House" located at 7010 Miami Ave. In addition to these two properties the City also has ownership of the historic Railroad Depot located at 7701 Railroad Ave. These three important and historic properties are to be preserved, protected and left standing on the same ground that the structures were built upon. These three historic structures will be included in the "Historic District."

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