

“Unnecessary Waste of Madeira Tax Payers Money”

State of Ohio, ex rel, James Horwitz v. Richard F. Brasington, et al.

www.madeiramessenger.com Facts and Commentary

Madeira resident, Jim Horwitz in 2013 initiated legal action against the City of Madeira, accusing council members of violating the Ohio Revised Code, section 121.22, Open Meetings Act.

The results of the litigation was that the city of Madeira assumed the entire cost of the litigation exceeding \$43,000.00. This cost was an unnecessary waste of Tax Payers money. The city of Madeira was represented by Donnellon, Donnellon, and Miller at a cost of \$20,886.00. The Madeira Law Director submitted billings totaling \$15,189.20, paid to Mr. Malloy's law firm, Wood & Lamping. The billing record from Malloy's firm at my request was copied and provided by our city manager Mr. Thomas Moeller. The copy of the billing record was heavily redacted. Madeira council members and city officials have declined to provide any explanation regarding the billing from Wood & Lamping. Mr. Malloy was not able to defend the city due to his personal involvement in nearly all of the matters responsible for the lawsuit filed against the city. I have been required to submit various public records request for the procurement of the following e-mails and most of the documents.

- 1) An e-mail from our Law Director Robert P. Malloy sent to various recipients, dated March 17, 2013. “12 noon at the OK Corral”
- 2) Billing documents submitted by Madeira Law Director Robert Malloy on behalf of his law firm, Wood & Lamping. Note that the content of this document has not been explained and is heavily redacted. Our city council

members refuse to address this issue including why the city paid for services that should not have been billed.

3) You can decide when the abuse of Ohio Revised Code section 121.22 began and what may have led to the Horwitz Lawsuit. I am posting e-mails and other documents to assist you with that determination beginning with a series of e-mails from the year 2011.

3a) Did it begin March 7, 2011 when these e-mails were exchanged between Thomas M. Powers and our city manager, Thomas Moeller?

3b) A relationship continued, March 22, 2011 thru August 8, 2011 when e-mails were exchanged between Moeller and Powers including Moeller passing on information to Powers effecting the core area of Downtown Madeira. Moeller and Powers discussed the planning of closed door, executive session meetings, including the entire Madeira City Council and Mr. Powers, according to these e-mails.

3c) The preferential business relationship with Powers appears to be progressing, according to the e-mails. Powers provides his development plans for the core district of downtown Madeira. There is no indication that city council members discussed any potential development possibilities with anyone other than Powers. Powers appeared to be in control, and according to these e-mails dictates his plans for downtown Madeira. (March the 1st thru March the 8th 2013)

3d) An e-mail exchange between Moeller and Powers, discussing a contract still needing approval from city council, and explaining that council would meet in executive session for this purpose. (February 11, 2013)


3e) Ordinance number 12-27, certified on October 23, 2012, stated in section 4 that the "city may acquire or convey, without bidding, such interest in real-estate within area that the city deems appropriate to fulfill this public improvement". Ordinance 12-27 was in reference to the Historic Area of downtown Madeira.

3f) Three months after Ordinance 12-27 was approved our city council provided an "Exclusive Right to Negotiate" agreement for Mr. Powers, guaranteeing that there would not be any other proposals considered, in effect eliminating competition.

3g) Letter from Donnellon, Donnellon, and Miller.

Some, or all of the documents presented on this site, most likely contributed to the necessity of the lawsuit filed by Mr. Horwitz against our city. Our City Council Members, Law Director, and City Manager, still by all accounts, continue to manipulate, and make a mockery of the procedures and rules in the Ohio Revised Code, section 121.22. In the days that follow, I will present additional city documents showing that our council members continue the manipulation of the intent, written in Ohio Revised Code Section 121.22.

Thank you for visiting this news site.



Douglas Oppenheimer

consultdoug@cinci.rr.com

Judy Knarr

From: Robert P. Malloy
Sent: Sunday, March 17, 2013 11:19 PM
To: Robert P. Malloy; goconnell@graydon.com; thomas.powers@cassidyurley.com; Tom Moelle
Cc: Roccina S. Niehaus
Subject: RE: Exclusive Right to Negotiate

Well, Folks, we have elevated these discussions to 12:00 noon at the OK Corral. Our good friend, Doug Oppenheimer, protector of the public's right to know everything that he would like to know, has made a totally legal public records request. So we will be turning copies of all documents related to this matter to him in the next few days. It is the way of the world in public sector law. We just need to be sure that the goal to promote the public interest in this development is continued to be stressed in all our correspondence and drafts, as well as any final proposals before they are formally adopted.

So while we are "aware" there is no cause to do anything different, since we have been working in the public's behalf since day one.

Bob

From: Robert P. Malloy
Sent: Monday, March 11, 2013 4:22 PM
To: goconnell@graydon.com; thomas.powers@cassidyurley.com; Tom Moeller
Cc: rsniehaus@woodlamping.com
Subject: Exclusive Right to Negotiate

Please find attached a proposal intended to expedite our negotiations.

Of course, the attached does not represent any terms that have been approved by the City Council. Yet.

And I would propose that we plan to meet to discuss and draft the Contract to Purchase. What do your schedules look like in the next week?

Bob

> Entry for the Horwitz matter last year. The associated legal costs are as follows:

>
> * Donnellon, Donnellon and Miller \$20,886.25
> * Wood and Lamping 6,235.50
> * Curt Hartmann 7,500.00
>

> I should have the other information regarding the three city-owned properties tomorrow. Call me if you have any questions.

>
> Thomas W. Moeller
> City Manager
>
> City of Madeira, Ohio
> 7141 Miami Avenue
> Madeira, OH 45243
>
> tmoeller@madeiracity.com
> 513.561.7228 ext. 305 Phone
> 513.272.4211 Fax
> www.madeiracity.com
>
>
>
>

> -----Original Message-----

> From: sharp@madeiracity.com [sharp@madeiracity.com]
> Sent: Monday, August 18, 2014 4:16 PM
> To: tmoeller@madeiracity.com
> Subject: Scanned image from Sharp Color A-4573
>

> Reply to: sharp@madeiracity.com <sharp@madeiracity.com> Device Name:
> Sharp
> 5001 color Device Model: MX-5001N
> Location: Not Set
>

> File Format: PDF (Medium)
> Resolution: 300dpi x 300dpi
>

> Attached file is scanned image in PDF format.

> Use Acrobat (R) Reader (R) or Adobe (R) Reader (R) of Adobe Systems
> Incorporated to view the document.

> Adobe (R) Reader (R) can be downloaded from the following URL:

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>

> <http://www.adobe.com/>

Print

Date: Tuesday, August 19, 2014 2:59 PM
From: Tom Moeller <tmoeller@madeiracity.com>
To: consultdoug@cinci.rr.com
Cc: 'Robert P. Malloy' <RPMalloy@WoodLamping.com>
Subject: RE: Horwitz Public Records Request

You're welcome, Doug.

I will need to review the invoices with Mr. Malloy to determine if there is anything which comes under the heading of "attorney/client" privilege. Also, there was one other invoice that was not included in the total I gave to you yesterday. I am reviewing the costs provided by the Treasurer's office to make certain they have included everything associated with your request.

I am out of town beginning tomorrow and will not return to the office until Monday, 8/25. I'll get this information to you as quickly as I can. Call me if you have any questions.

Thomas W. Moeller
City Manager

City of Madeira, Ohio
7141 Miami Avenue
Madeira, OH 45243

tmoeller@madeiracity.com
513.561.7228 ext. 305 Phone
513.272.4211 Fax
www.madeiracity.com

-----Original Message-----

From: consultdoug@cinci.rr.com [consultdoug@cinci.rr.com]
Sent: Monday, August 18, 2014 5:35 PM
To: Tom Moeller
Subject: Re: Horwitz Public Records Request

Tom

Thanks again for the documents that were sent today. I would also appreciate copies of the invoices that each of the three law firms sent to the city. I would expect that the invoices will show how each entity billed the city, hours other billing details etc..

Doug

----- Tom Moeller <tmoeller@madeiracity.com> wrote:

> Doug,

>

> Per your request, please find attached the Agreed Consent Decree/Final

TOTAL \$15,189.20

Wood & Lamping LLP

City of Madeira
Re: General
I.D. 57621-00001 - RPM

June 20, 2013
Invoice 454041
Page 2

Date	Atty	Description	Hours	Rate	Amount
05/01/13	RPM	[REDACTED]			
05/01/13	RSN	[REDACTED]			
05/01/13	RFC	[REDACTED]			
05/01/13	RFC	[REDACTED]			
05/02/13	RPM	[REDACTED]			
05/02/13	RSN	[REDACTED]			
05/03/13	RPM	[REDACTED]			
05/03/13	RPM	[REDACTED]			
05/03/13	DAS	[REDACTED]			
05/06/13	RPM	[REDACTED]			
05/06/13	RPM	[REDACTED]			
05/06/13	RPM	[REDACTED]			
05/06/13	RSN	[REDACTED]			
05/06/13	RFC	[REDACTED]			
05/07/13	RPM	[REDACTED]			
05/07/13	RSN	[REDACTED]			
05/07/13	RFC	Conducted research in Ohio Revised Code, Ohio cases, Ohio Jurisprudence, Ohio Attorney General Opinions, and general internet research on situations in which an executive session can be held related to the proposed sale and purchase of real property in the Muchmore Historic District.	2.00	158.00	316.00
05/08/13	RPM	Research and analysis regarding executive sessions.	2.00	158.00	316.00
05/08/13	RSN	[REDACTED]			
05/08/13	RFC	Conference with Bob Malloy regarding executive sessions for purposes of discussing plans for the Muchmore Historic District.	0.25	158.00	39.50
05/09/13	RPM	Executive Session - sale of real estate analysis ORC 121.22.	2.40	158.00	379.20
05/09/13	RFC	Conference with Bob Malloy regarding suggested revisions to the memorandum on executive sessions. Drafted revisions per conference with Bob Malloy.	1.00	158.00	158.00
05/10/13	RPM	Executive Session for real estate - draft memo.	1.50	158.00	237.00

Wood & Lamping, L.L.P.

City of Madeira
 I.D. 57621-00001 - RPM
 Re: General

June 20, 2013
 Invoice 454041
 Page 3

Date	Atty	Description	Hours	Rate	Amount
05/10/13	RPM	Planning Commission - review information.	0.60	158.00	94.80
05/10/13	RFC	Conference with Bob Malloy regarding research conducted on executive sessions related to sale and purchase of real estate in the Muchmore Historic District.	0.25	158.00	39.50
05/11/13	RPM	Executive Session issue - research.	1.20	158.00	189.60
05/13/13	RPM	[REDACTED]			
05/13/13	RPM	[REDACTED]			
05/13/13	RPM	[REDACTED]			
05/13/13	RSN	[REDACTED]			
05/13/13	RFC	Review of memorandum drafted by Bob Malloy regarding executive sessions for purposes of discussing sale of real property.	0.50	158.00	79.00
05/14/13	RPM	[REDACTED]			
05/14/13	RPM	[REDACTED]			
05/14/13	RPM	Revisions to Memo regarding Executive Sessions.	0.80	158.00	126.40
05/14/13	RSN	[REDACTED]			
05/14/13	JDF	[REDACTED]			
05/15/13	RPM	[REDACTED]			
05/15/13	RPM	[REDACTED]			
05/15/13	RPM	[REDACTED]			
05/15/13	RFC	[REDACTED]			
05/16/13	RPM	[REDACTED]			
05/16/13	RPM	[REDACTED]			
05/16/13	ESD	[REDACTED]			
05/17/13	RPM	[REDACTED]			
05/17/13	RFC	[REDACTED]			
05/20/13	RPM	[REDACTED]			
05/20/13	RPM	[REDACTED]			
05/20/13	JDF	[REDACTED]			
05/21/13	RPM	[REDACTED]			

Wood & Lamping, L.L.P.

City of Madeira
 I.D. 57621-00001 - RPM
 Re: General

June 20, 2013
 Invoice 454041
 Page 4

Date	Atty	Description	Hours	Rate	Amount
05/21/13	RPM	[REDACTED]			
05/22/13	RPM	[REDACTED]			
05/23/13	RPM	[REDACTED]			
05/24/13	RPM	[REDACTED]			
05/24/13	RPM	[REDACTED]			
05/24/13	RPM	[REDACTED]			
05/27/13	RPM	[REDACTED]			
05/28/13	RPM	[REDACTED]			
05/28/13	RPM	Evaluation of Jim Horowitz email response.	1.30	158.00	205.40
05/28/13	RPM	[REDACTED]			
05/29/13	RPM	[REDACTED]			
05/29/13	RPM	[REDACTED]			
05/29/13	RPM	[REDACTED]			
05/29/13	RPM	[REDACTED]			
05/29/13	ESD	[REDACTED]			
05/30/13	RPM	[REDACTED]			
05/30/13	RPM	[REDACTED]			
05/31/13	RPM	Litigation - Horowitz research, analysis.	3.20	158.00	505.60

Disbursements		
Date	Description	Amount
05/13/13	[REDACTED]	
05/23/13	[REDACTED]	
05/23/13	[REDACTED]	
05/31/13	[REDACTED]	

[REDACTED]

[REDACTED]

[REDACTED]

Wood & Lamping LLP

City of Madeira
 Re: Litigation
 I.D. 57621-00002 - RPM

July 22, 2013
 Invoice 454923
 Page 2

Rees						
Date	Atty	Description	Hours	Rate	Amount	
05/29/13	RPM	Notification to Plaintiff's attorney.	0.40	184.00	73.60	
06/03/13	GGL	Office conference with Mr. Malloy regarding new assignment to put together a list of all council meeting minutes of the City of Dublin, Ohio and the City of Worthington, Ohio for Mr. Malloy in order to distribute to Attorney Terrence Donnellon to assist him as Special Counsel in defending the City of Madeira against the recent lawsuit filed by Jim Horwitz claiming that the Madeira City Council goes into executive session too often.	0.50	184.00	92.00	
06/03/13	RFC	Conference with Bob Malloy on issues related to the litigation instituted by Jim Horwitz related to executive sessions. Follow up conference with Bob Malloy.	0.50	184.00	92.00	L
06/04/13	RPM	Horowitz litigation issues.	1.40	184.00	257.60	L
06/04/13	RFC	Conference with Bob Malloy on issues related to executive sessions and nuances between the litigation exception and purchase of real estate.	0.25	184.00	46.00	L
06/04/13	GGL	Printed off all of the City Council meeting minutes of the City of Dublin, Ohio and the City of Worthington, Ohio for the year 2011 and organized them by date. Began highlighting and tabbing each and every time the City Councils for both cities went into Executive Session as indicated in the council meeting minutes in 2011. Made and printed out cover sheets for inclusion with binders to be distributed to Attorney Donnellon for his review and preparation for defense of City of Madeira against citizen lawsuit.	2.50	80.00	200.00	L
06/05/13	GGL	Worked with Mrs. Knarr and Mrs. Flood to assemble the 2011 meeting minutes of the City of Dublin, Ohio and the City of Worthington, Ohio into notebooks with tabs for Mr. Malloy so that he can present them to Special Counsel Attorney Donnellon to aid in responding to a complaint recently filed by Attorney Hartmann against the City of Madeira for a violation of the Ohio Open Meetings Act (Sunshine Law). Highlighted relevant sections of each City's meeting minutes in which it went into executive session. Email correspondence with Mr. Malloy notifying him of findings and informing him of total numbers and percentages of time that the two cities went into executive session at their regular city council meetings.	2.00	100.00	200.00	L
06/05/13	RFC	Conference with Bob Malloy on issues related to executive sessions and lawsuit filed by Jim Horwitz. Conducted research in Ohio Revised Code, Ohio caselaw, Ohio Jurisprudence, Ohio	5.00	140.00	700.00	L

Wood & Lamping LLP

City of Madeira
Re: General
I.D. 57621-00001 - RPM

July 22, 2013
Invoice 454918
Page 2

L.D. - LAW DIRECTOR

Date	Atty	Description	Hours	Rate	Amount	
06/04/13	RPM	[REDACTED]				
06/05/13	RPM	[REDACTED]				C
06/05/13	RPM	[REDACTED]				C
06/05/13	RPM	[REDACTED]				C
06/06/13	RPM	[REDACTED]				C
06/07/13	RPM	[REDACTED]				C
06/10/13	RPM	Preparation for strategy regarding litigation.	0.80	158.00	126.40	C
06/10/13	RPM	Horowitz litigation - analysis.	2.70	158.00	426.60	C
06/11/13	RPM	[REDACTED]				C
06/14/13	RPM	[REDACTED]				A
06/17/13	RPM	[REDACTED]				C
06/17/13	RPM	[REDACTED]				C
06/17/13	RPM	[REDACTED]				C
06/17/13	JDF	[REDACTED]				C
		se.				
06/18/13	RPM	[REDACTED]				C
06/19/13	RPM	[REDACTED]				C
06/20/13	RPM	[REDACTED]				C
06/21/13	RPM	[REDACTED]				C
06/21/13	RPM	[REDACTED]				C
06/21/13	RSN	[REDACTED]				C
06/24/13	RPM	[REDACTED]				C
06/24/13	RPM	[REDACTED]				C
06/24/13	RPM	[REDACTED]				C
06/24/13	ESD	[REDACTED]				C
06/24/13	RSN	[REDACTED]				C
06/27/13	RPM	[REDACTED]				C
06/27/13	JDF	[REDACTED]				A
06/27/13	JDF	[REDACTED]				A
06/28/13	RSN	[REDACTED]				C

1218.20

Wood & Lamping, L.L.P.

City of Madeira
I.D. 57621-00002 - RPM
Re: Litigation

July 22, 2013
Invoice 454923
Page 3

Date	Atty	Description	Hours	Rate	Amount
		Attorney General Opinions, General Internet Searches, Madeira Charter and Madeira Code of Ordinances on issues related to executive sessions and R.C. 121.22. Drafted memorandum to Bob Malloy outlining the findings of the research.			
06/06/13	JDF	Conference with Robert P. Malloy regarding Sunshine law litigation. Review of related cases.	0.75	184.00	138.00
06/11/13	RPM	Horowitz Litigation - information to Attorney.	2.20	184.00	404.80
06/14/13	RPM	Research and analysis regarding Horowitz complaint.	2.30	184.00	423.20
06/17/13	RPM	Meeting regarding litigation.	2.20	184.00	404.80
06/19/13	RPM	Sunshine - litigation; research.	1.20	184.00	220.80



Wood & Lamping LLP

City of Madeira
 Re: General
 I.D. 57621-00001 - RPM

August 26, 2013
 Invoice 455759
 Page 2

			Fees		
Date	Atty	Description	Hours	Rate	Amount
07/01/13	RPM	[REDACTED]			
07/05/13	RSN	[REDACTED]			
07/08/13	RPM	[REDACTED]			
07/08/13	RPM	[REDACTED]			
07/09/13	RPM	[REDACTED]			
07/09/13	RPM	[REDACTED]			00
07/09/13	RPM	[REDACTED]			
07/09/13	RPM	Litigation - Horowitz - review and analysis of pleading.	1.50	158.00	237.00
07/10/13	RPM	[REDACTED]			
07/10/13	RPM	Litigation - status and evaluation - strategy.	1.20	158.00	189.60
07/11/13	RPM	Sunshine law litigation - analysis.	1.00	158.00	158.00
07/11/13	RPM	[REDACTED]			
07/12/13	ESD	[REDACTED]			
		[REDACTED]			
		[REDACTED]			
07/12/13	RPM	[REDACTED]			
07/12/13	RPM	[REDACTED]			
07/12/13	RPM	[REDACTED]			
07/12/13	RPM	[REDACTED]			
07/15/13	RPM	[REDACTED]			
07/15/13	RPM	[REDACTED]			
07/15/13	RPM	[REDACTED]			
07/16/13	RPM	[REDACTED]			
07/17/13	RPM	[REDACTED]			
07/18/13	RPM	Litigation - Sunshine law.	0.80	158.00	126.40
07/19/13	RPM	[REDACTED]			
07/19/13	RPM	Analysis regarding Horowitz litigation issues.	0.80	158.00	126.40
07/22/13	RPM	[REDACTED]			
07/22/13	RPM	[REDACTED]			
07/22/13	RPM	[REDACTED]			
07/22/13	RPM	[REDACTED]			
07/22/13	RSN	[REDACTED]			
07/23/13	RPM	[REDACTED]			

Wood & Lamping LLP

City of Madeira
Re: Litigation
I.D. 57621-00002 - RPM

August 27, 2013
Invoice 455845
Page 2

			Fees		
Date	Atty	Description	Hours	Rate	Amount
07/10/13	RFC	Review of Respondent's Response to Relators Motion and Motion for Summary Judgment filed in the Jim Horwitz open meetings litigation.	0.75	184.00	138.00
07/11/13	RFC	Conference with Bob Malloy regarding research to be conducted on new legislation in Ohio related to executive sessions for redevelopment and on issues related to Horwitz litigation in Madeira.	0.25	184.00	46.00
07/11/13	RFC	Conference with Bob Malloy regarding research project on amendment to Open Meetings Act in the Ohio Budget signed by Governor John Kasich. Conducted research in Ohio Revised Code, Ohio Legislative Services and general internet research on issues related to H.B. 59 which added an additional basis for executive sessions for consideration of applications for economic development assistance. Conference with Bob Malloy on the findings of the research. Drafted memorandum to Bob Malloy summarizing the research. This is related to Sunshine Law Litigation.	3.25	184.00	598.00

[REDACTED]

		Disbursements	
Date	Description		Amount
07/30/13	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]

Wood & Lamping LLP

City of Madeira
Re: Litigation
I.D. 57621-00002 - RPM

September 18, 2013
Invoice 45666
Page 1

Date	Atty	Description	Hours	Rate	Amount
08/05/13	RPM	Research and strategy regarding sunshine law litigation.	2.30	184.00	423.20
		[REDACTED]			
		[REDACTED]			
08/27/13	RFC	Conference with Bob Malloy on issues related to the Public Records Litigation filed by Jim Horowitz and the research to be conducted.	0.25	184.00	46.00
08/27/13	RPM	Horowitz litigation analysis.	1.80	184.00	331.20
		[REDACTED]			
		[REDACTED]			
		[REDACTED]			

Wood & Lamping, L.L.P.

City of Madeira
I.D. 57621-00001 - RPM
Re: General

September 18, 2013
Invoice 456660
Page 3

Date	Atty	Description	Hours	Rate	Amount
08/28/13	RPM	[REDACTED]			
08/28/13	RSN	[REDACTED]			
08/29/13	RPM	Horowitz litigation.	0.40	158.00	63.20
08/30/13	RPM	[REDACTED]			
08/30/13	RPM	[REDACTED]			00

[REDACTED]

[REDACTED]

[REDACTED]

Wood & Lamping LLP

City of Madeira
 Re: General
 I.D. 57621-00001 - RPM

October 29, 2013
 Invoice 458273
 Page 2

Rees						
Date	Atty	Description	Hours	Rate	Amount	
09/03/13	RPM	Horowitz litigation; analysis.	1.20	158.00	189.60	L
09/03/13	RPM	[REDACTED]				C
09/03/13	RPM	[REDACTED]				C
09/05/13	RPM	[REDACTED]			40	A
09/05/13	RPM	[REDACTED]			40	I
09/06/13	RPM	[REDACTED]				C
09/06/13	RPM	[REDACTED]				C
09/06/13	RFC	[REDACTED]			50	L
09/09/13	RPM	[REDACTED]				C
09/09/13	RPM	[REDACTED]				F
09/09/13	RPM	[REDACTED]				C
09/09/13	RFC	[REDACTED]				C
09/10/13	RPM	[REDACTED]				C
09/11/13	RPM	[REDACTED]				F
09/12/13	RPM	[REDACTED]				F
09/12/13	RPM	[REDACTED]				C
09/13/13	RPM	[REDACTED]				F
09/16/13	RPM	[REDACTED]				P
09/16/13	RPM	[REDACTED]				P
09/16/13	RFC	[REDACTED]				C
09/17/13	RPM	[REDACTED]				C
09/17/13	RPM	[REDACTED]				F
09/17/13	RPM	[REDACTED]			40	C
09/18/13	RPM	[REDACTED]				C
09/23/13	RPM	[REDACTED]				C
09/23/13	RPM	[REDACTED]				C
09/23/13	RPM	[REDACTED]				C
09/25/13	RPM	Litigation - Horowitz litigation.	1.20	158.00	189.60	L
09/27/13	RPM	[REDACTED]				F

46 ?

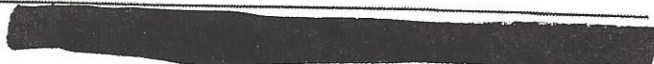
Disbursements		
Date	Description	Amount

Wood & Lamping LLP

City of Madeira
 Re: Litigation
 I.D. 57621-00002 - RPM

October 29, 2013
 Invoice 458272
 Page 2

Fees					
Date	Atty	Description	Hours	Rate	Amount
09/03/13	RFC	Conducted research in Ohio Revised Code, Ohio Jurisprudence and Ohio Case Law on issues related to local self-government, home rule powers and Ohio Sunshine Laws. Two conferences with Bob Malloy on the findings of the research.	7.25	184.00	1,334.00
09/04/13	RPM	Litigation - Research and analysis regarding Sunshine Law issues.	1.40	184.00	257.60
09/04/13	RFC	Drafted memorandum to Bob Malloy on issues related to the Jim Horwitz open meetings litigation based on research conducted on charter municipalities and Sunshine Laws.	1.50	184.00	276.00
09/05/13	RPM	Litigation - Meeting at Municipal building; preparation and analysis.	2.70	184.00	496.80
09/05/13	RFC	Meeting at City of Madeira with Tom Moeller and Terry Donnellon together with Bob Malloy on issues related to the Horwitz sunshine law litigation.	1.75	184.00	322.00
09/11/13	RPM	Litigation; research.	1.20	184.00	220.80
09/12/13	RPM	Review of Reply Memorandum.	1.30	184.00	239.20
09/12/13	RFC	Review of Reply Memorandum drafted by Terry Donnellon in the case of Horwitz v. Madeira. Conference with Bob Malloy. Drafted redlined revisions per review and conference with Bob Malloy.	1.50	184.00	276.00



\$15,345.40

Wood & Lamping LLP

City of Madeira
Re: Litigation
I.D. 57621-00002 - RPM

November 29, 2013
Invoice 459465
Page 2

			Fees		
Date	Atty	Description	Hours	Rate	Amount
10/02/13	RPM	Horowitz litigation; analysis and strategy.	1.00	184.00	184.00
10/03/13	RFC	Review of Madeira consent decree in the Jim Horwitz litigation related to Ohio Sunshine Laws.	0.50	184.00	92.00
10/04/13	RPM	Litigation review and analysis; strategy.	1.30	184.00	239.20
10/04/13	RFC	Conducted research for and drafted redlined revisions to proposed agreed consent decree in the Jim Horwitz Sunshine Law litigation in Madeira.	1.25	184.00	230.00
10/08/13	RPM	Horowitz litigation issues.	0.80	184.00	147.20
10/10/13	RPM	Horowitz issues.	0.70	184.00	128.80
10/11/13	RPM	Analysis regarding Horowitz issues.	1.80	184.00	331.20
10/11/13	RFC	Conference with Bob Malloy on issues related to the agreed consent decree and remedies in the Jim Horwitz sunshine law litigation.	0.50	184.00	92.00
10/14/13	RPM	Public meeting; litigation and analysis.	1.10	184.00	202.40



Wood & Lamping LLP

City of Madeira
Re: General
I.D. 57621-00001 - RPM

December 26, 2013
Invoice 459975
Page 2

Date	Atty	Description	Hours	Rate	Amount
11/01/13	JDF	[REDACTED]			
11/01/13	RPM	[REDACTED]			
11/01/13	RPM	[REDACTED]			
11/01/13	RPM	[REDACTED]			
11/01/13	RPM	[REDACTED]			
11/04/13	RPM	[REDACTED]			20
11/04/13	RPM	[REDACTED]			0
11/04/13	RFC	[REDACTED]			40
11/05/13	RPM	[REDACTED]			
11/05/13	RPM	[REDACTED]			
11/06/13	RSN	[REDACTED]			
11/06/13	RPM	[REDACTED]			
11/07/13	RPM	[REDACTED]			
11/07/13	RPM	[REDACTED]			
11/08/13	RPM	[REDACTED]			
11/08/13	RPM	[REDACTED]			
11/08/13	RPM	[REDACTED]			
11/08/13	RFC	[REDACTED]			
11/11/13	RPM	[REDACTED]			
11/11/13	RPM	[REDACTED]			
11/11/13	RPM	[REDACTED]			
11/11/13	RFC	[REDACTED]			
11/12/13	RPM	[REDACTED]			
11/12/13	RPM	[REDACTED]			
11/12/13	RPM	[REDACTED]			
11/13/13	RPM	[REDACTED]			
11/13/13	RPM	[REDACTED]			
11/14/13	RPM	[REDACTED]			
11/14/13	RPM	[REDACTED]			
11/14/13	RPM	[REDACTED]			
11/14/13	RPM	[REDACTED]			
11/14/13	RFC	Review of press release related to Horwitz litigation drafted by Tom Moeller. Started redlining press release. Conference with	0.75	158.00	118.50

City of Madeira
 I.D. 57621-00001 - RPM
 Re: General

December 26, 2013
 Invoice 459975
 Page 3

Date	Atty	Description	Hours	Rate	Amount	
		Bob Malloy regarding proposed draft.				
11/15/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/15/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/15/13	RFC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/18/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/18/13	RPM	Horowitz issue.	1.00	158.00	158.00	
11/18/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/19/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/20/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/20/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/20/13	RFC	Conference with Bob Malloy on issues related to the public records request by Jim Horwitz. Conducted research on attorney-client privilege in Ohio in the context of public records.	1.00	158.00	158.00	
11/21/13	RFC	Review of correspondence from Tom Moeller related to listserv announcement requested by Jim Horwitz.	0.25	158.00	39.50	
11/22/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/22/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/22/13	RFC	Conference with Bob Malloy regarding research to be conducted. Review of correspondence forward by Bob Malloy related to public records request made by Jim Horwitz pertaining to press release. Conducted research on Ohio public records law and attorney-client privilege exception. Conference with Bob Malloy regarding the findings of the research.	1.50	158.00	237.00	
11/25/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/25/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/25/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/25/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/25/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/25/13	JDF	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/25/13	RFC	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/26/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/26/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/26/13	RFC	Review of correspondence forwarded by Bob Malloy on public records request related to press release by Jim Horwitz. Conference with Bob Malloy.	0.50	158.00	79.00	
11/27/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
11/27/13	RPM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

Wood & Lamping LLP

City of Madeira
Re: Litigation
I.D. 57621-00002 - RPM

December 26, 2013
Invoice 459976
Page 2

			Fees		
Date	Atty	Description	Hours	Rate	Amount
11/21/13	RPM	Resolution litigation issues.	0.90	184.00	165.60
			Total Fees	0.90	165.60



I spoke to the agent who just listed the little antique building and he is asking \$259,99 for the building which sits on 0.07 acres.

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From: Tom Moeller [<mailto:tmoeller@madeiracity.com>]
Sent: Monday, March 07, 2011 8:59 AM
To: Powers, Tom
Subject: Economic Development Committee Meeting

Tom,.

I have the players assembled for 5:30 on Wednesday. Does that still work for you? Let me know what kind of information you might need in advance of the meeting.

Thomas W. Moeller
City Manager

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From: Tom Moeller [<mailto:tmoeller@madeiracity.com>]
Sent: Monday, March 07, 2011 9:34 AM
To: Powers, Tom
Subject: RE: Economic Development Committee Meeting

I think everything is on the table for the initial discussions at this point. My goal is to get some feedback from the committee on the direction they would like me to pursue so we can start formulating a strategy for property acquisition, infrastructure improvements, etc. Let's plan to talk about it all.

Re: the Antique Shop...that's only 150% over the value of our appraisal from 2007. Not surprised at all.

Thomas W. Moeller
City Manager

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From: Powers, Tom [<mailto:Tom.Powers@cassidyturley.com>]
Sent: Monday, March 07, 2011 9:26 AM
To: Tom Moeller
Subject: RE: Economic Development Committee Meeting

5:30 on Wed works. Where are we meeting? Your office?

Are we going to be discussing:

-moving the two houses and building something there

-moving the road closer to the existing house so I can expand the existing Train Station

-Seeing if Buzz is interested in downsizing the hardware and then leasing the remainder to Toro and Nelson. And if so, then taking to next step of seeing if Toro and Nelson are willing to play ball.

Depending on the extent of the conversation, I will get back to you with information that I may need, to the extent you have it.

Judy Knarr

From: Powers, Tom <Tom.Powers@cassidyturley.com>
Sent: Monday, March 07, 2011 9:44 AM
To: Tom Moeller
Subject: RE: Economic Development Committee Meeting

See you then.

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From: Tom Moeller [<mailto:tmoeller@madeiracity.com>]
Sent: Monday, March 07, 2011 9:43 AM
To: Powers, Tom
Subject: RE: Economic Development Committee Meeting

I'll have some property maps as well. We'll meet in the conference room next to my office. It will be a closed door meeting (executive session) because there is discussion regarding property acquisition.

Thomas W. Moeller
City Manager

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From: Powers, Tom [<mailto:Tom.Powers@cassidyturley.com>]
Sent: Monday, March 07, 2011 9:41 AM
To: Tom Moeller
Subject: RE: Economic Development Committee Meeting

OK thanks for the clarification. I will bring some aerials with me but if you have maps of any kind or info on zoning for the specific area that would be good. Also, something showing the location you may move the houses.

Is the meeting at your office?

Judy Knarr

From: Powers, Tom <Tom.Powers@cassidyurley.com>
Sent: Tuesday, March 22, 2011 10:03 PM
To: Tom Moeller
Subject: RE: Welcome Back!

I have had no luck getting hold of Buzz. He was out of town last week but supposedly returned yesterday. I have a couple calls into him and will try again tomorrow.

From: Tom Moeller [tmoeller@madeiracity.com]
Sent: Tuesday, March 22, 2011 9:10 AM
To: Powers, Tom
Subject: Welcome Back!

Good Morning Tom,

Any updates I can pass along to City Council? Or, more importantly, is there anything I can do in meeting with Buzz?

Not sure if passed this along previously; the Antique Shop was appraised at \$95,000-\$105,000 in December 2008. B&B was appraised at \$310,000-\$370,000 at the same time.

Thomas W. Moeller
City Manager

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www.madeiracity.com

Judy Knarr

From: Powers, Tom <Tom.Powers@cassidyurley.com>
Sent: Monday, May 23, 2011 7:59 AM
To: tmoeller@madeiracity.com
Subject: RE: Economic Development Committee Meeting

OK, I will wait to hear from you. In the meantime, how many copies of the four alternatives should I print up.

From: tmoeller@madeiracity.com [tmoeller@madeiracity.com]
Sent: Sunday, May 22, 2011 10:31 PM
To: Powers, Tom
Subject: Re: Economic Development Committee Meeting

Hi Tom,

I'll call you first thing tomorrow. The time will be more like 8:00 so we can meet with the entire council in executive session.

Tom Moeller
Sent from my Verizon Wireless BlackBerry

From: "Powers, Tom" <Tom.Powers@cassidyurley.com>
Date: Sun, 22 May 2011 18:45:32 -0600
To: Tom Moeller<tmoeller@madeiracity.com>
Cc: Mike Wentz<mike@wentzdesign.com>; Powers, Tom<Tom.Powers@cassidyurley.com>
Subject: RE: Economic Development Committee Meeting

Tom,

Are we still on for 5:30 pm tomorrow (Monday) to present our ideas. Mike and I are planning on being there unless we hear otherwise.

From: Tom Moeller [tmoeller@madeiracity.com]
Sent: Friday, May 13, 2011 4:13 PM
To: 'John Dobbs'; Rick Brasington; 'Steuer, Mike'; Powers, Tom; mike wentz
Cc: 'Robert P. Malloy'
Subject: Economic Development Committee Meeting

All,

We are confirmed for 5:30 PM, Tuesday, May 17th in the Municipal Building. We will adjourn into Executive Session to discuss Real Estate.

Thomas W. Moeller
City Manager

City of Madeira
7141 Miami Avenue
Madeira, OH 45243

Judy Knarr

From: Powers, Tom <Tom.Powers@cassidyturley.com>
Sent: Tuesday, July 05, 2011 10:55 AM
To: Tom Moeller
Subject: RE:

OK. I am available until about 4:30 if you could call prior to that.

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From: Tom Moeller [<mailto:tmoeller@madeiracity.com>]
Sent: Tuesday, July 05, 2011 10:41 AM
To: Powers, Tom
Subject: RE:

Good Morning Tom,

I'll run this by the Law Director to get his thoughts on how this fits into the situation. I'll call you later today.

Thomas W. Moeller
City Manager

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From: Powers, Tom [<mailto:Tom.Powers@cassidyturley.com>]
Sent: Tuesday, July 05, 2011 8:47 AM
To: Thomas W. Moeller
Subject:

I had called Friday because I had another idea/questions regarding the approval process. My thought was: would it make sense if we were able to get a long term ground lease on the property, then put our addition on and once we were established (say 1-2 years) that you then have a referendum to sell us the fee simple interest). That way we would not have to wait for 6-8 months for a referendum and could get started right away, and also gives us a chance to eventually own the property. There are risks involved for us if the referendum does not pass but something we may want to consider.

Give me a call today if you have a chance to catch up on everything.

Thanks.

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Judy Knarr

From: Powers, Tom <Tom.Powers@cassidyturley.com>
Sent: Monday, August 08, 2011 11:32 AM
To: Tom Moeller
Cc: Powers, Tom
Subject: FW: Paxton's celebrates 10 years- news article
Attachments: Paxton's celebrates 10 years in Loveland article.pdf

Tom,

Ran across this article from about year and half ago over the weekend. Thought you and maybe some of the city council would be interested in reading it. It tells a pretty nice story of all the things we have tried to do to be part of the Loveland community and fabric of the city. I really think we could do the same and more for Madeira if we get the chance.

Any updates please let me know.

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or commitment by the sender or Cassidy Turley.

Judy Knarr

From: Doug Messer <Doug@dovlimited.com>
Sent: Tuesday, August 23, 2011 2:53 PM
To: Tom Moeller
Subject: RE: Follow up

Can I meet with you on Friday, Chases plan has changed a little bit

From: Tom Moeller [<mailto:tmoeller@madeiracity.com>]
Sent: Tuesday, August 23, 2011 1:25 PM
To: Doug Messer
Cc: Powers, Tom; George Flynn; 'Born, Ken (GE Aviation, US)'; jdobbs@hsr.com
Subject: RE: Follow up

Hi Doug,

Just got back from a meeting with Mr. Powers. I shared with him my discussions with both you and the City Council in Executive Session last night. We should all plan to meet very soon to coordinate ideas/issues, etc. I believe Tom is out of town later this week, but may be available next week. He is having his architect take the plan you proposed from Chase and working a site plan for his project into the scheme.

Thomas W. Moeller
City Manager

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www.madeiracity.com

From: Doug Messer [<mailto:Doug@dovlimited.com>]
Sent: Tuesday, August 23, 2011 12:52 PM
To: tmoeller@madeiracity.com
Subject: Follow up

Tom-

Hope your party was a success.

Have you been able to contact Tom Powers yet? I had another meeting with Chase today, are you available Friday to meet with me?

Thank you,

Douglas Messer, Principal
Dov Limited
8110 Plainfield Road
Cincinnati, Ohio 45236

Judy Knarr

From: Powers, Tom <Tom.Powers@cassidyurley.com>
Sent: Friday, April 29, 2011 8:49 AM
To: tmoeller@madeiracity.com; Powers, Tom
Subject: Re: Update

Thanks for update. Will call you monday
Tom Powers
Executive Managing Director, Principal
Cassidy Turley
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tom.powers@cassidyurley.com

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From: Tom Moeller [<mailto:tmoeller@madeiracity.com>]
Sent: Friday, April 29, 2011 06:46 AM
To: Powers, Tom
Subject: Update

Good Morning Tom,

Talked with City Council about the idea of joining the buildings. There was some interest although a couple of members expressed concern about how it would look. I'm tied up most of the day so give me a call on Monday and we can discuss further. Have a good weekend

Thomas W. Moeller
City Manager

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Judy Knarr

From: Robert P. Malloy
Sent: Monday, March 11, 2013 4:23 PM
To: goconnell@graydon.com; thomas.powers@cassidyurley.com; Tom Moeller
Cc: Roccina S. Niehaus
Subject: Exclusive Right to Negotiate
Attachments: 1112759_2.DOC.doc

Please find attached a proposal intended to expedite our negotiations.

Of course, the attached does not represent any terms that have been approved by the City Council. Yet.

And I would propose that we plan to meet to discuss and draft the Contract to Purchase. What do your schedules look like in the next week?

Bob



Judy Knarr

From: Tom Moeller <tmoeller@madeiracity.com>
Sent: Monday, February 11, 2013 4:12 PM
To: 'Powers, Tom'
Cc: Roccina S. Niehaus; Robert P. Malloy
Subject: Madeira MHA option to purchase 1st draft 2-11-13 (2)
Attachments: Madiera MHA option to purchase 1st draft 2-11-13 (2).DOC.doc

Tom,

Attached is the first draft of the contract we discussed last week. There are obviously many specifics which still need to be addressed. As well, as stated last week, this has not been reviewed by Council and there's no authority to direct or approve any of the terms set forth in this document. It is an attempt to identify the practical and legal issues addressed in our meeting last week.

We will be discussing this in Executive Session with City Council this evening. We can connect later this week to discuss.

Thomas W. Moeller
City Manager

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Madeira, OH 45243

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Judy Knarr

From: Robert P. Malloy
Sent: Monday, March 11, 2013 5:48 PM
To: goconnell@graydon.com; thomas.powers@cassidyurley.com; Tom Moeller
Cc: Roccina S. Niehaus
Subject: Exclusive Right to Negotiate
Attachments: 1112759_2.DOC.doc

Dear Colleagues,

Here is the document per our discussion a little while ago. I think this will enable us to lock down the focus of discussions to completing a Contract to Purchase in the near future.

Tom Moeller,

Is it possible that you can have copies available for council members for tonight?

Bob

3e

ORDINANCE NO. 12-27

RECOGNIZING IMPORTANCE OF PRESERVING HISTORICAL LANDMARKS WHILE ENCOURAGING MIXED USE IN THE SAME VICINITY THAT ENHANCES ECONOMIC VITALITY IN SEGMENT OF THE CITY THAT IS NOT ONLY COMPELLING BUT IS COMPATIBLE WITH USES IN THE IMMEDIATE AREA

WHEREAS, the City of Madeira recognizes the strength, vitality, and multi-generational interest that is preserved and promoted by designating areas that connect the City’s historical roots; and

WHEREAS, one primary objective of the recently adopted Downtown Core District regulations, which includes buildings of significant historical landmarks, is to encourage the active initiative of developers to propose uses that plan for economic destination points that thrive in part because of the integration of significant historical features; and

WHEREAS, “mixed use,” as a planning tool, envisions residential, retail, and office uses thriving within the same neighborhood, it does not mandate that each parcel or building provide components of each use. Rather, “mixed use” can be achieved, perhaps with a better balance, by encouraging the focus of each new development to achieve the single highest and best zoning use for each parcel/development. In the end, individual residential, commercial and office uses better retain their own identity while becoming a welcome component to a mixed use zoning district; and

WHEREAS, the City is entrusted with historically significant property that is also the center of its downtown retail activities. Careful management is necessary to preserve this historical doorway to our past, present and future. Careful planning is necessary to encourage development that preserves the vital historical links while celebrating the desirability of the retail epicenter of the City.

NOW, THEREFORE, BE IT ORDAINED that in order to balance the competing but complementary uses inherent in retail and historical uses so that such uses co-exist to complement each type of use in such a way as be a benefit to the citizens of Madeira, both business and residential, the Council of the City of Madeira hereby adopts the following plan to enhance the public good of the historical and vibrant community of Madeira:

Section 1. That the City, for planning purposes, hereby designates the following described area as the Muchmore Historical Area: It is outlined on the attachment as Exhibit A. It is bound on the West by Miami Ave, on the south by the railroad tracks, on the east by the storm water culvert and on the north by Laurel Avenue.

Diane D. Novak 10/23/12
Diane D. Novak
Clerk of Council

3e

Section 2. That the City hereby commits to preserving historical significant landmarks within the Muchmore Historical Area while seeking ideas that would combine destination retail businesses that complement certain historical landmarks as accessory destinations. In furtherance of this objective, the City shall reserve its authority under constitutional home rule provisions of the Ohio Constitution to acquire or convey such interests in real estate within the Muchmore Historical Area to preserve and promote the two objectives of this Ordinance: Preserving the significance of historical landmarks while promoting compatible business uses within the Muchmore Historical Area (MHA). This Ordinance is a measure relating to Council's determination to proceed with public improvements compatible with the stated objectives. (Dayton's Grill "like".)

The only developer was Mr. Tom Powers friend of Tom Moeller - owner of Dayton's Grill love land

Section 3. That the City hereby commits to providing a vision of the MHA, after consultation with developers and with persons and organizations committed to preserving the significant historical landmarks of this area and developers who share this mixed use vision. While reserving its obligations to make decisions consistent with the long term good of the community, which meet the two prong goal stated herein (preservation of historical significant landmarks and creating a compatible retail destination) the City shall commit to the best available plan that achieves its objectives.

This paragraph was inserted for only one reason - Dayton's Grill will Restaurant.

Section 4. That in furtherance of accomplishing its two prong public improvement plan described herein, the City may acquire or convey, without bidding, such interests in real estate within the area that the City deems appropriate to fulfill this public improvement. This plan of public improvements may include private real estate within the described area, with or without improvements. Such acquisitions or conveyances may be for the purpose of assemblage of property that the City deems incidental and consistent with the purposes of this plan for public improvements. Property conveyed by the City shall contain provisions for restriction of uses of any property interest conveyed to those consistent with this public improvement and shall contain clauses causing the reversion of such property to the City of Madeira should the property not be used in a manner consistent with the public improvement plans.

PASSED ON THE 22ND DAY OF OCTOBER, 2012,
BY THE FOLLOWING 6-0 VOTE:

YEA:
Melisa Adrien
Brasington
Tim Dicke
Rick Staubach
Rob Steier
Mike Steur

NAY:

ABSTAIN:

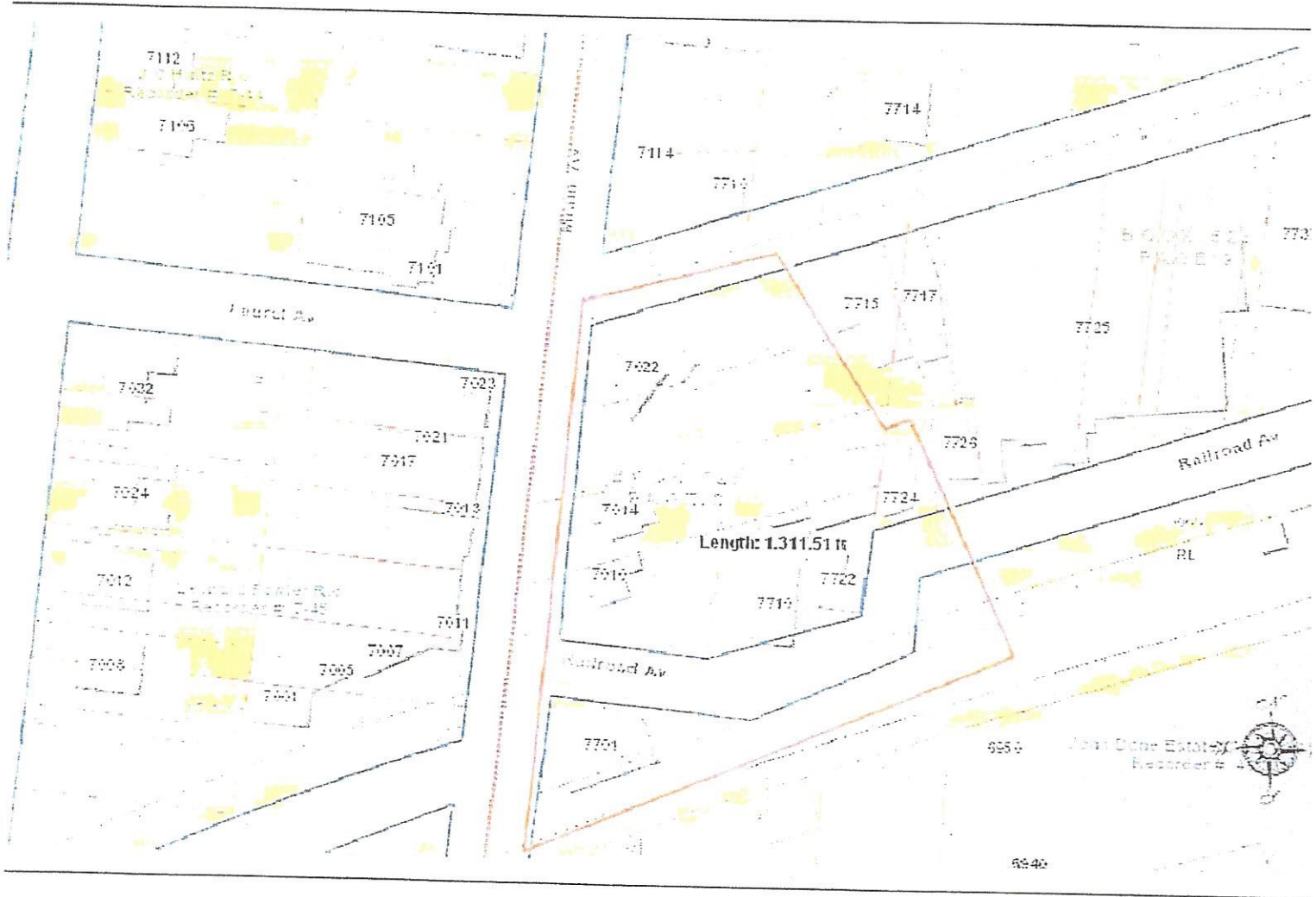
ABSENT:
Ken Born

Rick Brasington, Mayor

Diane D. Novakov
Diane D. Novakov, Clerk of Council

Diane D. Novakov 10/23/12
Diane D. Novakov
Clerk of Council
Date

ORDINANCE NO. 12-27
EXHIBIT A



Certified Copy
Diane D. Novak - 10/23/12
Diane D. Novak Date
Clerk of Council



Judy Knarr

From: Robert P. Malloy
Sent: Friday, March 08, 2013 7:46 PM
To: goconnell@graydon.com; thomas.powers@cassidyurley.com; Tom Moeller
Cc: Roccina S. Niehaus
Subject: Madera MHA option to purchase 4th draft 3-8-13.DOC
Attachments: Madera MHA option to purchase 4th draft 3-8-13.DOC

The efforts to draft an Option to Purchase that clearly achieves the respective goals of the City and Purchaser has been exciting and illuminating. It has also been difficult. In the midst of preparing another draft of the document, we realize that, perhaps, we are trying to cram too much into the first document. This revelation is based on the recognition that the Purchaser wants this first document to be construed in such a way that a subsequent document, the Contract to Purchase, will contain nothing that will conflict with the first document. That pretty much requires all the terms, conditions, and restrictions to be put in the first document, which has now been titled "Option to Purchase." In addition, the discussion regarding the issue of the right of first refusal alone suggests that an "Exclusive Right of Negotiation" would serve both parties better.

I am concerned that the present course will (perhaps already has) result in actually prolonging the negotiations. And it could result in an impasse.

Here is an alternative proposal. There is no intent to change the ultimate goals, which are to enable the City and the Purchaser to work cooperatively to achieve a publicly driven economic development through the cooperation of private and public efforts. We want to enable a wonderful, energetic restaurant to thrive within the surrounding public space that integrates the historically inspired Centennial Plaza, the train station, the significance of the Muchmore Historical Area with public parking that serves all these activities.

It is recommended that unless the attached draft of the Option To Purchase is satisfactory to all parties (and it is not), that we alter the initial steps. Instead of an Option to Purchase, we prepare an agreement that grants to Tom Powers (PMABC) the Exclusive Right to Negotiate with the City for the next six months (with a rights to extend.) This proposed Agreement will provide that the City and Powers will use best efforts to negotiate in good faith to reach agreement in the form of a Contract to Purchase without unreasonable delay. The intent is to have a final Contract to Purchase completed and approved long before the expiration of Exclusive Right to Negotiate. This means it (Contract to Purchase) could be completed in a month or two, which would actually accelerate the time table contemplated under the Option to Purchase.

Therefore, please review the attached discussion regarding the Option to Purchase. If that appears close to achieving our initial goals, we can work toward finalizing it. But otherwise, let's do the Exclusive Right agreement. The Exclusive Right to Negotiate agreement will not force us to completely craft every possible term of the final agreement - at this time. Remember, we initially were thinking that a simple contract would allow us time and reasonable assurance, for both parties, to work out the details for the Contract to Purchase. But, as negotiations proceeded, both parties have attempted to put more and more details in the first, preliminary, document. This does not work in favor of either party.

Please let us know if the Exclusive Right to Negotiate seems like the better path. If I recall, an early idea was simply to designate Tom Powers as a "Preferred Developer." But as examination of the issues proceeded, it became clear that both parties wanted to protect their interests for now and the future. As a result, this document is changing. We are now negotiating the final terms rather than a preliminary agreement. Please understand that the negotiations and drafting that have been completed will still be valuable. We want to get this done. But backing up right now might allow us to go forward more expeditiously.

A simple declaration that Tom Powers is granted the Exclusive Right to Negotiate with the City will benefit both parties. We will then move towards a Contract to Purchase.

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From: Powers, Tom [<mailto:Thomas.Powers@cassidyturley.com>]
Sent: Friday, March 01, 2013 3:30 PM
To: Robert P. Malloy
Cc: goconnell@graydon.com; Powers, Tom; Tom Moeller; Roccina S. Niehaus
Subject: Re: Madeira - Powers

Jerry and Tom. Is it possible that I can talk directly with Bob so that we can move this along. I believe both of you had said that is find but want to confirm.

Sent from my iPhone

On Mar 1, 2013, at 12:40 PM, "Robert P. Malloy" <RPMalloy@WoodLamping.com> wrote:

Dear Jerry,

Tom Powers left a voice mail asking for me to call. I hesitate to return the call for obvious ethical reasons.

But it does trigger a thought about what is missing from the proposed agreement. Tom has described with great enthusiasm the restaurant he envisages in the center of Madeira. Council, and the city in general, shares this enthusiasm. But for purposes of moving towards an agreement that both parties can endorse, we do need to have a description of the uses, activities and improvements that are planned for the site. Can you and Tom provide such a description that can be used as the threshold guide for what is expected to be built on the site as well as the activities that are intended. We can then incorporate this information into the proposed Option to Purchase. This will help us with discussions and decisions on the pending issues.

Thanks

Bob

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Payment of purchase price: \$175,000 at closing and the remaining \$103,000 in equal payments of \$14,714 per year over 7 years

Acreage

Approximately 0.267 acres (enough for a 5,000 to 6,000 sf first floor and room to park one row of cars immediately behind the building)

City Assistance

In order to make this a long term successful project from both the investors standpoint, the City's and most importantly the people, we would like the assistance of the City with the following items to the extent possible:

- City to apply for TIF for site development in an amount equal to 10 times the estimated real estate tax that would be applicable to our project
- Assist in securing the approvals necessary in order to obtain a liquor license
- Assistance with any other incentives that may be available through the city, county or state.
- Securing a variance on number of parking spaces required for the development
- Use of the remaining property that the city will own for parking purposes
- City to remove the two houses from the property at their cost
- Continue to pursue the purchase of the B&B mower property
- If B&B is not interested in selling, the assist in getting their approval to redesign their outside storage area to allow for additional parking.

First Right for ChooChoo's

We would have a first right to lease the train station whenever it should become available, as long as we are still the owners of the proposed new development

Easement with adjoining property

The City would be responsible for obligations associated with the perpetual easement agreement between the City and the adjoining Schneider property

Price Reduction

If Planning and Zoning requires us to build a second floor that consists of any more than 49% of the size of the first floor, then the purchase price to be reduced to \$242,000 (low end of appraised value) and the initial payment to be reduced to \$150,000 with the remainder to be paid in equal annual installments over 7 years.

Contract

We would anticipate entering into some form of 'Preferred Developer' agreement which would give us sufficient time to complete all the due diligence items that would be necessary in order to get all final approvals from all involved prior to ground breaking.

Our goal is to create something very unique for Madeira's business district that will be a draw and gathering place for all people in the community and elsewhere to enjoy what Madeira has to offer. Our goal is to help bring a more vibrant life to the business district not only during the day, but especially into the evenings. We would hope that our project would lead to others wanting to do similar developments and that downtown Madeira would enjoy some of the same things that Loveland has benefited from as their historic district became a reality and a gathering place for that community. We can not do this if the finances do not make sense so we are hoping the city will work with us in all matters, both financial and other, to help create something we all can be proud of and that will be both a focal point of the business district and remain so for years to come.

3E

CERTIFIED COPY

STATE OF OHIO

City of Madeira SS
County Hamilton

I, Diane D. Novakov, Clerk of the City of Madeira , Ohio do hereby certify that the foregoing is a true and correct copy of Ordinance No. 13-15 adopted by the legislative Authority of the said City on the 25th day of March, 2013 that the publication of such ordinance be made and certified of record according to law; that no proceedings looking to a referendum upon such ordinance have not been taken; and that such ordinance and certificate of publication thereof are of record in Ordinance No. 1 3-15, Page 15.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, this 14th day of May, 2013.

Diane D. Novakov
Diane D. Novakov, Clerk of Council

City of Madeira , Ohio

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ORDINANCE NO. 13-15

**ORDINANCE APPROVING AGREEMENT FOR EXCLUSIVE RIGHT TO
NEGOTIATE AND AUTHORIZING AND DIRECTING CITY MANAGER TO
EXECUTE SUCH AGREEMENT**

WHEREAS, Ordinance 12-27 adopted a plan to encourage the active initiative of developers to propose uses that plan for economic destination points that thrive in part because of the integration of significant historical features; and

WHEREAS, the City is entrusted with historically significant property that is also the center of its downtown retail activities; and

WHEREAS, careful planning is necessary to encourage development that preserves the vital historical links while celebrating the desirability of the retail center of the City; and

WHEREAS, The City, for planning purposes, has designated the area bound on the West by Miami Ave, on the south by the Railroad tracks, on the east by the storm water culvert and on the north by Laurel Avenue as the Muchmore Historical Area; and

WHEREAS, the City is committed to preserving historical significant landmarks within the Muchmore Historical Area while seeking ideas that would combine destination retail businesses which complement certain historical landmarks as accessory destinations; and

WHEREAS, The City's goals are to preserve the significance of historical landmarks while promoting compatible business uses within the Muchmore Historical Area (MHA); and

WHEREAS, Ordinance 12-27 is a measure setting forth Council's determination to proceed with public improvements compatible with the stated objectives; and

WHEREAS, The City has committed to consultation with developers and with persons and organizations committed to preserving the significant historical landmarks of this area and developers who share this mixed use vision of the area; and

WHEREAS, The City may convey without bidding, such interests in real estate within the area that the City deems appropriate to fulfill this public improvement. Such conveyances shall contain provision for restriction of uses of any property interest conveyed to those consistent with this public improvement; and

NOW, THEREFORE, BE IT ORDAINED that the Council of the City of Madeira, in order to enhance the public good of the historical and business area of Madeira, approves and authorizes the exclusive right to negotiate as follows:

Section 1. That the Council of the City of Madeira hereby approves an agreement for the exclusive right to negotiate (ERTN) with PMABC, LLC and authorize and directs the City Manager to execute such agreement substantially in the form set forth on Exhibit A, attached hereto.

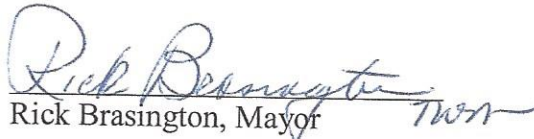
3F

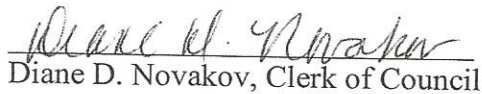
Section 2. That the City understands and agrees that it shall refrain from weighing and considering any other proposals for the use of such property during the term of the ERTN. However, City shall encourage comments, suggestions and ideas concerning such development.

Section 3. That this Ordinance may be adopted upon a single reading and is not subject to a referendum.

**PASSED ON THE 25TH DAY OF MARCH, 2013
BY THE FOLLOWING 6-0 VOTE:**

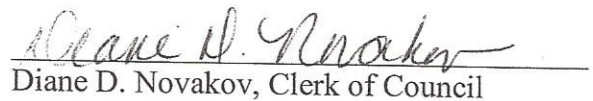
YEA:	NAY:	ABSTAIN:	ABSENT:
Melisa Adrien			Tim Dicke
Ken Born			
Rick Brasington			
Rick Staubach			
Rob Steier			
Mike Steur			


Rick Brasington, Mayor


Diane D. Novakov, Clerk of Council

CERTIFICATE

The undersigned, Clerk of Council of the City of Madeira, hereby certifies this to be a True and exact copy of Ordinance No. 13-15, adopted by the City Council fo the City of Madeira on March 25, 2013. This legislation is not subject to referendum per the Madeira Home Rule Charter Article XII, Section 3.


Diane D. Novakov, Clerk of Council

Certificate of Copy

 5/14/13
Diane D. Novakov Date
Clerk of Council

EXCLUSIVE RIGHT TO NEGOTIATE

THIS EXCLUSIVE RIGHT TO NEGOTIATE (“**ERTN**”) is entered into and effective this _____ day of _____, 2013 (“**Execution Date**”) by and between **PMABC, LLC**, an Ohio limited liability company, or a company to be formed (“**PMABC**”) and the **City of Madeira, Ohio**, an Ohio municipal corporation, (“**Madeira**”), for the purchase of the property located at 7010 and 7014 Miami Avenue, a parcel of 0.267 acres more or less.

WITNESSETH:

WHEREAS, Madeira is the owner of the above real property situated in Hamilton County, Ohio, which is described above and more specifically described and depicted on the attached Exhibit “A” (the “**Property**”); and

WHEREAS, Madeira desires to grant to PMABC, and PMABC desires to obtain from Madeira, an Exclusive Right to Negotiate the Property;

WHEREAS, Madeira has had an appraisal performed on the Property and Two Hundred Seventy Eight Thousand Dollars (\$278,000.00) represents the fair market value of the Property;

WHEREAS, Madeira has passed an Ordinance No. 12-27, setting forth its goals to develop the Muchmore Historic Area (“**MHA**”), which is generally depicted in the drawing set forth on Exhibit “B”;

WHEREAS, PMABC desires to develop the Property with one or two story building containing a restaurant and perhaps additional space for an office, with construction to be compatible with overlapping goals within the MHA to preserve the historical significance of the area and promote economic development (“**Project**”). The Project, as currently proposed, is attached hereto as “Exhibit “C”;

WHEREAS, City Council has set forth its goals for public improvements within the MHA with the intent to establish recognition of the historic significance of this area and the economic development that can be derived from intertwining public and private initiatives; and

WHEREAS, Madeira's intent is to reserve appropriate interest in all development to assure that the area integrates the goals of this community, which may require any private buildings developed within the MHA to include mechanisms for recognizing the historical significance of the area such as displaying photographs and other memorabilia that portray the history of Madeira, encouraging civic groups, including the Madeira Historical Society, to conduct breakfast, lunch and dinner meetings, using reasonable efforts to incorporate historically appropriate architecture into improvements within this area and encourage the private developer to support civic events in a reasonable manner; and

WHEREAS, as a matter of law, public improvements need not adhere to local zoning requirements when such regulations may hinder the public development and, therefore, City Council is vested with the authority to determine and ascertain whether applications of certain zoning restrictions to this public development may be waived in favor of enforcement of use restrictions by the incorporation of restrictive covenants into the Purchase Agreement anticipated by this Exclusive Right to Negotiate; and

WHEREAS, it is contemplated that there shall be a Right of Reentry or equivalent measure to assure that the use agreed upon by Madeira and Purchaser is achieved and maintained and, if not, that the

City retains or regains sufficient legal control of the Property to make sure any future use of the Property is compatible with the goals of the MHA; and

WHEREAS, the public improvement of the MHA contemplates that certain improvements within the MHA will be owned and managed by the Purchaser herein, subject to guidance and restrictions set forth in the restrictive covenants that encourage and confirm the intended economic development and the recognition of the historical significance of the area.

WHEREAS, Madeira and PMABC have negotiated and continue to negotiate in good faith to enter into a Contract to Purchase for the Property, and there shall be no open opportunity for competing offers to develop the Property for the duration of the ERTN.

NOW, THEREFORE, in consideration of the mutual promises described herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, PMABC and Madeira hereby promise, covenant and agree as follows:

- 1. Grant of the ERTN.** Madeira, for and in consideration of the sum of One Thousand Dollars (\$1000.00) paid by PMABC ("**ERTN Price**"), shall grant to PMABC an Exclusive Right to Negotiate to purchase the Property which shall continue for sixty (60) days from the date of execution of this ERTN ("**Expiration Date**"). In the event that Madeira and PMABC have not consummated a Contract to Purchase, by the Expiration Date, PMABC shall have the right, upon written request, to unilaterally extend the Expiration Date of this ERTN by an additional sixty (60) days. No additional consideration shall be necessary for this extension.
- 2. Restriction on Sale During Term of ERTN.** Madeira agrees not to sell, offer for sale or consider any offer for sale of the Property during the duration of the PMABC's ERTN and continuing through the Expiration Date and any extension.
- 3. Inspections/Due Diligence.** PMABC, its agents and employees, during the term of this ERTN is entitled to undertake inspections and perform initial due diligence, through the Expiration Date, at PMABC's sole expense, including, Phase I environmental and determine reasonability of access. However, PMNBC shall not cause damage to the existing improvements.
- 4. Ownership and Condition of Property.** Madeira represents to PMABC that [i] Madeira shall have the full right to execute this ERTN, and [ii] no person or business has any leasehold, contractual or other rights or claims to be in possession of the Property, except as has been disclosed by Madeira to PMABC, and as recorded in the Hamilton County, Ohio records.
- 5. Authority of PMABC to Execute ERTN.** PMABC represents and warrants to Madeira that it is/or will be lawfully organized, active and in good standing according to the Office of the Secretary of State of Ohio and that it has taken all necessary steps required by law or any governing agreement to authorize the execution of this Exclusive Right to Negotiate, and that an officer, agent, or member having appropriate authority has executed this Exclusive Right to Negotiate on its behalf.
- 6. Non-Transferability of the ERTN.** This ERTN may not be assigned, transferred or pledged.
- 7. Not a Contract to Purchase.** It is understood and acknowledged by Madeira and PMABC that this ERTN is not a contract to purchase. However, both parties shall continue to negotiate in good faith to consummate a Contract to Purchase prior to the expiration of the term of this ERTN.

8. **Acknowledgment.** The parties have read the entire contents of this ERTN and acknowledge receipt of a copy of same.

9. **Notices.** Any notices required to be given under this Exclusive Right to Negotiate are valid only if sent to the following addresses:

IF TO PMABC:

PMABC, LLC:
Thomas M. Powers, Managing Member
8500 Mohican Lane
Cincinnati, Ohio 45242

With a copy to:

Gerald F. O'Connell, Jr., Esq.
Graydon Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202
Email: goconnell@graydon.com

IF TO MADEIRA:

Tom Moeller
City Manager
Madeira Municipal Building
7141 Miami Avenue
Madeira, Ohio 45243
Phone
Fax
Email: tmoeller@madeiracity.com

With a copy to:

Robert P. Malloy, Law Director
Wood and Lamping LLP
600 Vine Street, Suite 2500
Cincinnati, Ohio 45202
Phone 513.852.6043
Fax 513-419-6443
Email: rpmalloy@woodlamping.com

10. **Execution and Recording.** This ERTN may be executed in multiple counterparts, each of which shall be deemed an original.

PMABC LLC

By: _____

Title: _____

City of Madeira, Ohio

By: _____

Title: _____

STATE OF OHIO)
) ss.
COUNTY OF _____)

This document was signed and acknowledged before me this ____ day of _____, 2013, by _____, the authorized member of PMABC LLC named above, to be his/her/its/their free act and deed.

NOTARY PUBLIC
My commission expires: _____

STATE OF OHIO)
) ss.
COUNTY OF HAMILTON)

This document was signed and acknowledged before me this ____ day of _____, 2013, by _____ the _____ of City of Madeira, Ohio named above, to be its free act and deed.

NOTARY PUBLIC
My commission expires: _____

HAVE SEEN AND APPROVED:

Robert P. Malloy, Law Director

Exhibit "A"
(to be more specifically described by boundary survey)

Exhibit "B"

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Exhibit "C"

PMABC, LLC's plans and intentions for development of the subject property are to build a building, designed in a manner to compliment the historic location of the site within the heart of the Madeira business district. Our plans are at a minimum to build a building large enough to operate a family oriented restaurant similar in nature to the one we own and have successfully run for 13 plus years in another Cincinnati suburban area. We anticipate needing between 4-5,000 square feet. Specifically, our intent is to have an indoor eating area, a bar and an outdoor patio that all showcase and play off the historic location within the downtown area. We plan on serving lunch and dinner 7 days a week with the bar being open during normal business hours. We also plan on serving breakfast on the weekends, however, based on our past experience at our current restaurant, we will probably wait a few months after opening this new establishment to allow for ramping up of the business before we would start the breakfast service.

We may wish to build a slightly larger building that has additional space on the first floor which would be used for a complimentary retail use - either by some PMABC LLC related entity or by a third party tenant. Any second floor space may be used for office, apartments, or a second floor patio of some sorts for our restaurant. Until we have feedback from the City regarding design requirements and have had a chance to analyze the viability of building a larger facility than we need for the restaurant, we will not be able to definitively outline what additional space, if any, would be built and what its intended use would be.

Donnellon
Donnellon & Miller

A LEGAL PROFESSIONAL ASSOCIATION

Terrence M. Donnellon
513-891-7087
tmd@donnellonlaw.com

November 13, 2013

VIA ELECTRONIC MAIL (sirion@cms.hamilton-co.org)

Ms. Susan Rion
Clerk, Judge Carl Stich, Jr.
Court of Common Pleas
Hamilton County, Ohio


RE: CASE No.: A1303920 / State, *ex rel*, Horwitz v. Brasington, et al.

Dear Sue:

Enclosed is an Agreed Consent Decree/Final Entry to conclude the Horwitz litigation pending before Judge Stich. I have executed the Entry on behalf of Curt Hartman with his email authorization and have signed on behalf of my clients as Respondents.

Please accept the Final Entry to conclude the matter. If there are questions, please contact me.

Sincerely,



Terrence M. Donnellon,
Attorney at Law

TMD/ld

Enclosure

cc: Curt C. Hartman, Esq.
Thomas W. Moeller

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Terrence M. Donnellon (0017869)
Attorney for Respondents

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO, <i>EX REL</i> , JAMES HORWITZ,	:	CASE NO.: A1303920
Relator,	:	(Judge Stich)
v.	:	
RICHARD M. BRASINGTON, et al.	:	AGREED CONSENT DECREE/ FINAL ENTRY
Respondents.	:	

The claims asserted herein by Relator James Horwitz against the Council of the City of Madeira, Ohio, alleged violations of R.C. § 121.22 (the Ohio Open Meetings Act), relating to the holding of certain executive sessions and the accuracy of minutes of certain meetings by the Madeira City Council.

Based on the pleadings and briefs submitted by the parties it is clear that the Madeira Charter has reserved to the City of Madeira the powers of self-government, including the power to determine when meetings are to be open to the public. When the City Council adopted §30.02 of its Code of Ordinances, the City superseded certain provisions of R.C. §121.22 and adopted its own open meeting law whereby it determined the topics appropriate for executive sessions and the procedure to be followed in adjourning to Executive Session. The general reservation of rights to the citizens of Madeira within their Charter and the supremacy of its Charter and legislative enactments over state law are consistent with the principle of Charter supremacy outlined in *State ex rel. Bednar v. City of North Canton*, (1994) 169 Ohio St. 3d 278, 1994 Ohio 89, 631 N.E. 2d 621 and *Hipp v. City of North Canton*, (1996) 75 Ohio St. 3d 221, 1996 Ohio 225, 661 N.E. 2d 1090.

The principle of law requiring open meetings has not been superceded by Madeira's Charter, but the manner in which such meetings are to be conducted, including the holding of executive sessions, is legislatively governed by the City now and in the future. The governing

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law with respect to whether an executive session can be properly be held concerning any particular subject is Madeira Code §30.02 and not R.C. §121.22.

However, to the extent that Madeira Code §30.02 fails to address or provide for other matters governed or addressed by R.C. §121.22 such that no conflict exists between the two laws, then the provisions of R.C. §121.22 and associated case law still govern and control the Madeira City Council, including the requirement to prepare, file and maintain full and accurate meeting minutes for all meetings and executive sessions of the Madeira City Council and any committees thereof. Since the commencement of this action, the Madeira City Council has remedied any alleged deficiency in the meeting minutes asserted in this action. However, nothing herein shall preclude or prohibit the Madeira City Council from either amending Madeira Code §30.02 or enacting additional legislation that addresses or provides for other matters currently governed by R.C. §121.22 to supersede such matters by local legislative action provided such actions are still consistent with and in conformity with the Madeira City Charter and state law.

Given that the law of the case has been decided, which will guide the Madeira City Council, its appointed officials and administration now and in the future, and given the uncertainty, risk and cost to the parties to continue to litigating this case, particularly the cost to the residents of Madeira, it is agreed that the dispute will be settled among the parties with the City contributing \$7,500.00 to the cost of these proceedings including all claims for attorney's fees.

This agreement is not an admission by the Respondents of any violation of law, but all parties recognize the value and efficiency in clarifying at this stage the law as applicable to the City of Madeira and the value and efficiency in closing this case without further record and without further cost of litigation.

Based upon these findings, agreed to and among the parties and confirmed by the Court, with the payment of the sum set forth herein, this matter is hereby closed with this Final Entry without further record and without further proceedings.

Judge Carl J. Stich, Jr.
Hamilton County Court of Common Pleas

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Curt C. Hartman

Curt C. Hartman (0064242) *TME*
Attorney for Relator
State Of Ohio, ex rel,
James Horwitz
(By email authorization 11/13/13)

Terrence M. Donnellon

Terrence M. Donnellon (0017869)
Attorney for Respondents
Richard M. Brasington, et al.