



MORGANSTERN, MACADAMS & DEVITO CO., L.P.A.

TRIAL ATTORNEYS AND COUNSELORS AT LAW

“Legal Solutions for Individuals, Families, and Businesses”

April 14, 2015

VIA EMAIL, REGULAR U.S. MAIL, AND CERTIFIED MAIL

Kevin M. Butler, Esq, Law Director
Lakewood City Hall
12650 Detroit Avenue
Lakewood, Ohio 44107

Re: Taxpayer Request for Legal Action to Preserve Lakewood Hospital

Dear Law Director Butler:

I represent Mr. Edward M. Graham, Esq., Mr. William J. Grulich, Ms. Deborah "D.L." L. Meckes, Marguerite Harkness, and all residents and taxpayers of the City of Lakewood. This letter constitutes the written request pursuant to Article VII, Section 1 (G), of the 2nd Amended Charter of Lakewood and Ohio Revised Code ("R.C.") 733.59 on behalf of my clients that you, as Law Director of the City of Lakewood, promptly apply to a court of competent jurisdiction for relief to preserve and ensure the continued operation of Lakewood Hospital for the benefit of the Lakewood community.

My clients are forced to take this action because of failed leadership. They are committed to holding the Mayor and City Council, and the leadership of Lakewood Hospital Association, Lakewood Hospital Foundation, and the Cleveland Clinic Foundation responsible and accountable for their actions and omissions in managing Lakewood Hospital and failure in being good stewards of these valuable assets in our community. The only course of action the City should be pursuing is to protect these assets and manage them in the best interests of the health and welfare of the citizens of the City of Lakewood. The City needs to ignore the strategic plan of the Cleveland Clinic and begin to focus on the economic and healthcare interests of its residents. The above named taxpayers request that you seek:

- Relief under Article VII, Section 1 (D), of the 2nd Amended Charter of Lakewood and Ohio R.C. 733.56 for an injunction to enjoin abuses of the corporate power of Lakewood and execution or performance of any contract in contravention of the 2nd Amended Charter of Lakewood and the Ordinances of the City of Lakewood relating to the preservation and continued operation of Lakewood Hospital;
- Relief under Article VII, Section 1 (E), of the 2nd Amended Charter of Lakewood and Ohio R.C. 733.57 for specific performance of the Amended and Restated Lease by and between the City of Lakewood and the Lakewood Hospital Association, dated December 23, 1996, as authorized by Ordinance No. 51-96 and the Definitive Agreement by and between the Cleveland Clinic Foundation and the Lakewood Hospital Association, dated December 1996; and

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- Relief under Article VII, Section 1 (F), of the 2nd Amended Charter of Lakewood and R.C. 733.58 for a writ of mandamus to compel City of Lakewood Officials, including the Mayor and Council, the performance of their duty under the 2nd Amended Charter of Lakewood and the Ordinances of the City of Lakewood to ensure the preservation and operation of Lakewood Hospital for the benefit of the Lakewood community.

Under the authority of Article XV of the Charter of the City of Lakewood and through adoption of Sec. 907.03 of the Codified Ordinances of the City of Lakewood, Council has declared "it necessary and conducive to the public health and general welfare to establish and it hereby does establish a municipal hospital of the City to be known as The Lakewood Hospital." As authorized by Ordinance No. 51-96, the City of Lakewood and the Lakewood Hospital Association entered into an amended and restated lease permitting the Hospital Association to enter into a definitive agreement with the Cleveland Clinic Foundation pertaining to the operation of Lakewood Hospital. The lease and agreement provide for operation of the Lakewood Hospital through the end of 2026.

The obligations and duties under the 1996 Amended and Restated Lease and Definitive Agreement as authorized by Ordinance No. 51-96 have been and are currently being evaded and/or violated. Among other things, the hospital facilities are not being maintained and services have been significantly diminished or eliminated. Moreover, the Lakewood Hospital Association together with the sole member of the Lakewood Hospital Association (i.e. the Cleveland Clinic Foundation) has assented to the referral and diversion of patients to other hospital facilities undermining the financial viability of Lakewood Hospital. Further, the Lakewood Hospital Association, and the Cleveland Clinic Foundation has provided notification in writing and by other means to patients, Lakewood Hospital employees and the greater Lakewood community that Lakewood Hospital will be closing. The above named taxpayers assert that City of Lakewood officials, including the Mayor and Council, have failed and continue to fail to fulfill their duties to ensure compliance with the 2nd Amended Charter of the City of Lakewood, the Codified Ordinances of the City of Lakewood and Ordinance No. 51-96 and the 1996 Amended and Restated Lease and Definitive Agreement.

These abuses of the corporate power of Lakewood and failure in the performance of duties are compounded by the fact that the Mayor and the two Council members who serve as Ex Officio Members of the Lakewood Hospital Association voted in favor of the January 14, 2015, Letter of Intent, rather than seeking recusal from the vote. That vote was in direct conflict with the exercise of their duties as public officials. As such, it is an abuse of the corporate powers of Lakewood for these three public officials to continue to participate in the consideration of those matters advanced in the Letter of Intent. It is further an abuse of the corporate powers of Lakewood for the Mayor to participate in consideration of this matter as the items outlined in the Letter of Intent benefit the Lakewood Hospital Foundation, Inc., to which the wife of the Mayor has a fiduciary responsibility as a member of the Board of Trustees. Similarly, it is an abuse of the corporate powers of Lakewood for Councilman Ryan Nowlin to participate in consideration of this matter as the items outlined in the Letter of Intent benefit the Lakewood Hospital Association, to which his

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law partner has a fiduciary responsibility as a member of the Board of Trustees. (The above named taxpayers would also like confirmation as whether or not the law office of which Councilman Nowlin is a partner is providing legal counsel to the Lakewood Hospital Foundation, Inc.)

My clients request that you, as Law Director for the City of Lakewood, bring an action in the name of the City of Lakewood to defend the Charter and Ordinances of Lakewood and to protect Lakewood Hospital and the economic interest of our community. If you fail to bring such action and include the necessary parties (including but not limited to the City of Lakewood, its officials, the Lakewood Hospital Association, the Cleveland Clinic Foundation and the Lakewood Hospital Foundation, Inc., my clients intend to enforce a right of action on behalf of and for the benefit of the public by pursuing a taxpayer claim under Article VII, Section 1 (G) of the 2nd Amended Charter of Lakewood and R.C. 733.59 for the relief outlined above. In the event, that you, as Law Director, fail to bring such an action by the end of business on Friday, May 1, 2015, a taxpayer claim will be commenced by the undersigned on behalf of the above listed clients.

The actions (including misfeasance and nonfeasance) of Lakewood City Officials and of the Lakewood Hospital Association, together with the Cleveland Clinic Foundation, the sole member of the Lakewood Hospital Association, are causing immediate and irreparable harm to the continued viability of Lakewood Hospital. These actions negatively impact the health and welfare of the citizens of Lakewood and require immediate attention.

Thank you for your consideration.

Sincerely,

/s/ Christopher M. DeVito

Christopher M. DeVito, Esq.

CC. Via Email **ONLY**:

Mayor Michael P. Summers
Ward 4 Councilperson Mary Louise Madigan, President of Council
Councilperson at Large Thomas Bullock
Councilperson at Large Ryan Nowlin
Councilperson at Large Cindy Marx
Ward 1 Councilperson David W. Anderson
Ward 2 Councilperson Sam O'Leary
Ward 3 Councilperson Shaun Juris

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