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Court of Appeals

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By: PATRICK S. VROBEL 0082832

Confirmation Nbr. 1075229

STATE OF OHIO, EX. REL., BRIAN J. ESSI

CA 16 104659

vs.

CITY OF LAKEWOOD, OHIO

Judge:

Pages Filed: 150

**State of Ohio ex rel.
BRIAN J. ESSI**

V.

Respondent.

ORIGINAL ACTION IN MANDAMUS

Relator Brian J. Essi (“Essi”) respectfully requests an order requiring the City of Lakewood (“Lakewood”) and its records custodian and former attorney of record, Kevin M. Butler (“Butler”), to appear under oath, subject to cross examination, and show cause why they should not be held in contempt of court for: (1) intentionally adulterating public records; (2) violating the February 15, 2017 Order by intentionally misrepresenting to the Court that Lakewood produced public records in response to 22 separate public records requests when Lakewood did not produce the records in response to those 22 public records requests; and (3) engaging in bad faith abuse in the performance of their governmental duties under the Ohio Public Records Act.

As a result of these intentional acts in violation of the statute and public trust, Lakewood and Butler simply cannot be trusted to fulfill this Honorable Court's March 9, 2017 and April 6, 2017 Orders. Accordingly, Essi requests the following relief:

1. An order finding Lakewood and Butler in contempt and engaging in bad faith conduct in violation of R.C 149.43.
2. An order appointing a qualified independent third-party consultant with expertise in digital discovery to serve as special master to gather public records from Lakewood and directly from Lakewood's servers and to monitor and oversee Lakewood's compliance with this Honorable Court's March 9, 2017 and April 6, 2017 Orders, with the costs of said independent third-party consultant to be paid for by Lakewood and/or its insurers.
3. An order amending the March 9, 2017 Journal Entry clarifying that, in addition to certifying the steps it undertook to locate the requested records, Lakewood must also certify the steps it did not undertake or could not undertake to locate the requested records due to the failure to preserve potentially relevant information, the failure to implement a litigation hold, or because of the spoliation of public records or evidence. In addition, where Lakewood did not undertake any steps to locate requested records because Lakewood claims that the records are in the possession of another entity, Lakewood must identify the records and location of those records.
4. An order to conduct a hearing to determine if there has been spoliation and altering of additional public records and evidence.

5. An order for Lakewood to pay Essi's reasonable attorneys related to this motion and for such sanctions as this Honorable Court deems just and fair.

The basis for this motion is outlined, more fully, below.

I. CONTEMPT, FRAUD, AND ABUSE

The details of the various wrongs and abuses perpetrated upon this Honorable Court and Essi by Lakewood and Butler are as follows:

1. Lakewood and Butler intentionally and fraudulently adulterated at least six public records in direct violation of their official public duties to notify Essi of redactions or make redactions plainly visible per R. C. 149.43(B)(1). In fact, rather than fulfill their official public duties to notify Essi of redactions, Lakewood and Butler proactively adulterated the documents in order to conceal information contained in the public records.¹ *See* Affidavit of Relator Essi ("Essi Aff."), attached hereto and incorporated herein as Exhibit A, ¶¶ 3-6. *See also* Exhibits 1-14. All of the adulterated records were produced to Essi while this action was pending and Lakewood additionally failed to make the Court aware of the adulterations on March 10, 2017, when Lakewood filed "Lakewood's Attachment to Answer" ("Lakewood's Attachment") pursuant to the Court's February 15, 2017 Order.² Before discovery of the fraudulent adulterations, Essi wrote to Butler inquiring about the lack of content on one of the records. Butler remained silent and did not respond. Essi Aff. ¶ 5f.

¹ While the instant action is a civil matter, it is not inconceivable that the known conduct of Butler and additional conduct discovered during this case may give rise to a violation of R.C. 2913.42 – i.e., tampering with records.

² Curiously, Lakewood did note the few instances in Lakewood's Attachment that redactions were made, but failed to apprise the Court of the intentionally hidden redactions.

2. Lakewood and Butler violated this Honorable Court's February 15, 2017 Order by knowingly making over 22 false statements of fact and material misrepresentations in Lakewood's Attachment filed on March 10, 2017. Specifically, Lakewood and Butler misrepresented to this Honorable Court that they had produced public records in response to 22 separate public records requests when Lakewood did not produce any records in response to those 22 public records requests. Essi Aff. ¶¶ 7-7i. Lakewood claimed it provided public records in response to 86 of Essi's requests when in fact Lakewood provided records in response to only 64 of those requests. Essi Aff. ¶ 7c.
3. Lakewood and Butler knowingly made false statements of fact and misrepresentations in Lakewood's Answer filed on July 19, 2016, its Answer to Relator's Amended Complaint filed on March 10, 2017, and its Motion for Judgment of the Pleadings filed on March 29, 2017. Namely, Lakewood claimed it had, in 174 instances, informed Essi of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties when Lakewood did not so inform Essi in all 174 instances. Essi Aff. ¶¶ 8-8f.
4. Lakewood and Butler repeatedly denied the existence of inculpatory public records and, after prolonged delay and stonewalling, produced records they repeatedly denied existed.³ Essi Aff. ¶¶ 9-9j; Exhibits 15-18.

³ Had the records been produced timely, these records could have affected the outcome of *Skindell v. Madigan*, Cuyahoga No. CV-15-8555961 (Judge Stuart Friedman) and the appeal of that case in this Court. These records were inculpatory in relation to false and misleading testimony given by Councilman O'Leary and false representations by Attorneys Butler and Robert E. Cahill made to the Court in the *Skindell* case.

5. Lakewood and Butler improperly delivered public records in the possession of Lakewood to attorneys for the Cleveland Clinic Foundation (“Clinic”) and Lakewood Hospital Association (“LHA”) for review as to whether the public records are public in order to delay and avoid releasing them to the public. Essi Aff. ¶¶ 10-10e; Exhibits 19-22.⁴ Lakewood subordinated its duties to Essi due to Lakewood’s perceived obligations to the Clinic and LHA. While some of these public records were delivered to the Clinic lawyers on March 23, 2015 – i.e., eight months ago – Butler wrote Essi on September 12, 2016, “I am told counsel’s review will be completed early this week.” Essi Aff. ¶ 10a.
6. Lakewood and Butler adulterated a public record created by a public consultant which was then used in Mayor Michael Summers’ partisan political campaign for re-election and otherwise used a public consultant paid with public money to create a public record for political purposes. Essi Aff. ¶¶ 11-11d; Exhibits 23- 25.
7. Lakewood and Butler improperly marked public records “Attorney-Client Privileged” to conceal matters of great public interest and to conceal inculpatory evidence of the improper legislative and other governmental functions and activities of Butler and Lakewood City Council in likely violation open meetings laws. Essi Aff. ¶¶ 12-12b; Exhibit 17. Butler, by his own writings, led and coordinated a secret “communication strategy” involving the legislative process, due diligence by public consultant (Huron Consulting) allegedly working for

⁴ The examples provided in the Exhibit A affidavit are not exhaustive of the instances in which Lakewood and Mr. Butler subordinated his judgement in deference to the Clinic to decide for Lakewood what public records Lakewood would release to the public.

Lakewood City Council, and the public role out by Butler of decisions made by City Council that had nothing to do with attorney-client privileged activities.

II. THE PUBLIC'S INTEREST AND RIGHT TO KNOW

This case was filed by a citizen journalist, Essi, and is about his efforts to discover and publicly report on governmental functions and activities of the highest level of public interest. *See* Affidavit of James O'Bryan, attached hereto and incorporated herein as Exhibit B (O'Bryan is the publisher of the Lakewood Observer which include articles written by Essi and published by the Lakewood Observer). The public interest concerns the details of the legislative and administrative functions of Lakewood that led to the sale of the Lakewood owned Lakewood Hospital once valued at over \$150 million. Consequently, this case is about Essi's First Amendment right to report on his local government's activities and functions, the public's right to know those details, and, therefore, the case touches the heart and soul of transparency and openness (and the lack thereof) of the local government in Lakewood, Ohio. The public records sought by Essi concern the who, what, when, where and how concerning the most important governmental transaction in the history of Lakewood – the sale and closure of the largest charity and employer in Lakewood which was owned by Lakewood.⁵

III. THE COURT'S ORDERS

This Honorable Court's Orders of March 9, 2017, and April 12, 2017, make it clear that this Honorable Court wants to see all of Lakewood's records that Lakewood redacted and withheld from the public and what efforts Lakewood made to comply with R.C. 149.43 to find the records that Essi seeks. This Honorable Court issued its Orders after this case had been

⁵ Lakewood's own annual audit report states that Lakewood Hospital was owned by the Lakewood.

pending for over seven months and after Lakewood's nearly year-long⁶ delay in producing records to many of Essi's requests.

At the April 25, 2017 Guidelines Hearing in this matter, this Honorable Court made it clear the Court's concerns – to resolve this public records case and to ensure complete and fair compliance with the Public Records Act and common law.

IV. ELEMENTS OF THE COVER UP

This case is not about Essi's alleged inability to draft proper public records requests. It is about the public's right to know.

The facts are now clear that prior to and during this litigation, Lakewood and Butler have been involved in a cover up of inculpatory public records in an effort to defile the public's right to know. The elements of the cover up are:

1. Inculpatory communications among Lakewood, Clinic, and LHA regarding the transaction to close the Lakewood Hospital known as the Master Agreement.⁷
2. The Lakewood City Council's open meetings abuse.⁸
3. Misuse of government assets for partisan purposes.
4. Misuse of government employee time for partisan purposes.

⁶ The March 15, 2017 letter attached as Exhibit 1 to the Amended Complaint documents that some of Essi's requests have been outstanding since May 2015.

⁷ The appearance of the Clinic and LHA at the April 25, 2017 Guidelines Hearing to argue against the release of public records verifies collusion in the cover-up of likely inculpatory communications between these parties and Lakewood public officials. *See* Relator's Notice of Non-Party Appearances at Guidelines Hearing.

⁸ While the violations of open meetings laws go far beyond the limited matters raised and decided in *Skindell* and the appeal of that case to this Court, Lakewood delayed the release of inculpatory records until after this Court dismissed the *Skindell* appeal.

5. Public employee Rick Uldrick's misuse of government computers and harassment of citizens⁹ on government time.

The cover up has prevented Essi from reporting important aspects of Lakewood's governmental activities, which Essi respectfully submits is another of Lakewood's bad faith.

V. SPOILIATION OF PUBLIC RECORDS

Based upon several of Lakewood's responses denying the existence of various electronic records (Essi Aff. ¶¶ 13-13e), Essi has reason to believe (1) that Lakewood is either withholding public records; (2) that Lakewood has not searched for the records sought; and (3) Lakewood will not search for public records ordered to be produced. Under these extreme circumstances, Essi respectfully submits that this case warrants the relief sought, including, but not limited to, the appointment of a special master and an order requiring Lakewood and Butler to certify the steps it did not undertake or could not undertake to locate the requested records due to the failure to preserve potentially relevant information or because the records are no longer in Lakewood's possession.

VI. CONCLUSION

Under the circumstances set forth herein, if the Court does not order the relief sought, including the appointment of a qualified independent third-party consultant to serve as special master, complete and fair compliance with the Public Records Act will not be achieved in this case. The public will have forever lost its right to know what really happened with Lakewood Hospital. Accordingly, Essi requests the relief sought herein to ensure the public's right to know and ensure complete and fair compliance with the Public Records Act and common law.

⁹ Mr. Uldricks continues to harass Essi and his attorney, Matthew Markling, through Uldrick's Twitter account up through the date of this filing.

Respectfully submitted,

/s/ Patrick Vrobel

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Attorneys for Relator Brian J. Essi

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing will be sent via email and the court's electronic filing system, on May 23, 2017, to the following:

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/s/ Patrick Vrobel

Patrick Vrobel (0082832)

**State of Ohio ex rel.
BRIAN J. ESSI**

y.

Respondent.

CASE NO. CA-16-104659

ORIGINAL ACTION IN MANDAMUS

STATE OF OHIO

COUNTY OF CUYAHOGA

SS: AFFIDAVIT OF BRIAN J. ESSI

I, BRIAN J. ESSI, having been first duly sworn, depose and state that I have personal knowledge of the facts and matters that follow:

1. I am over the age of 18 and not laboring under any disabilities.
2. I am an attorney at law and have been licensed in the State of Ohio and in good standing since 1984.
3. Exhibit 1 attached hereto is a true and accurate copy of an email that I received from Records Custodian Kevin M. Butler ("Butler") on July 15, 2016, at 10:39 p.m., wherein Butler produce 18 documents in pdf format in response to PRR120: "All correspondence and communications – electronic or otherwise – between or among Law Director Butler, Mayor Summers, Bullock, Paul Colarusso ("Colarusso"), and/or John Bodine ("Bodine") from January 1, 2015, to the present."
 - a. In Exhibit 1, Mr. Butler made no reference to any redactions concerning any of the 18 emails he produced.

- b. Exhibit 2 attached hereto is a true and accurate copy of one of the 18 emails produced via an email attachment to Exhibit 1---no redactions were plainly visible on the original of Exhibit 2.
 - c. Exhibit 3 is a true and accurate copy of a "screen shot" I generated on my computer that exposes both hidden and visible text contained in the metadata of original Exhibit 2 by using Adobe Acrobat Pro DC software that enabled me to display both hidden and visible text. The text hidden by Lakewood is at the bottom of Exhibit 3 and includes the words "Redacted does not document functions of public office" repeated several times. As a result, it appears that Lakewood and Butler have redacted portions of the public records and intentionally hidden the fact that redactions were made in violation of their duties under the Ohio Public Records Act.
 - d. Exhibit 4 attached hereto is a true and accurate copy of another one of the emails 18 email produced via an email attachment to Exhibit 1---no redactions were plainly visible on the original of Exhibit 2.
 - e. Exhibit 5 is a true and accurate copy of a "screen shot" I generated on my computer that exposes both hidden and visible text contained in the metadata of original Exhibit 4 by using Adobe Acrobat Pro DC software that enabled me to display both hidden and visible text. The hidden text is at the bottom of Exhibit 5 and includes the words "Redacted does not document of public office" repeated several times. As a result, it appears that Lakewood and Butler have redacted portions of the public records and intentionally hidden the fact that redactions were made in violation of their duties under the Ohio Public Records Act.
4. Exhibit 6 attached hereto is a true and accurate copy of an email that I received from Records Custodian Butler on July 15, 2016, at 1:01 p.m. where Butler produced two pdf documents in response to PRR 92: "All records, notes, and communications – electronic or otherwise – relating to the engagement letter or contract with Hennes Communications, or any other public relations or consulting firm, from January 1, 2015, to the present."
- a. In Exhibit 6, Butler made no reference to any redactions.
 - b. Exhibit 7 attached hereto is a true and accurate copy of one of the pdf documents produced via an email attachment to Exhibit 6---no redactions were plainly visible on the original of Exhibit 7.
 - c. Exhibit 8 is a true and accurate copy of a "screen shot" I generated on my computer that exposes both hidden and visible text contained in the metadata of original Exhibit 7 by using Adobe Acrobat Pro DC software that enabled me to display both hidden and visible text. The hidden text is

at the top of Exhibit 8 and includes the words "Redacted does not document functions of public office" several times. As a result, it appears that Lakewood and Butler redacted portions of the public records and intentionally hid the fact that redactions were made in violation of their duties under the Ohio Public Records Act.

5. Exhibit 9 attached hereto is a true and accurate copy of an email that I received from Records Custodian Butler on July 15, 2016, at 5:13 p.m., wherein Butler produced a total of 35 pdf documents in response to PRR 214: "All correspondence and communications – electronic or otherwise – between Colin McEwen and any member of the Lakewood City Council from December 1, 2015, through December 22, 2015."
 - a. Records Custodian Butler wrote in Exhibit 9 that: "Two email communications from Councilman Bullock were redacted to protect the attorney-client privilege." Tom Bullock was the author of more than 2 dozen emails found in the 35 pdf documents that were produced via Exhibit 9.
 - b. Exhibit 10 attached hereto is a true and accurate copy of one of the pdf documents produced via an email attachment to Exhibit 9---no redactions were plainly visible on the original of Exhibit 10.
 - c. Exhibit 11 is a true and accurate copy of a "screen shot" I generated on my computer that exposes both hidden and visible text contained in the metadata of original Exhibit 10 by using Adobe Acrobat Pro DC software that enabled me to display both hidden and visible text. The hidden text appears twice in Exhibit 10 and includes the words "Redacted does not document functions of public office" appearing to mask the content of Councilman Bullock's two emails comprising Exhibit 10. As a result, it appears that Lakewood and Butler redacted portions of the public records and intentionally hid the fact that redactions were made in violation of their duties under the Ohio Public Records Act.
 - d. Exhibit 12 attached hereto is a true and accurate copy of another one of the pdf documents produced via an email attachment to Exhibit 9---no redactions were plainly visible on the original of Exhibit 10.
 - e. Exhibit 13 is a true and accurate copy of a "screen shot" I generated on my computer that exposes both hidden and visible text contained in the metadata of original Exhibit 12 by using Adobe Acrobat Pro DC software that enabled me to display both hidden and visible text. The hidden text appears at the bottom and includes the words "Redacted does not document functions of public office." As a result, it appears that Lakewood and Mr. Butler redacted portions of the public records and

intentionally hid the fact that redactions were made in violation of their duties under the Ohio Public Records Act.

- f. Exhibit 14 attached hereto is a true and accurate copy of my email sent to Records Custodian Butler dated March 6, 2017, at 9:23 a.m., and Butler's email in response dated March 8, 2017, at 11:25 a.m. In my March 6, 2017 email I wrote the following concerning Exhibit 12: "It is also apparent from the attached record that part of the email sent by Cindy Marx to you and Mr. McEwen on Monday, December 7, 2015 at 2:33PM has no content—that content would be responsive to PRR 214." Through the date hereof, Butler never responded to my inquiry concerning the missing email content and never brought the redactions or hidden text in Exhibit 12 to my attention.
6. I first discovered the hidden and concealed redactions set forth above in paragraphs 3 through 5 on or about March 17, 2017, by accident and I was not aware of any of the hidden redactions until that time as I did not have the program Adobe Acrobat Pro DC until March 17, 2017.
7. **False Statements of Lakewood's Attachment to Answer.** Paragraphs 7a through 7i of this affidavit concern numerous false and misleading statements contained in Lakewood's Attachment to Answer ("Lakewood's Attachment") filed with its Answer to the Relator's First Amended Complaint on March 10, 2017, which attachment was filed in response to this Court's February 15, 2017 Order ("February Order") that required: "the answer is to include what records have been released to the relator." The below paragraphs of this affidavit demonstrate that Lakewood violated the Court's February 15, 2017 Order by intentionally misrepresenting to this Honorable Court that Lakewood had produced public records in response to 22 separate public records requests when Lakewood had not produced any records in response to those 22 public records requests.
 - a. Page 1 of Lakewood's Attachment suggests the February Order required Lakewood to provide "a list of public records ("PRR") to which [Lakewood] provided [Essi] records." However, rather than complying with the February Order to "include what records have been released to the relator" or a "list of public records" that Lakewood suggested it was providing to the Court in its attachment, Lakewood instead used the following sentence over 80 times: "Respondent provided [X number of] pages of documents in response to this request" followed by narrative descriptions of the documents. Lakewood did not provide a "list of public records" as it represented to the Court it was doing. Nor did Lakewood include in its answer "what *records* have been released to the relator" as the February Order required. By way of example only as to how Lakewood's Attachment is misleading and, I believe, a violation of the February Order, Lakewood claims it provided "362" pages of documents"

in response PRR # 36-37 and went on for a page and half describing some of the “pages” of those documents, when in fact Lakewood released only 3 redacted records in pdf format entitled: “LHA board book February 18, 2015-redacted.pdf,” “LHA board book May 13, 2015-redacted.pdf” and “LHA board May 14, 2015 –redacted.pdf.” The lengthy descriptions provided by Lakewood appears to be an effort to mislead the Court, because the titles placed on the 3 records by Lakewood would have been ample description to inform the Court of “what records have been released.”

- b. It also appears that Lakewood’s reporting of the “number of pages” released instead of the number of public records it produced is an effort to mislead the Court. This effort combined with Lakewood producing the same emails and other records over and over without any de-duplication effort and claiming over 9,000 pages of documents were released, appears to be an effort to obfuscate the intent of the February Order.
- c. Finally, the evidence below demonstrates that Lakewood falsely represented to the Court in Lakewood’s Attachment that it provided public records in response to 86 of my requests when in fact Lakewood provided records in response to only 64 of those requests.
- d. **PRR# 28.** Lakewood’s claims in Lakewood’s Attachment regarding PRR#28 are both false and misleading:
 1. PRR28 sought “All records, notes, and communications – electronic or otherwise – *provided by the LHA to Mayor Summers, Madigan, and/or Bullock by the LHA* from May 4, 2015, to the present.” (Emphasis added.)]
 2. Lakewood’s response to PRR28 on July 15, 2016, at 11:59 a.m., (Exhibit A to Lakewood’s Answer) states: “We have recently obtained the attached three records responsive to these requests as part of a matter in litigation.” I sought the records provided to the elected representatives on the LHA board, not obtained in litigation with redactions.
 3. The three records produced on July 15, 2016 are entitled “LHA board book February 18, 2015-redacted.pdf,” “LHA board book May 13, 2015-redacted.pdf,” and “LHA board book May 14, 2015-redacted.pdf.” However, the LHA board book entitled “LHA board book May 14, 2015-redacted.pdf” was actually a board book from May 14, 2014, and not 2015. All three records contained redactions so they were not the records provided to the elected representatives by LHA.

4. Footnote 2 on page 1 to Lakewood's Attachment makes the false claim that LHA provided the documents "in Response to Relator's requests" and the "Lakewood Hospital Association provided these...documents to Respondent as a courtesy." This contradicts Lakewood's claim that they were obtained as part of a matter in litigation.
 5. Only 3 records were produced in response to PRR 28, but Lakewood's representation in Lakewood's Attachment (a) states that "363 pages of documents" were produced, (b) states "the records include, but are not limited to..." and (c) lists 9 separate categories of documents under which each category Lakewood lists documents in a mixture of both general and specific descriptions. This appears to be an effort mislead this Honorable Court whose February Order required the answer to include "what records have been released to the relator." Namely, Lakewood's Attachment makes it seem that Lakewood has somehow complied with this PRR and produced more than Lakewood actually produced.
- e. **PRR#33.** Lakewood's claims in Lakewood's Attachment regarding PRR#33 are false:
1. None of the nine pages described in the Attachment were supplied in Lakewood's response to PRR33 on July 16, 2016, at 12:59 a.m..
 2. Exhibit A to Lakewood's Answer demonstrates Lakewood denied PRR33 in its entirety and Lakewood provided no records in its response to this request issued by me on March 15, 2016.
- f. **PRR#34.** Lakewood's claims in Lakewood's Attachment regarding PRR#34 are false:
1. None of the 18 pages described in the Attachment were supplied in Lakewood's response to PRR34 on July 16, 2016, at 12:59 a.m..
 2. Exhibit A to Lakewood's Answer demonstrates Lakewood denied PRR34 in its entirety and Lakewood provided no records in its response to this request by me issued on March 15, 2016.
- g. **PRR# 36-37.** Lakewood's claims in Lakewood's Attachment regarding PRR#36-37 are both false and misleading:
1. Lakewood's response to PRR 36 & 37 was in the same email as their response to PRR28 on July 15, 2016, at 11:59 a.m., which

states: "We have recently obtained the attached three records responsive to these requests as part of a matter in litigation."

2. The 3 records that Lakewood provided are entitled "LHA board book February 18, 2015-redacted.pdf," "LHA board book May 13, 2015-redacted.pdf," and "LHA board book February 14, 2015-redacted.pdf." However, the LHA board book entitled "LHA board book May 14, 2015-redacted.pdf" was actually a board book from May 14, 2014, and not 2015.
 3. Footnote 2 on page 1 of Lakewood's Attachment makes the false claim that LHA provided the documents "in Response to Relator's requests" and the "Lakewood Hospital Association provided these... documents to Respondent as a courtesy."
 4. PRR36 sought "The materials and handouts provided by the LHA to Mayor Summers, Madigan, and/or Bullock at any LHA trustee meeting from January 1, 2015, to the present."
 5. PRR37 sought "The materials and handouts provided by the LHA to Mayor Summers, Madigan, and/or Bullock from January 1, 2015, to the present."
 6. Lakewood's claims in Lakewood's Attachment regarding PRR#36-37 are misleading because even though the responses and records produced pursuant to PRR 36&37 were in the same email as the response to PRR 28 and are the same 3 documents produced in response to PRR 28, Lakewood described the documents differently in its Attachment. The effect is that Lakewood in renaming the same documents in order to give this Honorable Court the impression that it produced more records than it did produced.
 7. Finally, by creating the false pretense that it made separate responses to PRR 28, 36 & 37, they claimed credit for producing 726 pages of documents instead of 363 page of documents.
- h. **PRR#54.** Lakewood's claims in Lakewood's Attachment regarding PRR#54 are false:
1. None of the 772 pages described in the Attachment were supplied in Lakewood's response to PRR54 on July 15, 2016, at 5:23 p.m..
 2. Lakewood claimed the link referenced in the request was no longer valid and Lakewood denied the request PRR 54.

3. Exhibit A to Lakewood's Answer demonstrates that Lakewood denied PRR54 in its entirety and provided no records in its response to this request issued by me on March 15, 2016.
- i. **PRR#58 through #64.** Lakewood's claims in Lakewood's Attachment regarding PRR#56 though #64 are both false and misleading.
1. The 1 document described in Lakewood's Attachment was not supplied in Lakewood's response to PRR56, 58, 61, and 62 on March 28, 2016, at 3:49 p.m..
 2. The 1 document described in the Attachment was not supplied in Lakewood's response to PRR57, 59, 63 and 64 on March 28, 2016 at 4:16 PM.
 3. Only 1 document was produced and it was only responsive to PRR60 and produced via an email on September 16, 2015.
 4. No documents were provided in response to PRRs 56, 57, 58, 59, 61, 62, 63, and 64 and Exhibit A to Lakewood's Answer to Relators' First Amended Complaint demonstrates this.
- j. **PRR#62.** Lakewood's claims in Lakewood's Attachment regarding PRR#62 are both false and misleading.
1. Lakewood did not provide the "Subsidium Healthcare's Lakewood Hospital Association Board of Trustees Strategic Options Evaluation Process, dated January 12, 2015" in response to PRR62 on March 28, 2016 at 3:49 PM nor did Lakewood provide that document in Mr. Butler's September 16, 2015 email at 5:09 pm.
 2. Lakewood's September 16, 2015 email states: "***Response: The city has no records responsive to this request***" in response to a request I issued via email on August 18, 2015 at 10:16 a.m..
 3. Lakewood's statement suggests to me that Lakewood has a document responsive to PRR#62 that I issued on March 15, 2016 and my similar email request from August 18, 2015, but Lakewood is withholding that document.
- k. **PRR#213.** Lakewood's claims in Lakewood's Attachment regarding PRR#213 are both false and misleading:
1. No internet history for Lakewoodbuzz.com or Lakewoodobserver.com described in the Attachment to Answer

were supplied to in Lakewood's response to PRR213 on July 7, 2016 at 2:44 PM.

2. Exhibit A to Lakewood's Answer and the 1 record produced by Lakewood on July 7, 2016 at 2:44 PM demonstrate Lakewood only produced 1 record in response to this request PRR 213 issued by me on May 13, 2016.
 3. The record produced does not include what Lakewood claims in Lakewood's Attachment.
 4. Lakewood denied the existence of volumes of records contain in city computers which suggests that Lakewood may have destroyed the records sought despite the request for a litigation hold requested by me.
1. **PRR# 110, 114, 116, 142, 167, 185, 208, and 285.** Lakewood's 8 separate claims in Lakewood's Attachment regarding PRR# 110, 114, 116, 142, 167, 185, 208 and 285 are both false and misleading:
 1. Exhibit A to Lakewood's Answer demonstrates that Lakewood denied PRR110, 114, 116, 142, 167, 185, 208 and 285 in their entirety and provided no records in its response to this request issued by me on March 15, 2016.
 2. Exhibit A to Lakewood's Answer demonstrates that Lakewood denied PRR 110 in its entirety and provided no records in its response to this request issued by me on March 15, 2016.
 3. As near as I can tell from the descriptions of the documents described in Lakewood's Attachment concerning PRR 110, 114, 116, 142, 167, 185, 208 and 285, the documents may have been provided to me at some time, but they were never provided in response to those requests as Lakewood claimed in Lakewood's Attachment.
 8. **False Statements and Representations in Pleadings.** Paragraphs 8a through 8f relate to Lakewood's false claims and intentional direct violation of R.C. 149.43(B)(2) denying me the opportunity to revise requests by failing to inform me of the manner in which records are maintained by the public office and accessed in the ordinary course of the public office's or person's duties.
 - a. In Lakewood's responses to 174 of my PRRs, Lakewood claimed that my requests were somehow "vague overly broad and/or ambiguous" which, if true, imposed an obligation on Lakewood under R.C. 149.43(B)(2) to inform me as the requester of the manner in which records are maintained by Lakewood and accessed in the ordinary course of the Lakewood's or

Butler's duties. As set forth below, I believe in all 174 instances, Lakewood and Butler failed in their obligation and they then made false statements in their pleadings claiming they had so informed me, when they had not.

- b. The 174 instances involve the following PRRs and all of which can be determined directly from Lakewood's original Answer and Exhibit A to Lakewood's Answer to my First Amended complaint: PRR 23-34, 36, 37, 39-43, 45-52, 54, 55, 57, 63, 64, 76, 77, 79-95, 98, 99, 101, 102, 108, 112-116, 120, 126-129, 131, 133, 134, 136, 138, 139, 142-145, 149-153, 155-163, 167, 168, 171, 172, 173, 178-187, 196, 198, 227-234, 241-245, 252, 202-206, 208, 212, 214-216, 225, 265-270, 285-308, 310-313, 315-319, 321.
- c. On July 19, 2016, Butler signed and filed Lakewood's Answer to the original Complaint in this case, which Answer at page 5 paragraph 2 of the "Affirmative on Other Defenses" contained the following false statement of fact: "respondent...offered the relator an opportunity to revise his request by informing the relator of the manner in which records are maintained by the respondent and accessed in the ordinary course of the respondent business as required by R.C. 149.43(B)(2) and (B)(3)." Other than the general statement by Butler that: "the city maintains and accesses its records in the ordinary course of its duties based on their function and use," Lakewood and Mr. Butler never once informed me of the manner in which records are actually maintained and accessed by Lakewood, much less informing me as to how records were maintained and accessed in relation to the 174 specific records requests I made.
- d. On March 10, 2017, Butler signed and filed Lakewood's Answer to the Relator's First Amended Complaint in this case, which Answer at page 11, "Fourth Defense", contained the following false statement of fact: "respondent...offered the relator an opportunity to revise his request by informing the relator of the manner in which records are maintained by the respondent and accessed in the ordinary course of the respondent business as required by R.C. 149.43(B)(2) and (B)(3)." Other than the general statement by Butler that: "the city maintains and accesses its records in the ordinary course of its duties based on their function and use," Lakewood and Butler never once informed me of the manner in which records are actually maintained and accessed by Lakewood, much less informing me as to how records were maintained and accessed in relation to the 174 specific records I made.
- e. On March 29, 2017, Lakewood filed its Motion for Judgment on the Pleadings which at page 62 contains the following false statements of fact: (1) "Respondent has further complied with its duty under Ohio Revised Code Section 149.43(B)(3) by informing the relator of the manner in

which records are maintained by the respondent and accessed in the ordinary course of the respondent business as required by R.C. 149.43(B)(2) and (B)(3)” and (2) that Lakewood has made “constant explanations about the manner in which it keeps records.” There were no “constant explanations” as Lakewood claims. Other than the general statement by Butler that: “the city maintains and accesses its records in the ordinary course of its duties based on their function and use,” Lakewood and Butler never once informed me of the manner in which records are actually maintained and accessed by Lakewood, much less informing me as to how records were maintained and accessed in relation to the 174 specific records I made.

- f. The only effort I could find in the hundreds of pages of Butler’s emails that could be characterized as informing me of the manner in which records are maintained and accessed by Lakewood is the following identical statement made once in an email on July 16, 2016, at 2:26 a.m., and once in an email on March 8, 2017, at 11:21 a.m., both on Exhibit A to Lakewood’s Answer: “To this end please feel free to review the city’s records retention schedules, which are attached to this email. The city maintains and accesses its records in the ordinary course of its duties based on their function and use.” These statements by Butler did not help me revise my 174 specific requests which requests I do not believe were “vague, overly broad or ambiguous” in the first place.

9. **Denying the existence of records that existed.** Paragraphs 9a through 9j relate to Lakewood’s repeated denial of the existence of public records and, after prolonged delay and stonewalling, producing records they repeatedly denied existed.

- a. On or about December 4, 2015, I learned that Butler and Lakewood had reached an agreement with the Cleveland Clinic concerning the sale and closure of the Lakewood Hospital and that the resulting agreement would be presented at a Lakewood City Council meeting scheduled for December 7, 2015.
- b. Exhibit 15 attached hereto contains a true and accurate copy of my email dated December 4, 2015, at 11:07 a.m., addressed to Butler, then Council President Mary Madigan and other public officials, requesting the following:
 1. “Please produce public records containing any draft, signed or unsigned agreement or proposal or concerning Lakewood Hospital that was or may have been discussed, approved or agreed to by Lakewood Hospital Association (LHA) or any committee of LHA and/or the Cleveland Clinic this week;”

2. "Please produce public records containing any draft, signed or unsigned agreement or proposal or document concerning Lakewood Hospital that will or may be the subject of the City Council Meeting to be held on December 7, 2015;" and
 3. "Please produce public records concerning Lakewood Hospital that will or may be the subject of any reading at the City Council Meeting to be held on December 7, 2015."
- c. Exhibit 15 also contains a true and accurate copy Butler's email dated December 4, 2015, at 11:58 a.m., in which he wrote: "We are unaware of any such records and do not have any records that would be responsive to your request." These records did exist and as the person authorized to negotiate the agreement Butler must have had access to those drafts, but he did not produce these records until February 28, 2017, just days after the *Skindell v. Madigan*, Eighth District No.CA-15-103976 appeal was dismissed by this Court.
- d. Exhibit 16 attached hereto contains a true an accurate copy of my email dated December 7, 2015, at 1:42 p.m., addressed to Butler (see bottom of the exhibit) requesting the following records:
1. "Please produce copies of all public records delivered to Councilmembers on December 6, 2015;"
 2. "Please produce public records containing any draft, signed or unsigned agreement or proposal or concerning Lakewood Hospital that was or may have been discussed, approved or agreed to by Lakewood Hospital Association (LHA) or any committee of LHA and/or the Cleveland Clinic this week;"
 3. Please produce public records containing any draft, signed or unsigned agreement or proposal or document concerning Lakewood Hospital that will or may be the subject of the City Council Meeting to be held on December 7, 2015; and
 4. "Please produce public records concerning Lakewood Hospital that will or may be the subject of any reading at the City Council Meeting to be held on December 7, 2015."
- e. On December 8, 2015, at 8:00 a.m., Councilman O'Leary and I met for coffee at a restaurant called Cravings in Rocky River to discuss the Master Agreement and proposed Ordinance 49-15 that would adopt the Master Agreement. Councilman O'Leary told me that he possessed a copy of the agreement and indicated that he would vote to approve the pending legislation adopting the Master Agreement.

- f. Exhibit 16 also contains a true and accurate copy Butler's email dated December 9, 2015, at 11:58 a.m., in which he wrote:
1. "All papers given to councilmembers on Dec. 6 were privileged attorney-client communications and will thus not be produced;
 2. "The agreed-upon key highlights of the master agreement and the ordinance considered by council on Dec. 7 are attached to this email in one document;"
 3. "Your third request is overbroad but nevertheless we believe the only documents considered by Council on Dec. 7 that were related to the hospital are attached (in one PDF)."
- g. Mr. Butler's December 2015 responses essentially denied the existence of the draft Master Agreements that he later produced on February 28, 2017.
- h. Exhibit 17 is a true and accurate copy of a public record produced by Butler on July 15, 2016, in which Butler discusses in emails he authored, dated June 22, 2015, July 10, 2015, and July 17, 2015, the new Master Agreement. This record reflects that Butler had drafts of the Master Agreement and was discussing the Master Agreement with city Council. Specifically, Butler wrote: "We have no attachments at this point; they're nothing less than essential to giving us all an understanding of the deal being proposed."
- i. On July 15, 2016, at 1:55 p.m., Butler responded to PRR 101 that requested "Any draft, signed, or unsigned agreement or proposal concerning the Lakewood Hospital that was, or may have been, the subject of the Lakewood City Council Meeting held on December 7, 2015" which PRR was virtually identical to my December 4th and December 7th, 2015 requests. Butler failed to produce any of drafts of the Master Agreement even though public records produced subsequently showed he had the Drafts in his possession prior to December 17, 2015, including a draft dated December 4, 2015—the same day I first requested drafts of the agreement.
- j. Exhibit 18 is a true and accurate copy of a public records sent to me on September 12, 2016, by Butler that indicates he received a draft of the Master Agreement on March 23, 2015.
- k. On March 28, 2017, at 10:59 a.m., (see Exhibit A to Lakewood's Answer to the Amended Complaint), one week after this Court denied a motion for reconsideration in the appeal in *Skindell v. Madigan*, Butler responded to

PRR 253 by producing drafts of the Master Agreement, which was the first-time Lakewood produced drafts of the Master Agreement, which drafts Butler denied existed back on December 4, 2015, December 9, 2015, and July 15, 2016.

10. **Delivering records to the Clinic and LHA for purposes of delay and obfuscation.** Paragraphs 10a through 10e relate to Lakewood's and Butler's subordination of their duties under public records laws to their perceived duties to the Clinic and LHA who both owed fiduciary duties to Lakewood as the owner of Lakewood Hospital.
 - a. Exhibit 19 attached hereto is a true and accurate copy of an email sent to me by Mr. Butler on September 12, 2016, in which Butler produced various emails and wrote: "Four of the emails between me and Mr. Meehan were redacted, only to remove their attachments, because counsel for the Clinic and LHA are reviewing those attachments for matters they deem confidential or subject to peer review or trade secret protection. *You'll see where I've noted that attachments were removed. I am told counsel's review will be completed early this week and so I'll have an update for you once I hear from them.*" (Emphasis added.).
 - b. Exhibit 20 attached hereto is a true and accurate copy of one of the emails sent to me by Butler on September 12, 2016 (via Exhibit 19) that Butler represented to me was from prior to April 13, 2015. Exhibit 19 and 20 suggest that Butler as Lakewood's Records Custodian and Law Director has sent public records in the possession of Mayor Summers (and Butler) to the Cleveland Clinic attorneys for permission "*to release them, either redacted or otherwise.*" Exhibit 20 indicates that the public record attachment was "*removed for review by counsel for Cleveland Clinic, Lakewood Hospital Association.*" (Emphasis added).
 - c. Exhibit 21 attached hereto is a true and accurate copy of one of the emails sent to me by Mr. Butler on September 12, 2016 and indicates that the public record attachment was "removed for review by counsel for Cleveland Clinic, Lakewood Hospital Association."
 - d. Exhibit 22 attached hereto is a true and accurate copy of an email I sent to Butler on March 14, 2017, where I requested Butler to cooperate with me pursuant to this Court's March 9, 2017 Order.
 - e. Butler has not responded to my Exhibit 22 email and has not followed through on his commitment outlined in Exhibit 19 from September 12, 2016. I received other records similar to Exhibits 20 and 21 that Butler is also withholding attachments to pending the Clinic and LHA lawyers review.

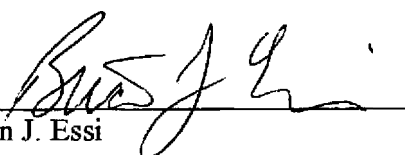
11. **Adulterating a Public Record for Political Purposes.** Paragraphs 11a through 11d relate to Lakewood's adulteration of a public record created by a public consultant and then used in Mayor Michael Summers' ("Mayor Summers") partisan political campaign for re-election and otherwise using Huron Consulting, a public consultant paid with public money to create a public record for political purposes
 - a. Exhibit 23 is a true and accurate copy of a public record I received from Butler on February 3, 2016, which is an email exchange Huron Consulting representatives, Butler and Lakewood Councilman Tom Bullock. The original of Exhibit 23 shows the Huron Consulting's comments in "green."
 - b. Exhibit 24 is a true and accurate copy of a public record that shows alterations were made to the original Exhibit 23. Mayor Summers gave to the editorial board of the Cleveland Plain Dealer during and endorsement interview between Mayor Summers and his mayor challenger on October 1, 2016.
 - c. Exhibit 25 is a true and accurate copy of my email to Butler, Lakewood City Council and Mayor Summers concerning Exhibits 23 and 24 and outlined the alterations made to Exhibit 23 before Mayor Summers presented it to the Plain Dealer editorial board. The alterations point the improper use of the consultant for political purposes, the delay in the city producing records, Councilman Bullock's dishonesty and concealment of his improper use of the Huron consultant for political purposes and the city's refusal to provide responses to my follow up records requests on the same subject all expose improper conduct by a member of City Council, Butler and the Mayor.
 - d. Butler delayed in responding to my public records until after the 2015 mayor re-election campaign was over.
12. **Improperly marking public records "Attorney-Client Privileged."** Paragraphs 12a through 12b relate to Butler improperly marking public records "Attorney-Client Privileged" to conceal from the public inculpatory evidence of the improper legislative and other governmental functions and activities of City Council in likely violation open meetings laws
 - a. Exhibit 17 is a public record released via email from Butler on July 15, 2016, at 10:39 p.m., in response to PPR 120. The emails from Butler to multiple public officials are marked "Confidential Attorney-Client Communications" discuss matters such as, but not limited to Butler coordination a "communications strategy"; the "new master agreement";

“Huron Consulting’s work”, etc., suggest other than public decisions being made outside of public meetings.

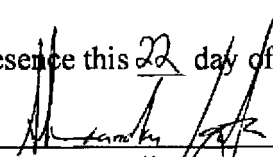
- b. Butler’s release of Exhibit 17 prompted me to issue PRRs 229 through 259 on September 20, 2016. In fact, Exhibit 17 was referenced in and attached to my September 20, 2017 PRRs. *See* Exhibit 5 to Relator’s First Amended Complaint). Butler denied all but 6 of PRRs 229 through 259. I have a good faith belief that Butler is concealing a succession of emails following those contained in Exhibit 17 because they are likely inculpatory and point to violations of open meeting laws.
13. **Potential Destruction and Loss of Public Records by Lakewood.** Paragraphs 13a through 13e relate to potential destruction and loss of public records based upon what Lakewood may have done or may have failed to do that violated his duties as a public official.
- a. In my three written records requests of March 15, 2016, May 13, 2016, and September 20, 2016, I wrote Butler asking him to preserve information that may be relevant in the event they are need in this litigation. *See* Exhibits to Relator’s Complaint).
 - b. PRR# 213, 219, 221, 222, 223, and 224 were all essentially identical and requested “All records, emails, notes, and communications – electronic or otherwise – documenting [public employees Rick Uldricks, Jennifer Pae’s, Kevin Butler’s, Colin McEwen’s, Bruce Sylvester’s Mayor Summers’, Dru Siley’s] use of any City of Lakewood computer to access the websites Build Lakewood Facebook site, Save Lakewood Hospital Facebook site, LakewoodCitizen.com, Lakewood Citizen Facebook site, Lakewoodbuzz.com and/or Lakewoodoserver.com/forum.”
 - c. In response to PRR 213, Lakewood produced only 1 record of Rick Uldrick’s computer usage which record Mr. Butler told me verbally was prepared during a Lakewood Police Department investigation of Uldricks. The Police investigation related, in part, to Uldricks sending postcards to Lakewood residents that Lakewood’s Human Resources Director determined were meant to intimidate residents.) In response to PRR 213, Butler wrote “there are no further records that respond.” However, other public records suggest Uldricks’ personal and political use of his public computer involved far more than 1 record of such use.
 - d. In response to PRR# 219, 221, 222, 223, and 224, on June 7, 2016 (Exhibit A to Lakewood’s Answer), Butler produced no records and wrote: “We have confirmed the city has no records in existence that respond to these requests.”

- e. Based upon Butler's responses to PRR 213, 219, 221, 222, 223, and 224 and evasive comments made by him at the April 25, 2017 Guidelines hearing concerning the same, I have a good faith reason to believe that Mr. Butler and /or Lakewood have not preserved information, and that spoliation has likely occurred.
14. Throughout the process of this litigation, I received approximately 9,000 pages of documents – not 9,000 records with a substantial number being multiple duplicates of the same records. Many of those pages were either unresponsive to my requests or were redundant productions of the same documents.
15. As a result of my interactions with Butler over nearly two years and the unproductive results of the time spent meeting with him and interacting with him by email, it is my opinion that his alleged concerns regarding the purported vagueness, overbreadth, and ambiguity of my public records requests were not due to any lack of understanding regarding my requests but, rather, due to his bad faith, his intentional and willful failure to fulfill his duties as a public official, his evident lack of cooperation and his desire to further delay production of the requested public records.
16. On the basis of all that has happened in my interactions with Butler and Lakewood City officials, I have a good faith belief that in the absence of an Order appointing a qualified independent third-party consultant with expertise in digital discovery to serve as special master to gather public records from Lakewood's servers and monitor and oversee the Lakewood's compliance with this Honorable Court's March 9, 2017 and April 6, 2017 Orders, this Honorable Court's stated desire to ensure complete and fair compliance with the Ohio Public Records Act and common law cannot be achieved.

FURTHER AFFIANT SAYETH NAUGHT.


 Brian J. Essi

SWORN TO BEFORE ME and subscribed in my presence this 22 day of May 2017.


 Notary Public



ALEXANDER GORETA
 Notary Public, State of Ohio
 My Commission Expires
 February 07, 2022

From: Butler, Kevin
Sent: Friday, July 15, 2016 10:39 PM
To: 'Brian Essi'
Cc: Petrus, Jeannine; Strachan, Shannon
Subject: RE: Public Records Requests --PRR1 to PRR 173

Mr. Essi:

In No. 120 of your March 15, 2016 public records request, you ask for "All correspondence and communications – electronic or otherwise – between or among Law Director Butler, Mayor Summers, Bullock, Paul Colarusso ('Colarusso'), and/or John Bodine ('Bodine') from January 1, 2015, to the present."

The Ohio Supreme Court has held that a public records request must describe the records desired with reasonable and sufficient clarity and not be overly broad and ambiguous. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶129, quoting *State ex rel. Fant v. Tober*, 68 Ohio St.3d 117 (1993). Your request is denied to the extent you intended it as a request for all correspondence and communications exchanged between or among people who are not either Paul Colarusso or John Bodine, which we surmised was not your intention. You have the ability to revise your request in the event we have interpreted incorrectly.

Your request is denied to the extent it seeks communications to Mr. Bodine from Mr. Colarusso only, or vice versa, because those records are not in our possession. Only records kept by a public office are public records. R.C. 149.43(A).

Your request is also denied to the extent it seeks communications to or from me and Mr. Colarusso and/or Mr. Bodine, because those communications have been prepared in preparation for trial in *Graham v. City of Lakewood, et al.* and are therefore not public records pursuant to R.C. 149.43(a)(1)(g). Additionally, your request for my communications seeks records prepared by the defendants in the same lawsuit. The defendants, including the city, which is represented by me, have exchanged joint defense information in confidence with the intent and for the purpose of facilitating the rendition of legal services concerning common defense interests, with the expectation that the information will remain privileged and confidential and will not be disclosed without the prior written consent of all of the defense parties. *State ex rel. ESPN v. Ohio State Univ.*, 132 Ohio St.3d 212, 2012-Ohio-2690. We do not have the consent of the parties to release this information.

At the time Huron was engaged, the issues included in their engagement were directly implicated in the lawsuit filed by Mr. Graham and others, and they remain so. As such, because these trial preparation records and joint defense communications to or from me and Mr. Colarusso and/or Mr. Bodine are exempted from the Public Records Act or are not records, they will not be provided.

The foregoing is not an outright denial of your request. We have located and attach to this email records that are communications between (1) Councilman Bullock and/or Mayor Summers, and (2) Mr. Colarusso and/or Mr. Bodine. These are the only public records responsive to No. 120 of your March 15, 2016 request, and thus this completes our response to that request.

Best wishes,

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

From: John Bodine
To: Butler, Kevin; Summers, Mike; Lisa Fry (lfry@subsidiumhealthcare.com); Ken Haber (ken.haber@stbcglobal.net)
Cc: Smyers, Robyn Minter (Robyn.Smyers@thomsonline.com); Olson, David C.; Walter, Ehrhardt (walter@hcaltilaw.com); Huntsberger, Jeffrey R. (jhuntsberger@mcdonalddhopskins.com); Paul Colanusso
Subject: RE: Huron Consulting / Lakewood Hospital
Date: Friday, June 19, 2015 11:28:05 AM

Mayor Summers, Ms. Fry and Mr. Haber:

I would like to set up calls with each of you so that we can gain a better understanding of the proposed transaction involving Lakewood Hospital, as well as any insight you can share regarding issues, concerns or key decision criteria. Please let me know if you have some time over the next week for this purpose. I anticipate the call will last roughly one hour.

Regards,

John Bodine
312.880.3411

From: John Smith
To: Gail, Mary, Susan, Mike, Lisa (y@smithandsons.com), Tom (m@smithandsons.com)
Cc: Jerry, Bob (b@smithandsons.com), Sam, David C., Victor (v@smithandsons.com), Margaret, Jeff R. (j@smithandsons.com), Paul (p@smithandsons.com)
Subject: RE: New Contract / Johnson Project
Date: Friday, June 10, 2011 11:20:05 AM

Mayer Summers, Ms. Fry and Mr. Haber:

I would like to set up calls with each of you so that we can gain a better understanding of the proposed transaction involving Lakewood Hospital, as well as any insight you can share regarding issues, concerns or key decision criteria. Please let me know if you have some time over the next week for this purpose. I anticipate the call will last roughly one hour.

Respectfully,

John Bodine
312 880 3411

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The following table shows the number of students who took part in the competition in each year.

Year	Number of students
2000	10
2001	15
2002	20
2003	25
2004	30
2005	35
2006	40
2007	45
2008	50
2009	55
2010	60
2011	65
2012	70
2013	75
2014	80
2015	85
2016	90
2017	95
2018	100
2019	105
2020	110
2021	115
2022	120
2023	125
2024	130
2025	135
2026	140
2027	145
2028	150
2029	155
2030	160
2031	165
2032	170
2033	175
2034	180
2035	185
2036	190
2037	195
2038	200
2039	205
2040	210
2041	215
2042	220
2043	225
2044	230
2045	235
2046	240
2047	245
2048	250
2049	255
2050	260
2051	265
2052	270
2053	275
2054	280
2055	285
2056	290
2057	295
2058	300
2059	305
2060	310
2061	315
2062	320
2063	325
2064	330
2065	335
2066	340
2067	345
2068	350
2069	355
2070	360
2071	365
2072	370
2073	375
2074	380
2075	385
2076	390
2077	395
2078	400
2079	405
2080	410
2081	415
2082	420
2083	425
2084	430
2085	435
2086	440
2087	445
2088	450
2089	455
2090	460
2091	465
2092	470
2093	475
2094	480
2095	485
2096	490
2097	495
2098	500
2099	505
2100	510

From: Summers, Mike
To: John Bodine
Subject: RE: Huron Consulting / Lakewood Hospital
Date: Tuesday, June 23, 2015 7:55:40 AM

John

Work with Lu ann Baker at 216-529-6600 to arrange a mutually convenient time. Ken Haber is suggesting that tom Gable, Ken and I do this in a shared conversation to more accurately reflect the trustees views. It might take longer, but I believe it will provide more insight .

Mike summes

From: John Bodine [mailto:jbodine@huronconsultinggroup.com]
Sent: Friday, June 19, 2015 11:28 AM
To: Butler, Kevin; Summers, Mike; Lisa Fry (lfry@subsidiiumhealthcare.com); Ken Haber (ken.haber@sbcglobal.net)
Cc: Smyers, Robyn Minter (Robyn.Smyers@thompsonhine.com); Olson, David C.; Walter Ehmfelt (walter@healthlaw.com); Huntsberger, Jeffrey R. (jhuntsberger@mcdonaldhopkins.com); Paul Colarusso
Subject: RE: Huron Consulting / Lakewood Hospital

Mayor Summers, Ms. Fry and Mr. Haber:

I would like to set up calls with each of you so that we can gain a better understanding of the proposed transaction involving Lakewood Hospital, as well as any insight you can share regarding issues, concerns or key decision criteria. Please let me know if you have some time over the next week for this purpose. I anticipate the call will last roughly one hour.

Regards,

John Bodine
312.880.3411

From: Summers, Mike
 To: John Bodine
 Subject: RE: Huron Consulting / Lakewood Hospital
 Date: Tuesday, June 23, 2015 7:20:48 AM

John

Work with Lu Ann Baker at 216-529-6600 to arrange a mutually convenient time. Ken Heber is suggesting that Tom Geale, Ken and I do this in a shared conversation to more accurately reflect the trustees views. It might take longer, but I believe it will provide more insight.

Mike Summers

From: John Bodine [mailto:jbodine@huronconsultinggroup.com]
 Sent: Friday, June 19, 2015 11:28 AM
 To: Butler, Kevin; Summers, Mike; Lisa Fry (lfry@lakewoodhospitals.com); Ken Heber (ken.heber@bcglobal.net)
 Cc: Snyers, Robyn Minter (Robyn.Snyers@thomsonline.com); Olson, David C.; Walker Elmstedt (walker@healthlaw.com); Hantsberger, Jeffrey R. (jhantsberger@mcdonalddiagnostics.com); Paul Colarusso
 Subject: RE: Huron Consulting / Lakewood Hospital

Mayor Summers, Ms. Fry and Mr. Heber:

I would like to set up calls with each of you so that we can gain a better understanding of the proposed transaction involving Lakewood Hospital, as well as any insight you can share regarding issues, concerns or key decision criteria. Please let me know if you have some time over the next week for this purpose. I anticipate the call will last roughly one hour.

Regards,

John Bodine
 312.880.3411

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From: Butler, Kevin
Sent: Friday, July 15, 2016 1:01 PM
To: 'Brian Essi'
Cc: Petrus, Jeannine; Strachan, Shannon
Subject: RE: Public Records Requests --PRR1 to PRR 173

Mr. Essi:

In No. 92 of your March 15, 2016 public records request, you ask for "All records, notes, and communications – electronic or otherwise – relating to the engagement letter or contract with Hennes Communications, or any other public relations or consulting firm, from January 1, 2015, to the present."

Because it seeks information "relating to" other records, your request is vague, overly broad and/or ambiguous, and is therefore, to that extent, denied. The Ohio Supreme Court has held that a public records request must describe the records desired with reasonable and sufficient clarity and not be overly broad and ambiguous. *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 2006-Ohio-6365, ¶29, quoting *State ex rel. Fant v. Tober*, 68 Ohio St.3d 117 (1993). Furthermore, a governmental office has no duty to "seek out and retrieve those records which would contain the information of interest to the requester." *Fant*, 1993 Ohio App. LEXIS 2591 at *4 (8th Dist. Apr. 28, 1993); *aff'd* 68 Ohio St.3d 117 (1993). Finally, a public office is under no obligation to search for records containing selected information. *State ex rel. Thomas v. Ohio State University*, 71 Ohio St.3d 245 (1994).

Nevertheless, as a courtesy, we have endeavored to identify records that may be responsive to No. 92 of your request. I have, to that extent, found the attached records as two that may be responsive because they contain the terms of the city's agreement with communications consultants. We have not identified any other records that may be responsive to this request. Thus, this completes our response to No. 92 of your March 15, 2016 request.

Best wishes,

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

From: Eileen Korey
Sent: Monday, November 23, 2015 2:46 PM
To: mike.summers@lakewoodoh.net
Cc: Eileen Korey
Subject: Proposal to assist in communications

Mayor Summers,

As per our conversation, I would be available to assist your administration and the leadership of the City of Lakewood in developing both strategy and messaging vital to the transparent and effective communications of the proposed plan for health care delivery in the City. Given the recent election, political campaigning and the politicization of the messaging, it is imperative that the residents of Lakewood fully understand the issues and the recommendations for improved service to the community.

I propose to work with you and your team--and others suggested by you who have expertise and information relevant to the communications effort--to develop clear communications for public dissemination. This would include--but not be limited to--presentations to City Council, materials to be posted on the web, and releases to the media. I would also work with you and your team on an ongoing communications strategy, so that the public feels fully informed through the process of introducing and executing the recommendations in the plan.

My hourly charge for services for a public entity is \$125. I would anticipate that the completion of the first phase of this project (developing the messaging and strategy for initial public dissemination) would require 15 to 20 hours of work, totalling no more than \$2,500. I will keep a detailed record of my time, and submit a bill to you on a weekly basis. I will notify you immediately when the cost of the project approaches the \$2,000 level, so that you may plan accordingly.

We can discuss further consulting services to the City as you may see the need after the completion of this project.

Eileen Korey
216.470.8737
ek@eileenkorey.com
www.eileenkorey.com

Major Suppliers.

As per our conversation, I would be available to assist your administration and the leadership of the City of Lakewood in developing both strategy and messaging vital to the transparent and effective communications of the proposed plan for health care delivery in the City. Given the recent election, political campaigning and the politicization of the messaging, it is imperative that the residents of Lakewood fully understand the issues and the recommendations for improved service to the community.

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My hourly charge for services for a public entity is \$125. I would anticipate that the completion of the first phase of this project (developing the messaging and strategy for initial public dissemination) would require 15 to 20 hours of work, totalling no more than \$2,500. I will keep a detailed record of my time, and submit a bill to you on a weekly basis. I will notify you immediately when the cost of the project approaches the \$2,000 level, so that you may plan accordingly.

We can discuss further consulting services to the City as you may see the need after the completion of this project.

Eileen Koney
216.470.8737
ek@eileenkoney.com
www.eileenkoney.com

Begin forwarded message:

From: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>
Subject: RE: Public Records Requests --PRR1 to PRR 173
Date: July 15, 2016 at 5:13:04 PM GMT-4
To: "Brian Essi" <bjessi@sbcglobal.net>
Cc: "Petrus, Jeannine" <Jeannine.Petrus@lakewoodoh.net>, "Strachan, Shannon" <Shannon.Strachan@lakewoodoh.net>

Mr. Essi:

In No. 214 of your May 13, 2016 public records request, you ask for "All correspondence and communications – electronic or otherwise – between Colin McEwen and any member of the Lakewood City Council from December 1, 2015, through December 22, 2015."

Please find attached all the responsive records we have located. Two email communications from Councilman Bullock were redacted to protect the attorney-client privilege. Records of communications between attorneys and their clients pertaining to the attorneys' legal advice are excepted from disclosure under R.C. 149.43(A)(1) since the release of these records is prohibited by state law. See *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 660, 635 N.E.2d 331, 349; *Woodman v. Lakewood* (1988), 44 Ohio App.3d 118, 541 N.E.2d 1084; *State ex rel. Natl. Broadcasting Co. v. Cleveland* (1992), 82 Ohio App.3d 202, 611 N.E.2d 838.

This completes our response to No. 214 of your May 13, 2016 public records request.

Best wishes,

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

From: Bullock, Tom
To: Summers, Mike; Strachan, Shannon
Cc: Swallow, Jennifer; Hagan, Mary; Bach, Maur. an; Smith, Monique; McEwen, Collin; Eileen Korey (ek@eileenkorey.com)
Subject: Fw: Amicus brief from Build Lakewood
Date: Monday, December 21, 2015 3:09:55 PM
Attachments: BL motion for leave and amicus.pdf
BL motion and brief Skindell case.pdf

Tom Bullock
Lakewood City Council at Large
216-395-7LWD (-7593)
Report-a-problem free smart phone app: tinyurl.com/kjgsb2x
Report-a-Problem webform: tinyurl.com/qxkl5be
Sign up for emergency notifications: tinyurl.com/q5budby
How was our service?: <http://tinyurl.com/qgus4sd>

From: Bullock, Tom
Sent: Monday, December 21, 2015 3:05 PM
To: O'Leary, Sam; Marx, Cynthia; Nowlin, Ryan; Madigan, Mary; Juris, Shawn; Anderson, David; Butler, Kevin; Cathryn.Greenwald@thompsonhine.com; Smyers, Robyn Minter (Robyn.Smyers@thompsonhine.com)
Subject: Amicus brief from Build Lakewood

Tom Bullock
Lakewood City Council at Large
216-395-7LWD (-7593)
Report-a-problem free smart phone app: tinyurl.com/kjgsb2x
Report-a-Problem webform: tinyurl.com/qxkl5be
Sign up for emergency notifications: tinyurl.com/q5budby
How was our service?: <http://tinyurl.com/qgus4sd>

From: Jay R. Carson <JRCarson@wegmanlaw.com>
Sent: Monday, December 21, 2015 2:49 PM
To: Bullock, Tom
Subject: FYI-- here comes the cavalry

Jay R. Carson
Wegman, Hessler & Vanderburg
6055 Rockside Woods Boulevard, Suite 200
Cleveland, OH 44131
Telephone: 216.642.3342

From: Bullock, Tom
To: Summers, Phil; Brewster, Steven
Cc: Bullock, Jennifer; Hagan, Mary; Bush, Margaret; Smith, Margaret; McDevitt, Colby; Olsen, Henry
 (40@thompson.com)
Subject: Re: Amicus brief from Budd Lakewood
Date: Monday, December 21, 2015 3:05:58 PM
Attachments: IL motion for leave and attach.pdf
 IL motion and brief Bullock vsm.pdf

Restricted: does not constitute knowledge
 of public affairs

Tom Bullock
 Lakewood City Council at Large
 714-385-71WD (-7591)
 Report-a-problem free smart phone app: <http://myport.com/ReportA>
 Report-a-Problem website: <http://myport.com/reporta>
 Sign up for emergency notifications: <http://myport.com/efbuddy>
 How was our service? <http://myport.com/feedback>

From: Bullock, Tom
Sent: Monday, December 21, 2015 3:05 PM
To: O'Leary, Sam; Marx, Cynthia; Nowlin, Ryan; Madigan, Mary; Juris, Shawn; Anderson, David;
 Butler, Kevin; Cathryn Greenwald@thompsonline.com; Smyers, Robyn Minter
 (Robyn.Smyers@thompsonline.com)
Subject: Amicus brief from Budd Lakewood

Restricted: does not constitute knowledge of public affairs

Tom Bullock
 Lakewood City Council at Large
 714-385-71WD (-7591)
 Report-a-problem free smart phone app: <http://myport.com/ReportA>
 Report-a-Problem website: <http://myport.com/reporta>
 Sign up for emergency notifications: <http://myport.com/efbuddy>
 How was our service? <http://myport.com/feedback>

From: Jay R. Carson <JRCarson@wegmanlaw.com>
Sent: Monday, December 21, 2015 2:49 PM
To: Bullock, Tom
Subject: FYI- here comes the cavalry

Jay R. Carson
 Wegman, Hessler & Vanderburg
 6055 Rockside Woods Boulevard, Suite 200
 Cleveland, OH 44131
 Telephone 216.642.3342

From: Marx, Cynthia
To: McEwen, Colin
Subject: Re: Cindy Marx Comment.docx
Date: Monday, December 07, 2015 4:01:01 PM

Colin what time should I be at City Hall?

Sent from my iPhone

> On Dec 7, 2015, at 2:45 PM, McEwen, Colin <Colin.McEwen@lakewoodoh.net> wrote:

>

> Thanks, Cindy.

>

>

From: Marx, Cynthia

> Sent: Monday, December 7, 2015 2:33 PM

> To: Butler, Kevin; McEwen, Colin

> Subject: Cindy Marx Comment.docx

>

>

>

From: Marx, Cynthia
To: McEwen, Colin
Subject: Re: Cindy Marx Comments.docx
Date: Monday, December 07, 2015 4:01:01 PM

Colin what time should I be at City Hall?

Sent from my iPhone

> On Dec 7, 2015, at 2:45 PM, McEwen, Colin <Colin.McEwen@sharwoodoh.us> wrote
>
> Thanks, Cindy
>
> From: Marx, Cynthia
> Sent: Monday, December 7, 2015 2:33 PM
> To: Butler, Kevin; McEwen, Colin
> Subject: Cindy Marx Comments.docx
>
> Barbara does not
> appreciate the review
> and the review

From: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>
To: Brian Essi <bjessi@sbcglobal.net>
Cc: "Petrus, Jeannine" <Jeannine.Petrus@lakewoodoh.net>
Sent: Wednesday, March 8, 2017 11:25 AM
Subject: RE: Cindy Marx Comment.docx and PRR 214

Mr. Essi:

The document "Cindy Marx's comment.docx" is attached to this email.

Best wishes,

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

From: Brian Essi [mailto:bjessi@sbcglobal.net]
Sent: Monday, March 6, 2017 9:23 AM
To: Butler, Kevin
Subject: Cindy Marx Comment.docx and PRR 214

Dear Records Custodian Butler,

Please see the attached email that you produced as a public record on July 15, 2016 in response to PRR214 I issued May 13, 2016 which email references "Cindy Max Comment.docx." You did not producing the attachment Cindy Marx Comment.docx even though it is clearly responsive to PRR 214. It is also apparent from the attached record that part of the email chain has been deleted, e.g. the email sent by Cindy Marx to you and Mr. McEwen on Monday, December 7, 2015 2:33 PM has no content---that content would be responsive to PRR214.

Over six months ago, you said that you would produce the document Cindy Max Comment.docx as well as the document/record that Mr. O'Leary testified in the Skindell v. Madigan matter that Mr. McEwen gave him.

Both records, and likely more, would be responsive to PRR214 that was issued on May 13, 2016.

So far, you have only produced Mr. Bullock's December 7, 2015

So, the record produced is incomplete as are others produced July 15, 2016 at 5:13pm.

Kindly fulfill your duties as Records Custodian by completely responding to my original PRR214.

Sincerely,

Brian J. Essi

Cell 216-346-3434

From: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>
To: 'Brian Essi' [Redacted]; "Hagan, Mary" <Mary.Hagan@lakewoodoh.net>; "Summers, Mike" <Mike.Summers@lakewoodoh.net>; "Madigan, Mary" <Mary.Madigan@lakewoodoh.net>; "O'Leary, Sam" <Sam.OLeary@lakewoodoh.net>; "Bullock, Tom" <Tom.Bullock@lakewoodoh.net>; "Anderson, David" <David.Anderson@lakewoodoh.net>; "Marx, Cynthia" <cindy.marx@lakewoodoh.net>; "Nowlin, Ryan" <Ryan.Nowlin@lakewoodoh.net>; "Juris, Shawn" <Shawn.Juris@lakewoodoh.net>
Cc: "Petrus, Jeannine" <Jeannine.Petrus@lakewoodoh.net>
Sent: Friday, December 4, 2015 11:58 AM
Subject: RE: Proposal/Agreement Concerning Lakewood Hospital

We are unaware of any such records and do not have any records that would be responsive to your request.

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

From: Brian Essi [redacted]
Sent: Friday, December 04, 2015 11:07 AM
To: Butler, Kevin; Hagan, Mary; Summers, Mike; Madigan, Mary; O'Leary, Sam; Bullock, Tom; Anderson, David; Marx, Cynthia; Nowlin, Ryan; Juris, Shawn
Cc: Petrus, Jeannine
Subject: Re: Proposal/Agreement Concerning Lakewood Hospital

Dear Director Butler and President Madigan,

Please produce public records containing any draft, signed or unsigned agreement or proposal or concerning Lakewood Hospital that was or may have been discussed, approved or agreed to by Lakewood Hospital Association (LHA) or any committee of LHA and/or the Cleveland Clinic this week.

Please produce public records containing any draft, signed or unsigned agreement or proposal or document concerning Lakewood Hospital that will or may be the subject of the City Council Meeting to be held on December 7, 2015.

Please produce public records concerning Lakewood Hospital that will or may be the subject of any reading at the City Council Meeting to be held on December 7, 2015.

Sincerely,

Brian J. Essi
Cell 216-346-3434

From: Brian Essi [Email redacted]
To: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>; "Hagan, Mary" <Mary.Hagan@lakewoodoh.net>;
"Summers, Mike" <Mike.Summers@lakewoodoh.net>; "Madigan, Mary"
<Mary.Madigan@lakewoodoh.net>; "O'Leary, Sam" <Sam.OLeary@lakewoodoh.net>; "Bullock, Tom"
<Tom.Bullock@lakewoodoh.net>; "Anderson, David" <David.Anderson@lakewoodoh.net>; "Marx,
Cynthia" <cindy.marx@lakewoodoh.net>; "Nowlin, Ryan" <Ryan.Nowlin@lakewoodoh.net>; "Juris,
Shawn" <Shawn.Juris@lakewoodoh.net>
Cc: "Petrus, Jeannine" <Jeannine.Petrus@lakewoodoh.net>
Sent: Tuesday, December 1, 2015 12:28 PM
Subject: Agreement With LHA/CCF

Dear Director Butler,

Please produce any signed or unsigned agreement concerning Lakewood Hospital that was or may have been approved or agreed to by Lakewood Hospital Association (LHA) or any committee of LHA and/or the Cleveland Clinic on November 30, 2015.

Brian J. Essi
Cell 216-346-3434

From: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>
To: 'Brian Essi' <bjessi@sbcglobal.net>
Cc: "Petrus, Jeannine" <Jeannine.Petrus@lakewoodoh.net>; "Hagan, Mary" <Mary.Hagan@lakewoodoh.net>; "Summers, Mike" <Mike.Summers@lakewoodoh.net>; "Madigan, Mary" <Mary.Madigan@lakewoodoh.net>; "O'Leary, Sam" <Sam.OLeary@lakewoodoh.net>; "Bullock, Tom" <Tom.Bullock@lakewoodoh.net>; "Anderson, David" <David.Anderson@lakewoodoh.net>; "Marx, Cynthia" <cindy.marx@lakewoodoh.net>; "Nowlin, Ryan" <Ryan.Nowlin@lakewoodoh.net>; "Juris, Shawn" <Shawn.Juris@lakewoodoh.net>
Sent: Wednesday, December 9, 2015 7:51 PM
Subject: RE: Proposal/Agreement Concerning Lakewood Hospital

Mr. Essi:

All papers given to councilmembers on Dec. 6 were privileged attorney-client communications and will thus not be produced.

The agreed-upon key highlights of the master agreement and the ordinance considered by council on Dec. 7 are attached to this email in one document.

Your third request is overbroad but nevertheless we believe the only documents considered by Council on Dec. 7 that were related to the hospital are attached (in one PDF).

Best wishes,

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

From: Brian Essi [mailto:bjessi@sbcglobal.net]
Sent: Monday, December 07, 2015 1:42 PM
To: Butler, Kevin; Hagan, Mary; Summers, Mike; Madigan, Mary; O'Leary, Sam; Bullock, Tom; Anderson, David; Marx, Cynthia; Nowlin, Ryan; Juris, Shawn
Cc: Petrus, Jeannine
Subject: Re: Proposal/Agreement Concerning Lakewood Hospital

Dear Director Butler,

Please produce copies of all public records delivered to Councilmembers on December 6, 2015.

Please produce public records containing any draft, signed or unsigned agreement or proposal or concerning Lakewood Hospital that was or may have been discussed, approved or agreed to by Lakewood Hospital Association (LHA) or any committee of LHA and/or the Cleveland Clinic this week.

Please produce public records containing any draft, signed or unsigned agreement or proposal or document concerning Lakewood Hospital that will or may be the subject of the City Council Meeting to be held on December 7, 2015.

Please produce public records concerning Lakewood Hospital that will or may be the subject of any reading at the City Council Meeting to be held on December 7, 2015.

Brian J. Essi
Cell 216-346-3434

From: Bullock, Tom
To: Smyers, Robyn Minter
Cc: Pae, Jennifer; Butler, Kevin; 'John Bodine' (jbodine@huronconsultinggroup.com); Greenwald, Cathryn
Subject: Re: Lakewood Hospital
Date: Wednesday, July 22, 2015 6:12:59 PM
Attachments: image005.png
 image006.png

Aha. Sure is helpful. Thanks very much. Looping in Mayor Summers here.

At the appropriate time, I'd like to summarize this and other recent email discussion w/Dir. Pae and Mr. Bodine this week to my Council colleagues... have not yet done so, but I suspect all these insights would be elucidating.

Tom Bullock
 Lakewood City Council at Large
 (216) 337-1318
 Sign up for Lakewood emergency notifications: <http://tinyurl.com/o2mmsr5>
 Report-a-problem free smart phone app: tinyurl.com/kjgsb2x
 Report-a-Problem webform: tinyurl.com/4n7acj
 How was our service? tinyurl.com/kw2zj6v

From: Smyers, Robyn Minter <Robyn.Smyers@thompsonhine.com>
Sent: Wednesday, July 22, 2015 5:27 PM
To: Bullock, Tom
Cc: Pae, Jennifer; Butler, Kevin; 'John Bodine' (jbodine@huronconsultinggroup.com); Greenwald, Cathryn
Subject: Lakewood Hospital

Hi Tom,

Below are our thoughts on the questions you raised. We're happy to discuss these items further if you would like. We've reproduced your questions below for clarity.

Isn't the \$91.5 million in deferred maintenance (\$95 million if you include the parking garage) and the recent payment of LHA debt down to \$0 a tacit statement by leadership over the last 5-10 years that LHA is not viable, since no attempt to incur the expense of the investments needed to compete was made?

Is the reference to "leadership" in your question to City leadership or LHA leadership? It does not appear that there has been any expectation on the City's part that it would be investing additional funds into capital improvements at the Hospital, nor do there appear to have been requests made by LHA that the City invest any such funds. As Jenn notes, the last funding of debt was in 2003. We cannot speak to LHA's or the City's motivations, but Jenn's explanation that Hospital revenues were uncertain and LHA did not want to take the risk of incurring debt under those conditions would certainly make sense.

The statement in the Huron report that the financial burden of replacements or renovations would fall to the City refers to the fact that the responsibility for the property and improvements will revert

to the City upon the expiration of the lease. If the City were to try to lease or sell the facility to another operator, it seems likely that it would have to make some capital improvements or make other concessions to make another party willing to do so.

Who ought to have been financing these investments? LHA? CCF? The City? Who ought to have proposed them?

As we discussed at last week's meeting, the lease contains language requiring that LHA maintain the Hospital in "good repair and operating condition" during the term of the lease, but does not place an affirmative obligation on LHA to make capital repairs or improvements beyond what is required to keep the Hospital in "good repair and operating condition." We cannot speak to the parties' expectations in 1985 or 1996, but there is no express requirement in the lease that LHA make capital improvements outside of its express lease obligations. There is no obligation, for instance, to make the capital investments that would be required to maintain the profitability or competitiveness of the Hospital. The City also does not have the ability to force LHA to make improvements beyond the obligation to maintain the Hospital in "good repair and operating condition."

The Definitive Agreement does not place any financial obligations on CCF to fund capital or other obligations of LHA out of CCF's own resources, except for the cash-to-debt ratio and the requirement of the initial capital investment of \$10M over the first 5 years of the Definitive Agreement. We have asked Huron to specifically address the cash-to-debt ratio in their report; however, LHA cannot (1) undertake capital projects over \$500K, (2) incur indebtedness over \$500K, or (3) make capital expenditures in excess of \$500K, each without CCF approval, and if the cash-to-debt ratio covenant is triggered by expenditures/indebtedness approved by CCF, CCF is advancing (not gifting) the funds to LHA (subject to potential forgiveness if not repaid by the end of the term of the Definitive Agreement).

We hope that the above is helpful.

Robyn Minter Smyers | Cleveland Partner-in-Charge | Thompson Hine LLP |

3900 Key Center | 127 Public Square | Cleveland, OH 44114

Office: +1.216.566.5830 | **Mobile:** +1.216.287.1491

Fax: +1.216.566.5800 | **Email:** Robyn.Smyers@ThompsonHine.com

Web: <http://www.ThompsonHine.com>



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From: Bullock, Tom [mailto:Tom.Bullock@lakewoodoh.net]
Sent: Tuesday, July 21, 2015 4:23 PM
To: Pae, Jennifer; Smyers, Robyn Minter
Cc: Butler, Kevin
Subject: Re: Hospital matters: a general update

Hi Jenn (cc'ing Robyn here too),

One more round of questions your writing, and the Huron report has prompted. On page 19 of the recent Huron report (our DRAFT Phase One report), it says (emphasis added),

"The total renovation costs for the facility have been estimated at \$91.5 million. While the lease includes customary tenant covenants requiring LHA to maintain the Hospital in good repair and operating condition during the term of the lease, *these covenants should not be interpreted as requiring LHA to make material capital investments in the Hospital, to maximize Hospital revenues or to operate the Hospital as a state of the art facility. Consequently, the financial burden of the facility replacement or renovation would fall to the City* if LHA declines to renew the lease at expiration."

This would seem to indicate that the point you made at the conclusion of your column:

"The City of Lakewood voter's made that decision in 1985 to shift the liability for Lakewood Hospital capital improvements from the City to LHA."

...is either subject to a disputed interpretation, or that the 1985/1987 changes were not successfully constructed to achieve their intended outcome.

That prompts a pair of corollary question from me:

1. Isn't the \$91.5 million in deferred maintenance (\$95 million if you include the parking garage) and the recent payment of LHA debt down to \$0 a tacit statement by leadership over the last 5-10 years that LHA is not viable, since no attempt to incur the expense of the investments needed to compete was made?
2. Who ought to have been financing these investments? LHA? CCF? The City? Who ought to have proposed them?

I'd welcome your analysis here.

In addition, Robyn, can you shed any light?

Thanks,
Tom

Tom Bullock
 Lakewood City Council at Large
 (216) 337-1318
 Sign up for Lakewood emergency notifications: <http://tinyurl.com/o2mmsr5>
 Report-a-problem free smart phone app: tinyurl.com/kjgsb2x
 Report-a-Problem webform: tinyurl.com/l4n7acj
 How was our service? tinyurl.com/kw2zj6v

From: Pae, Jennifer

Sent: Friday, July 17, 2015 4:23 PM

To: Butler, Kevin; Anderson, David; Bullock, Tom; Juris, Shawn; Madigan, Mary; Marx, Cynthia; Mary Madigan; Nowlin, Ryan; O'Leary, Sam; Strachan, Shannon; Summers, Mike; Siley, Dru

Cc: 'Smyers, Robyn Minter (Robyn.Smyers@thomsonline.com)'; 'Greenwald, Cathryn'

Subject: RE: Hospital matters: a general update

You may also know that I recently took to social media regarding my opinions regarding the Lakewood Hospital transition and how they relate to the City's finances. I'm going to share this piece on the Deck, Buzz, NextDoor and FB this evening:

The Cost of Maintaining the Bricks and Mortar

On July 16, 2015 Summa Health System's president, Dr. Tom Malone, gave a speech to the Akron Roundtable about changes in healthcare: <http://www.ohio.com/news/local/summa-ceo-big-changes-coming-for-patients-1.608740>

He said, "People need to understand that looking at the hospitals and the bricks and mortar isn't where that care is being delivered anymore."

And this got me thinking about the bricks and mortar aspect of the Lakewood Hospital transition discussion, and Lakewood resident Tom Monahan's recent question to me about the City's indebtedness. Yes, it is municipal finance stuff, and it is what I think about.

The 23-member governing board of the Lakewood Hospital Association (LHA) knows that the hospital and the surrounding properties it is responsible for are in need of significant capital investment.

It is one thing to have the financial means to pay your mortgage and keep the lights on, but any property owner knows if you cannot pay for upkeep and maintenance you are going to run into trouble. You might think otherwise, but it is the Lakewood Hospital Association's responsibility for upkeep and maintenance of the hospital and its surrounding properties, not the Cleveland Clinic or the City of Lakewood. LHA took on this responsibility through its lease with the City of Lakewood, first in 1987, and revised in 1996, when that private, non-profit organization took over all of the hospital's assets and liabilities from the City.

In the recent Huron Consulting draft report, it is estimated that Lakewood Hospital needs over \$91 million in improvements. And these are not improvements to make it a shiny new hospital. It is to replace existing systems in order for them to continue to operate safely and efficiently. In addition, the parking garage needs about \$4 million just to bring it up to code and ADA compliance. That means LHA needs to come up with at least \$95 million for capital

investments.

That also means if another healthcare system or private physician practice took over the hospital, they would have to take on this liability and future expenses. And this amount is only going to increase over time if it is not addressed in the remaining 10 years of the lease between LHA and the City. The question is who is going to pay for this?

There is a call from some in the community that the City should take back the hospital. That means that suddenly the City would now have a \$95 million liability. The City definitely does not have that kind of money sitting around. It would have to borrow to cover those expenses, and the City of Lakewood would have to come up with the ability to pay that debt back.

The \$95 million in capital investments for the hospital will not necessarily make operations profitable. So if the hospital shut down during those 20 years, the City would still be on the hook for paying back the debt. In my opinion, this magnitude of borrowing would severely limit the City's ability to undertake any other capital improvements such as streets, parks and routine replacement of its fleet of vehicles during those 20 years. It would definitely hurt its strong bond rating of Aa2 by Moody's Investor Service, and put at risk the fiscal strength the City has built over the past 8 years.

For starters, the City only has capacity to borrow an additional \$30 million in debt as permitted by law. However, if there was a mechanism to issue the \$95 million in debt for the needed hospital improvements, I estimate that a 20-year bond will cost the City approximately \$5 million a year in annual debt service (principal and interest).

To put an additional \$5 million a year in perspective, that is the annual cost of the City's Parks and Refuse divisions combined. City Council would have to increase your income taxes by 1%, from 1.5% to 2.5% to generate an additional \$5 million a year. Or Lakewood voters could levy an additional 5.95 mills of property tax to come up with an additional \$5 million a year. For a \$100K valued home, that would be an increase of nearly \$210 a year for 20 years.

So everyone needs to ask themselves, is it worth the risk and cost? The City of Lakewood voter's made that decision in 1985 to shift the liability for Lakewood Hospital capital improvements from the City to LHA. Let's not go backwards, but instead let City Council deliberate on the issues and begin to negotiate the best deal for Lakewood going forward.

From: Butler, Kevin

Sent: Friday, July 17, 2015 3:37 PM

To: Anderson, David; Bullock, Tom; Juris, Shawn; Madigan, Mary; Marx, Cynthia; Mary Madigan; Nowlin, Ryan; O'Leary, Sam; Strachan, Shannon; Summers, Mike; Siley, Dru; Pae, Jennifer

Cc: 'Smyers, Robyn Minter (Robyn.Smyers@thompsonhine.com)'; 'Greenwald, Cathryn'

Subject: RE: Hospital matters: a general update

Confidential Attorney-Client Communication: Do Not Forward

Councilmembers, Mayor, Directors,

Please do not share this email. It is privileged and confidential. Here's an update on our status related to the proposal before you:

New master agreement: Our work in last Monday's committee meeting tightened the schedule so you now know when you'll weigh in on the strategic negotiating points in the event we proceed to negotiate with the Clinic. You all should have received the updated meeting schedule from Monique, and it's also posted [here](#).

Huron Consulting's work: John Bodine of Huron Consulting will be here to present on August 17 and will have released his firm's report beforehand, in accordance with the updated schedule. We saw an article this morning in the ABJ, [reporting on a talk](#) from the Summa system's CEO, that seems to confirm some of the materials we've read in Huron's phase-one report. ("At Summa, Malone said, the focus is shifting from hospital-based services to efforts that coordinate all the care patients seek from a variety of providers, primarily on an outpatient basis. 'This is why I went to medical school,' Malone said. 'This is a better model of care.'")

Litigation: In *Graham v. City of Lakewood*, the lawsuit filed as a taxpayer action, the city and other defendants are working on a written response to the plaintiffs' motion for an injunction and preparations for the injunction hearing tentatively scheduled for August 13 in Judge O'Donnell's courtroom. Not much else to report there.

I have attached for your edification, however, a transcript of the July 7 conference between Judge O'Donnell and several of the attorneys on the case, after which the judge denied the plaintiffs' motion for emergency temporary relief. I wrote to you about this last Friday. Through their lawyer, Chris DeVito, the plaintiffs in essence asked the judge to order LHA and the Clinic to run the hospital as it was run prior to 2010, a request the judge found to be fraught with peril. One exchange is telling in that it gives you a peek into the minds of the plaintiffs, who must genuinely believe an alternative operator will step in to run the hospital at their request:

THE JUDGE: "Essentially, I really think what you're asking is that the hospital be appointed to the equivalent of a receivership."

MR. DeVITO: "That's where I was going to go. I think the appropriate procedure is to order the specific performance [i.e., to force the parties to keep running the hospital]. If they fail to abide by that, then we can find our own hospital administrator, take over LHA and we will run it as a hospital."

Real estate: Dru has sent you the brokers opinion of value and facilities assessments related to the parking garage, community health center and professional office building on the west side of Belle. He is scheduled to speak before you on July 27. I do not believe an executive session is in order for this meeting. I'll be out of the country at the time, for what it's worth, back on August 1.

Communications strategy: You've seen the Mayor's latest *Observer* piece debunking the claims that he has plans for a recreation center on the hospital site. His work on a media strategy continues. Know that I'll begin coordinating with you and the Council office the "facts as we know them" piece for distribution after August 17. We'll be circulating drafts well in advance of that date.

New charter proposal: We had heard that some contingent of the Save Lakewood Hospital group would be seeking a charter amendment requiring voter approval of any hospital deal adopted by Council. Yesterday Ed Graham came into city hall with his attorney and offered up ballot language that, if adopted by the voters, would ostensibly do that. I've attached what they submitted. The committee now must gather signatures amounting to 10 percent of Lakewood's voters, and if they do you'll be obligated to send the issue to an upcoming election (depending on when the petitions are submitted). It's possible this issue will go onto the November ballot. In light of the confusion that could be created among the voters, I'd strongly suggest that Council wait to send the proposed third amended charter to the ballot until a 2016 election. I've spoken with Council President Madigan and she appears to be in agreement with me.

See you all Monday.

Kevin

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
 (216) 529-6034
kevin.butler@lakewoodoh.net

From: Butler, Kevin
Sent: Friday, July 10, 2015 2:39 PM
To: Anderson, David; Bullock, Tom; Juris, Shawn; Madigan, Mary; Marx, Cynthia; Mary Louise Madigan (mimadigan9@hotmail.com); Nowlin, Ryan; O'Leary, Sam; Strachan, Shannon; Summers, Mike; Siley, Dru; Pae, Jennifer
Cc: 'Smyers, Robyn Minter (Robyn.Smyers@thompsonline.com)'; Greenwald, Cathryn
Subject: RE: Hospital matters: a general update

Confidential Attorney-Client Communication: Do Not Forward

Councilmembers, Mayor, Directors,

Please do not share this email. It is privileged and confidential. Prior to Council's Committee of the Whole meeting Monday night, here's an update on our status related to the proposal before you:

New master agreement: Robyn continues to work with Mike Meehan on the Clinic's drafting and coordination of a proposed definitive agreement, most importantly the attachments to that agreement which would form the basis for much of the deal. It bears repeating we are not negotiating a new agreement at this point. We continue to wait for Huron's work to be completed, even in phases (see below), and of course we must continue to work with and hear from all of you to form, with our consultant's and attorneys' input, our key negotiating points. Robyn and Cathryn Greenwald will be in attendance Monday and can provide a fuller update.

Huron Consulting's work: Huron Consulting continues its work on our behalf and has prepared a *draft* report that remains a work in progress. The draft encompasses much of the first phase of Huron's consultancy. John Bodine indicated to me that other sections are being developed as Huron works through each other phase – for example, with respect to Subsidiary's analysis and process and the hospital's financials – but those other sections wouldn't be available by Monday. I anticipate

sending out the report later today, when I'm expecting it from Huron, so you can review it prior to Monday evening. John will participate in our meeting by phone (he'll be in Dallas) and will give us an update on his work, the path ahead for Huron Consulting, and some of the early key conclusions that firm has reached.

Litigation: In *Graham v. City of Lakewood*, the lawsuit filed as a taxpayer action, three significant things have happened since my last update. First, the city has asked Judge O'Donnell to order the plaintiffs to post a bond in a higher amount that would protect the city against any losses, including potential attorney fees, should the litigation delay any of our work. A bond is required in taxpayer actions to guard the public against haphazard claims and lost time and money. The plaintiffs posted a paltry \$100 bond when they filed the complaint and we've asked that it be increased, at the judge's discretion, to somewhere closer to \$250,000.

Next, the plaintiffs unsuccessfully sought this week an emergency order, based on Dr. Kilroy's affidavit, that would force LHA and the Clinic to return the hospital to pre-2010 status quo in terms of its services, employees and equipment. On the same day the plaintiffs made their request, the court found that they did not meet the test for emergency injunctive relief. The judge set a fuller hearing for August 13, which may or may not go forward depending on how he rules on the briefs to be filed in the case. Part of the motion seeks an order stopping you from deliberating over the hospital, a request against which we'll vigorously defend you.

Finally, the defendants will file a joint motion to dismiss the case today, which I'll also attach in a follow-up email. Although it's long, it's a good read and the work of many able hands. If this motion is granted, which wouldn't happen until, I suspect, at least mid-September, the case would be thrown out entirely.

Incidentally, I've heard that some councilmembers have received a few oddball anonymous calls lately about the litigation—one apparently alleging the city has set aside a pool of money for the Clinic's use to settle the lawsuit. That's a doozy, and as you might have guessed untrue. If you have any questions about the case just let me know.

Real estate: Dru is awaiting formal word from our outside appraisers on the valuation of the city-owned properties that constitute a portion of the proposal before you. I anticipate he'll have a better update by the time he next presents to COW, and perhaps documents to share by then as well. He can also discuss Monday his progress on visioning for the hospital site should it become developable.

Communications strategy: I know you've been working on formulating a communications strategy. I can tell you the Mayor is working on this as well, and he can further update you on Monday. It remains a work in progress but I think there are a few emerging ideas (and new people involved) that will prove helpful for this initiative.

Have faith in this process and be proud of your work. Expect a follow-up email from me later that attaches the documents I reference. Otherwise, see you Monday in Committee of the Whole.

Kevin

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

From: Butler, Kevin
Sent: Monday, June 22, 2015 12:22 PM
To: Summers, Mike; Siley, Dru; Pae, Jennifer; Anderson, David; Bullock, Tom; Juris, Shawn; Madigan, Mary; Marx, Cynthia; Mary Louise Madigan (mlmadigan9@hotmail.com); Nowlin, Ryan; O'Leary, Sam
Cc: Smyers, Robyn Minter (Robyn.Smyers@thompsonhine.com)
Subject: Hospital matters: a general update

Confidential Attorney-Client Communication: Do Not Forward

Councilmembers, Mayor, Directors,

Please do not share this email. It is privileged and confidential.

I hope you had a nice weekend. Prior to Council's Committee of the Whole meeting tonight, here's an update on our status related to the proposal before you:

Other healthcare systems: You may by now have read the developments from last Friday, namely that MetroHealth's Dr. Boutros sent Mayor Summers a letter that day (attached) indicating his system is not interested in running Lakewood Hospital as an inpatient facility. (Here are links to articles on this update, from [Crain's](#) and [Cleveland.com](#).) At the same time as that letter came to us, I received a copy of a letter (attached) from the Cleveland Clinic's chief of staff, Dr. Donley, to Dr. Boutros, reassuring Dr. Boutros that the Clinic would not stand in the way of MetroHealth submitting a proposal for the site. Dr. Donley's letter is of less consequence now, and I'm not sure how the two letters interrelate, if at all, but nonetheless I view this as a fairly significant development. Note: Part of the scope of Huron's work is to determine whether Subsidiary's process might have yielded additional suitors for the operation of a healthcare facility in Lakewood. That won't change with this news.

New master agreement: Robyn and I have been in conversations with Clinic and Lakewood Hospital Association attorneys about the timing of the drafting a new master agreement, always sure to caution the other parties that the city must complete its due diligence process before we decide to engage in negotiating a deal. Huron's and your input would, of course, be important contributions to this work if it came to pass. In the interim, we've requested updates to the master agreement from the Clinic, to the extent the Clinic would propose to adjust certain items (for example, the location of the new family health center). We've also requested a listing of attachments to the master agreement and who the Clinic proposes would draft each of those documents. We have no attachments at this point; they're nothing less than essential to giving us all an understanding of the deal being proposed.

Huron Consulting's work: Huron Consulting has begun its work on our behalf. It's expected we'll have the first deliverable from Huron – the firm's views on healthcare trends – this week. By July 15,

we should have the result of Huron's work with respect to Subsidiary's engagement and the analysis of the definitive agreement's financial covenants. By July 22, we should have the result of Huron's work on Lakewood Hospital's financial position and management fees, including a comparison with industry benchmarks.

Litigation: We've obtained a transcript of the pretrial conference from the June 4 hearing in *Graham v. City of Lakewood* before Judge John O'Donnell. I've attached the transcript for your review on the off chance you'd find compelling a bunch of lawyers talking. We continue to work through the claims process with our insurer, Trident, in order to minimize our expense defending the lawsuit. Meanwhile, we've retained Brzytwa, Quick and McCrystal LLC to join this department in defending the suit. Motions to dismiss from all defendants are due by July 10, and it's expected all defendants will file such motions. The plaintiffs would have until the second week of September to file responses to those motions.

Real estate: The appraisal of the medical facility at 850 Columbia Road, ordered and paid for by its owner, Lakewood Hospital Association, is in and was shared with us on Friday. I've attached it for your review.

See you tonight in Committee of the Whole.

Best wishes,

Kevin

Kevin M. Butler
Director of Law
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12650 Detroit Road
Lakewood, OH 44107
(216) 529-6034
(216) 228-2514 fax
kevin.butler@lakewoodoh.net
www.one.lakewood.com

From: "Meehan, Michael J., Esq." <MEEHANM@ccf.org>
Subject: Master Agreement Regarding Lakewood Hospital
Date: March 23, 2015 at 3:54:37 PM EDT
To: Lisa Fry <lfry@subsidiaryhealthcare.com>, Thomas J. Gable
(fourgablemgmt@aol.com) <fourgablemgmt@aol.com>,
"ken.haber@sbcglobal.net" <ken.haber@sbcglobal.net>, "Butler, Kevin"
<Kevin.Butler@lakewoodoh.net>

Attached is the initial draft of the Master Agreement involving
Lakewood Hospital. I will be in touch with you further regarding this.
Please share with your counsel as desired. I am willing to receive
communications from either them or you. Mike Meehan

Michael J. Meehan, Esq. / General Counsel, Regional Hospitals, Cleveland Clinic
Law Department / AC 321 / O: 216 448 0167 / M: 216 312 3523 / Confidential & Privileged

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From: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>
Subject: RE: Public Records Requests --PRR1 to PRR 173
Date: September 12, 2016 at 7:58:54 AM GMT-4
To: "Brian Essi" <blessi@sbcglobal.net>

Brian, per below, here are the last of the additional emails between me and Michael Meehan in response to No. 173 of your requests.

Four of the emails between me and Mr. Meehan were redacted, only to remove their attachments, because counsel for the Clinic and LHA are reviewing those attachments for matters they deem confidential or subject to peer review or trade secret protection. You'll see where I've noted that attachments were removed. I am told counsel's review will be completed early this week and so I'll have an update for you once I hear from them.

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

From: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>
Subject: RE: LHA minutes - another records request
Date: September 12, 2016 at 7:11:49 AM EDT
To: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>

**[Attachments removed for review by counsel for Cleveland Clinic,
Lakewood Hospital Association]**

Mike and Tom,

We received another records request for 2006-2010 minutes of the LHA in the Mayor's possession. We were able to find only the minutes from 2008 and 2009 that are attached among his materials (these represent just three meetings). I am asking whether you would permit us to release them, either redacted or otherwise. Please advise. Thanks.

Kevin

Kevin M. Butler
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(216) 529-6034
(216) 228-2514 fax
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From: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>
Subject: RE: Draft Notice and Agenda
Date: September 12, 2016 at 7:20:24 AM EDT
To: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>

**[Attachment removed for review by counsel for Cleveland Clinic,
Lakewood Hospital Association]**

From: Meehan, Michael J., Esq. [<mailto:MEEHANM@ccf.org>]
Sent: Tuesday, December 30, 2014 11:42 AM
To: Butler, Kevin
Subject: Draft Notice and Agenda

Hi Kevin. Attached—comments welcome. Are you available to talk today by phone? I can be reached at 216 312 3523 Mike

Michael J. Meehan, Esq. | General Counsel, Regional Hospitals
Law Department | Cleveland Clinic | 3050 Science Park Dr., AC321
Beachwood, OH 44122 | (216) 448-0167 | Fax: (216) 448-0201 |
meehanm@ccf.org
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received this communication in error, please contact the sender immediately and destroy the material in its entirety, whether electronic or hard copy. Thank you.

From: Brian Essi <bjessi@sbcglobal.net>
To: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>
Sent: Tuesday, March 14, 2017 4:18 PM
Subject: Re: Cooperation Requested

Dear Records Custodian Butler,

Please recall that you and I met for approximately 12 hours on August 30, 2016, September 6, 2016 and September 9, 2016 discussing 116 of my requests 23-225. Both during and at the conclusion of those discussions you stated that you understood each of my requests and committed to producing records and/or providing complete responses.

I have received responses to only 7 PRRs in that category since September 9, 2016--over six months ago.

So, I am writing to request your cooperation to correct the failures of the City of Lakewood to follow through on its prior commitments.

By way of example, your email of September 12, 2016 at 7:58 am (below for your convenience) included another commitment that you would get back to me concerning redacted attachments to 4 emails between you and Mr. Meehan (see attached for your convenience). Three of those emails were dated December 30, 2014, December 31, 2014, and January 4, 2015 and one was undated and incomplete as to recipients besides the attachments. Note that the emails were actually produced via your email of September 12, 2016 at 7:50 am--That's a very confusing way to produce things and reference redactions in separate emails. Anyway, you marked the four emails in question: "[Attachment removed for review by counsel for Cleveland Clinic, Lakewood Hospital Association]"

Whatever the reason you sought the LHA and CCF attorneys' advice and review prior to releasing these public records, it has now been 183 days, i.e. over 6 months since you made the commitment to get back to me.

In furtherance of the Court's order March 9, 2017 for the parties to cooperate, could you kindly explain in detail the reasons you are withholding these documents and your reasons for the delay?

Please explain how a redlined "Draft LOI" and a "Draft Notice and Agenda" and LHA minutes in the Mayor's possession can be subject to any exemption from public records?

Sincerely

Brian J. Essi
Cell 216-346-3434

From: "Butler, Kevin" <Kevin.Butler@lakewoodoh.net>
To: 'Brian Essi' <bjessi@sbcglobal.net>
Sent: Monday, September 12, 2016 7:58 AM
Subject: RE: Public Records Requests –PRR1 to PRR 173

Brian, per below, here are the last of the additional emails between me and Michael Meehan in response to No. 173 of your requests.

Four of the emails between me and Mr. Meehan were redacted, only to remove their attachments, because counsel for the Clinic and LHA are reviewing those attachments for matters they deem confidential or subject to peer review or trade secret protection. You'll see where I've noted that attachments were removed. I am told counsel's review will be completed early this week and so I'll have an update for you once I hear from them.

Kevin M. Butler, Director of Law
City of Lakewood | Law Department
(216) 529-6034
kevin.butler@lakewoodoh.net

Butler, Kevin

From: Paul Colarusso <pcolarusso@huronconsultinggroup.com>
Sent: Tuesday, September 29, 2015 5:37 PM
To: Bullock, Tom
Subject: RE: Clarification on Huron statements in report for Lakewood
Attachments: image001.gif

Certainly. Apologies – please note typo below now fixed (highlighted).

Paul Colarusso
Associate
550 W. Van Buren Street
Chicago, Illinois 60607
Office 312-880-5617 | Mobile 312-288-5024
pcolarusso@huronconsultinggroup.com
www.huronconsultinggroup.com

Huron

From: Bullock, Tom [mailto:Tom.Bullock@lakewoodoh.net]
Sent: Tuesday, September 29, 2015 4:25 PM
To: Paul Colarusso; John Bodine
Cc: Butler, Kevin
Subject: Re: Clarification on Huron statements in report for Lakewood

Thank you. These are helpful clarifications, and I'll share them with my colleagues and the public. I appreciate your quick turnaround.

Sincerely,
Tom

Tom Bullock
Lakewood City Council at Large
216-395-7LWD (-7593)
Report-a-problem free smart phone app: tinyurl.com/kjgsb2x
Report-a-Problem webform: tinyurl.com/qxkl5be
Sign up for emergency notifications: tinyurl.com/g5budby
How was our service?: <http://tinyurl.com/ugus4sd>

From: Paul Colarusso <pcolarusso@huronconsultinggroup.com>
Sent: Tuesday, September 29, 2015 5:10 PM
To: Bullock, Tom; John Bodine
Cc: Butler, Kevin
Subject: !RE: Clarification on Huron statements in report for Lakewood

Hi Tom,

Please see below for our response (in green).

- "Under these circumstances, there is simply no cause to abandon Lakewood Hospital or do anything else in a hurry. As Huron Consulting affirmed, holding Cleveland Clinic to its obligations while conducting a patient, transparent, genuine

search for a new partnership is a perfectly viable option." <http://savejakewoodhospital.org/why-jakewood-hospital-is-not-st-michaels>

- The term "perfectly" is inaccurate. While it is our opinion that continuing the partnership search process is an option that can be pursued, it will likely be expensive (due to the need for a replacement facility) and we are not sure if it will yield positive results given the lack of independent physicians in the market (more on this below) and the lack of interested suitors.
- <http://savejakewoodhospital.org/huron-consulting-report-other-news/> "Certain of its [Huron's] observations have generated much discussion, among them:
 - The city's purported search for alternative partners was mishandled and abandoned well short of completion
 - Huron does not use the term "mishandled" or the phrase "abandoned well short of completion." Huron had concerns with certain areas of the marketing process, including (a) Subsidium is not an investment banker, (b) a letter of release from Cleveland Clinic was not obtained, (c) there were two sets of RFPs, and (d) certain mission/fair-based systems or companies with a history of investing in distressed hospitals were not approached. However, it is incomplete and misleading to note the above without mentioning that it is our belief that the Hospital was marketed to nearly all logical parties and we have no expectation that a different outcome would have resulted if the above concerns were addressed during the sale process.
 - "The earlier report by Subsidium consultants ignored important issues in concluding that Lakewood does not need "obsolete" inpatient hospital facilities
 - This is not our quote and is not supported by our analysis. In our report, we note that we believe the criteria Subsidium utilized in determining the viable options for Lakewood is reasonable and comprehensive. We also note that we believe Subsidium considered essentially all relevant potential options. That said, we point out that the City of Lakewood may also consider non-financial factors that we did not investigate including the impact on employment in the community or whether or not the City feels it has a responsibility to ensure that acute care services are provided within Lakewood.
 - "Continue operating under the current lease agreement, while also pursuing strategic initiatives and affiliation discussions" is a viable option for Lakewood.
 - Given numerous factors, including the recent downturn in financial performance, we believe that it will be difficult for the Hospital to continue on a status-quo course of action. Accordingly, this is only considered a viable option if the City addresses the facility issues, develops a supportive physician network, and pursues negotiations with potential partners. If this strategy is unsuccessful, the cost to the community in terms of financial losses and lost services could be significant. While the above initiatives and negotiations are taking place, the investment portfolio of UHIA will likely be depleted.
- "A population the size of Lakewood has the ability to support an acute care hospital." Pages 38, 71 (My question: is that statement only true if Fairview Hospital is not drawing away so much patient volume?)
 - The population is large enough to support an acute care hospital, but only if a larger portion of the population utilizes the facility (this would require the redirection of patients that are currently out-migrating to other facilities including Fairview).

- "Huron believes status quo 'may be a viable option if LHA and the City prefer to delay a decision on the Hospital, during which time the City would continue to receive payments under the lease.' Use additional time 'to develop a strategy to address facility issues, develop a supportive physician network, and pursue negotiations with potential partners.'" Pages 40, 71 (My question -- wouldn't achieving these things take longer periods of time and are very costly, correct? Would achieving these things take weeks, months, or years? How much money?)
 - o It is our opinion that it would likely take several years to build a new facility and possibly longer to develop a physician network (if it is even possible). The time requirement can be shortened if the Hospital renovates the current space (as opposed to a complete rebuild), although refurbished space is seldom of the same standard as a new facility and may not be competitive depending on the extent of the renovations. It will likely cost over \$100 million to build a new facility and develop a physician network, potentially less if the existing space is renovated.
- "Right Size Hospital - Reduction of Beds - Huron believes this is 'a viable option if there is sufficient capital for facility renovations and an ability to expand the physician network and capture additional community support for the Hospital.'" Page 40 (My question -- wouldn't achieving these things take longer periods of time and are very costly, correct? Would achieving these things take weeks, months, or years? How much money?)
 - o Our answer to this question is similar to the previous question, especially since we would expect a new or renovated hospital to contain fewer beds than are currently in place. We would expect a new facility to contain between 50 and 100 beds. Construction costs for a hospital typically range from \$700,000 to \$1.4 million per bed.

If you have any further questions, please let me know.

Thank you,

Paul Colarusso
Associate
550 W. Van Buren Street
Chicago, Illinois 60607
Office 312-880-5617 | Mobile 312-288-5024
pcolarusso@huronconsultinggroup.com
www.huronconsultinggroup.com

Huron

From: Bullock, Tom [<mailto:Tom.Bullock@lakewoodoh.net>]
Sent: Tuesday, September 29, 2015 8:28 AM
To: John Bodine
Cc: Paul Colarusso; Butler, Kevin
Subject: Re: Clarification on Huron statements in report for Lakewood

Thank you

On Sep 28, 2015, at 10:07 PM, John Bodine <jbodine@huronconsultinggroup.com> wrote:

Tom:

We will review and respond shortly.

On Sep 28, 2015, at 2:33 PM, Bullock, Tom <Tom.Bullock@lakewoodoh.net> wrote:

From: Paul Colarusso <pcolarusso@huronconsultinggroup.com>
 Sent: Tuesday, September 29, 2015 5:10 PM
 To: Bullock, Tom; John Bodine
 Cc: Butler, Kevin
 Subject: IRE: Clarification on Huron statements in report for Lakewood

Please see below for our (Huron Consulting) response (in red) to Mike Skindell's campaign statements (underlined)

- "Under these circumstances, there is simply no cause to abandon Lakewood Hospital or do anything else in a hurry. As Huron Consulting affirmed, holding Cleveland Clinic to its obligations while conducting a patient, transparent, genuine search for a new partnership is a perfectly viable option." <http://sayelakewoodhospital.org/why-lakewood-hospital-is-not-st-michaels/>
 - .. The term "perfectly" is inaccurate. While it is our opinion that continuing the partnership search process is an option that can be pursued, it will likely be expensive (due to the need for a replacement facility) and we not sure if it will yield positive results given the lack of independent physicians in the market (more on this below) and the lack of interested suitors.
- <http://sayelakewoodhospital.org/huron-consulting-report-other-news/> "Certain of its [Huron's] observations have generated much discussion among them:
 - The city's purported search for alternative partners was mishandled and abandoned well short of completion
 - Huron does not use the term "mishandled" or the phrase "abandoned well short of completion." Huron had concerns with certain areas of the marketing process, including (a) Subsidiary is not an investment banker, (b) a letter of release from Cleveland Clinic was not obtained, (c) there were two sets of RFPs, and (d) certain mission faith-based systems or companies with a history of investing in distressed hospitals were not approached. However, it is incomplete and misleading to note the above without mentioning that it is our belief that the Hospital was marketed to nearly all logical parties and we have no expectation that a different outcome would have resulted if the above concerns were addressed during the sale process.
 - "The earlier report by Subsidiary consultants ignored important issues in concluding that Lakewood does not need "obsolete" inpatient hospital facilities
 - This is not our quote and is not supported by our analysis. In our report, we note that we believe the criteria Subsidiary utilized in determining the viable options for Lakewood is reasonable and comprehensive. We also note that we believe Subsidiary considered essentially all relevant potential options. That said, we point out that the City of Lakewood may

also consider non-financial factors that we did not investigate including the impact on employment in the community or whether or not the City feels it has a responsibility to ensure that acute care services are provided within Lakewood.

- o "Continue operating under the current lease agreement, while also pursuing strategic initiatives and affiliation discussions" is a viable option for Lakewood.
 - Given numerous factors, including the recent downturn in financial performance, we believe that it will be difficult for the Hospital to continue on a status-quo course of action. Accordingly, this is only considered a viable option if the City addresses the facility issues, develops a supportive physician network, and pursues negotiations with potential partners. If this strategy is unsuccessful, the cost to the community in terms of financial losses and lost services could be significant. While the above initiatives and negotiations are taking place, the investment portfolio of LHA will likely be depleted.
- o "A population the size of Lakewood has the ability to support an acute care hospital..."

The population is large enough to support an acute care hospital, but only if a larger portion of the population utilizes the facility (this would require the redirection of patients that are currently out-migrating to other facilities including Fairview).
- o "Huron believes status quo may be a viable option if LHA and the City prefer to delay a decision on the Hospital, during which time the City would continue to receive payments under the lease. Use additional time to develop a strategy to address facility issues, develop a supportive physician network, and pursue negotiations with potential partners."

It is our opinion that it would likely take several years to build a new facility and possibly longer to develop a physician network (if it is even possible). The time requirement can be shortened if the Hospital renovates the current space (as opposed to a complete rebuild), although refurbished space is seldom of the same standard as a new facility and may not be competitive depending on the extent of the renovations. It will likely cost over \$100 million to build a new facility and develop a physician network, potentially less if the existing space is renovated.
- o "Right Size Hospital - Reduction of Beds - Huron believes this is a viable option if there is sufficient capital for facility renovations and an ability to expand the physician network and capture additional community support for the Hospital."

Our answer to this question is similar to the previous question, especially since we would expect a new or renovated hospital to contain fewer beds than are currently in place. We would expect a new facility to contain between 50 and 100

beds. Construction costs for a hospital typically range from \$700,000 to \$1.4 million per bed.

If you have any further questions, please let me know.

Thank you,

Paul Colarusso
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www.huronconsultinggroup.com

Huron

From: Brian Essi <bjessi@sbcglobal.net>
To: Sam O'Leary <sam.oleary@lakewoodoh.net>; David Anderson <david.anderson@lakewoodoh.net>; Ryan Nowlin <ryan.nowlin@lakewoodoh.net>; Cynthia Marx <cindy.marx@lakewoodoh.net>; Tom Bullock <tom.bullock@lakewoodoh.net>; John Litten <john.litten@lakewoodoh.net>; Daniel O'Malley <daniel.omalley@lakewoodoh.net>; Kevin Butler <kevin.butler@lakewoodoh.net>; Mary Hagan <mary.hagan@lakewoodoh.net>; Mike Summers <mike.summers@lakewoodoh.net>
Sent: Monday, April 4, 2016 9:23 PM
Subject: Huron and a Fabricated Huron Document Used by Summers' Campaign

Dear Councilmembers, Mayor Summers and Mr. Butler,

Attached are:

- (1) the public records Mr. Butler sent to me February 3, 2016---records I asked for back on October 5, 2015; and
- (2) a scanned copy of the document Mayor Summers gave the Plain Dealer Editorial Board during a mayoral endorsement interview on October 1, 2015.

The email of Huron dated September 29, 2015 at 5:10 p.m. which is part of the Butler production was altered from its original form and substance prior to Mayor Summers giving it to the PD on October 1, 2015.

The original email starts on page 8 -10 of the Butler February 3, 2015 production and Mr. Bullock's original request to Huron is on pages 10-12.

Examples of alterations are as follows:

1. The original Huron 9/29/15 email contained the following introduction:

"Hi Tom,

Please see below for our response (in green)"

2. The adulterated document given to the PD on October 1, 2015 omits the "Hi Tom" and contains the following introduction

Please see below for our (Huron Consulting) response (in red) to Mike Skindell's campaign statements (underlined)

The body of the email was significantly changed by omitting many words and references to page numbers, changing coloring of words and underlining sections from the original version.

The alterations point to the following concerns:

1. The alteration leaves the reader of the document with the impression that Huron was addressing alleged misstatements by Senator Skindell's campaign when in fact the statements were made by Save Lakewood Hospital (SLH) on the SLH website and written by Matt Kuhns of SLH all without any involvement by Mr. Skindell or anyone in his campaign.

2. The alterations omit all traces of Mr. Bullock's fingerprints as the surrogate of Summers who had prompted the responses to be given to Mayor Summers and then given by Mayor Summers to the PD for political purposes.
3. There is no evidence that Mr. Bullock actually shared any of this with his colleagues or the public as Mr. Bullock told Huron he would—he could have easily chosen to copy all Councilmembers on his improper activities but he chose not to. Rather, the only “public” use of the Huron responses (albeit adulterated responses) was that the adulterated document was given by Mayor Summers to the PD editorial board to unfairly discredit Senator Skindell.
4. It would seem that Bullock was in the best position and had the clear motive to perform the alterations and remove traces of his involvement. However, it matters not if he actually did the alterations or Huron or someone else accomplished that task. In fact, if Huron performed the adulterations it would suggest they were acting in a political role rather than as an allegedly independent consultant.
5. It is also worthwhile to note that Huron referred to Mr. Bullock as “Tom” and in contrast referred to Councilman Anderson as “Mr. Anderson” implying that “Tom” (Summers' surrogate and part of the campaign inner circle) was in a cozy and regular relationship with Huron, i.e. in a position to influence their work and findings. Since Mr. Bullock had already voted for the LOI on LHA's Board, any of his involvement with Huron taints all of Huron's findings. Why was Mr. Bullock at all involved with Huron since he had already voted on the matter?
6. Mr. Butler was copied on these emails and was equally aware of and culpable in the Summers campaign's use of the city's paid consultant for campaign purposes.
7. There are numerous other implications from the activities exposed by the emails.

In summary, the improper use of the consultant for political purposes, the delay in the city producing records, Mr. Bullock's dishonesty and concealment of his improper use of the Huron consultant for political purposes and the city's refusal to provide responses to my follow up records requests on the same subject all expose improper conduct by a member of city Council, the Law Director and the Mayor that warrant an independent investigation.

This is but one example of bad government that needs to be cleaned up to restore trust and confidence in our local government.

Will one of you please identify the person who altered the document?

What will Council do about policing misconduct by its own member and monitoring the city's public records process that is being abused?

Sincerely,

Brian J. Essi
Cell 216-346-3434

IN THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO

State of Ohio ex rel.
BRIAN J. ESSI

Relator,

v.

CITY OF LAKEWOOD, OHIO

Respondent.

CASE NO. CA-16-104659

ORIGINAL ACTION IN MANDAMUS

STATE OF OHIO

COUNTY OF CUYAHOGA

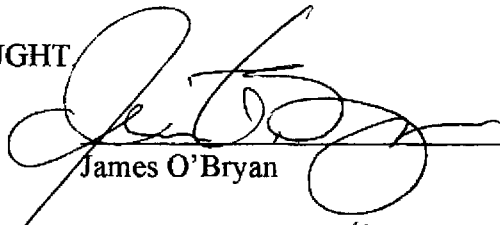
SS: AFFIDAVIT OF JAMES O'BRYAN

I, JAMES O'BRYAN, having been first duly sworn, depose and state that I have personal knowledge of the facts and matters that follow:

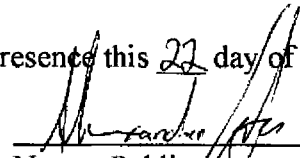
1. I am over the age of 18 and not laboring under any disabilities.
2. I am the Co-Publisher of the Lakewood Observer, Inc. and the President of the Observer Media Project, Inc.
3. The Lakewood Observer publishes printed papers twice a month and has a circulation of approximately 9,000 printed copies per issue.
4. In all Observer Projects, we incorporate Civic Journalism.
5. Civic journalism (also known as public journalism) is the idea of integrating journalism into the democratic process. The media not only informs the public, but it also works towards engaging citizens and creating public debate.

6. Brian Essi ("Mr. Essi") is a respected reporter and member of the Observer Media Project. Mr. Essi quickly became one of our lead journalists and investigative reporters on stories like involving Lakewood Hospital, Open Government, the Edgewater Sewer Treatment Project, Improper Hiring, etc. Using his vast legal knowledge Mr. Essi has not only uncovered many irregularities, but he has a down home way of explaining the facts so that everyone can understand, and then judge for themselves. He has helped residents of the community understand complex legal issues that might escape some, or lead those without legal knowledge into being manipulated by answers given. Mr. Essi has shown a depth and fairness most of us want to see from professional journalists, but rarely do in this day and age.
7. Attached hereto as Exhibit B-1, is a compilation of online and printed articles written by Brian Essi as published in the Lakewood Observer printed and online version.
8. In addition, Mr. Essi is a frequent poster of the Observation Deck online forum writing about numerous matters of public interest and posting public records of public interest. The Observation Deck is also used to answer questions that arise from stories while having a casual online conversation with others.
9. The Observer Media Project depends on highly educated and engaged individuals, like Mr. Essi. His legal, business, and social skills help us focus on the facts. As part of that process, he is a recognized member of the press, and the community. He not only holds the rights, liberties and protection afforded to news media, but all of the rights and liberties provided by the Constitution.

FURTHER AFFIANT SAYETH NAUGHT.


James O'Bryan

SWORN TO BEFORE ME and subscribed in my presence this 22 day of May 2017.


Notary Public



ALEXANDER GORETA
Notary Public, State of Ohio
My Commission Expires
February 07, 2022

Exhibit B-1

Brian Essi Lakewood Observer Articles

Articles by Brian Essi, as published in the Lakewood Observer, print and online in the last two years.

Dates are listed as the articles were posted in the online edition, usually a few days in advance of print publication. Some material was online only.

Oct. 11, 2016 (Front Page Headline Article).

State Auditor Report Confirms Cleveland Clinic Paid \$9.6 Million, A Fraction Of Hospital Value, For Lakewood Hospital

<http://lakewoodobserver.com/read/2016/10/11/state-auditor-report-confirms-cleveland-clinic-paid-96-million-a>

by Brian Essi

- The Cleveland Clinic Foundation admits liability to Lakewood of \$278 million.
- Clinic records show Clinic will make \$11.5 million additional profit each year into the future due to the hospital closure.
- State Auditor Report shows the Clinic paid only \$9.6 million in the purchase of Lakewood Hospital.
- In exchange for only \$9.6 million, the Clinic received \$108 million or 60% of \$180 million fair market value of Lakewood Hospital.

Clinic records prove the Clinic was Liable for \$278 million prior to the Master Agreement

Internal planning documents prepared by the Clinic and filed in Court in the pending taxpayer lawsuit on October 5, 2016, prove that the Clinic was liable for required capital improvements and all losses at Lakewood Hospital through 2026. The Clinic's own documents from 2011 declare the amount of the Clinic's liability was \$278 million beginning in 2017 which would have made Lakewood Hospital a state-of-the-art hospital on par with the Clinic's other hospitals.

This is at odds with Lakewood Law Director Kevin Butler's September, 2015 legal opinion in which he stated: "The Cleveland Clinic is not required to cover LHA's operating losses. And neither LHA nor the Cleveland Clinic is obligated to invest significant capital money into the hospital facility--making major improvements at the hospital is the city's responsibility." Butler's legal opinion was the most important reason cited by City Council when they authorized Butler to negotiate the Master Agreement.

The Clinic will make over \$11.5 million per year into the future from the Master Agreement.

Other internal planning documents from 2011 just filed in Court, show that the Clinic planners “calculated the closing of Lakewood Hospital would result in a \$11.5 million a year windfall” profit to the Clinic’s other hospitals because “CCF hospitals would capture an additional 5,000 inpatient visits per year with a closed Lakewood Hospital.” The documents show that as far back as 2011, the Clinic wanted to avoid its \$278 million obligation by closing the hospital and harvesting the “premium payer mix” of Lakewood patients using the proposed family health center (FHC) to refer patients to the Clinic’s other hospitals.

On January 14, 2015, CCF’s Brian Donley (second in charge to Toby Cosgrove) referred to the FHC as a “specialty referral center.” Lakewood’s low-pay and self-pay patients would be referred out of Lakewood to Metro Hospital and other non-Clinic hospitals. The Master Agreement gives the Clinic a non-compete, or restrictive covenant (terms are interchangeable), that prohibits its competitors from operating at the former Lakewood Hospital site and assures the Clinic’s dominance in Lakewood as a “referral center.” The non-compete also guarantees that the land will be available to developers—which court documents and sworn testimony show that Summers and the Clinic planned since 2011, and earlier.

The State Auditor Report shows the Clinic paid only \$9.6 million in the hospital “sale.”

Public records released by Finance Director Jenn Pae on September 29, 2016 to support the City of Lakewood Comprehensive Annual Financial Review (CAFR), clearly demonstrate that the Cleveland Clinic paid only \$9.6M to the city to purchase 60% of Lakewood Hospital’s \$180 million FMV. The CAFR was prepared by the State Auditor’s office so the \$9.6 million number is not subject to debate.

According to the CAFR, which was prepared with the participation of Mayor Summers and his administration: The Master Agreement disposed of “The City-owned Lakewood Hospital” (CAFR, page 47) in a “sale of Lakewood Hospital to the Cleveland Clinic” (CAFR, pages 42 and 44). The full CAFR can be found

at https://ohioauditor.gov/auditsearch/Reports/2016/City_Lakewood_15-Cuyahoga.pdf

In his January, 2016 deposition in the taxpayer lawsuit, when Summers (a defendant) was asked why there were no appraisals of hospital assets and why an investment banker was not hired to market the hospital, he testified: “We weren’t selling this hospital.” [Summers transcript page 155; line 14.]

In the last issue of the Lakewood Observer, Councilman David Anderson wrote: “...the Lakewood Hospital Association’s net assets were valued at \$128 million. The negotiated deal accounts for all of the \$128 million.” However, it has been previously established through public records requests that neither the Mayor nor City Council conducted any appraisal of the hospital assets and Mr. Anderson’s \$128 million number is the net “book value” of the assets and not a fair market value of the assets.

The Fair Market Value of Lakewood Hospital was \$180 million.

Nevertheless, now that it has been established that a “sale of Lakewood Hospital to the Clinic” took place, and that the Clinic paid only \$9.6 million, the question remains:

What was the value of hospital assets sold to the Clinic for the \$9.6 million the Clinic paid?

Investment bankers and hospital valuation experts generally agree that the fair market value (FMV) for the sale of a hospital, is about 75% of annual “net revenues.” The logic behind this valuation approach is that the purchaser is paying for the revenue stream from existing patient lists as part of a going concern. Using this valuation method would produce a \$180 million FMV when Lakewood’s \$87 million liquid investment portfolio is included. This valuation is supported by the reported comparable sale price of St. John’s Hospital in Westlake to University Hospitals in 2015.

The Clinic Received \$108 million of the Hospital FMV paying only \$9.6 million.

The Master Agreement terms and the CAFR together establish that the Clinic received \$108 million of hospital FMV in exchange for \$9.6 million. The Clinic received:

1.) \$63.4 million—Net Value of the Non-Compete/Restrictive covenant, together with all patient records and patient information, equipment, furniture, fixtures, bed licenses and tangible and intangible property. 2.) \$30 million--cash portion of the hospitals liquid investments. 3.) \$1.6 million--value of 1.8 Acres of cleared land on Belle and Detroit. 4.) \$13 million--FMV of Columbia Road surgical center.

Total Cash, Property and Rights to Clinic: \$108 million.

Summary of how \$180 million hospital value was distributed/sold

So here is the summary of what each party gets from the \$180 million city-owned hospital:

1.) \$22 million returned to the City (12 %) 2.) \$16.5 million (net present value) to new foundation (9%). 3.) \$33.5 million released to Lakewood Hospital Foundation for private charitable use. (19%) 4. \$108 million to the Clinic. (60%)

Total: \$180 million

Issue 64 on November 8th gives voters the chance to vote for or against the Master Agreement.

Lakewood Voters must judge whether the Master Agreement is a good or bad financial deal for Lakewood; and a good or bad deal for their future healthcare.

SUPPORTING DETAILS AND ANALYSIS:

The following details and analysis support what I wrote above. It is intended to serve as a guide to simplify the overly complex terms of the Master Agreement that have been

mischaracterized and misunderstood by various elected and public officials and others.

I. The 2015 CAFR (and the recently release records) show the city received \$9.6 million from CCF for Lakewood Hospital, which includes:

1. \$ 6,644,731 sale proceeds Columbia Road property (per CAFR).
2. \$1,400,00 promissory note from CCF for sale of Columbia Road (per CAFR).
3. \$1,576,000 for sale of Detroit/Belle land sold to CCF (per CAFR).

Total Received from CCF: \$9,620,731.

II. The Clinic gets \$108 of the \$180M FMV of the Hospital (60%).

The Master Agreement read together with the CAFR provides that the Clinic received \$108 million of hospital fair market value (FMV) in exchange for \$9.6 million. This includes:

1. \$63.4 million — Net Value of the non-compete/restrictive covenant blocking all of its competitors from operating at the former hospital site, together with all patient records and patient information as well as a covenant together with equipment, furniture, fixtures bed licenses and tangible and intangible property.
2. \$30 million — Cash portion of the hospitals liquid investments (see below).
3. \$1.6 million — Value of 1.8 acres of cleared land on west side of Belle and Detroit.
4. \$13 million — FMV of Columbia Road surgical center (CCF only paid \$8M).

III. Overview of what each party gets from \$180M FMV of Lakewood Hospital.

So here is the overview of what each party get from the \$180M FMV of the city-owned hospital:

1. \$7 million — Demolition payments to City.
2. \$5.4 million — Surrender of control of real estate owned by the City.
3. \$9.6 million — for Columbia Road and Belle/Detroit Land paid to City (per CAFR).
4. \$16.5 million — Net Present Value of payments to a new foundation, largely controlled by CCF.
5. \$33.5 million — Returned to Lakewood Hospital Foundation for private use.
6. \$108 million — FMV of all assets transferred to CCF for \$9.6M payment to city.

IV. According to the CAFR and the Master Agreement the City will receive only \$22 million value for the hospital closing.

1. \$8 million — Sale proceeds Columbia Road property (per CAFR).
- 2 \$7 million — Demolition payment toward tear down of hospital (from Master Agreement).
3. \$1.6 million — For Family Health Center site land sold to CCF (Per CAFR).
6. \$1 million — For seven residential properties (per CAFR).
7. \$0.7 million — For existing community health center (per CAFR).
8. \$3.7 million — Estimated value of hospital site, subject to non-compete and CCF parking lot rights not returned to city until 2018.

Total to be received by City: \$22M.

V. Lakewood Hospital had a fair market value of \$180M:

1. Industry standards used by Investment Bankers: 75% of 2014 net revenues of \$124 million equals \$93 million, plus investment portfolio of \$87 million puts FMV of Lakewood Hospital at \$180M.
2. Supporting the \$93 million FMV is the 2015 announcement that University Hospitals (UH) had paid \$90M for the smaller St. John's Hospital in Westlake. UH received no liquid investments in that sale.
3. The Clinic will make \$11.2 million profit per year — capitalized this supports the \$93M valuation.
4. Subsidiary — a conflicted expert hired by CCF placed an average FMV \$71M Lakewood Hospital plus \$87 million investments. \$158M FMV.

VI. CCF receives \$30M of LHA's liquid assets.

1. \$2.5 million paid to CCF's Cayman Islands insurance company to protect CCF.
2. \$2.5 million paid to CCF to help CCF build parking lot owned by CCF.
3. \$3.5 million to CCF for demolition of parking garage and medical building on CCF land.
4. \$21.5 million to CCF as cash "dissolution distribution."

(Note CCF receives the direct benefit of \$30 million of cash and an indirect benefit of \$16.5 million by controlling the new foundation.

Total cash assets benefiting CCF=\$43.1 million

City receives only \$7 million from LHA liquid assets.)

VII. Distributions from Hospital's \$87 M in Liquid Assets

1. \$7 million - Demolition payments to City.
2. \$16.5 million - Net Present Value of payments to the new foundation, largely controlled by CCF.
3. \$33.5 million - Returned to Lakewood Hospital Foundation for private use.
4. \$30 million balance to CCF

Looking at the deal by the numbers, it's really bad government.

Master Agreement Gives Clinic Public Assets

--this is a deep dive into numbers

Jan 19, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2016/01/05/master-agreement-gives-clinic-public-assets>

On December 21, 2015, City Council voted 7-0 to approve the so-called Master Agreement (MA) to close and dissolve Lakewood Hospital. Lakewood Hospital had been recently valued at more than \$120 million. [Subsidiary Slide # 71 8/20/14] Under

agreements existing immediately prior to approval of the new Master Agreement, if Lakewood Hospital closed and dissolved, the City of Lakewood would have received the entire value of Lakewood Hospital, i.e. property and money worth nearly \$120M. [1996 Lease 12.2, 14.1 and LHA Articles of Incorporation] Instead, under the Master Agreement, the Cleveland Clinic (CCF) will receive money and property valued at \$80M, the City will receive less than \$23M and a new health and wellness foundation jointly controlled by CCF and the City will receive about \$16.5M. The City did not conduct any public bidding or advertising of its Lakewood Hospital rights and properties.

Here is What the City Receives under the Master Agreement.

The City will receive total cash and property valued at less than \$23M:

1. \$ 8M Net Present Value (NPV) for a medical building on Columbia Road in Westlake. [MA 5.4 and Exhibit H]
3. \$ 2.7M estimated sales price for 2.7 acres of land at the southwest corner of Belle and Detroit sold to CCF. [MA 5.1 and Exhibit G]
4. \$ 5.7M estimated sales price for 5.7 acres of land and gutted Hospital buildings located on the east side of Belle Ave. to be sold to private developer. Note: this estimate is likely high because (a) it is not discounted to NPV to take into account that the City will not have possession of this site until at least June, 2018; (b) the land will be impaired by a restrictive covenant limiting use of the property as a hospital or medical facility by any Health Care System Provider; and (c) CCF has the right to lease parking spaces on this land. [MA 5.3] Further, Councilman Tom Bullock said it could take 3 to 5 years to develop or sell the site, i.e. the building has questionable marketability for uses other than a hospital or medical facility and is encumbered by CCF's parking rights.
5. \$ 6.2M NPV as a partial payment for demolition and tear down of the Hospital buildings on the east side of Belle Ave. [MA 3.3(c)]
6. The Curtis Block building and residential homes near the hospital—the value of these properties is included in the estimate for the 5.7 acres above. [MA 5.6]

The City may also receive a maximum of \$2,887,500 in rent installments beginning March 1, 2016 and ending June 30, 2018, but this rent is in exchange for LHA's continued occupancy, use and control of the hospital building for an emergency room (ER) through at least June, 2018. It is not a payment for City's equity in Lakewood Hospital assets. [MA 5.5]

Here is what the LHA Trustees and CCF employees working at Lakewood Hospital Receive.

LHA Trustees and CCF employees receive a full release and waiver of liability [MA 9.4] and will be indemnified, defended and insured against their past and future conduct through a payment of \$2.5M by LHA to CCF for an insurance policy. [MA 9.12]

Here is what the new Health and Wellness Foundation Receives.

A new health and wellness foundation will be created, but will not be fully funded by LHA until June 2026 at the earliest—the total value of LHA's funding of the new foundation is worth \$16.5M NPV. [MA 6.1 and Article IV] This amount could be reduced depending upon LHA future operating losses. [MA 6.1(c)] Although the agreement states that "LHA" and the City will name the initial board and develop the yet undefined rules of governance of this new foundation [MA 4.1], the effect of the agreements are that as of December 21, 2015 CCF has full legal authority to vote in new trustees as it pleases. The practical effect is that CCF and the City will name the initial board and develop its rules of governance.

In addition, CCF will make 16 annual payments of \$500K to the new foundation starting in mid-2018 and ending in mid-2034. These payments have a NPV of less than \$4M--- CCF will have the practical right to control the use of this money.

So although supporters of the Master Agreement claim the new foundation is worth \$32M, the portion that the City has only shared control of is worth only \$16.5M. CCF will have significant influence and control over the entire new foundation.

Here is What the Clinic Receives under the Master Agreement.

The Clinic is obligated to pay a total of only \$10.7 million to the City and will receive the following:

1. The state of the art medical office building and surgery facility located at 850 Columbia Road, Westlake. [MA 5.4]
2. 2.7 acres of cleared land located at the southwest corner of Belle and Detroit. LHA will pay an estimated \$3.6M to tear down the existing hospital parking garage and the Lakewood West Medical building to prepare the land for CCF's Family Health Center (FHC). [MA 5.1, 3.3(b)]
3. \$2.5 million in LHA cash to help CCF build a parking garage on the 2.7 acres of land given to CCF. [MA 3.3(b) and 2.2(a)]
4. All of Lakewood Hospital's valuable bed licenses, medical equipment, furniture, fixtures and everything else of value located in the current hospital building. [MA 3.3(d)]
5. A covenant not to compete in favor of CCF that will prevent the Hospital building and land from being used by any Hospital System Provider as any medical facility or service including a hospital. In other words, the value of the gutted hospital building and land returned to the City will be greatly decreased and likely torn down because it is designed for use as a hospital and medical facility. [MA 5.3]
6. The right to lease parking spaces from the City on the hospital land on the east side of Belle owned by the City.

7. A full release of liability for its “decanting” and other damage that CCF caused to the Lakewood Hospital, i.e. CCF gets to keep all that it has taken from the hospital prior to December 21, 2015.[MA 9.4 and 3.4]
8. Continued control and influence of the new Health and Wellness Foundation and how that money is spent. [MA 4.2]
9. Control of \$3M in donor restricted assets on LHA’s balance sheet. [MA 3.3(d)(6)] On December 22, 2015 CCF amended the LHA Articles of Incorporation so that CCF can receive this money too if the donor restrictions are reformed.
- 10.A “Dissolution Distribution” of all remaining LHA cash, accounts receivable and other property after payment of “wind-down expenses.” [MA 3.3(d)]

Based upon LHA’s most recently available financial statement, CCF will have at its disposal more than \$27M of LHA’s cash and liquid investments to be used for the “wind-down” even after payments to the City and the new foundation described above. In spite of this fact, the Master Agreement states that there is a “significant assumption of risk” by CCF to pay for “wind-down expenses” that might exceed the \$27M or LHA’s “Net Asset Value.” [MA 3.1(a) and 3.3(a)] The agreement does not specify any compensation for most of the rights and property to be given to CCF other than this perceived “assumption of risk.” [MA 3.1(a)] There has been no public disclosure or record of the estimated wind-down expenses that CCF is alleged to be at “risk” of assuming.

LHA’s experts estimate that there will be a \$38M NPV benefit to CCF from the admissions at Lakewood --which are likely to move to CCF’s facilities-- in the first 3 years alone, as a result of closing Lakewood Hospital. [Subsidium Slide #70 8/20/14]

LHA’s operating losses for the first 9 months of 2015 were only \$4.5M. [9/30/15 LHA financial statement] The Master Agreement calls for all of Lakewood Hospital’s inpatient operations (except the ER) to be wound down and closed by March 1, 2016—just two months of potential losses. [MA Article III and 6.1(c)] Consequently, it appears that there is no evidence or circumstance of any financial risk to CCF that would necessitate payment of any “wind down expenses.” In fact, experts estimate that CCF may receive more than \$20M of LHA cash upon dissolution. This would mean that CCF is paying nothing for substantial and valuable equipment, property, licenses and non-competition covenant rights and may receive \$20M in cash on top of those free valuables.

The terms of the Master Agreement and other agreements attached to it are such that CCF and LHA (now fully controlled by CCF) will not be obligated to account for how the balance of the LHA money is spent in the “wind-down.” [MA 5.5, Exhibit I] Nor will there be an accounting of how much of LHA’s cash is ultimately distributed to CCF. It should be noted that throughout the hospital debate, CCF refused to disclose how it allocated over \$20M of annual administrative charges to Lakewood Hospital claiming its allocation formula was “confidential and proprietary.”

In summary, the City would otherwise have received nearly \$120M in value under the 1996 agreements if the hospital closed and dissolved, but will likely receive less than \$23M under the Master Agreement. CCF will likely receive cash and property valued at

\$80M in exchange for an estimated payment of only \$10.7M. The nearly \$70M windfall to CCF could finance building CCF's \$34M proposed FHC in Lakewood with \$36M left over.

Bad Government: Startling Lack Of Public Records Exposes Cover-Up Of Sham Bid Process.

March 29, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2016/03/16/bad-government-startling-lack-of-public-records-exposes-coverup-of>

Regardless of where you stand on the hospital issue, it is hard not to argue that the whole hospital debacle represents bad government.

It has been established that Lakewood Hospital was an asset owned by the city that had an estimated fair market value of \$120M (FMV). It is a given that you cannot obtain FMV if you don't test the market. Our city government failed to test the market.

On December 10, 2015, the terms of the Master Agreement were announced. Per that agreement, the city would receive money and property estimated to be only \$20M. \$5.7M of that amount is the estimated value of the empty gutted hospital building and land the city gets in the deal which is subject to a restrictive non compete covenant and parking lot rights in favor of CCF. So the \$5.7M estimate is likely too high and the city will likely get much less than the estimated \$20M.

The Master agreement gave the Cleveland Clinic (CCF) \$70M of the Hospital's value as a "dissolution distribution" (cash, accounts receivable, bed licenses, equipment, fixtures, a non-compete covenant, discounted prices of buildings and land, and the balance of the \$50M investment portfolio, etc.) in exchange for the "risk" that CCF might have to pay some "wind down" expenses.

On December 13, 2015, Summers told the Plain Dealer that *"\$12 million of the hospital's \$78 million in wind down costs would be borne by the Clinic."* That same day, I made several records requests seeking records of any estimated wind down costs.

The Master Agreement was passed on December 21, 2015, but there was no public discussion at all concerning the estimated wind down costs.

On January 4, 2016, I spoke at the City Council meeting and asked for information on the wind down costs. City Hall remained silent.

On February 3, 2016, the city responded to my records requests made back on December 13, 2015 by stating ***"The city bears no written record of the Cleveland***

Clinic's or LHA's wind-down costs, although much information was exchanged during the parties' negotiation of the master agreement."

On February 4, 2016, CCF closed the hospital cutting their costs and losses to nearly nothing. The Master Agreement reflected that the hospital was losing less than \$500K per month in 2015 so it's hard to imagine they lost \$1M in closing it in less than 2 months.

On March 7, 2016, I spoke again at the City Council meeting asking for details concerning the wind down costs. City Hall remained silent again.

So our city official gave \$70M of value to CCF based upon a "information exchanged" in conversations behind closed doors concerning \$78M in undocumented estimated expenses and they won't tell us what those expenses are.

What could be worse government than that?

At a special council meeting on February 11, 2016, Law Director Kevin Butler announced his legal argument that the Master Agreement had been structured in such a way that the anticipated voter referendum to challenge it could not stop the agreement from proceeding even if it passes. He went on to say it was the city's legal position that the city would ignore the will of the people if the referendum passes.

What could be worse government than that?

Back in 2012-2013, Mayor Summers, Council President Madigan and Councilman Bullock were our representatives and trustees on LHA. They were among 19 individuals interviewed by the healthcare consultant to develop a "framework for evaluation of options"—10 of the other 16 were CCF executives, CCF doctors and/or trustees on CCF's board. Even before the consultant had made its recommendations on the "options," a CCF/Summers proposal for an outpatient family health center (FHC), demolishing the Hospital, creating a new foundation, and converting land for other economic development was already drafted. The early plans also included a recreation wellness center---a goal of Summers. Not surprisingly the number one option developed was precisely what ended up in the Master Agreement.

In late 2013-2014 Summers formed and led the "Step 2 Committee" to whitewash the CCF/Summers proposal. Step 2 consisted of 5 LHA trustees chosen by Summers that included Summers, two trustees from CCF's board, and a conflicted physician who had lucrative business with CCF. Why did Summers choose three men aligned with CCF to evaluate bids on CCF competitors' proposals? Under Step 2's direction, the consultant issued a blind "Preliminary Memorandum" to only 10 parties in which it represented that the city ***"was only interested in proposals to operate the Hospital as an inpatient facility with substantially similar services as those offered today and for a period of no less than twenty (20) years."*** Why were only ten other parties contacted?

CCF was the only “bidder” that was allowed to “bid” on an FHC and “bid” on hospital assets to liquidate the hospital. Why weren’t other parties allowed to bid on the number one option proposed by the consultant? It is clear that the CCF was not in the “bid” process at all, because Summers and his colleagues collaborated with CCF in formulating the “winning” proposal.

At a special council meeting on February 11, 2016, Mr. Butler, stated *“I don’t think we can ignore the fact that [City Hall] relied on the expertise of those who had spent so many years in the room trying to figure this out.”* Mr. Butler added that public bidding mechanisms can be done in many ways, *“many of which resemble the process that LHA went through.”* Its hard to image a **legal** public bidding process that resembles what our elected officials led and participated in at LHA.

Throughout 2015 and into 2016, various elected officials made gestures that if other bidders would come forward, they would be considered. The fallacy of these empty gestures were exposed by Councilman David Anderson’s comments on December 21, 2015: *“LHA had no interest in reopening the process for a new [bid process] nor in allowing City Council to wrestle the process away from LHA.”* Since Summers, Madigan, and Bullock were a major part of LHA, it is clear that they prevented an open, honest and fair process to market the hospital and its assets.

Since all of our elected officials who were involved in supporting the Master Agreement now remain silent on key information concerning the basis for transferring \$70M of value to CCF, it would seem that all now embrace the sham process and all are now involved in a cover-up.

Now that’s really bad government.

Bad Government 2: Using Positions On A Charity And Charitable Money To Influence An Election

March 29, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2016/03/29/bad-government-2-using-positions-on-a-charity-and-charitable>

Recently released public records and Mayor Mike Summers’ deposition transcript from the taxpayer lawsuit expose how Summers, former Council President Mary Madigan, and Councilman Tom Bullock collaborated with business leaders to use a public charity and charitable money to influence the outcome of an election.

It has been established that as far back as 2013, Summers, Madigan and Bullock took part in the formulation of the then secret plan to divert LHA charitable money and public land to private use. The plan was made public on January 15, 2015, and charitable and city funds were expended to coach leaders and arm them with talking points to sell the plan.

On March 3, 2015, Bullock wrote business leader David Stein a private email uncaptioned "Developing Site Plan for Hospital Redevelopment" that included Bullock's view that the importance of architectural appeal of the new health clinic was "*equal to the medical services themselves.*" Stein is the head of the Downtown Lakewood Business Association and became an active member of political action committee (PAC) known as Build Lakewood that would later fund and oppose issue 64.

On March 24, 2015, Madigan (using her private email account) wrote to Stein and others: "*I wrote an email to Mike [Summers] about "campaign" mode. He wants to engage the LHA to take the lead, which is as it should be. The city ought to not be in a campaign but we can certainly be a bigger and more vocal part of an outreach effort. He said the materials will be done maybe tomorrow.*"

On March 30, 2015, the Cleveland Clinic's attorney Michael Meehan sent Law Director Kevin Butler over 600 hundred pages of documents in electronic form assembled and prepared by the CCF legal department which were then immediately posted on the city website as is without review or edit and remain there today. Needless to say city leaders and CCF only provided the information that they wanted the public to see which supported their "campaign" --much of that information created a false narrative which has been discredited as the concealed evidence comes to light.

On January 20, 2016 Summers testified that charity funds were expended from the Lakewood Hospital Association (LHA) to influence the election last November. Summers initially denied that LHA engaged in advertising campaigns, public information activities and authorized expenditures to send direct mailers to Lakewood residents to influence the outcome of the election. Some time after his deposition, however, Summers sought to change his testimony by writing the following changed answers: "*Yes. The Hospital Association did have an advertising campaign on the proposed charter amendment [Issue 64] ...Yes. There was a direct mailer...and Yes [LHA money was authorized and spent in the campaign].*"

So Summers, Madigan and Stein are discussing and orchestrating a "**campaign**" that the city "ought not" be involved in but they want "**LHA to take the lead**" (Note: Summers, Madigan and Bullock were all part of LHA as elected leaders). And later the PACs Build Lakewood and "No on 64" are formed and its activities funded by LHA.

So here are the established facts:

1. Summers, Madigan, Bullock and CCF leaders used a charity and charitable money in a political campaign to influence the outcome of an election.

2. City Hall collaborated with CCF and its legal team in use of the city website to carry out the campaign and propaganda.
3. City Hall delayed for nearly 6 months before producing the records mentioned above and Summers delayed his deposition until this year which deprived voters and City Council information that is now public.
4. The swing on the election was decided by around 2% and Summers, Madigan, and Bullock then used that result as a mandate to execute their agendas.
5. City officials are violating public records laws for personal political purposes using private emails to avoid open and honest government.

Now that's really bad government.

Note: Hundreds of public records requests remain unanswered so we don't yet know how much more our government is hiding or how bad it really is.

Bad Government 3: Public Records Responses Expose More Potential Ethics Violations And Use Of City Website In Ongoing Cover-Up Of Corrupt Activity.

April 12, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2016/04/12/bad-government-3-public-records-responses-expose-more-potential-ethics>

As of the time of this writing, following documents are listed on the city website under the "Lakewood Wellness" page:

"RFP/Search for New Hospital Operators

-Subsidium Hospital RFP

-Subsidium Preliminary Memorandum: Community Hospital Seeks Community Partner

-Clinic's Response to RFP

-Subsidium Slides 1 of 2

-Subsidium Slides 2 of 2"

The City of Lakewood's website is perpetuating an ongoing cover-up of a steered sham bid process.

The documents on the website are presented in a manner amounting to intentional disinformation by city leaders to cover up past and ongoing corrupt activity. Here is why:

The “*Clinic’s Response to RFP(Request for Proposals)*” (the Clinic’s Proposal) is **NOT** a response to the RFP and the Preliminary Memorandum (PM) posted directly above it on the website. In fact, the Clinic’s Proposal is a response to a separate insider’s RFP given only to the Clinic to close the hospital --that insider’s RFP is not on the website--it was obtained in the taxpayer lawsuit. Last summer, when Summers reacted to a citizen’s persistent public comment that the Clinic’s Proposal did not meet the requirements of the RFP, Summers unwittingly revealed part of the sham process and admitted he helped develop the Clinic’s Proposal in 2013 **before** the RFP process began in 2014. On July 20, 2015, Summers said: “*The [LHA] trustees first went to their current partner...and after a significant amount of time and effort the Cleveland Clinic proposed an outpatient service delivery system...The Clinic was not asked to deliver an inpatient service...the RFP at that point was designed to seek someone other than the Clinic.*”

However, the documents on the website, including the 324 pages of Subsidium slides, tell a completely different story—they make no mention of the insider RFP. Also, public records reveal that all of the Subsidium slides were sanitized by the Clinic’s legal counsel and delivered to the city [on behalf of Lakewood Hospital Association (LHA)] and then immediately posted on the city website “as is” in late March 2015. The delivery and posting of these documents happened just days after Mayor Summers, former Council President Mary Madigan and Law Director Kevin Butler exchanged emails that discussed LHA “taking the lead” in a “campaign” to pass the Clinic’s Proposal. So the disinformation “campaign” using the city website started at least in early 2015 and has been ongoing.

Summers led LHA, but perpetuates the fraud that he was only one of 23 trustees.

To make matters worse, on April 4, 2016, Butler responded to a public records request that sought: “*All records authorizing Subsidium to issue the Preliminary Memorandum on behalf of the City of Lakewood to any party.*” Butler’s response was: “*The city has no responsive records. Subsidium did not issue a document called “Preliminary Memorandum” on behalf of the city. Subsidium represented the Lakewood Hospital Association, not the city, in its work.*”

However, the PM which is posted on the city website clearly states: “*...the municipality has asked Subsidium to provide this Preliminary Memorandum to potentially interested parties... **Through this process the municipality is only interested in proposals to operate the Hospital as an inpatient facility with substantially similar services as those offered today and for a period of no less than twenty (20) years.** As it deems appropriate in its sole discretion the municipality will [decide who the municipality wants to include in the RFP process]*” So according to the terms of the PM, Summers was in control of the RFP process and could determine *in his sole discretion* to whom he wanted to give a copy of the RFP. The PM, the Subsidium slides and Summers’ sworn deposition testimony all make it clear that Summers only allowed bogus “bidding” on what Summers admits he believed was the unsustainable “status quo” in- patient model of staying the course. In his sworn deposition, he stated, “*We weren’t selling this*

hospital”—a clear admission that the RFP process was not an attempt to keep a hospital in Lakewood. The PM and RFP were a sham designed to “whitewash” the Clinic’s Proposal that Summers had participated in forming. Summers continues to use his sham RFP process to claim that nobody was interested in Lakewood Hospital. Summers has consistently distanced himself from LHA and claimed he was only one of 23 trustees.

On December 21, 2015 David Anderson expressed a major reason for his vote for the Master Agreement: “*LHA had no interest in reopening the process for a new [bid process] nor in allowing City Council to wrestle the process away from LHA.*” Summers clearly misled council and the public as to the RFP process and his control of it. Summers used his leadership role on LHA to prevent members of council from conducting an open, honest and fair process to market the hospital and its assets and from finding the truly best healthcare solutions for Lakewood.

Summers exceeded his authority by conducting the sham RFP process

Butler’s unequivocal April 4, 2016 response that the PM was not authorized by the city creates a very real issue of Ohio Ethics Commission violations by Summers. Since the city did not authorize the Subsidium RFP process, Summers exceeded his authority by directing Subsidium’s issuance of the PM on behalf of the city. That abuse of his power and corporate authority violate existing Ohio Ethics Commission Opinions directly on the subject.

The cover-up continues.

On April 4, 2016, Summers gave a vague report to city council as to how new “Health and Wellness” money will be handled by a yet to be formed “foundation”—a foundation that the Subsidium slides show was contemplated since 2013. Summers is hiding his plans for his claimed “\$32M”—money obtained through the corrupt activity and ongoing cover-up.

Also on April 4, 2016, Council President Sam O’Leary said city council went into executive session to hear from the Summers administration and discuss “*the city’s sale strategies relative to*” real estate returned to the city under the Master Agreement. However, “*discussing sale strategies*” for public properties is not a legal reason for executive session.

So city leaders are proactively covering up the past and ongoing process as they secretly plan what to do with the land and money Summers obtained through a sham bid steer process.

This is all really bad government and it is getting worse.

Brian J. Essi is a life-long Lakewood resident and businessperson. This article is one in a series of articles on the city government.

Bad Government 4: Mayor And Law Director Misrepresent Ownership Of City Assets To Continue Cover Up

April 26, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2016/04/26/bad-government-4-mayor-and-law-director-misrepresent-ownership-of>

Mayor Summers, as the top city executive, directs Law Director Kevin Butler as the city's lawyer. For nearly a year now, Summers and Butler have been fighting against Lakewood citizens in a lawsuit that seeks, among other things, accountability for Summers abusing his corporate powers and his participation in a fraud upon the city while acting on behalf of Lakewood Hospital Association (LHA). Last year Butler and City Council used the lawsuit as an excuse to conduct secret executive sessions to hide the terms and reasons for the "Master Agreement" until shortly before it was approved by City Council.

In March 2016, the citizen plaintiffs asked the Court to add new claims to the lawsuit, including a claim that the city failed to follow public bidding laws when it gave city assets to the Cleveland Clinic (CCF) per the "Master Agreement." On April 14, 2016, Summers and Butler responded in a Court filing claiming, among other things, that the city had no obligation to conduct any public bidding on certain real estate assets. They made the false claim that LHA and not the City owned the real estate assets. On April 22, 2016, in a Court filing, the citizens wrote that the claim about LHA owning the city assets "*is erroneous as a matter of fact and law. The Lease between the City and LHA defines 'Improvements' as 'any, improvements, or other facilities, including land and rights in land...and any other facilities acquired, constructed, and operated by the [LHA] ... (Lease, p. 7). The 'Leased Premises' which is to be returned to the City, and rightful owner, at the end of the Lease 'means...any Improvements... (Lease, p. 8).'*" The Lease also provides that if the Lease is terminated, LHA "*shall transfer all of its then assets to the City...*"

This clearly means that all real estate acquired, built or improved by LHA during the term of the Lease (including the medical building at 850 Columbia Road in Westlake) is city property. Summers' and Butler's false claim to the contrary is against the city's interests and ignores the clear language of the Lease. They also turn logic on its head--certainly landlords own the assets they lease to their tenants! Especially in this case, since the city leased everything associated with Lakewood Hospital to LHA as a fully operational going concern---LHA could never have built 850 Columbia Road without the money and revenue from the city-owned hospital business---LHA owned nothing that was not owned by the city. So LHA and the city leaders were not free to sell off city assets at the end of the Lease without following the competitive bidding laws regardless of how LHA and CCF chose to title assets such 850 Columbia Road.

So why are these city officials going to such lengths to misrepresent ownership of city assets that they have sworn duties to protect?

In January, 2016, Summers was forced to admit under oath that there was no valuation of the city owned hospital assets transferred to CCF. To defend the failure to value the assets he gave away, Summers made another remarkable admission when he testified: *"We weren't selling this hospital."* Yet for over a year both Summers and Butler claimed that no other parties were interested in the city-owned hospital assets. It is now clear that the shifting stories and twisted arguments are part of a larger cover up of the sham "bid steering" process Summers led while working for LHA and with CCF bigwigs---he clearly steered city assets to CCF. It is a proven fact that no other parties were allowed to "bid" for the city assets that Summers offered only to CCF.

Last year, Councilman Tom Bullock, who was also an LHA trustee with Summers and then Council President Mary Madigan, made a startling admission of his own when he said: *"Suing LHA would be like suing ourselves."* Bullock was right—all three elected officials had clear conflicts of interests—all three took part in the secret executive sessions of LHA conducted by Summers in furtherance of the sham "bid" process that led to the Master Agreement.

So the city lawyer is taking direction from Summers and defending the conduct of Summers, Bullock and Madigan for things they all did as LHA trustees and against the interests of the city—and the legal fees to defend this conduct are being paid from taxpayer dollars.

All of this means that Summers and Butler are either completely incompetent, they are lying to cover up very bad behavior, or a combination of the two.

There is no escaping the fact that city officials are fighting against accountability and transparency--and that's really bad government.

Bad Government 5: Using A Public Charity To Conceal Government Activity And Records

May 10, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2016/05/10/bad-government-5-using-a-public-charity-to-conceal-government>

Mayor Summers, Councilman Tom Bullock and past Council President Mary Madigan participated in governmental planning and decision-making that was actively concealed from the public—all three have acted to hide records from the public. After over a year of public debate and pending litigation, Summers, Bullock and public officials continue to fight to keep public records and details of their secret process from the public.

Here is how they did it (much of which comes from documents now on the city website):

1. The city was the sole owner of Lakewood Hospital and the mission was to provide hospital services to Lakewood residents. So any planning and decision-making concerning the sale or closure of Lakewood Hospital was clearly a city government function.
2. Starting in 2012, Summers, Bullock and Madigan as ex-officio trustees of LHA engaged in secret government planning and decision-making on the closure of the hospital. For example, in January 2016, Summers testified under oath concerning his activities at LHA: *"I believed that it was my responsibility as a Mayor...to **shape**...the issues facing the hospital and...make a recommendation to the citizens of Lakewood."* However, he, Madigan and Bullock *"shaped"* it all in secret.
3. Beginning in 2013 and through January, 2015 when they announced their decision, Summers, Madigan and Bullock (the "ExOfficios") repeatedly voted to go into secret executive sessions for the contrived reason that public meetings would be *"detrimental to the interests of patients."* However, in those meetings, the three secretly planned and decided to eliminate the services provided to the very patients [Lakewood residents] they were sworn to provide the services to and protect.
4. In 2013, the ExOfficios were all members of the secret "Select Committee" at LHA—Summers controlled who was on that committee and he led it—he chose Cleveland Clinic (CCF) trustees, Tom Gable and Bill Gorton, as well as CCF executives and other CCF trustees to help *"shape"* the ExOfficios' *"recommendation."*
5. The goal of Summers' "Select Committee" was *"to ultimately recommend one option"* and they decided that the *"one option"* was to close the hospital. Indeed, in November, 2013, Gable told Councilwoman Cindy Marx that CCF would build a family health center to replace the hospital.
6. At a "Special" LHA Board meeting on December 12, 2013, they issued a *"written report"* and *"[t]he copies of the **written report** were numbered and collected at the conclusion of the executive session."* That *"written report"* has never been made public.
7. Also, on December 12, 1983, the ExOfficios voted to give Summers authority to create a smaller and more secret Step 2 Committee *"to continue to define a more comprehensive model for the delivery of future healthcare and health services in Lakewood, **potentially including the solicitation of letters of intent with potential partner(s) or investor(s).**"* But this was all a sham, because the ExOfficios had already decided their *"one option."* Summers again chose Gable and Gorton to be on Step 2 to influence this governmental decision-making process—Bullock and Madigan approved it.
8. As has been previously reported, none of the *"**potential partner(s) or investor(s)**"* allegedly sought were allowed to bid on the *"one option"* our three elected leaders decided upon—that option had been given to CCF alone.
9. Throughout this government decision-making process, the ExOfficios continuously left all relevant documents in the custody of CCF attorneys and/or CCF executives---an apparent effort to shield public information and actions from the public and keep details of the bogus process secret.

10. On December 21, 2015, Madigan, Bullock and the rest of Council approved the Master Agreement which Summers signed---that agreement sealed the fate of the public records leaving them with CCF—CCF and their top notch white collar crime lawyers are fighting in court to keep the records secret. The Master Agreement also provided for a \$2.5 million insurance premium that will protect the ExOfficios for their bad behavior if they are ever called to task.
11. Summers, Bullock and Madigan have all resigned their positions as LHA trustees creating further distance between them and the evidence of their secret deliberations and decisions.

Its all so convenient—our elected leaders used a public charity to shield governmental planning and decision-making functions and hide public records in a cover-up of that process. The charity was supposed to protect Lakewoodites, but our leaders used it to protect themselves.

That's really bad government.

Bad Government 6:

"The Truth Does Not Matter" Says Mayor's Law Director: Hospital Was Real, The Bidding Process Was Not

May 24, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2016/05/24/bad-government-6the-truth-does-not-matter-says-law-directormetrohealths>

It was a startling public admission by Law Director Kevin Butler at the May 16, 2016 city council meeting. After a citizen, Brian Essi, presented new and compelling evidence to city council showing that Mayor Summers actively misled council and the public about MetroHealth's offers to operate Lakewood Hospital, Butler said that the truth about Summers' potentially illegal conduct does not matter.

Amidst the new evidence that has surfaced since the last issue of the Lakewood Observer is an internal email from Metro Health's Director of Business Development, Julie Jocono, discussing how Metro would respond to a County Councilman inquiry about Metro's interest in taking over Lakewood Hospital. Ms. Jocono wrote, on January 15, 2015 (the day of Summers' public announcement of the hospital closure): ***"I think we should be open about the fact that we [Metro] tried and they (the [Summers] selection committee) turned us down. They would rather have an outpatient office with ccf over a hospital with metro."*** Ms. Jocono was listed as a key member on Metro's team and was directly involved in Metro's efforts to operate Lakewood Hospital—she squarely contradicted numerous false claims by Summers that Metro's interest "went away." It is now clear that Metro's offer was real but the bidding process

was a sham process orchestrated by Summers in which the Cleveland Clinic was the only party allowed to bid on a family health center.

Summers' first public statement about Metro and Lakewood Hospital was on January 28, 2015 at a public forum at the Beck Center where he was asked by a citizen, Bill Grulich, if he would release the Metro proposal. Summers said: ***"We had two meetings with our narrow strategic group and the Metro group. We never got a written letter of intent from them. There was some serious interest on their part strategically on starting off as a family health center and considering whether or not they would consider running it as a community hospital. It was a very exciting possibility and then at the beginning of October they withdrew their interest. So it went away."*** (<https://youtu.be/RIgkF7nq3lk?t=1h43m17s>) Per Jocono, Summers and his secret Step 2 Committee turned down the Metro proposal. (The Step 2 Committee was in charge of the RFP process. Summers picked the members who are Summers, CCF trustees Tom Gable and Bill Gorton, Dr. Tabbaa who has business dealings with CCF and Ken Haber.)

Summers actively concealed Metro's first written proposal from May 12, 2014 until he was forced, under intense public pressure, to release it in May, 2015. That proposal provided that: ***"...MetroHealth is committed to developing a mutually agreeable collaborative arrangement with the City and LHA whereby it will commit to a long term agreement (including possibly a long term lease) providing for the operation of Lakewood Hospital... MetroHealth is open to scenarios in which MetroHealth alternately enters into a long term operating arrangement replacing The Cleveland Clinic Foundation ("CCF") as the corporate member of Lakewood Hospital Association. Other legal structures including affiliation, merger or sale can be explored in the future...the Hospital's current volume is forecasted to be maintained..."*** Summers told a story under oath that completely contradicted the express terms of the Metro proposal when he said: ***"the City of Lakewood, as a community, would lose total control over those assets, and get nothing in return." That was not true.***

At a May 4, 2015 city council meeting, Summers denied the existence of a second Metro proposal: ***"I am not aware of any second proposal from Metro....I've not seen any proposal."*** (https://youtu.be/n8_IW6llo8A?t=1h9s) But Summers personally attended the presentation Metro's second proposal on September 17, 2014 which was not made public in July, 2015. The second proposal provided for, among other things, Metro:

- (1) Maintaining Lakewood as a full service inpatient hospital;
- (2) Keeping Lakewood's employed 900 jobs and tax revenue.
- (3) Investing \$100 million in capital improvements and medical technology.

At his January 20, 2016 deposition Summers testified: *"the only interest we had in operating an inpatient model, and it was a very modest interest and a very weakened interest, was from Metro Hospital...Metro Hospital pulled out."* **That was not true.**

Butler was fully aware of this evidence and more, but advised council on May 16, 2016: *"An ordinance has been voted on, a contract is being executed. In my view, it may not make a lot of difference as to whether or not anything that Mr. Essi is saying is true."* Also on May 16, 2016, Councilman Tom Bullock echoed Butler's unusual advice: *"We have a legal opinion [from Butler] saying the effect of the repeal of the ordinance wouldn't undo the contract anyway."*

So the mayor's law director is advising council that even if Summers misrepresented and suppressed Metro's offer to operate Lakewood Hospital and illegally steered public assets to CCF, that council should not and cannot do anything about it and the voters can't either.

Our city leaders believe that the truth and our votes don't matter.

Now that's really bad government.

Bad Government 7: Elected Leaders & Build Lakewood PAC

June 21, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2016/06/21/bad-government-7-elected-leaders-build-lakewood-pac-took-public>

According to public filings, a Build Lakewood political action committee known as "Voters Engaged to Oppose 64" (the "No Build PAC") obtained 98% percent of its donations from the Lakewood Hospital Association (LHA). The No Build PAC was formed to defeat a ballot issue that would have given Lakewood voters the right to approve or reject a city council decision to close Lakewood Hospital and prevent charitable money and property from being given away to the Cleveland Clinic (CCF) and other private parties for less than fair value.

Of the \$51,077 donated to the No Build PAC, \$50,000 was donated by LHA. Mayor Summers, Council President Madigan, Councilmen Tom Bullock and John Litten were all trustees of LHA when the charitable money was diverted to the PAC.

There were only 16 individuals who made donations to the No Build PAC---3 of the 16 donors were elected leaders—Tom Bullock, School Board Member Linda Beebe, and Councilwoman Cindy Marx. Bullock also loaned money from his own campaign as seed money for the No Build PAC. Many of the other handful of donors to the PAC are known friends and supporters of Summers and Bullock, including CCF trustee, Tom Gable.

The same month that LHA funded the PAC, Build Lakewood's attorney and PAC deputy treasurer, Jay Carson, claimed at city council last fall, "We [Build Lakewood] are not the political or marketing arm of anyone." Summers, Bullock, Madigan and Marx were all in attendance. This year, Summers first testified under oath in a pending taxpayer lawsuit that LHA did not fund the political campaign, but then he tried to change his sworn testimony.

The public's charitable money was used by the PAC to hire a public relations company to make mass mailings to Lakewood residents that contained many false and misleading statements and propaganda. For example, the false PAC mailings said that passage of issue 64 would "Kill Jobs" ---Since the hospital has closed, nearly a 1,000 jobs have been lost and more job losses and business closing are predicted.

LHA was a public charity whose mission was to provide hospital services for *all* citizens of Lakewood---*all* of LHA's assets and charitable money were owned by the City of Lakewood. So Summers, Bullock, Madigan and Litten all used their positions on a public charity to allow charitable money to be used in a campaign waged by a small handful of people aligned with those political leaders.

Issue 64 was narrowly defeated and the same elected leaders who supported and continue to support the No Build PAC propaganda are now claiming the defeat of that issue to be a mandate of the voters to close the hospital and give public property to CCF for free.

Taking money designated for the poor and using it for dishonest political purposes is reprehensible.

It is also very bad government.

Bad Government 8: Summers, County Leaders Limit Healthcare

<http://lakewoodobserver.com/read/2016/08/02/bad-government-8-summers-county-leaders-limit-healthcare-optionscover-up>

Aug. 16, 2016

By Brian Essi

Citizens generally expect a certain level of frankness and honesty from their elected representatives. Unfortunately, we are witnessing an era in which lies by elected officials are the first recourse in any public discussion.

In 2015, Mayor Summers first said that Lakewood Hospital would not close. Days later, he announced the closure of the hospital, the loss of Lakewood's largest employer and the loss of \$7M in annual charitable services to the underserved. In his announcement, Summers made a false claim that there would be a "\$120M investment" in Lakewood and claimed the closure was somehow "Good News." That same month, when Summers was first asked about MetroHealth's proposal concerning Lakewood Hospital, Summers lied about that, too, in an apparent cover-up of what we later discovered were two Metro proposals that he suppressed.

It took months of public records requests and separate discovery efforts in a taxpayer lawsuit to expose the truth--Summers' alleged "Good News" was actually a \$120M financial loss for the city and Summers had concealed a proposal that would have meant a \$100M investment in Lakewood and would have saved 900 jobs--all without the need for financial losses or loss of charity services—Metro's proposals were objectively better than the Cleveland Clinic (CCF) proposal that Summers actively misrepresented.

New evidence now suggests the involvement of County Executive Armond Budish and County Councilman Dale Miller in Summers' efforts to keep Metro out of Lakewood. Additionally, new evidence exposes the role of Huron Consulting, LLC as an advocate for the Summers and Cleveland Clinic (CCF) agenda. Prior to this new evidence, we were told that Huron was an independent consultant that could be relied upon to objectively assess what Summers did with CCF in the backroom.

Potentially Criminal Antitrust Violations.

The public disclosure of one of Metro's proposals back in May, 2015, resulted in Metro making public statements of continued interest in Lakewood. A May 18, 2015 email has recently surfaced where Summers wrote to Budish and Miller concerning Metro's interest in Lakewood. Miller recently stated that Summers had "***an excessive desire to manage the process and keep discussions to insider players,***" that "***they had a distinct agenda***" and that Summers "***carefully controlled***" the process. Miller said he "***helped facilitate a change***" concerning Metro's public interest in Lakewood. In other words, County leadership knew what Summers was up to in the backroom with CCF and then assisted in the "***distinct agenda***" to keep Metro out of Lakewood.

To make matters worse, at least one Lakewood City Councilmember recently claimed that CCF pressured County Executive Budish, and Budish pressured Metro to back down.

So the evidence suggests that the leadership of one competitor (Budish and Miller on behalf of the county owned Metro Hospital) and the leadership of another competitor (Summers on behalf of the city-owned Lakewood Hospital) colluded with CCF to suppress the Metro interest which helped Summers steer the deal to a third competitor (CCF). This is what is referred to as "bid-rigging." Antitrust laws contain criminal provisions designed to prevent bid-rigging among competitors in the marketplace. Metro

Hospital, CCF Hospitals and Lakewood Hospital all competed in the same marketplace--the Summers' Master Agreement with CCF eliminates Lakewood as a competitor and further precludes Metro from operating any healthcare facility at the former Lakewood Hospital site.

The Cover Up Continues.

On July 15, 2016, Law Director Butler denied over 100 public records requests, the majority of which had been outstanding since March 15, 2016. Butler's denial of the requests was made just days before the City of Lakewood was required to answer an Original Mandamus Action filed in the Cuyahoga County Court of Appeals to compel the city to produce public records related to a corruption probe.

One of the 100+ requests that Butler denied, sought records of all of Butler's communications with Huron Consulting, LLC. Huron is the consulting firm that issued a report that was used to close the hospital and allow CCF to dominate Lakewood's valuable healthcare market indefinitely. Butler claims that ***all*** records of his interactions with Huron are "***trial preparation records and joint defense communications***" to be used only in the pending taxpayer litigation --Butler says he cannot share the records without the consent of defendants Summers, CCF and the Lakewood Hospital Association (LHA). But there is a problem with Butler's claim-- the Huron engagement letter that Butler signed *while the litigation was pending* makes no mention of the litigation at all and it does not mention that Huron would serve as a litigation consultant or keep its interactions with Butler confidential.

So the cover up continues with the city relying on strained arguments and ever shifting stories. The latest concealment of the truth and public records concerns the now highly questionable role of a consultant leaders used to whitewash secret public decision-making. That secret decision-making by Summers and other public officials concerned the dissolution of Lakewood's largest public asset, worth an estimated \$150M-- the loss of which will affect the healthcare of Lakewoodites for generations to come.

Elected leaders acted in secret to exclude Metro, potentially jeopardizing Metro's long term viability as the small competitor in the healthcare marketplace dominated by CCF and University Hospitals.

Allowing Metro into Lakewood would have provided greater healthcare opportunities and competition for Lakewood and Cuyahoga County citizens, including the under-served.

Our leaders continue to fail the "frankness and honesty" test.

That is really bad government.

Sept. 13, 2016

Bad Government 9: Jenn Pae and City Hall's \$100 Million Lie

by Brian Essi

<http://lakewoodobserver.com/read/2016/09/13/bad-government-9-jenn-pae-and-city-halls-100-million>

This past week, City Hall's Director of Finance Jenn Pae made the following false statement concerning the Issue 64 referendum challenge to the Cleveland Clinic agreement: "*At risk is more than \$100 million of investment in healthcare currently under way.*" In fact, the bad agreement pushed by City Hall and Pae results in \$107 million in healthcare leaving Lakewood. This can ONLY be stopped by voting AGAINST Issue 64.

Here are the facts that expose City Hall's \$100 million lie:

I. LAKEWOOD OWNED \$157 Million in Healthcare Investments prior to the Master Agreement with CCF:

1. **\$54M** market value of liquid investments on the balance sheet of the Lakewood Hospital Association's (LHA), per audited LHA financial statements.
2. **\$33.5M** market value of liquid investments by the Lakewood Hospital Foundation (LHF) on the LHA balance sheet, per audited LHA financial statement.
3. **\$70M** going concern value of Lakewood Hospital (per LHA and Clinic paid consultant).

II. LAKEWOOD LOSES \$157 Million in Healthcare Investments that are leaving Lakewood:

1. **\$54M LHA Investments – GONE.** The entire portfolio of investments was given to the Clinic for the mysterious and unexplained "wind-down costs." It's all gone.
2. **\$33.5M LHF investments – GONE.** Immediately upon signing the Master Agreement the LHF's \$33.5M dropped off the LHA balance sheet, per the audited 2015 financial statements. LHF immediately ceased being for a hospital and ceased being a Lakewood investment. Wealthy family trusts controlled by the Cleveland Foundation immediately pulled their money out of Lakewood because we no longer had a hospital to support. Indeed, LHF president Ken Haber publicly announced "the LHF does not belong to Lakewood." Wow.
3. **\$70M Hospital going concern – GONE.** City Hall continues to lie, but the fact is the hospital is GONE and the Clinic took everything except an empty gutted building that can't be used by other healthcare providers due to a non-compete gifted to the Clinic. Further, the empty shell of the hospital building is no longer a healthcare investment.

III. Healthcare Assets OWNED by Lakewood are Privatized – and ONLY \$50.5 Million:

\$34M Family Health Center. The Clinic will invest \$34M in a new Family Health Center PRIVATELY OWNED by the Cleveland Clinic.

\$16.5M Private Foundation. City Hall and Jenn Pae boast about a new \$32M "*community-run health and wellness foundation.*" But that won't be controlled by Lakewood, and it won't be fully funded until 2026. The present value of the funding is

only \$16.5M. Just last week Law Director Kevin Butler said it will be a PRIVATE foundation that won't repeat the mistake of public trustees.

Conclusions:

1. Jenn Pae's claim of \$100M "investment in healthcare" is an outright lie.
2. Lakewood OWNED \$157M worth of investments in healthcare – GONE per the Master Agreement.
3. The Master Agreement leaves us with only \$50.5M of PRIVATE healthcare investments.
4. BOTTOM LINE: A NET amount of \$107M in healthcare investments were taken from Lakewood and City Hall is LYING about it.

Sept. 27, 2016

"Build Lakewood" Insiders' PAC Hurt Healthcare and Costs Taxpayers Over \$184 Million-Vote Against 64

by Brian Essi

<http://lakewoodobserver.com/read/2016/09/27/build-lakewood-insiders-pac-hurt-healthcare-and-costs-taxpayers-over>

In the last Lakewood Observer, Jim Kenny, a spokesman for "Build Lakewood" recently rebranded as an insiders' fake "progress" Political Action Committee (PAC) published some seriously false claims. The Rebranded PAC is the same group of insiders who last year took \$50,000 in charitable money from the hospital and spread the same kind lies to "win" by cheating. Here is a point by point rebuttal of the claims made by the PAC:

Insiders' Lie #1: Issue 64 is "No costs to taxpayers."

Facts: The total cost to taxpayers is \$184M right out of the gate. The Master Agreement has caused \$107M in taxpayers' healthcare assets to leave Lakewood, it will cost taxpayers \$22M in income taxes over the next 11 years, and the Master Agreement gave away \$55M in capital improvements to taxpayers' assets—previously guaranteed by the Cleveland Clinic.

Insiders' Lie #2: "Your healthcare experience won't need to change."

Facts: Healthcare has changed for 19,000 hospital Emergency Room patient visits per year that used to go to Lakewood Hospital before it closed. \$7 million per year in charity care (\$77 million for the balance of the Lease) is gone. The wealthy insiders care more about money than working class people in need of healthcare. The Insiders PAC and the Cleveland Clinic are shipping in overworked medical residents while the experienced doctors have been forced out of Lakewood by the destructive Master Agreement.

Insiders' Lie #3: "Better yet, a vote *for* requires the Clinic pays Lakewood an additional \$19.6 million for transition costs and to help the City of Lakewood redevelop the old site"

Facts: The Clinic pays nothing for transition costs—ZERO. The only money paid by the Clinic to the city is \$1.6M for 1.8 acres of land on the east side of Belle, but taxpayers

foot the bill for \$3.6M in demolition costs and a \$2.5M gift to the Clinic for their parking lot—A net taxpayer loss of \$4.6M to gift city land to the Clinic. Its Nuts! Only \$8M is paid for Columbia Road (a taxpayer asset) that was valued at \$13M---Cost to taxpayers for sale of Columbia Road--\$5 million loss to taxpayers.

Insiders' Lie #4: "Meanwhile \$32 million is being deposited into a new Lakewood foundation dedicated to improving our community's health."

Facts: The "new" foundation is not going to be controlled by Lakewood—it will be controlled by the Clinic and the same old insiders who destroyed the hospital using charitable money for their own goals, not the goals of Lakewood's citizens. The "private" foundation won't be fully funded until 2026---true value of the funding is only \$16.5M, at a cost to taxpayers of \$184M (see above).

Insiders Spin: "When you see the unvarnished facts, I believe you'll recognize that the choice is clear. We need to keep quality healthcare in Lakewood."

Facts: The Master Agreement destroys Lakewood's public healthcare assets and seriously degrades healthcare in Lakewood.

Stop the Insiders and their lies.

Vote AGAINST 64.

Sept. 27, 2016

Bad Government 10: Summers Admits "Life Is On The Line" And "Community Is Better Served" By A Hospital

by Brian Essi

<http://lakewoodobserver.com/read/2016/09/27/bad-government-10-summers-admits-life-is-on-the-line>

At his press conference last week in front of firetrucks standing shoulder to shoulder with Fire Chief Scott Gilman, Summers said:

1. "When Life is on the Line, Let's Make Sure We Know the Truth."
2. "We did lose a Valuable Service that served this community for 100 years."
3. "They (The Against 64 group) believe that the community is better served by a local inpatient care. I don't dispute that."

So there you have it from Summers' own lips—there is no dispute that what Save Lakewood Hospital is working for would *better serve the community*.

Lives are on the line and a hospital would better serve our community and save lives. Summers said it.

Chief Gilman said at the press conference: "It takes longer to get to the hospital" now that the hospital is closed.

So why did Summers hold his press conference when there is no dispute that lives are at stake?

Summers said at the press conference: *"I am deeply disturbed by the allegations and untruths spread by people in our community who are politically motivated and who are trying to scare others by attacking our emergency service system here in Lakewood."* But Summers failed to be specific about any alleged "untruths" or even the "people" allegedly spreading them. Perhaps that's because nobody is "attacking our emergency service system in Lakewood." By Summers' own words, it can't be the Against 64 group or Save Lakewood Hospital, because Summers admits that they are proposing something that *"better serves our Community"* and saves the *"lives that are on the line."* So Summers held a press conference to set up a lie (a straw man) that he could knock down.

So it is Summers spreading politically motivated lies trying to scare people when "Life is on the Line."

How sad.

And certainly, very bad government.

Oct. 25, 2016

The Truth About Issue 64

by Dr. Terence Kilroy, Dan Alaimo, Betsy Voinovich, Brian Essi

<http://lakewoodobserver.com/read/2016/10/25/the-truth-about-issue-64>

An ambulance on its way out of Lakewood to the nearest hospital stuck in traffic on the highway.

The Six Biggest Untruths About the Lakewood Hospital Situation:

- 1.) Lakewood Hospital was failing.
- 2.) If Lakewood didn't go with this Family Health Center idea we would be left with "nothing."
- 3.) No other health system was interested in running Lakewood Hospital.
- 4.) The Family Health Center Plan will be built at "no cost to taxpayers."
- 5.) The new Master Agreement "cannot be overturned."
- 6.) Going with the new family health center and Emergency Center would be progress.

Quickly, here is a fact check to dispel the untruths:

1.) Lakewood Hospital was profitable, had no debt, significant money in the bank, and great borrowing power if need be. It was never failing, even when the City allowed the Clinic to take away our Trauma Care center and inpatient pediatric care in 2010.

2.) In 1996, Cleveland Clinic signed a binding agreement to run our hospital until 2026, and then return it to us in good working order. They aren't allowed by the enforceable contract terms to "leave us with nothing." They want the market share in Lakewood. They have no plans of losing the many paying patients here. They intend to have all of us continue being their patients in Fairview and now in their new hospital in Avon. This is why there is a "no compete" clause in the new contract. They have no intention of totally leaving Lakewood and losing Lakewood patients to another health system that could run Lakewood's hospital.

3.) There were two serious proposals from Metro to run Lakewood Hospital. They were not pursued by our mayor or City Council. Metro proposed to make a \$100 million investment and run a full-service in-patient hospital. EVERY TIME you hear that "no one was interested" it is an untruth. Nobody besides the Cleveland Clinic was ever invited by the City to purchase Lakewood Hospital or any of its assets.

4.) The City sold our hospital, worth \$180 million, to CC for \$9.6 million for all property and assets used in the operation of the hospital. The only asset the city will get is the empty "mothballed" building that can never be used for healthcare due to a "no-compete." The loss of the taxes paid by the 1100 people no longer working here will be enormous. There has already been a huge cost to taxpayers of over \$100 million.

5.) The new Master Agreement can be overturned by a vote of the people and in court. Lakewood's City Hall has cited ONE case where a contract was not overturned, the only case they could find. There are many others, especially concerning contracts which were put together under circumstances where public officials' behavior was in question.

6.) The "new" family health center is a consolidation of Cleveland Clinic's other facilities in Lakewood. We gain nothing new. We lose a full service hospital and keep an Emergency room that doesn't have the capacity to treat serious emergencies. This is not progress. If "health care was changing to an out-patient model," Cleveland Clinic would not have just built a brand new in-patient hospital in Avon, and it would not have projected making an 11 million dollar profit per year on in-patient visits going to their hospitals from the closure of Lakewood Hospital.

Lakewood Hospital Was Not Failing

- **Lakewood Hospital was profitable.** The audited financial statements show that LHA made over \$2.6 million, \$5.4 million and \$1.3 million in net profit in 2014, 2013, and 2012 respectively.
- **Lakewood Hospital Was Well Funded.** The audited financial statements for the hospital showed liquid investment portfolios assets and current net cash-like assets of totaling \$107 million.
- **Lakewood Hospital was Debt Free.** By the end of 2015, the hospital owed only \$1.6 million in long term debt and had the capacity to borrow over \$90 million to finance improvements and renovations.
- **Lakewood Hospital Was Well Positioned.** *"Lakewood Hospital's primary service area (including 4 zip codes) generates 25,000 hospital admissions per year. We are a valuable market."* That's according to even the Cleveland Clinic's own consultant, Subsidiary Consulting.

- **The Announcement to Close the Hospital Hurt the Hospital.** It is beyond debate that Mayor Summers' plan and announcement to close the hospital and his complicity in allowing the Clinic to dismantle the hospital are the only reasons the hospital suffered financial losses in 2015. -----

If you vote Against Issue 64:

- The 2015 Master Agreement is revoked.
- The 1996 Lease and Definitive Agreement will be re-instated--the Clinic and LHA will be obligated to operate Lakewood Hospital through 2026, which the Clinic estimated is a \$278M investment by the Clinic from 2017 through 2026.
- Lakewood's portfolios of investments are returned to Lakewood.
- Lakewood's equipment or cash value of equipment is returned to Lakewood.
- Prevents a Clinic monopoly in Lakewood—covenant not to compete is erased.
- Allows city to engage in an honest RFP (request for proposal) process to encourage other health systems to run a hospital in Lakewood if Cleveland Clinic wants to break its contract.
- Will open transparent bidding process to sell assets at fair market values.
- Taxpayer lawsuit continues with support of a majority of Lakewood voters.

If you vote For Issue 64:

- The Hospital closes forever. Lakewood will never have a hospital again.
- Lakewood loses largest employer--1,000 jobs transferred to Lorain County.
- Over \$100 million in taxpayer owned healthcare assets leave Lakewood.
- The Clinic will be relieved of a \$278 million obligation to invest in Lakewood.
- The Clinic will pay Lakewood only \$9.6 million for \$108 million or 60% of \$180 million fair market value of Lakewood Hospital.
- Gives the Clinic a monopoly on Healthcare service in Lakewood on the current Hospital site.
- \$33 million in Lakewood Hospital Foundation money is transformed to a regional Foundation controlled by the Clinic. \$33 million taxpayer and healthcare loss.
- Clinic will consolidate existing facilities in Lakewood into a family health center and low level emergency room.
- Gives the Clinic the right to reduce future service in Lakewood without notice.
- Taxpayer litigation continues.
- Taxpayer Clinic records show Clinic will make \$11.5 million additional profit each year into the future due to the hospital closure.
- Forces the City to bear the full cost of demolition and site development of former Hospital site.
- Requires the City to build and maintain parking facilities without compensation.
- Forces sale the Columbia Road Health Center at \$5 million taxpayer loss.

From a Healthcare Point of View, By Dr. Terence Kilroy

The Promise: "a new modern healthcare facility."

What does this mean?

The plan is to consolidate the internal medicine group on Woodward, the family practice group from eastern Detroit Ave. and the outpatient Family Practice Residents (i.e. doctors in training) from Fairview Hospital into this building.

This does not expand coverage in our city since these professional resources already exist here. There is nothing new about it. We gain nothing.

The Promise: A Free-standing 24/7 Emergency Room

What does it mean:

A free-standing ER is staffed by 1 or 2 ER trained physicians and 1 or 2 physician assistants to see any and all manner of illnesses and injuries.

This arrangement has no immediate medical or surgical backup.

Major illnesses such as heart attack, stroke, ruptured blood vessels, shock, and gastrointestinal tears all require immediate treatment by medical and surgical specialists with the proper facilities such as a catheterization lab or an operative suite.

Our ER does not, and will not have those, as it is not connected to a hospital.

There is no way to safely “stabilize” these patients so they can wait for a transfer to a hospital.

It is not safe to transfer patients to other facilities when they are not stable.

Yet they will have to be transferred.

The longer there is a delay, the greater will be the mortality rate and permanent organ damage.

The primary purpose of “Free standing ER’s” is to trap the patient into the health care system that owns the emergency department rather than to provide the health care needs of a community.

Consequently, when our citizens need admission they will be transferred to the nearest open CCF bed which may be the east side rather than the nearest open bed which may be St. John’s, Southwest, Parma or Metro.

The Promise: To protect Lakewood’s progress and the health of our citizens into the future

What does is mean?

We lose access to all the other health resources which could participate in our community.

Other providers know of the \$80-90 million of hospital assets that the mayor and council have given to CCF with Issue 64.

They know that the city no longer controls significant cash assets to entice them to open facilities here.

They know of the restrictive covenant, negotiated by the mayor, that prevents Metro, UH or any other provider from using the residual hospital property.

Independent physicians, both primary care and specialists, are already leaving our community. They will not be replaced since there is no vehicle to support them.

Specialists will not come, since we do not have the local facilities contained in a hospital that they need to do their jobs. We will become a medical desert.

Additionally, there is nothing in the agreement that can compel the CCF to stay in our city despite everything we have handed to them.

This is analogous to rural areas where Walmart came into a town, wiped out the mom and pop stores and then left to another location once they had control of the market.

If we vote "For 64," we will become a "one horse" town in respect to health care.

Citizens will no longer have the capacity to control the health care of our community.

Nov. 11, 2016

Bad Government 10: 54.5% Of Lakewood Voters Did Not Vote For Issue 64

by Brian Essi

<http://lakewoodobserver.com/read/2016/11/22/bad-government-10-545-of-lakewood-voters-did-not-vote>

It's clear that Issue 64 passed, but by a slim margin of 702 votes (3%). That's according to the still unofficial Cuyahoga County Board of elections results. Issue 64 was a referendum created by Lakewood voters seeking to repeal the City Hall ordinance adopting the Master Agreement that closed Lakewood Hospital. One-hundred percent of Lakewood elected officials, the Cleveland Clinic, the Lakewood Hospital Association, most of Cuyahoga County officials, nearly every media outlet and nearly every special interest group in Lakewood supported the "For 64" campaign.

The "Against 64" campaign was a grassroots effort organized and financed by ordinary Lakewood residents who were against City Hall's insider agreements that gave away over \$100 million in taxpayer assets to the Cleveland Clinic and other special interests.

Despite the seemingly overwhelming "establishment" money and "insider" support "For 64", 48.5% of voters cast ballots "Against 64" and just 51.5% "For 64". Certainly that is not a mandate or strong endorsement of the "process" or the "result" pushed on Lakewood by 100% of Lakewood's elected officials.

But a closer examination of all votes, i.e. the "Under Votes" (11.5%), the "For Votes" (45.5%) and the "Against Votes" (43.5%) reported by the Board of Elections reveals that things may be much worse for Lakewood's elected officials going "forward" with what they claim is "progress" for Lakewood. "Under Votes" are the Lakewood voters who the "For 64" campaign failed to convince to support Issue 64. The "Under Votes" and the

“Against Votes” combined amount to 54.5% of the total Lakewood voters who went to the polls did not vote endorse the Master Agreement.

So despite all the insider money and establishment support that Lakewood elected officials used to pass their corrupt Master Agreement, 100% of Lakewood elected leaders only got 45.5% of the public to expressly support their corrupt plan. That’s less of a percentage of voters who voted for Hillary Clinton (48%) and Donald Trump (47%).

If the national election stands for voters fed up with business as usual, a close examination of the vote in Lakewood might be said to contain a comparable message.

On the other hand, since many believe that the “For 64” campaign sought to confuse voters on the issue, perhaps the 11.5% of “Under Votes” should be counted as a “win” for City Hall.

Either way, that is really bad government leadership.

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Either way, that is really bad government leadership.

Dec. 20, 2016

Bad Government 11: “New Foundation” Is Objectively Worse In Every Measurable Way

by Brian Essi

<http://www.lakewoodobserver.com/read/2016/12/20/bad-government-11-new-foundation-is-objectively-worse-in-every>

On December 12, 2016, each of the seven members of City Council nominated one person to the “new wellness” Foundation Planning Task Force. City Council plans to nominate 2 additional task force members and Mayor Summers is to nominate 8 members-- so there will be a total of 17 members of the task force. The stated goals of the Foundation Planning Task Force are to: *“recommend a process for the creation...discuss and reach preliminary conclusions about the nature, scope, mission and governance of the new foundation”* provided for in the Master Agreement passed on December 21, 2015. So it has taken a year to create a task force even though the hospital has been closed since February, 2016 and people are in need of help.

1. Council President Trails Mayor’s Lead in Favoring the Cleveland Clinic Influence.

Council President Sam O’Leary nominated Dr. Charles Garven to the task force. Dr. Garven was a Cleveland Clinic family practice doctor until recently when he joined North Coast Health Ministry as Director of Medicine as part of plans related with the Master Agreement. While Dr. Garven is a fine doctor, Mr. O’Leary’s nomination amounts to giving away a Lakewood “choice” to the Clinic. The Master Agreement guaranteed that the Clinic will have at least two representatives on the board of the “New Foundation,” and the City of Lakewood is not guaranteed any representation. The “New Foundation” was first planned back in 2013 in Mayor Summers’ secret “Select Committee” formed within the Lakewood Hospital Association—Summers chose a majority of Clinic trustees as the members of his “Select Committee.”

2. Delay in Foundation Funding Is Measurably Worse Than the 2015 Letter of Intent.

Elected official gave the Cleveland Clinic complete control over \$50 million of Lakewood’s charitable investment portfolio which otherwise would have come directly to the City when the hospital closed. Only after the Clinic’s new specialty referral center

(also known as a family health center) is opened in Lakewood in mid-2018, will the Clinic be required to begin funding the “New Foundation.”

The Master Agreement foundation funding plan is objectively worse in every measurable way for Lakewood than was the original Letter of Intent (LOI) made public on January 15, 2015. The LOI provided for foundation funding of \$12.2 million upon signing (December, 2015) and \$12.2 million by 2018.

The following chart shows how the Clinic will benefit for the coming 11 years the differences between the agreements:

Year	New Foundation Funding		Clinic's Returns On Portfolio (Estimated)
	Master	LOI	
2015	\$0.2M	\$12.2M	
2016	-0-		\$5M
2017	-0-		\$5M
2018	\$7.6M	\$12.2M	\$5M
2019	\$4.3M		\$5M
2020	-0-		\$5M
2021	-0-		\$5M
2022	\$4.1M		\$5M
2023	-0-		\$5M
2024	\$4.1M		\$5M
2025	-0-		\$5M
2026	\$4.1M		\$5M
Total	\$24.4M		\$55M

Net benefit to the Clinic by 2026:

\$50M portfolio gifted to Clinic in 2015

+\$55M returns on portfolio

- (\$24.4) foundation funding

\$80.6M Net to Clinic by 2026

Despite these facts, President O'Leary claimed in the October 25, 2016 Lakewood Observer that *"Lakewood deserved a better deal than what was put forward in January of 2015, and after a year of study, negotiation, and public input, Lakewood City Council was able to affect a deal that was objectively better in every measurable way."*

Another problem with Mr. O'Leary's claim is that there was no **public** discussion, deliberation or explanation as to why the Master Agreement funding was worse than the original LOI.

The City's Master Agreement closed Lakewood Hospital in February, 2016 and ended 100 years of charity services which averaged over \$7 million per year for the last 20 years.

Christmas 2016 will be the first Christmas in over 100 years that Lakewood's residents will be without the charitable services of Lakewood Hospital or any other charity to take care of health needs of the underserved. At the pace our elected officials are proceeding with the "New Foundation," it is likely that there will be many more future Christmases in which the needs of Lakewood's most vulnerable citizens will go unmet.

That's bad government.

Jan. 10, 2017

Bad Government 12: President O'Leary Delays Charity Care For Political Purposes

<http://lakewoodobserver.com/read/2017/01/10/bad-government-12-president-oleary-delays-charity-care-for-political>

by Brian Essi

The facts set forth in Bad Government 11

(<http://lakewoodobserver.com/read/2016/12/20/bad-government-11-new-foundation-is-objectively-worse-in-every>) were delivered to City Council during the public comment portion of the Council Meeting on December 19, 2016.

In response to those facts, Council President Sam O'Leary doubled down on his previous claim saying, *"I absolutely 100% stand by my comment that it [the Master Agreement] is in every measurable way objectively better."* Again, the facts show that City Council negotiated backwards from the original Letter of Intent (LOI) and ended up with about \$7 million less money for the new charitable foundation under the final agreement (based upon the present value of the delayed funding).

To defend his claim, Mr. O'Leary said on December 19, 2016: *"We were able to get an amount certain for the community health foundation whereas previously it was amounts that would be left after a wind down uncertain."* However, the original LOI guaranteed \$24.4 million and provided: *"The amount of such payment is fixed and will not vary due to the value of assets remaining following the Hospital's cessation of operations."* So, O'Leary's latest claim is untrue.

O'Leary further stated on December 19, 2016 that: "*The city and the other parties to the agreement might have moved more swiftly this year [to form the new foundation] were it not for the fact that there was a ballot referendum [Issue 64] challenging the legitimacy of the action at large. So, certainly I think that had we acted this year to say spend \$12 million we would have come under significant public scrutiny for spending money that was then subjected to a referendum without having actually allowed for a second blessing by the voters of this transaction.*" Of course, they could not have spent \$12 million in 2015, because the new foundation will not even have \$12 million until sometime in 2022 due to delayed funding.

In addition, City Council, led by Mr. O'Leary, promoted all the following actions and positions while the "legitimacy" of the Master Agreement was being challenged:

1. Closure of the hospital.
2. Termination of nearly 1,200 hospital employees.
3. Transfer of all medical equipment and bed licenses to the Cleveland Clinic.
4. Cancellation of all Medicare, Medicaid and private insurance contracts.
5. Transfer of millions of dollars of cash and title to real estate.
6. Commencement of demolition of two buildings.
7. A "legal" opinion of Law Director Kevin Butler that the outcome of Issue 64 did not affect the "legitimacy" of the Master Agreement.

So, O'Leary advanced all those things, but now claims he refrained from appointing task force members to discuss a health foundation because he and other public officials would be "*under significant public scrutiny*" if they had not delayed this less significant action until after the vote on Issue 64.

The complete list of the 17 task force members was made public on January 3, 2017 and included City Hall insiders and people associated with the Clinic.

So, it appears that the delay in making the task force appointments public was to avoid *significant public scrutiny* while Issue 64 was pending.

Under O'Leary's leadership, the parts of the Master Agreement detrimental to the health of citizens were immediately implemented, but the part that was supposed to advance the health of citizens was purposely delayed for political purposes.

That's bad government leadership.

OLDER MATERIAL

SLH Seeks Unity And Choices While City Hall Fights To Limit Choice And Divide Us

March 1, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2016/03/01/slh-seeks-unity-and-choices-while-city-hall-fights-to>

The hospital saga has followed the well known playbook of large hospital systems that divide and conquer local communities to *limit consumer choice and limit competition*.

They do this by sizing up local leaders, promising the leaders things that the leaders want and then dividing the community to achieve the hospital system's goals of *limited consumer choice*. In Lakewood's case, the Cleveland Clinic (CCF) worked that playbook to perfection and City Hall *chose* to side with CCF and divide itself from the people.

City Hall Chose to Limit Choice and Divide the City.

The record is clear that several years ago, CCF promised things to Mayor Summers and he then *chose* to side with CCF—Summers was promised land and money to pursue his recreation and economic development agenda in exchange for giving CCF a virtual monopoly on healthcare, *limiting competition and choices* for the people of Lakewood. It is now clear that Summers, with the help of others, steered a “sham” bid process allowing CCF the inside track. Indeed, Summers *chose* two CCF Trustees to assist in conducting and overseeing the bid process. On January 14, 2015, councilmembers Mary Madigan and Tom Bullock (who were likely aware of the sham process) made their *choices* to join with CCF in *limiting choice*. On December 21, 2015, City Council collectively made their *choice* by voting 7-0 to *limit the peoples' choice* to CCF. Several Councilmembers even explained their *choices* to join CCF and divide from the people as “the only option.”

The Grassroots Movement Gives the People Choices at the Ballot and for their Healthcare.

Since its formation in January, 2015, the grassroots organization known as Save Lakewood Hospital (SLH) has consistently promoted *choices* for all of the people of Lakewood. SLH consistently urged City Hall to have a fair, open and honest bidding process concerning all available *options*. City Hall embraced the sham process and refused to engage in an open, honest and otherwise legitimate bid process. SLH promoted a charter amendment known as issue 64 to give the people the *choice* on the hospital issues. The political action committee (PAC) that opposed issue 64 was funded by the Lakewood Hospital Association (LHA) with much support from City Hall and CCF. While they outspent the grassroots effort 10 to 1, filled mailboxes with false campaign literature and propaganda, they eked out only a narrow 52 to 48 “victory” to *limit the choice*.

Last month, SLH successfully led a signature drive and referendum effort to give voters the *choice* of overturning the City Hall/LHA/CCF *limited choice*. If the referendum passes, it will nullify the Master Agreement that gave away \$70M in value to CCF for free and unfairly restricted operation of a hospital in the existing city-owned hospital Lakewood Hospital building (the “restrictive covenant”). The restrictive covenant helped CCF limit choices of the people and also helped Summers, et al with their recreation and economic development agenda. Passage of the referendum will also allow the city to properly conduct a fair, open and honest bidding process concerning all available *choices for future healthcare*—a longstanding goal of SLH supporters.

City Hall is Fighting the People's Right to a Vote and Choices for their Healthcare.

The referendum could have been placed on the upcoming March 15th ballot, but the law department and city council made *choices* to delay the vote. On February 11, 2016, Kevin Butler announced the "city's legal position" is that if the referendum passes, CCF/LHA/City Hall will proceed with their alliance and ignore or fight the voters' *choice*. So essentially, City Hall has *chosen* to fight the people's right under their own city charter to have a *choice* in their own healthcare.

By all accounts, City Hall/LHA/CCF secretly manufactured and contrived a "legal position" that if valid would essentially steal the right of the people to choose the future of healthcare in Lakewood. In a twisted justification for keeping the details of the secret plan from the public, the city has argued that the taxpayer lawsuit (citizens seeking sunshine on the process) provided them with the "legal" cover to negotiate the Master Agreement with CCF and LHA in secret. Since the Master Agreement has been made public, City Hall has refused to answer questions and produce public records as to how and why critical details were arrived at. Instead, they use Mr. Butler to engage in legal gymnastics to try to explain why the voters are being deprived of choices.

As City Hall *chose* a divisive and contentious course through alliance with CCF/LHA and crafty lawyers, various councilmembers acknowledged that CCF and LHA had behaved badly and could not be trusted. There was also an acknowledgement that the Master Agreement was not really about healthcare at all. The basic needs of the people remain unmet.

Imagine if City Hall Chose to Unite with its People and Divide from CCF and LHA.

Just imagine if City Hall chose to divide itself from CCF/LHA by overturning the agreement or even remaining neutral and letting the people make their own choice at the ballot box as soon as possible. Just imagine if City Hall chose to open the bidding process and an honest and reliable partner came in to buy or lease the existing facility as a full service hospital. Since no other party was ever offered to bid on what CCF was offered on the inside "sham" track, just imagine if a more honorable competitor was given that opportunity and offered to do the same thing as CCF has "promised" and we actually got some money for our valuable beds licenses, equipment and real estate at fair market value---likely yielding tens of millions of dollars, rather than just giving it to CCF for free. Just imagine if City Hall stopped pretending that the Master Agreement was improved healthcare when everyone knows that is not true.

Just imagine if City Hall had a reunion with its people instead of fighting them and siding with an outsider.

Master Agreement Gives Clinic Public Assets

Jan 19, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2016/01/05/master-agreement-gives-clinic-public-assets>

On December 21, 2015, City Council voted 7-0 to approve the so-called Master Agreement (MA) to close and dissolve Lakewood Hospital. Lakewood Hospital had been recently valued at more than \$120 million. [Subsidium Slide # 71 8/20/14] Under agreements existing immediately prior to approval of the new Master Agreement, if Lakewood Hospital closed and dissolved, the City of Lakewood would have received the entire value of Lakewood Hospital, i.e. property and money worth nearly \$120M. [1996 Lease 12.2, 14.1 and LHA Articles of Incorporation] Instead, under the Master Agreement, the Cleveland Clinic (CCF) will receive money and property valued at \$80M, the City will receive less than \$23M and a new health and wellness foundation jointly controlled by CCF and the City will receive about \$16.5M. The City did not conduct any public bidding or advertising of its Lakewood Hospital rights and properties.

Here is What the City Receives under the Master Agreement.

The City will receive total cash and property valued at less than \$23M:

1. \$8M Net Present Value (NPV) for a medical building on Columbia Road in Westlake. [MA 5.4 and Exhibit H]
3. \$2.7M estimated sales price for 2.7 acres of land at the southwest corner of Belle and Detroit sold to CCF. [MA 5.1 and Exhibit G]
4. \$5.7M estimated sales price for 5.7 acres of land and gutted Hospital buildings located on the east side of Belle Ave. to be sold to private developer. Note: this estimate is likely high because (a) it is not discounted to NPV to take into account that the City will not have possession of this site until at least June, 2018; (b) the land will be impaired by a restrictive covenant limiting use of the property as a hospital or medical facility by any Health Care System Provider; and (c) CCF has the right to lease parking spaces on this land. [MA 5.3] Further, Councilman Tom Bullock said it could take 3 to 5 years to develop or sell the site, i.e. the building has questionable marketability for uses other than a hospital or medical facility and is encumbered by CCF's parking rights.
5. \$6.2M NPV as a partial payment for demolition and tear down of the Hospital buildings on the east side of Belle Ave. [MA 3.3(c)]
6. The Curtis Block building and residential homes near the hospital—the value of these properties is included in the estimate for the 5.7 acres above. [MA 5.6]

The City may also receive a maximum of \$2,887,500 in rent installments beginning March 1, 2016 and ending June 30, 2018, but this rent is in exchange for LHA's continued occupancy, use and control of the hospital building for an emergency room (ER) through at least June, 2018. It is not a payment for City's equity in Lakewood Hospital assets. [MA 5.5]

Here is what the LHA Trustees and CCF employees working at Lakewood Hospital Receive.

LHA Trustees and CCF employees receive a full release and waiver of liability [MA 9.4] and will be indemnified, defended and insured against their past and future conduct through a payment of \$2.5M by LHA to CCF for an insurance policy. [MA 9.12]

Here is what the new Health and Wellness Foundation Receives.

A new health and wellness foundation will be created, but will not be fully funded by LHA until June 2026 at the earliest—the total value of LHA's funding of the new foundation is worth \$16.5M NPV. [MA 6.1 and Article IV] This amount could be reduced depending upon LHA future operating losses. [MA 6.1(c)] Although the agreement states that “LHA” and the City will name the initial board and develop the yet undefined rules of governance of this new foundation [MA 4.1], the effect of the agreements are that as of December 21, 2015 CCF has full legal authority to vote in new trustees as it pleases. The practical effect is that CCF and the City will name the initial board and develop its rules of governance.

In addition, CCF will make 16 annual payments of \$500K to the new foundation starting in mid-2018 and ending in mid-2034. These payments have a NPV of less than \$4M---- CCF will have the practical right to control the use of this money.

So although supporters of the Master Agreement claim the new foundation is worth \$32M, the portion that the City has only shared control of is worth only \$16.5M. CCF will have significant influence and control over the entire new foundation.

Here is What the Clinic Receives under the Master Agreement.

The Clinic is obligated to pay a total of only \$10.7 million to the City and will receive the following:

- 1) The state of the art medical office building and surgery facility located at 850 Columbia Road, Westlake. [MA 5.4]
- 2) 2.7 acres of cleared land located at the southwest corner of Belle and Detroit. LHA will pay an estimated \$3.6M to tear down the existing hospital parking garage and the Lakewood West Medical building to prepare the land for CCF's Family Health Center (FHC). [MA 5.1, 3.3(b)]

3) \$2.5 million in LHA cash to help CCF build a parking garage on the 2.7 acres of land given to CCF. [MA 3.3(b) and 2.2(a)]

4) All of Lakewood Hospital's valuable bed licenses, medical equipment, furniture, fixtures and everything else of value located in the current hospital building. [MA 3.3(d)]

5) A covenant not to compete in favor of CCF that will prevent the Hospital building and land from being used by any Hospital System Provider as any medical facility or service including a hospital. In other words, the value of the gutted hospital building and land returned to the City will be greatly decreased and likely torn down because it is designed for use as a hospital and medical facility. [MA 5.3]

6) The right to lease parking spaces from the City on the hospital land on the east side of Belle owned by the City.

7) A full release of liability for its "decanting" and other damage that CCF caused to the Lakewood Hospital, i.e. CCF gets to keep all that it has taken from the hospital prior to December 21, 2015.[MA 9.4 and 3.4]

8) Continued control and influence of the new Health and Wellness Foundation and how that money is spent. [MA 4.2]

9) Control of \$3M in donor restricted assets on LHA's balance sheet. [MA 3.3(d)(6)] On December 22, 2015 CCF amended the LHA Articles of Incorporation so that CCF can receive this money too if the donor restrictions are reformed.

10) A "Dissolution Distribution" of all remaining LHA cash, accounts receivable and other property after payment of "wind-down expenses." [MA 3.3(d)]

Based upon LHA's most recently available financial statement, CCF will have at its disposal more than \$27M of LHA's cash and liquid investments to be used for the "wind-down" even after payments to the City and the new foundation described above. In spite of this fact, the Master Agreement states that there is a "significant assumption of risk" by CCF to pay for "wind-down expenses" that might exceed the \$27M or LHA's "Net Asset Value." [MA 3.1(a) and 3.3(a)] The agreement does not specify any compensation for most of the rights and property to be given to CCF other than this perceived "assumption of risk." [MA 3.1(a)] There has been no public disclosure or record of the estimated wind-down expenses that CCF is alleged to be at "risk" of assuming.

LHA's experts estimate that there will be a \$38M NPV benefit to CCF from the admissions at Lakewood --which are likely to move to CCF's facilities-- in the first 3 years alone, as a result of closing Lakewood Hospital. [Subsidium Slide #70 8/20/14]

LHA's operating losses for the first 9 months of 2015 were only \$4.5M. [9/30/15 LHA financial statement] The Master Agreement calls for all of Lakewood Hospital's inpatient operations (except the ER) to be wound down and closed by March 1, 2016—just two

months of potential losses. [MA Article III and 6.1(c)] Consequently, it appears that there is no evidence or circumstance of any financial risk to CCF that would necessitate payment of any “wind down expenses.” In fact, experts estimate that CCF may receive more than \$20M of LHA cash upon dissolution. This would mean that CCF is paying nothing for substantial and valuable equipment, property, licenses and non-competition covenant rights and may receive \$20M in cash on top of those free valuables.

The terms of the Master Agreement and other agreements attached to it are such that CCF and LHA (now fully controlled by CCF) will not be obligated to account for how the balance of the LHA money is spent in the “wind-down.” [MA 5.5, Exhibit I] Nor will there be an accounting of how much of LHA’s cash is ultimately distributed to CCF. It should be noted that throughout the hospital debate, CCF refused to disclose how it allocated over \$20M of annual administrative charges to Lakewood Hospital claiming its allocation formula was “confidential and proprietary.”

In summary, the City would otherwise have received nearly \$120M in value under the 1996 agreements if the hospital closed and dissolved, but will likely receive less than \$23M under the Master Agreement. CCF will likely receive cash and property valued at \$80M in exchange for an estimated payment of only \$10.7M. The nearly \$70M windfall to CCF could finance building CCF’s \$34M proposed FHC in Lakewood with \$36M left over.

City Council And Mayor Summers Need To Act Like A Responsible Landlord

December 8, 2015

By Brian Essi

[http://lakewoodobserver.com/read/2015/12/08/city-council-and-mayor-summers-need-to-act-like-a](http://lakewoodobserver.com/read/2015/12/08/city-council-and-mayor-summers-need-to-act-like-a-landlord)

Here is where we are on the hospital situation:

1. The Cleveland Clinic (CCF) is in breach of the Definitive Agreement (DA) and has committed tortious acts that have caused damage to Lakewood’s assets.
2. Lakewood Hospital Association (LHA) is in breach of the Lease.
3. LHA trustees, including the 3 City’s ex-officio trustees (Summers, Madigan and Bullock) have breached their fiduciary duties by failing to adhere to the charitable mission of LHA and failing to competently oversee CCF.
4. CCF and LHA want out of their obligations under the Lease and DA.

5. Under the circumstances, the City as the Landlord has both the right and the duty to seek alternative tenants to operate a hospital and/or buyers for its buildings and equipment.

6. Mayor Summers and City Council have failed to:

a. Demand that services taken away by CCF be restored and that LHA and CCF comply with all relevant agreements.

b. Conduct any proper or public bidding of its assets, i.e. they have made no effort whatsoever to maximize the value of the assets or advertise the hospital for lease.

7. No rational Landlord would let the "volunteer" trustees of the defaulting tenant and the defaulting CCF control the search for the new tenant and/or the liquidation of the City's assets. To make matters worse, the defaulting volunteer trustees are led by Tom Gable who is also a CCF trustee—this makes no sense!

8. Instead of fulfilling their legal duties, City leaders chose to negotiate exclusively with LHA and CCF—the parties who caused the perceived crisis.

9. Sources say that the City leaders are close to a deal that is roughly equivalent to the original LOI reached back in January, 2015---a "deal" worth far less than \$50 million.

In exchange for this "deal," Lakewood will be asked to surrender:

1. Public money and property valued by LHA's expert at \$120 million.
2. The largest employer in Lakewood--\$990,000 in annual income taxes.
3. \$7 million per year in charity care for our underserved.
4. Over \$ 1 million in rent.
5. \$5 million in annual capital improvements to the Hospital through 2026--\$55 million.
6. Valuable legal rights against CCF that could be worth more than \$100 million at settlement.
7. Economic Activity surrounding hospital estimated at over \$250 million annually.

Additional results of the "deal" will be as follows:

1. Lakewood businesses will close,
2. jobs will be lost,
3. homes and business properties will be foreclosed,
4. property values will drop,
5. tax revenues will go down,
6. the elderly will suffer,
7. crime will rise,
8. the underserved will be even more underserved,
9. taxes will rise, and

10. schools will suffer.

To make matters worse:

1. CCF will be the sole provider of healthcare in Lakewood---they have already shown their lack of respect for Lakewood and the health of its citizens.
2. The people who have caused this calamity and pressed for this "deal" will be in control of a majority of the "benefits" flowing from the "deal." The City gets virtually nothing for its \$120 million in assets and the loss of its largest employer.

What Should City Leaders Do?

Set Clear Goals:

1. Maximize Value of Assets.
2. Maximize Prospective Jobs, Tax Base and Economic Impact in repurposing or selling the assets.
3. Provide best possible healthcare for citizens, including the underserved in relation to assets.

The Simplest Solution is also the least Risky and provides the Highest Return:

1. Pursue and Explore Third Party Options—Council Led RFP for hospital, surgical center and/or FHC/ER. Immediately entertain SDP Columbia offer and engage on their vision for acute care hospital outpatient surgery center.
2. Pursue Claims Against LHA and CCF. For Breaches Consider contingency lawyers.

Any Council member who votes for such a corrupt and rotten "deal" will be breaching their duties and exposing themselves and the City to serious legal liabilities.

Build Lakewood Postcard Misinformation

October 27, 2015

By Brian Essi

<http://www.lakewoodobserver.com/read/2015/10/13/build-lakewood-postcard-misinformation>

Misinformation is false or inaccurate information, especially that which is deliberately intended to deceive. All 13 points in BL's postcard are false or misleading. The BL postcard sent to Lakewood voters is classic misinformation. Its time for BL to face these facts.

REBUTTAL OF LEFT SIDE OF POSTCARD: "Build a new Health Center for Lakewood."

MISINFORMATION: *"Privately funded - NO COST to taxpayer."*

FACT: Lakewood Taxpayers Are Subsidizing Cleveland Clinic Foundation's (CCF's) "Family Health Center."

1. High Taxpayer Price Tag for subsidizing CCF sending patients & doctors out of Lakewood to their real inpatient hospitals.

2. \$26 million in taxpayer money is used to tear down the hospital buildings and property worth an estimated \$70 million and payment of severance to CCF's employees. So Summers proposes to use/consume over \$90 million in public money and property to subsidize CCF and yet to be named private developers.

3. Millions of dollars of taxpayer-owned state-of-the-art equipment and other property at the hospital is given to CCF for FREE—it says so right in the draft Master Agreement.

4. \$400 million claim against CCF forgiven--Summers/BL want to release and forgive CCF. Discount claim to 10%--taxpayers paying a \$40 million subsidy to CCF.

MISINFORMATION: *"Improved Medical Services"*

FACT: There Will Be Greatly Diminished Medical Services, Doctors And Specialists Will Be Exported Out Of Lakewood.

1. Services Eliminated/Doctors & Specialists Exported. Hospital Services and outpatient surgeries will be completely eliminated under the Summers/BL plan. Per CCF's Dr. Steven Jones: "there will be no hospital services"—no cardiologists, no neurologists, no surgeons of any kind, no on-site stroke facility, etc.

2. No Services Are Guaranteed. There is no "guarantee" of any services after the "deal" is signed---LHA's Chairman Tom Gable and Finance Chair Ken Haber said this in April.

3. Privatization of Public Money. CCF and a few handpicked insiders will control the new foundation, which cannot sustain the "new healthcare initiatives" as claimed by BL unless needed traditional programs are abandoned and eliminated. Huron's John Bodine said the new foundation will not move the needle and is insignificant—especially in light of the great loss of the existing hospital charity services provided (historically \$7 million per year).

4. Bed Shortage Already. Patients have already been denied or delayed beds.

“Door to provider” rates are rising as CCF manipulates diminished use of Lakewood inpatient rooms.

MISINFORMATION: *"Redevelopment Opportunity"*

FACTS:

NO Redevelopment Plan Exists. Tax and Rent-Paying Cash Cow Hospital Can't Be Matched By Summers Unrealistic "Plan."

Lost Taxes and Rent. \$2 million in annual Payroll Taxes and Rent will be lost and can NEVER be replaced by Summers' vague plan. Lakewood Hospital is the highest and best use for the land. No number of new businesses can supply the jobs of a 24/7 365 fully-staffed hospital. Summers admits they have no market studies, no estimates of officer workers or retail workers, no interested businesses to relocate and build in heavily congested area far from I-90.

REBUTTAL OF RIGHT SIDE OF POSTCARD - "Don't Save Old Lakewood Hospital"

MISINFORMATION: *Hospital is 'old.'*

FACT: NOT THAT "OLD"

Many parts of Lakewood Hospital Plant and Equipment Are New and State-Of-The-Art—Additional Renovations Can be Financed and Paid By Our Debt-Free Hospital's Cash Flow—Not Taxpayers. Characterizing it as "OLD" is not accurate.

MISINFORMATION: *"High Cost"*

FACT: Taxpayers DO NOT PAY FOR Lakewood Hospital.

Once again, "The Hospital has always been supported by the revenues generated from operations.... no tax-derived revenue sources ever supported the hospital." Jenn Pae, Lakewood Finance Director, September 28, 2015.

1. CCF is Liable under the agreements to "Cash-Flow The Hospital." i.e. CCF has to supply cash to match every dollar of debt that might accumulate or be incurred through operations. An original drafter of the agreements agrees that CCF is liable under the 1996 Definitive Agreement and the 2010 "Centers of Excellence" agreement. The loss projections quoted by BL were made by Subsidiary spokesperson who admitted they did not understand the agreements---The estimates were based upon CCF moving a major "Center of Excellence" (Orthopedics) to Avon. BL makes two false assumptions: 1. That CCF is not liable under the agreements to fund the cash-to-debt obligation and allow LHA to borrow for improvements, and 2. That CCF is not liable under the 2010 modified agreement to maintain the "Centers of Excellence" losses per the enforceable contract. BL is wrong on both assumptions.

2. CCF & LHA Must, By Law, Invest in Renovations, Not Taxpayers. CCF and LHA (not taxpayers) are required by contract and by law to finance and pay for improvements to keep the hospital viable. BL does not understand the law and contract terms. Jenn Pae admits that this obligation has existed for 30 years.

3. Hospital Pays Millions More To Lakewood Than Summers Idea Ever Could. The hospital pays over \$2 million in annual Payroll Taxes and Rent. It also has provided an average of over \$7 million each year in charity services. The claim that the hospital pays no real estate taxes is purposely misleading.

4. Summers is Wasting Public Assets Fighting Citizens Who Are Doing His Job By Enforcing The Agreements. Mayor Summers chose to fight taxpayers rather than join them in enforcing the City's rights and recouping damages. According to public records, so far Summers has spent \$79K of taxpayer funds on "crisis management" and consultant fees to help him control Lakewood citizens. Nevertheless, Summers has not yet "wasted" the "hundreds of thousands of taxpayer" dollars on the Citizen's lawsuit that BL claims. Kevin Butler says that insurance may cover legal fees anyway. This BL claim is false.

MISINFORMATION: "High Risk"

FACT: Keeping Proven Cash-Cow Hospital is LESS RISKY than Summers VERY RISKY "Plan."

1. Other Hospital Systems Are Interested in Managing/Owning Lakewood Hospital—Summers Is Not Looking. There has been no professional search for new partners free of CCF's interference. Summers has allowed CCF to dominate LHA—consequently LHA is not a proper party to find a new partner or to independently negotiate anything. Summers gave up on his less-than-professional effort to seek another partner way back in early 2014. If CCF leaves opportunities for new partners open up.

2. Charter Amendment Prevents CCF From Corrupting Elected Leaders—Just like the existing charter provision that allows for a referendum, it forces the Mayor and Council to include the public in buying into any plan. It may even strengthen leaders' negotiating power. Summers and BL are the only parties suggesting that taxpayers finance a free-standing hospital, the charter amendment does not do this—it is a contrived scenario for them to fear-monger and accuse other of wanting tax increases.

3. CCF Is Driving Doctors & Specialists Out Of Lakewood. CCF has driven independent doctors out of Lakewood. Many have left in because they are worried about the potential of the hospital closing. The Summers/CCF Plan is to import family practice residents (inexperienced doctors in training) from Fairview. BL has told a partial truth--"Lakewood is at risk of losing more medical services if we continue on the present course" ---that course is Summers letting CCF completely loot the hospital of valuable

services and personnel---it is not the course of keeping the hospital open. Nobody has suggested continuing the present course with failed leadership.

Court Filing Raises Issues of Criminal Deception by CCF

October 13, 2015

By Brian Essi

<http://lakewoodobserver.com/read/2015/09/29/court-filing-raises-issues-of-criminal-deception-by-ccf>

On September 18, 2015, the Plaintiffs in the taxpayer lawsuit filed an Emergency Motion to Compel Discovery (the "Motion") against the Cleveland Clinic (CCF) and the Lakewood Hospital Association (LHA) claiming that both entities are withholding critical and relevant evidence. The evidence concerns past and ongoing removal of medical service lines and personnel from Lakewood Hospital—actions that the Plaintiffs say have caused and will potentially cause severe damage to the viability of the hospital.

The Plaintiffs are asking the judge to order CCF and LHA to produce, among other things: (1) all strategic plans for Lakewood and Fairview Hospitals, (2) the current and pending plans for removing, diminishing and decanting any medical services lines from Lakewood Hospital; and (3) Ann Huston, Head of CCF's Strategic Department for a deposition; and (4) LHA meeting minutes including minutes of committee meetings headed by Mayor Summers.

The Plaintiffs want this additional evidence that they say will "*pinpoint the decision-making timetable and process to close and decant Lakewood Hospital.*" The Motion references a criminal statute containing the legal definition "deception." On September 21, 2015, former Congressman Dennis Kucinich spoke publically about the facts set forth in the Motion and suggested that he may call for a grand jury investigation. It appears from the facts known so far that if the additional evidence shows that CCF was planning to close Lakewood Hospital at the same time CCF made representations and promises to City Council in 2010 that Lakewood Hospital was viable and sustainable in the long term, it may be a crime.

1. The Criminal Law—Securing Writings By Deception.

Ohio Revised Code Section 2913.43 sets forth the crime of "**Securing Writings by Deception**": "*no person, by deception, shall cause another to execute any writing that disposes of or encumbers property...*" Under that criminal law, "*Deception*" means "*knowingly deceiving another or causing another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms,*

or perpetuates a false impression in another, including a false impression as to law, value, state of mind, or other objective or subjective fact."

2. A Writing Potentially Secured By Deception---a 2010 Lakewood Council Resolution.

In 2010, City Council passed a written resolution that allowed Lakewood's trauma and in-patient pediatric care service lines to be transferred to CCF's Fairview Hospital. The written resolution expressly relied upon an *"April 6, 2010 letter from [CCF] leadership to the City of Lakewood"* and stated that *"The citizens of Lakewood and the elected officials have been assured continued, active participation in key decisions..."* The April 6, 2010 letter was followed up by a May 24, 2010 letter and accompanying representations by CCF that the resolution *"positions the Hospital for future sustainability"* and *"viability of Lakewood Hospital."*

Documents obtained so far show less than a year later in 2011; CCF secretly commissioned and began implementing the plan to demolish Lakewood Hospital that was ultimately set forth in the Letter of Intent (LOI) announced in 2015. *"The evidence suggests that a decanting strategy and medical office building plan was secretly under consideration at the very same time that representatives of CCF were providing public assurances and pronouncements as to the long term sustainability of Lakewood Hospital."*

3. The Property Disposed of Was Valuable Service Lines.

Trauma and in-patient pediatric care service lines were valuable assets of Lakewood Hospital. In fact, under its agreements with LHA and the City, CCF needed the City's permission to remove these service lines. It is assumed that City officials would not knowingly work to destroy their own hospital and that they would only give their permission to give CCF these valuable service lines if CCF had represented to City officials that the service lines promised to Lakewood were of equal or greater value in sustaining the future viability of the hospital. Given the great dollar value of these assets, if the crime is established, it would be a felony.

4. The Detailed Facts Concerning Deception.

The facts from documents and depositions of CCF official taken so far point to a longstanding deception by CCF that is akin to a classic bait and switch scheme.

As mentioned above, the Plaintiffs' Motion is currently focused on CCF and LHA's strategic planning related to Lakewood Hospital. In this regard, it is important to note that CCF's Dr. Stephen Jones testified before City Council that it generally takes about 3 to 5 years from the beginning of planning until the time that patients are seen. So for example, the plans for the removal of trauma from Lakewood to Fairview in 2010 began years earlier. Indeed, John Mills, Chief Operating Officer of Fairview Hospital, testified

that in 2007, he developed a business plan to enlarge the Fairview emergency room that was approved by CCF in 2008.

The “Bait” Included New Hospital Buildings and Then CCF Switched to Less Tangible “Centers of Excellence.”

According to documents and testimony, in 2007-2008, CCF initiated a plan approved by LHA Trustees to reconstruct and renovate two of Lakewood Hospital’s oldest buildings with an estimated budget of \$65-69 million. CCF withheld its approval for this project and switched to offering Lakewood the so-called “Centers of Excellence” which included “Geriatrics, Orthopedics, Neurological services and Diabetes/Endocrine.” The Centers of Excellence were essentially programs that CCF controlled and were promised to Lakewood in exchange for taking the valuable trauma and in-patient pediatric lines to Fairview. In 2010, CCF wrote to city Council: *“We remain committed to investing in facilities and programs at Lakewood Hospital.”* Also, on June 10, 2010, Janice Murphy, CCF’s President of Lakewood and Fairview Hospitals told City Council that *“Dr. Bronson [CCF’s then President Regional Hospitals] was eager to provide a world class hospital and was duty-bound on that promise.”*

However, even before the Centers of Excellence were fully developed, the “Decanting Plan” to close Lakewood Hospital was commissioned by CCF in 2011 and fully developed by 2012. According to the Motion, the testimony and documents show *“the Decanting Plan was formulated in secret with a confidential Fairview Hospital and CCF steering committee.”* Decanting has been described as the removal of hospital medical equipment and service lines from Lakewood Hospital and their transfer to Fairview Hospital and other CCF hospitals—this included the plan to close and demolish Lakewood Hospital and build a medical office building (later called a family health center). CCF officers testified under oath that approval of the decanting of Lakewood Hospital and replacement with the proposed medical office building would have been approved by the Medical Institute Chairs and Board of Governors and would have occurred prior to 2011.

The Implementation and Cover Up of the Decanting Plan

One exhibit attached to the Motion shows that the secret committee covered up the Lakewood “Decanting Plan” by referring to it as “Market/System Impact” instead of decanting.

Additionally and similarly, another exhibit (Mayor Summers’ July 3, 2014 letter to CCF’s President of Regional Hospitals) shows that numerous elements of the “decant” had been implemented by 2014. In his letter, Summers referred to CCF’s *“unilateral strategic approach”* to disregard Lakewood by *“moving Rehabilitation Services”* to Avon and other programs in *“unilateral”* action having a *“detrimental impact”* and *“devastating impact on the financial viability of our hospital.”* However, from January, 2015 through present, Summers repeatedly made claims to the public and City Council that *“market*

trends in inpatient beds" and *"changes in healthcare"* rather than CCF's unilateral secret actions threatened the viability of the hospital.

Another exhibit contains an August 26, 2015 CCF solicitation of Lakewood Hospital staff physician Terry Kilroy to work at CCF's new Avon rehabilitation hospital starting in early 2016. This solicitation of one Lakewood's best and brightest physicians is in contrast to contemporaneous representations by LHA and CCF that hospital personnel and doctors are not being lured away to CCF's other facilities.

Summary

The Summers and CCF narratives of "market trends" and "Market/System Impact" appear to be cover stories for the ongoing "decant" of Lakewood into Fairview and Avon. If the evidence currently being withheld by CCF and LHA is ordered to be produced it may show an active criminal deception of Lakewood and the public in 2010.

Evidence is mounting that CCF and those aligned with them are again using deception to obtain another ordinance from City Council that would not just close the hospital, but also reward wrongdoers and absolve them from prior bad actions. On April 30, 2015, Dr. Brian Donley, CCF's Chief of Staff, told City Council that the long-term success of the proposed CCF facility was largely about the City having "faith" in CCF.

The facts presented so far and the numerous critical questions still unanswered, likely explain why so many Lakewood residents lack faith in the City leaders proceeding with negotiations with CCF and LHA regarding the future of their healthcare, and the demolition of their hospital.

City's Rights Will Be Determined By the Court

September 29, 2015

By Brian Essi

<http://lakewoodobserver.com/read/2015/09/15/citys-rights-will-be-determined-by-the-court>

Lakewood's Law Director, Kevin Butler, published a letter to the Citizens of Lakewood including his interpretation of legal documents to provide citizens with *"relevant information needed to assess the future of Lakewood Hospital."*

Mr. Butler's letter cites no law and contains almost no facts other than the fact that two legal documents exist: a Lease and a Definitive Agreement (DA). Mr. Butler's interpretations of those documents omit the context by leaving out many facts.

Part of the context omitted is that several Lakewood residents filed a lawsuit on behalf of the City to enforce the Lease and DA and named Mayor Summers, the City of Lakewood, the Cleveland Clinic (CCF), Lakewood Hospital Association (LHA), and

others as Defendants. Mr. Butler is the attorney representing Summers and the City in that lawsuit. Breach of contract is only one of 13 legal claims of recovery.

Substantial evidence of CCF's serious wrongdoing and damage to Lakewood Hospital has been exposed, but Mr. Butler has filed a joint brief with CCF and LHA seeking to prevent enforcement of the same agreements that are the subject of his letter.

Here is a response to the conclusions set forth in Mr. Butler's letter.

Mr. Butler's First Conclusion: *"The Cleveland Clinic does not have a lease with the city and is not obligated to run Lakewood Hospital through the end of the city's lease with LHA."*

Response: The second part of this conclusion is dependent on the validity of the first part.

1. The Court in the lawsuit will determine if CCF has obligations under the Lease. The Plaintiffs claim, among other things, *"CCF exercised control over LHA and Lakewood Hospital so completely that LHA had no separate mind, will, or existence of its own... CCF is inextricably linked to LHA. Integration is complete. CCF is LHA. Thus, CCF is the lessee."*
2. If the Court decides that CCF is obligated on the Lease, CCF will be obligated to run the hospital through 2026. If not and CCF chooses to leave Lakewood, it will lose market share and control. This would free the City to find a new healthcare partner to operate the hospital.

Mr. Butler's Second Conclusion: *"LHA, the city's tenant and the entity responsible for running the hospital, could cease operating the hospital notwithstanding the lease, leaving the city with no partners to run the hospital."*

Response: There are three separate parts to this conclusion.

1. LHA is the tenant, but the DA provides for CCF to run the hospital under the supervision of the LHA Board. Both the Lease and DA require shared power between the City and CCF. Mr. Butler ignores the facts that Mayor Summers is the most influential Trustee on LHA's Board and that responsibilities for operation and management of the hospital ultimately rest with both the City and CCF. Again, the Plaintiffs in the lawsuit claim that CCF dominates LHA and that Summers has allowed this. So there is a factual dispute as to who is actually responsible for running the hospital.
2. LHA could cease running the hospital, but only if the Lakewood appointees, including Summers vote to do so. If that occurs without Council approval, the Trustees and/or their insurers would be liable. Again, if the Court decides that CCF is obligated on the Lease, CCF would be liable for the hospital closure also.

3. The third part of this conclusion is not logically or factually related to the first two parts. Mr. Butler's central theme is that the City will be left "*without a partner*" including the following two statements:
 1. "*The likelihood of the city finding a new operating partner in time to preserve hospital assets appears to be small.*"
 2. "*The city has only received an offer from the Cleveland Clinic to operate a family health center.*"

It is impossible to find a new partner to operate the hospital or even obtain another offer for a family health center if the City does not try. The facts are clear that the City never made ANY effort to find a new partner and it is currently making no such efforts. The efforts by LHA (led by Summers) that ended early in 2014 more than a year ago, were highly compromised, and were not handled in a professional manner, e. g. no broker-dealer was hired and LHA never got a release from CCF. Without this release, no other party besides CCF could make an offer to operate a hospital without the risk of liability to CCF.

Mr. Butler's Third and Fourth Conclusions: "*The Cleveland Clinic is not required to cover LHA's operating losses. Neither LHA nor the Cleveland Clinic is obligated to invest significant capital money into the hospital facility—making major improvements at the hospital the city's responsibility.*"

Response: CCF and LHA are both legally obligated to carry out the charitable mission to operate a hospital. The hospital is virtually debt-free and interest rates have never been lower. The Huron Report indicated that nearly all hospitals engage in significant borrowing to finance capital improvements. Mr. Butler claims that CCF approval is required to incur debt, but that requirement is expressly superseded:

Section 1.1.4 of the DA provides: "*All of the rights set forth in this section ... shall be exercised by CCF in a fiscally prudent manner, consistent with Lakewood [Hospital's] **charitable purpose and Lakewood [Hospital's] obligations under the lease ... in order to preserve the operations of Lakewood [Hospital] as a going concern.***"

The DA provides that CCF must maintain a 1:1 ratio of cash to debt.

It is clear from these provisions that if LHA runs up trade debt, has to borrow money to fund operational losses or make the capital improvements required, CCF must allow LHA to incur that debt and must advance enough cash to maintain the 1:1 cash to debt ratio.

Summary

Mr. Butler's letter creates a fiction that the City is powerless to control LHA's actions to continue to operate the hospital when it is clear the legal documents ensure that the City leadership was to play a direct and pivotal role in the management of LHA, including its relationship with CCF. Indeed, in 2014-2105, Summers led LHA in the

negotiation of the Letter of Intent in an effort to close the hospital. Mr. Butler's letter omits substantial facts concerning CCF's conduct that has caused damage to the City's asset—Lakewood Hospital. Mr. Butler's various abstract interpretations are not definitive.

So Mr. Butler and the lawyers representing the citizen taxpayers have two very different interpretations of the legal documents, the facts and the future of Lakewood Hospital.

No Court decision is expected until well after the November election.

Lakewood Can Keep The Hospital, But Summers Must Go

September 1, 2015

By Brian Essi

<http://lakewoodobserver.com/read/2015/09/01/lakewood-can-keep-the-hospital-but-summers-must-go>

It is now clear that Lakewood Hospital was profitable prior to the January 15th closure announcement by Mayor Summers and also that it can be viable in the future with the right leadership.

However, it is also clear that Mayor Summers, through acts of commission and omission, has been complicit with the Cleveland Clinic (CCF) in causing damage to the hospital and preventing Lakewood from optimizing its options for the future. So Lakewood can keep the hospital, but Summers must first be replaced to do so.

Here is where we are and what we know:

1. Lakewood needs a hospital. CCF admitted this fact in its "Decanting Plan"---a plan to take assets from Lakewood and invest \$190 million in Fairview Hospital where CCF hopes to profit from Lakewoodites forced to go Fairview if Lakewood closes.

2. Another manager can be found for Lakewood Hospital, but CCF and Summers have not allowed it---Summers and others tasked with protecting us from the Clinic are actually protecting the Clinic in order to pursue Summers' political agenda that is in conflict with keeping the hospital:

a. CCF wants to demolish the hospital and control the hospital site to prevent any competitor from competing with them in Lakewood. Summers has known the CCF's goal and he wants to close the hospital too---otherwise he would have asked the Clinic to sign a written agreement to step aside and not interfere with finding a new hospital system manager.

Huron Consulting found that no agreement was in place. It was later revealed that CCF had interfered with Metro---the only suitor that came forward last year. In addition, Summers not only ignored Metro's proposal, but he told Lakewood Hospital Association (LHA) trustees more than once that he didn't want "those people" in Lakewood--- His statements exposed Summers' personal prejudice against Metro and his ignorance of how healthcare works. When Metro expressed interest again in May, 2015, they asked Summers for a written assurance of an open and honest process where they would not be threatened. The events proved that prospective suitors are not comfortable proceeding without written legal assurances from Summers and CCF.

b. Summers admitted at the Beck Center forum on January 28, 2015, that while he was leading LHA in considering the future of the hospital, he was focused on "*advancing the economic revitalization of the downtown business district.*" Summers' personal political agenda is a clear conflict with Summers' legal duty of loyalty to Lakewood Hospital.

c. No broker-dealer or investment banker was ever hired to find a new manager for the hospital and the team Summers assembled had no experience at marketing and selling a hospital—3 of the 4 team members he chose had conflicts of interest in and were loyal to CCF;

d. No lawyers were hired to give advice on the process of marketing the hospital.

e. LHA trustees were compromised by CCF—the City is the proper party to market its hospital and assets and determine its future;

3. Lakewood Hospital is the highest and best use of the hospital site. No alternative economic development exists that can match the economic benefits of the hospital.

Despite years of planning for development on the hospital site, Summers and his City Hall planners have no market data, no traffic studies, no estimates of employees, no estimates of tax revenues, no prospective employers, no estimates of numbers of residents, and not even one business that would use, build or occupy ANY of the development scenarios they propose.

Nothing is as viable as a hospital and everything proposed by Summers is more risky than keeping the hospital open.

4. Lakewood Hospital was profitable until the Summers Plan caused losses this year—Summers is using these manufactured losses to pursue his agenda. The audited financial statements show that LHA made over \$2.5 million and \$5.3 million in net profits in 2014 and 2013, respectively.

There is no debate over the fact that Summers' announcement to close the hospital, and his complicity in allowing CCF to dismantle the hospital are the sole causes for the recent losses.

Summers is charged with protecting the hospital and has not simply failed to stop the ongoing looting and theft by CCF, he has used the ensuing calamity and losses caused as political pressure and justification for proceeding with his plan. He continues to promote the idea that the hospital is not viable when his own actions and his complicity with CCF are the only reasons that the hospital is losing money.

5. The Huron and Subsidiary appraisals of Lakewood Hospital did not account for prior thefts and looting by the Clinic so they were fashioned by Summers to support his plan. Summers was in control of the engagements of both of the Huron and Subsidiary consultants and they were not engaged to put a value on the damage that the Clinic and LHA caused to the hospital.

So the resulting appraisals did not reflect the damage that CCF, LHA and Summers caused, thereby favoring Summers' plan to close the hospital.

The prior efforts to find a new manager were bogus, because Summers and the Clinic had other plans besides operating a hospital in Lakewood. Summers has been the key actor in manufacturing and perpetuating the current crisis at the hospital. Replacing Summers with a new Mayor will enable Lakewood to fully explore all options to keep Lakewood Hospital operating and serving our community.

Court Filing And Documents Reveal 2012 Cleveland Clinic Plan To “Decant” Lakewood Hospital And Avoid Legal Agreements

August 18, 2015

By Brian Essi

<http://lakewoodobserver.com/read/2015/08/04/court-filing-and-documents-reveal-2012-cleveland-clinic-plan-to>

Court filings made in the taxpayer lawsuit on July 31, 2015 revealed new documents verifying the Cleveland Clinic's longstanding plans to close Lakewood Hospital and benefit Fairview Hospital.

In the Court filings, the plaintiff taxpayers claim that “CCF (Cleveland Clinic Foundation), without the knowledge or approval of the City, engaged in a secret plan to siphon valuable medical services and equipment so as to cripple the viability of the hospital. According to CCF's own 2012 Master Plan that was commissioned in 2011, a covert scheme was created to “Decant” Lakewood Hospital.

The “Decanting Plan” specified that medical services, equipment, and employees would gradually be transferred from Lakewood Hospital to Fairview Hospital (and other CCF wholly-owned hospitals) in preparation for the closure and razing of Lakewood Hospital as an inpatient, acute care, and medical/surgical hospital.

What is further troubling about this conduct is that the Lakewood Hospital Foundation and CCF continued to solicit, campaign, and raise funds from the public for the support of Lakewood Hospital. These donors were never alerted or advised that their intended contributions for the support of Lakewood Hospital would never be a reality as the hospital would soon cease to exist."

It should be noted that Lakewood Hospital Association ("LHA") is a public charity. By the terms of its Lease with the City of Lakewood, LHA agreed to: (a) **"provide healthcare services in accordance with [the Lease] to the residents of the City without regard to their ability to pay"**(b) **"operate... as Hospital Facilities for the service of the general public"** and **"faithfully and efficiently administer, operate, and maintain as Hospital Facilities...rendering Required Services...to patients who are residents of the City and all members of the general public..."**

All of LHA's money, property, equipment, bed licenses, service lines and programs are public assets that belong to the City of Lakewood. For example, Article Six of LHA's Articles of Incorporation provides: *"Upon the dissolution of the [LHA], all of the [LHA's] property of every nature and description shall....be paid over and transferred to the City of Lakewood, Ohio for public purposes which shall also serve one or more of the purposes of the [LHA] or to another nonprofit charitable organization... which is organized for the purpose of operating Lakewood Hospital.."*

At the end of the Lease, LHA *"shall transfer all of its then assets to the City or to another nonprofit corporation organized for the purpose of operating the Hospital."* [Section 12.2] The Lease also requires LHA to surrender all leased property and other assets to the City *"in as good condition as prevailed at the time"* LHA took possession. [Section 14.1]

So, although LHA is a public charity and its assets belong to the City, in numerous recorded public forums, Mayor Summers referred to LHA as a "private" charity.

In addition, the current Definitive Agreement between LHA and the Clinic provides that **"CCF shall assure that Lakewood shall have a cash to debt ratio of 1:1 on a fiscal year basis...if it is determined that [LHA] does not meet such ratio, CCF shall advance sufficient funds to Lakewood to meet such ratio...any advances not repaid to CCF at such time as the [Lease] terminates shall be forgiven by CCF"** [Section 2.1.1]

This means that the Clinic is required to fund all losses and cash flow needs of LHA through 2026. The Clinic's Definitive Agreement essentially guaranties that the hospital will be viable as a hospital through 2026 and LHA and the City do not need to repay any money the Clinic puts into LHA. Subsidiary estimated that the Clinic's liability could be as high as \$214 million through 2026 after the Clinic removes certain programs to its Avon hospital, slated to open in late 2016.

Apparently in furtherance of the 2012 “Decanting Plan,” the Clinic and LHA proposal from January, 2015 sought to end the Lease and dissolve LHA, but they did not want to give the money, property, equipment and programs back to the City and its citizens.

Instead, they propose, among other things:

1. The Clinic would benefit from all of LHA’s equipment, programs, service lines and hospital bed licenses (all property belonging to the City) without paying any money to LHA or Lakewood.
2. LHA would use City money to tear down buildings belonging to the City i.e. destroying value so that: (a) the Clinic could buy cleared land at only the land price, and (b) some yet to be named private developers can buy cleared land at only the land price. According to the BuildLakewood.org website: *“the City of Lakewood has already been contacted by a number of local and national developers interested in proposing projects for development on the land.”* Planning Director, Dru Siley, is a founding member of Build Lakewood—a political action committee that favors the Clinic/LHA plan.
3. The City’s money that is left over will go into a new foundation controlled by unnamed people for yet to be determined causes, but it will definitely not be controlled by the City---the Clinic would have some control over the new foundation too.

So, if the Clinic/LHA proposal is adopted, the City will receive little or nothing for most of the City’s public assets and the Clinic will avoid any of its liability to fund the hospital through 2026.

The Clinic and private developers would be the primary beneficiaries of the plan.

The Clinic and LHA will also avoid the legal obligations and liabilities set forth in the LHA’s Articles of Incorporation, the Lease and the Definitive Agreement.

All three legal documents were designed to protect Lakewood residents, including the most vulnerable, who are unable to pay for healthcare services.

In May, the Clinic and LHA began reporting significant losses at the hospital caused by their own January announcement that the hospital would close and other actions taken in furtherance of the newly revealed “Decanting Plan.”

For example, in February of this year, the Clinic and LHA through Shannon Ritchie, the Interim President of Lakewood Hospital, terminated Lakewood’s lucrative cardiac intervention program---this resulted in significant reduction of emergency room admissions and significant losses.

Despite the Clinic/LHA pressure for a decision in favor of their plan using the losses that they themselves have caused to try to show that “the hospital is losing money,” City

Council is at a stalemate and no action on any proposal is expected before January when a new Council President will be elected and possibly a new mayor.

It is uncertain what effect the public revelation of the Clinic's "Decanting Plan" will have on the political process prior to January. The newly discovered documents clearly bolster the plaintiffs' case in the taxpayer lawsuit, but a resolution of that case is not expected soon.

Distortions Distract From Good And Honest Government: Response To Mayor Summers' Letter To The Editor

August 18, 2015

By Brian Essi

<http://lakewoodobserver.com/read/2015/08/04/distortions-distract-from-good-and-honest-government-response-to-mayor>

Mayor Summers has finally acknowledged that he has had a hidden agenda concerning a recreation center on the Lakewood hospital site. In his letter published in the Observer Forum last issue, Mayor Summers admitted:

1. "[T]he idea of a recreation center was part of early conversations....among **people charged with envisioning** a healthier future for the community."
2. "The Cleveland Clinic sketched out a .. recreation/wellness facility in **envisioning** the future for the Lakewood Hospital site. This concept and others have been part of an ongoing discussion about the future of health care in our community."

Mayor Summers made these admissions when confronted with disclosure of previously secret documents dated in May, 2014--the documents only came to light this June. In addition the "Build Lakewood" political action committee, that includes among its founders, Lakewood Planning Director Dru Siley, claims in its website that *"the City of Lakewood has already been contacted by a number of local and national developers interested in proposing projects for development on the land."*

So Mayor Summers acknowledges secret discussions with the Clinic, unnamed private developers and unnamed people that he claims are "charged" with planning our future. These hidden discussions and plans all presume the closing and demolition of our publicly owned hospital that has provided, among other things, over \$126 million in charity healthcare to our community just since 1996.

Court filings made in the taxpayer lawsuit on July 31, 2015 revealed even more secret documents that reveal that the Clinic had a covert "Master Plan" commissioned in 2011 to siphon medical services, equipment, and employees from Lakewood Hospital to Fairview Hospital in preparation for the closure and razing of Lakewood Hospital. The

plans refer to the “economic development” of the hospital site that Mayor Summers is now working on in secret.

The new disclosure of documents now requires Mayor Summers to speak publicly, completely and clearly as to his knowledge of, and involvement with, the Clinic’s 2012 Master Plan to weaken and close Lakewood Hospital.

Good and honest government requires leaders who speak truthfully and without distortions. Can Mayor Summers make a clear and unequivocal statement that he will stand up to powerful and abusive corporate interests and work on behalf of the people of Lakewood?

LHA Trustees Need To Do Their Job

July 21, 2015

By Brian Essi

<http://lakewoodobserver.com/read/2015/07/21/lha-trustees-need-to-do-their-job>

The Lakewood Hospital Association (LHA) Board of Trustees has the job of overseeing the Cleveland Clinic (CCF) as managers of Lakewood Hospital for the citizens of Lakewood.

The Board of Trustees consists of a mix of Cleveland Clinic (CCF) appointees and City of Lakewood appointees. The Board of Trustees is heavily influenced by CCF---20 of the 23 Trustees must be approved by CCF prior to becoming Trustees. Because of this, they can not be objective. LHA is not the proper body to determine the future of healthcare in Lakewood.

The Trustees have failed to act as an independent Board to hold CCF as management accountable for managing the hospital per the written legal agreements. They have allowed CCF to transfer programs and services away from Lakewood thereby allowing CCF to threaten the long term stability of the hospital.

The Trustees compounded their failures when they accepted the narrative that market trends, rather than CCF, threaten the hospital’s future viability. They made a bad decision in January by announcing a plan to close the hospital under the auspices that they were somehow transforming healthcare in Lakewood into a futuristic model that would magically make Lakewood the “Healthiest City in America” with no need for a hospital. Remarkably, previously withheld documents, just recently uncovered, reveal that it was known at the time of the planning of the “transformation” that CCF would need to invest in and benefit from the expansion of their Fairview Hospital to satisfy Lakewood’s needs for a traditional hospital if Lakewood closes.

Despite posting a net profit of over \$2.5 million in 2014, the hospital began losing money immediately after the “transformation” announcement. While the Trustees’

decision and announcement itself contributed to the losses, the losses were exacerbated by the Trustees' continued failure to properly oversee CCF.

CCF terminated LHA's lucrative cardio intervention program in February, began hiring away key caregivers for CCF's other facilities and participated in other acts of omission and commission that were and are harmful to the hospital.

Consequently, the losses have accelerated. It has been reported that the hospital may now be losing as much as \$28,000 per day. Some claim losses could total \$10 million by the end of the year if the Trustees don't take action to reverse their decision.

So it is clear that the staggering losses this year are as a result of the Trustees' decisions and the actions taken by CCF under LHA's supervision and ostensibly with the Trustee's acquiescence.

Mayor Summers and Council President Madigan, who are both LHA Trustees, and continue to promote the plan to destroy the hospital, but they clearly don't have the City Council votes needed to approve this flawed plan.

Since the January announcement: (1) the non-profit group "Save Lakewood Hospital" was formed and is now advancing a charter amendment, as well as an initiative and a referendum if Council somehow approves the plan; (2) a taxpayer lawsuit to stop LHA's plan was filed with no resolution expected in the near future; (3) State Senator Mike Skindell has entered the mayoral race; (4) Council President Madigan (who favors the plan) has decided to not run for re-election; and (5) a number of intelligent citizens who have conducted independent research have publicly voiced opposition to the plan to close the hospital.

The reasons that the plan has been resisted and outright rejected by the public are obvious:

1. It is apparent that LHA Trustees have failed in their primary job as stewards of a fully functioning, well-run hospital for the public. Why should the public trust these same Trustees with a new self-appointed job when it is apparent that they failed in their primary job?
2. The terms of the plan heavily favor CCF—the actor that the public believes controls and orchestrated the plan. To accept these terms would amount to rewarding the bad behavior that created the crisis in the first place.

The Trustees need to abandon their bad decisions to try to close the hospital. They need to return to their original mission which is **to run the hospital by overseeing CCF and assuring that quality hospital services are provided to the citizens of Lakewood per the legal agreements.**

Trustees should immediately announce that the hospital is not closing.

They need to begin working with CCF to restore and build programs and services. CCF has the proven ability to shift its personnel and volume among its facilities and can make the hospital whole again which is their only job as managers of Lakewood Hospital.

LHA leadership must be capable of standing up to CCF and working with them toward enforcement of the agreements by which LHA and CCF are both bound.

If LHA leadership--whose ONLY job is to oversee Cleveland Clinic--whose ONLY job is the management of a healthy Lakewood Hospital--cannot lead, then LHA should resign before their poor oversight of CCF does any more damage to the hospital.

LHA Trustees broke it, they need to fix it.

They had one job. If they can't do it, they should not be trusted with any further action whatsoever.

The Distinction Between Lakewood's Hospital Charities

July 21, 2015

By Brian Essi

<http://lakewoodobserver.com/read/2015/07/21/the-distinction-between-lakewoods-hospital-charities>

In the hospital debate, it is important to distinguish between the Lakewood Hospital Association (LHA) and the Lakewood Hospital Foundation (LHF). Both are charitable organizations under 501(c)(3) of the Internal Revenue Service. However, LHA is also a "public" charity under 509(a) of the Internal Revenue Code while LHF is a "private" charity.

The assets of LHA are essentially the City of Lakewood's assets, i.e. public assets to be used for the general public. These assets are owned by the City of Lakewood and leased to LHA. By the terms of the 1996 Lease, when the lease ends in 2026 or earlier, the assets must be returned to the City of Lakewood. The Letter of Intent seeks to liberate some of LHA public assets and divert them to a new foundation. To do so would require City Council approval, because it is essentially the City's money. Exactly how trustees of the new foundation will be chosen and how they will be accountable to the City and its citizens remains to be seen, but it is clear from the LOI, that the Cleveland Clinic wants some representation and control over the assets of the new foundation.

A significant part of LHF's assets are "restricted" funds as to Lakewood Hospital--this means that the donors required that LHF use or apply these funds for the benefit of Lakewood Hospital. According to Kristin Broadbent, LHA's executive director, if Lakewood Hospital no longer exists, LHF will need to obtain the Ohio Attorney General's approval to use the "restricted" funds for a new purpose other than Lakewood

Hospital. Since the City owns the hospital that benefits from those restricted funds, the City might have some say with LHF or the Attorney General as to how that portion of LHF's money might be used.

Hospital, Recreation & Land Development Interests Conflict

July 7, 2015

By Brian Essi

<http://lakewoodobserver.com/read/2015/07/07/hospital-recreation-land-development-interests-conflict>

Over 400 documents posted on onelakewood.com and others recently uncovered, reveal that as early as August, 2013, Mayor Summers, Council President Madigan and Councilman Bullock, [who were all part of the Lakewood Hospital Association (LHA) "Select Committee,"] considered plans for a Family Health Campus at the hospital site along Detroit Ave with other developments behind it.

By October 2103, the lead option considered was to "take down" Lakewood Hospital in favor of a "Family Heath Campus" with *"potential development of additional health and wellness facilities or other attractive economic development elements."*

The plans were so far along that in November, **2013**, Tom Gable, LHA's chairman told one member of City Council that LHA and the Clinic would be at City Council in January, **2014** to propose an FHC to replace the hospital.

RECREATION AGENDA INTERTWINED WITH HOSPITAL DEBATE

Public records reveal that in December, 2013, Summers and Madigan supported a proposal to create a Recreation Task Force. Shortly after that, on February 18, 2014, at a Lakewood Board of Education meeting, Summers discussed a recreation center being built on the Lakewood Hospital site. By April, 2014, Summers and City Council made appointments to the Recreation Task Force.

A newly uncovered document dated May 15, 2014 reveals detailed drawings and plans for a "Health and Wellness Campus" on the hospital site that included a community wellness center with a pool/gym, a park and mentioned as potential affiliates the Lakewood YMCA (as manager), Lakewood City Schools and Lakewood Recreation Department. Over 8 months later, on January 28, 2015, Summers said concerning the development of hospital land: *"The question is what do we do with those 4 acres and the options really are residential, retail or commercial....**we have just begun to think about 4 acres of redevelopment downtown**....something else could happen there...it could be years in the making."* He made no mention of a wellness campus or recreation center plans.

On February 3, 2015, Mayor Summers attended a Recreation Task Force meeting. He displayed a map of the hospital site with the proposed FHC and green space available

for development. He told the task force members that money from the new foundation (proposed by the Clinic, Summers and the LHA) could be used by the Task Force. The task force was told to “Think Big.” So the Mayor tied the Recreation Task Force, the new foundation and the hospital site all together. At an April 15, 2015, forum about what to do with the new foundation money, Summers made no mention of the task force or land development.

PLANS FOR A HOSPITAL ABANDONED EARLIER IN THE PROCESS

In June, 2015 water bills, a Summers letter stated: *“Only one party, the Cleveland Clinic, submitted a comprehensive plan.”* MetroHealth submitted two proposals—the first was submitted to Summers in May, 2014—Summers only released that proposal in May, 2015 after much public pressure. The second proposal was made in September, 2014 and was just released by City Hall on July 1, 2015 after repeated records requests and only after Metro stepped back from what it described as a “maelstrom” occurring in Lakewood. At City Council on May 4, 2015, Summers said ***“I am not aware of any second proposal from Metro....I’ve not seen any proposal.”*** Metro’s second proposal included: (1) maintaining Lakewood as a full service, low acuity inpatient hospital, (2) 900 jobs; (3) \$100 million in capital improvements and medical technology over ten years.

Back on January 28, 2015, Mayor Summers said concerning Metro: *“There was some serious interest on their part strategically on starting off as a family health center and considering whether or not they would consider running it as a community hospital. It was a very exciting possibility and then at the beginning of October they withdrew their interest. So it went away.”* The documents reveal that Summers and LHA had others plans for the hospital and land before either of the Metro proposals.

Negotiations with the Cleveland Clinic began in June, 2014. Summers never responded to the second Metro proposal.

SUMMERS/LHA/CLINIC KNEW RISKS, BUT PURSUED AGENDA

Documents dated as early as October, 2013, referred to the need for a “community dialogue” as being “critical” and further identified several risks of the plan being pursued:

1. *“Risk that current [hospital] staff will get nervous about possible job losses and leave before we are ready to change the scope of the facility.”*
2. *“Risk that once the community begins to understand the changes to the scope of services, that they will stop coming to [Lakewood Hospital] and operating losses will escalate significantly.”*
3. *“Risk that the public dialogue about the decision is prolonged and it increases the likelihood of other executions risks occurring.”*

All of these things are occurring now. The public dialogue on the FHC portion of plan did not begin until January, 2015 over 16 months after these words were written.

Public dialogue on the land development portion of the plan has not yet begun.

Lakewood Hospital Association Allows Letter of Intent to Expire

June 9, 2015

By Brian Essi

<http://lakewoodobserver.com/read/2015/06/09/lakewood-hospital-association-allows-letter-of-intent-to-expire>

On May 28th, Attorney DeVito filed a taxpayer lawsuit including claims of fraud and conspiracy. The Letter of Intent (LOI) to demolish Lakewood Hospital expired on May 31st. At the first pretrial held on June 4, 2015, Judge John P. O'Donnell signaled that the complaint is being taken very seriously. Unless the \$400 million liability claimed against Lakewood Hospital Association (LHA) and the Clinic is resolved, the hospital must remain open and its assets cannot be sold, transferred or demolished.

On the evening of June 4th after the pretrial, LHA trustees were asked by the Clinic to consider changes to the LOI that might not guaranty the new foundation money. So despite the lawsuit and pretrial, the Clinic was defiantly pursuing the original plan and also trying to hold LHA accountable for self-inflicted financial losses and failures caused by the Clinic's mismanagement and the premature announcement of the hospital closing. The Clinic was digging itself into a deeper hole with Judge O'Donnell and attempting to have LHA go along. LHA made no public announcement of its June 4th proceedings.

At the June 8th City Council Committee of the Whole, Law Director Kevin Butler announced that LHA had voted to not extend or modify the LOI. Butler said the City still wanted to play a role in the future of healthcare in Lakewood and that there was a possibility of a new definitive agreement by the LHA and the Clinic to be presented soon.

Uncertainty remains as to the LHA and the Clinic's plan for the hospital as they have not withdrawn their January, 2015 announcement that the hospital will close in 2016.

Hospital Future Grows Brighter

June 23, 2016

By Brian Essi

<http://lakewoodobserver.com/read/2015/06/09/hospital-future-grows-brighter>

Since the last issue of the Observer, the likelihood of Lakewood Hospital remaining open long into the future has become a brighter reality:

1. Attorney DeVito filed a taxpayer lawsuit including claims of fraud and conspiracy. At the first pretrial Judge John P. O'Donnell signaled that the complaint is being taken very seriously. Unless the \$400 million claim against Lakewood Hospital Association (LHA) and the Cleveland Clinic is resolved, the hospital assets cannot be sold, transferred or demolished. Without compromise, resolution could take years. Fortunately, Mr. DeVito is a seasoned negotiator who can now negotiate on behalf of the citizens of Lakewood if the Clinic, LHA and Mayor Summers come to terms with reality.
2. A staunch supporter for Lakewood Hospital staying open, Senator Mike Skindell, announced his candidacy to become Lakewood Mayor.
3. The Letter of Intent to demolish Lakewood Hospital expired on May 31st --- However, on the evening of June 4, the LHA trustees were asked to consider changes to the LOI that might not guaranty the new foundation money. So the Clinic was trying to hold the LHA accountable for self-inflicted financial losses caused by the Clinic's mismanagement and the premature announcement of the hospital closing. At the June 8th City Council Committee of the Whole, Law Director Kevin Butler announced that the LHA had voted to not extend or modify the LOI but the City still wanted to play a role in the future of healthcare in Lakewood. Butler said that there was a possibility of a new definitive agreement by the LHA and the Clinic to be presented soon, though the January 15th closing announcement has not been withdrawn.
4. 110 supporters of Mayors Summers' plan wrote a letter to Council about the "*exciting possibilities*" for the "**significant parcel of land**" that would have become available under the LOI. Mayor Summers and his supporters have remained silent for 5 months despite opportunities to present their plans and proposals for the "**significant parcel of land**" ---a parcel to be created by expending millions of dollars of hospital money to demolish the hospital.
5. A nearly unanimous City Council wants MetroHealth to present its plans for the future of Lakewood Hospital. The Cleveland Clinic's threat of a tortious interference with their contract is the only legal obstacle preventing Metro's proposal from being heard.
6. Secrecy continues to surround Metro's augmented proposal of September, 2014— despite numerous public records requests, LHA and Mayor Summers refuse to reveal the terms of that proposal. It appears that the terms of that proposal would further expose the weakness of the Mayor's plan.
7. Since the January announcement of Lakewood Hospital closing, emergency room volume at Lakewood has rapidly declined while Fairview Hospital cannot handle the increase in emergency room volume---this underscores the need to keep Lakewood Hospital open.

"When one door closes, another opens; but we often look so long and so regretfully upon the closed door that we do not see the one which has opened for us." Alexander Graham Bell. Pressure from well-informed citizens and Mr. DeVito has shut the door on a corrupt plan. LHA and Mayor Summers have been focused on the closed door. In the days ahead they should walk through the new door by coming to terms with the public and Mr. DeVito, and acknowledge that Lakewood Hospital is needed and that the right leadership can make it viable for long into the future.

A New Day For Lakewood Hospital

May 26, 2015

By Brian Essi

<http://www.lakewoodobserver.com/read/2015/05/26/a-new-day-for-lakewood-hospital>

If you've been following the Lakewood Hospital saga, you know that at a press conference on January 15th, citizens were told that 1.) Lakewood hospital would be closing next year, that 2.) it was losing money and that 3.) no other healthcare system was interested in running it.

So we should gratefully accept Cleveland Clinic's offer to have Lakewood pay for demolishing its own hospital, so the Clinic could buy the land at a discount and put a "Family Health Center" (a specialty referral center similar to the Stephanie Tubbs Center in East Cleveland) on part of the land.

In addition, Lakewood would also have to sign an agreement indicating that we would never contract with any other health provider at that site without the Clinic's approval. The money left in hospital coffers and money that the Lakewood Hospital Foundation had raised and additional money paid yearly by the Clinic was supposed to be given to a new non-profit group, formed from the old Lakewood Hospital Association, whose responsibility would be "health and wellness activities"--the Clinic would have some control over that too. So a referral center, and a lot of money given to an "unnamed" group to be spent on "wellness" instead of a hospital.

Here is the great news.

1.) It has NOT been decided that the hospital is closing next year. That was a recommendation that has yet to be voted on by our City Council who represent citizens, many of whom DO NOT WANT THE HOSPITAL CLOSED.

2.) The hospital is not losing money, and could in fact become more robust and more viable under the right management.

3.) Another healthcare system, MetroHealth, is quite interested in running the hospital and has been for a long time.

THE HOSPITAL IS NOT CLOSING NEXT YEAR:

1. On January 15, 2015, nurses and other citizens wept after they were told at a press conference that the hospital had to close in 2016 because of changes in healthcare. That was not true.

2. Also on January 15, 2015, the hospital president, Shannon Richie (a Cleveland Clinic employee) mailed thousands of letters to hospital patients leaving them with the false impression that the hospital was closing in 2016---the letters failed to mention that City Council approval was needed to close the hospital.

3. At the many forums held, the public was told that the only options available were to accept the LOI or the hospital would go bankrupt—no other healthcare system wanted Lakewood hospital. That was not true—Just this past week, Metro expressed its continued commitment to work with Mayor Summers and Lakewood.

THE HOSPITAL WAS NOT LOSING MONEY UNTIL THE CLOSING ANNOUNCEMENT WHICH CAUSED NOMINAL PAPER LOSSES THAT ARE EASILY REVERSIBLE

1.) The 2014 Audited Financial Statements for LHA show revenues exceeded expenses by \$2.5 million in 2014 and \$5.3 million in 2013. Also, the cost of charity care decreased from \$7.4 million in 2013 to \$3.8 million in 2014. The auditors stated: *“The decrease in charity care is primarily attributable to the increase in Medicaid patients due to the expansion of Medicaid eligibility in the State of Ohio.”* This \$3.6 million improvement in Lakewood's payer mix is very important news for the viability of Lakewood Hospital and contradicts the false narrative.

2.) Hospital investment assets actually increased by over \$1 million in the first quarter of 2015 despite paper losses that only began as a result of the premature closing announcement. If depreciation expense is added back the hospital netted over \$1 million in the first quarter of this year.

METROHEALTH IS VERY INTERESTED IN MANAGING LAKEWOOD HOSPITAL

Three documents from MetroHealth dated May 2, 2014, October 3, 2014 and May 20, 2015 are now public. Together these documents establish the following:

1. Metro's initial proposal in May 2014 was very serious and revolutionary. Here are just a few of its provisions that undo the false narrative of the past four months:

a. That Metro is a profitable well-managed healthcare organization with patient revenues on the rise in service areas with more challenges than Lakewood.

b. *“MetroHealth believes that The Cleveland Clinic Foundation has a requirement and responsibility to fulfill their commitment to [Lakewood Hospital].”* Metro estimated the Clinic's responsibility to be \$40-\$50 million.

c. *"MetroHealth would support the introduction of a "Wellness/Community Recreation Center"--there was no funding specified for the recreation center—a disappointment for Mayor Summers who wants to use new foundation money and hospital land for a recreation center.*

d. *"MetroHealth is committed to developing a mutually agreeable collaborative arrangement with the City and LHA (including possibly a long term lease) WHEREBY METRO WILL COMMIT TO PROVIDING FOR THE OPERATION OF LAKEWOOD HOSPITAL."*

e. Metro wants to *"reinvigorate"* the Community Advisory Board by recruiting new members *"to provide a platform for the Hospital to listen and learn about concerns and ideas."* This is in sharp contrast to the Clinic's current approach of letting an unelected few decide what's right for all of Lakewood.

2. In September, 2014, Metro made an in-person presentation that improved upon their May 2014 written proposal. It is no surprise that LHA leadership and Mayor Summers want to keep the details of that presentation secret from the public.

3. On May 20, 2015 Metro responded to Mayor Summers' recent misguided letter to them reiterating Metro's commitment to Lakewood, and stating that they could not respond with the Letter of Intent (LOI) still pending-- The LOI, which will expire May 31st, remains an obstacle to any third party bidders for the hospital-- bidders don't want to be sued by the Cleveland Clinic for tortious interference-- and that 10 days given by Mayor Summers was not enough time to responsibly make a new proposal.

There are many more details and of course, much to explain regarding how this all happened in the first place, but the good news is in. Lakewood can have a hospital, restoring services that the LHA let the Clinic take away, if Lakewood citizens want one. Contact Mayor Summers and your council representatives today (via their contacts on onelakewood.com) and urge them to reject the Letter of Intent, and to pursue the path that builds Lakewood Hospital into a model for the 21st century.

May 13, 2015 (posted on Lakewood Observer's Observation Deck discussion board)

Open Letter:

Lakewood Hospital Trustees Must Act For Citizen Beneficiaries

<http://lakewoodobserver.com/forum/viewtopic.php?t=13373#p94355>

by Brian Essi Wed May 13, 2015 10:14 am

Dear LHA Trustees,

I am one of over 52,000 beneficiaries under the Lease dated December 23, 1996 by and between the City of Lakewood and Lakewood Hospital Association (the "Lease").

My background and research.

I am 55 years old and have lived almost my entire life as a resident of Lakewood. I have degrees in finance, economics, accounting and law. I have been a licensed attorney since 1984. In my legal career, as a solo practitioner and working with both medium and large law firms, I have handled complex litigation and business transactions involving fiduciary liability, professional liability, loan workouts, corporate restructuring, taxation, accounting and securities. I also have experience as an officer, director and manager of a medical practice. In recent months I have devoted fulltime and overtime researching the Lakewood Hospital matter which includes, but is not limited to reviewing documents and public records, and interacting with doctors, hospitals administrators, healthcare attorneys, elected leaders, Cleveland Clinic Foundation employees, Lakewood Hospital Association trustees, Lakewood citizens, representatives of the media and others willing to speak with me.

A hierarchy of wrongs and conflicting interests has resulted in a breach of trust.

The 1996 Lease and Definitive Agreement (the “DA”) created an unusual and complex love triangle among CCF, LHA and the City with LHA at the center between two competing interests that were supposed to share power and work together for the beneficiaries. The Lease and DA created a constructive trust with the CCF and LHA as trustees for the beneficiaries. There is an ongoing debate over the history and blame for how things went wrong that includes, but is not limited to: (1) CCF taking unfair advantage in its self-interest, (2) past and present City leaders failing to understand and properly execute their roles and the power vested in them, and (3) LHA board being less than effective and proactive in its supervision of CCF and the hospital affairs. Longstanding trends and changes in healthcare have also been blamed as a culprit. In addition to the gradual but steady loss of important and now vital hospital services, there has been a hierarchy of other issues and wrongs that have gone unaddressed.

These smoldering embers erupted into an inferno on January 14, 2015 with the announcement of the Letter Of Intent. As the debate over what to do rages, the hospital is burning. That CCF, LHA and the City have failed in their duties and the trust has been breached is beyond debate---the LOI stands as evidence of that failure. The hospital employees and the citizen beneficiaries are the victims. May I suggest that a major mistake was made and poor judgment was used in signing the LOI and presenting it as a “done deal” instead of just sending a recommendation to City Council. The lack of independent legal counsel for LHA explains but does not excuse the mistake. You can easily correct that mistake today.

The current state of affairs—high political stakes and high litigation risk.

Based upon my research, the City Council vote on the LOI has a good chance of failing. In my view, Council voting for the LOI is actually riskier for the hospital and the hospital employees (City assets), because if it is approved, there will be a referendum of some sort with the voters in deciding the matter in November—delay allows the hospital to burn longer. The folks at Save Lakewood Hospital are reporting approval of their current petition in the high 90%--they report getting 100% acceptance of the petition in some

neighborhoods. To add to the risk, there is the taxpayer lawsuit that I am told will be filed by Attorney DeVito's office as early as next week in which some or all of you may be named as individual defendants. Whether or not each of you is named personally there will be ensuing depositions of each of you, discovery requests and insurance defense lawyers in control, etc. i.e. the chaos of litigation. Based upon information made available to me, the plaintiffs have a strong case for breach and damages, i.e. the litigation risk as very high.

Minimize risk—maximize reward—a less risky course.

I believe that there is a much less risky and less contentious course that LHA should adopt at its May 13, 2015 meeting today. If chosen, the alternate course would greatly assist Mayor Summers and Council in their duties to make the best choices for the City and the beneficiaries. It will take open minds and courageous leadership by each of you to take the immediate action I recommend.

On behalf of the class of beneficiaries under the Lease and constructive trust to whom you all owe fiduciary duties, I hereby respectfully request that LHA take the following votes on May 13, 2015:

1. Vote to terminate LHA's participation in the LOI.
2. Vote to unilaterally grant the City the right and option, at the City's discretion upon reasonable notice, e.g. 90 days to terminate the Lease (the "Option").
3. Vote to remove Michael Meehan, Esq. from any further involvement with the LHA trustees and appoint a new qualified secretary---a lawyer free of conflicts.
4. Vote to hold CCF's feet to the fire—begin restoring hospital services and confidence in LHA.

The termination of the LOI and the grant of Option will free the City to explore all of its options.

The main reason you need terminate the LOI is because it is the right thing to do.

I cite 12 additional reasons supporting the request as follows:

1. The LOI is damaging the City's ability to attract third party options. It is wrong and damaging to our City that the LOI requires LHA and Mayor Summers to negotiate exclusively with the Clinic. In a public statement to City Council on April 27, 2015, Mr. Haber, speaking for LHA, stated that the LOI was only a "recommendation" and not intended to be "final." He said "third party options may emerge." Two days later Metro made a public statement: "We are always looking at ways to collaborate with healthcare providers and community leaders to see if there's a role MetroHealth can play in building up the health of the community." (Cleveland.com 4/29/15) Third party options cannot be pursued with the LOI in place. On April 27, 2015, Mr. Gable agreed that CCF won't walk away if negotiations are put on hold to consider third party options—CCF wants the hospital leveled and wants to control the Belle/Detroit location. Mr. Huntsberger can continue to keep the draft and discussions going on a nonexclusive basis if you all deem that advisable. Mr. Haber's word and fine reputation should be

honored. Using City Council as an excuse not to act is not acceptable leadership by LHA. It is wrong for LHA to bind itself and our City leaders to an agreement when with the stroke of a pen it can terminate the LOI and allow Metro and City leaders to explore at least that option.

2. LHA and the City have the sole right to amend the Lease without CCF approval.

It is clear that the City and LHA have the sole exclusive legal right to amend the Lease. If you grant the City the Option and the City comes to terms with Metro, the City can exercise the Option to terminate the Lease, and CCF will have no rights after termination. There is no reason to fear CCF—they want out of the DA and the LOI is only one vehicle for them to escape it. Lease Section 14.6 provides the “Lease may be amended by Lessee and City without the consent of or notice to....any other person [i.e. CCF] provided that such amendment shall be authorized by ordinance passed by at least two-thirds affirmative vote of the Council.” The DA at Section 10.2 provides “This Agreement may be terminated...[10.2.2] --[i]f the Lease expires or terminates” The DA Section 10.3 further provides, “Any termination pursuant to....Section 10.2 shall first be approved by the Board of Trustees of the party seeking termination.” Therefore, only 12 trustees voted are needed to amend the Lease to grant the City the Option and only 12 votes are needed to terminate the DA if that becomes necessary at a later date. Under Section 10.4 of the DA, if and when the Lease is terminated, the DA ends and CCF is removed as the sole member of LHA. Unless CCF claims a breach of the DA by LHA (which would be hard for CCF to do), CCF has no rights or claims after termination of the Lease. (See DA Section 10.5)

3. The Option Will Allow Council to Maximize the City's Assets. Selling a going concern is almost always better than selling pieces and parts. Having multiple bidders is better than having just one. If the constraints of the DA, LOI and CCF's inside track in negotiations are removed, the best prices can be obtained---likely with much more cash being paid to the City immediately or over time. The City does not need to bear the \$26M cost of winding down the going concern and tearing down its buildings (together valued by Subsidiary at over \$70M) to gift CCF a piece of land. The City does not need to forgo the loss of so many jobs and income taxes. The Option would empower Council and the City to sell or re-lease the going concern or liquidate the assets with multiple bidders and multiple potential solutions.

4. Hospital Services must be restored. I am told that the following services or elements of these services have been removed from Lakewood Hospital: Neurology, OB/GYN- turning away patients now, saying they will close it soon, Oncology (cancer), Pain Management, Pathologist – no frozen section, Physician Pre-certification Program, Thoracic surgery (lungs), Open Heart Surgery, Interventional Cardiology (stinting), 70% of Hospital profits come from Heart Service line, Electro Physiology (complex pacemakers), GI Gastro Intestinal lab, In patient Psych, Rehab- to be removed soon. Work on restoring these services should be a major focus of the trustees.

5. Council is the proper body and has the right to control the City's future healthcare needs. At this point in time, City Council is the proper body to decide the

direction of healthcare in Lakewood. With the Option in the hands of Council, the negotiating power shifts from CCF to the City. Your duties as trustees are to serve the City and the needs of the citizens as beneficiaries of the Lease and LHA. Only 11 of you are Lakewood residents. Whatever power LHA has retained by holding on to the non-binding LOI, it should immediately cede to the City to open up all options for the beneficiaries.

6. A hierarchy of CCF conflicts of interest has culminated in a colossal related party transaction, self-dealing and usurpation of corporate opportunity by CCF which can be best described as defalcation while serving in a fiduciary capacity.

The CCF "Code of Conduct" included in your trustee handouts at various LHA board meetings purports to govern "affiliates" (p.2) and "trustees". At p. 4, item 3 "Conflicts of Interest...Employees owe a duty of complete loyalty to Cleveland Clinic" This means that Drs. Jones, Freeman, Culley, Shannan Ricthie and Ankit Chharbra and Michael Meehan all owe "complete loyalty" to CCF, not LHA. This is bizarre since LHA reimburses CCF for portions of salaries of some of these actors purporting to be working on behalf of LHA. Mr. Meehan has additional unresolvable professional conflicts imposed by virtue of his license as an Ohio attorney combined with the fact that part of his salary is allocated to and paid by LHA in the administrative services charged by CCF. Based upon information provided to me, Mr. Meehan likely violated attorney ethical considerations and disciplinary rules by providing advice to LHA trustees that has impacted the current crisis as well as threatening an elected official. The Code of Conduct also suggests that Mr. Gable and other trustees who also serve as trustees for CCF affiliates may owe their "complete loyalty" to CCF, and not LHA. In fact, since LHA is considered an "affiliate" of CCF, the Code could be argued to apply to all trustees of LHA.

Adding to those conflicts were the January 14, 2015 presentations by Dr. Donley, Dr. Jones and Mr. Glass promoting the terms of the LOI that would dissolve LHA and enable CCF to cannibalize LHA and City assets. CCF and these individuals made the presentation while they owed fiduciary duties to and were being paid by LHA. Their actions exposed a hierarchy of complex conflicts of interest and duplicity. The LOI if acted upon is a monumental related party transaction involving self-dealing, usurpation of a corporate opportunity by CCF using the DA to preclude fair bidding for public assets. This amounts to defalcation by CCF and its officers while acting in fiduciary capacities in relation to LHA. That malfeasance by CCF has in turn tainted and sullied the public's perception of the LHA trustees.

Adding yet further to this hierarchy of conflicts and duplicity are paragraphs II L & M of the LOI whereby LHA arguably agrees to indemnify CCF for Jones, Ricthie, Glass and Chharbra serving as agents of LHA. To top all that, LHA pays CCF \$2.5M for insurance coverage (\$108,659 per trustee) to absolve all from any bad conduct---this sum is an unusually high premium to pay for such coverage and implies that there is a great deal of litigation risk exposure. This makes all of you as trustees look pretty bad—it is a shameful waste of public money by a public charity. It is simply wrong to pay that additional taxpayer money to CCF to protect their people from conflicts they created and are exploiting. At the very least, Mr. Meehan must be removed for his own good. I understand that much of this is not news to you and that there may be some internal

rules adopted by LHA and CCF that somehow allow these conflicts to exist, but it is simply not healthy or wise to have LHA stand on its position on the LOI it is at this time.

7. Employees at Lakewood Hospital will benefit. The May, 2014 Metro proposal provided an offer of employment for LHA employees to join Metro. Many doctors and staff at the hospital will join Metro or another system if they come to Lakewood. Many will choose to go to Avon. This is a win-win for the employees --including doctors. As you may be aware, a highly respected ER doctor with 25 years of service recently quit the hospital amid this crisis. Doctors and staff will stay with us and they will come back if another system takes over.

8. Despite trends, there is a need for inpatient hospital beds in Lakewood. In a recorded statement to City Council on April 30, 2015, Dr. Donley said that he does not know Lakewood's needs for inpatient beds, and that the Clinic relies on LHA for that assessment. At the same meeting he said he knew precisely that Avon needed 80 beds. Metro announced adding 85 beds to their health campus in a neighborhood with more challenges than Lakewood. How can there be an increased need in Metro's neighborhood and no need in Lakewood? LHA pays the Clinic over \$24 million annually for administrative services and if the Clinic truly does not know the need for beds unless LHA tells it—if this is true that is mismanagement. The 34 page 2014 Metro proposal released on Cleveland.com on May 11, 2015 contains many thoughtful details which underscore that there is a need for inpatient beds in Lakewood and a plan to sustain a hospital. May I suggest that Dr. Donley and CCF know that there is a need for inpatient beds in Lakewood and they just don't want to share it with you as their "partner" even though LHA has already paid them for their costs in generating the withheld information? CCF does not want to service our population with a hospital in Lakewood because there is not enough money in it for them.

9. Metro is a more trustworthy steward. Kindly note that to date, despite 15 years of full power and opportunity to do so, CCF has done little in the way of innovation to increase the efficiency of how over \$7M of charity (our money) is spent each year on delivery of services to the underserved. This must be contrasted with Metro which is way ahead of CCF in the population-based ACO model and has the proven ability and desire to serve demographics such as ours efficiently and profitably. It is the view of nearly every one of the many doctors with whom I have spoken that Metro is a much better fit for Lakewood than CCF—and I have spoken to many CCF doctors. In short, Metro cares more about populations like Lakewood's and is far ahead of CCF in serving them in innovative ways. In addition to Premier Physicians, there are a growing number of independent physicians who are being organized and will support Metro at Lakewood if Metro is given that opportunity. Metro has been around 70 years longer than CCF and is a proven sustainable provider and innovator.

10. The LOI is not a healthcare "Partnership"--it is just a bad real estate deal. On April 30, 2015, in a recorded statement before City Council Dr. Donley acknowledged that the long term sustainability of its Family Health Center is largely about the City having "faith" in CCF. Back in 1995, Dr. Loop told Lakewood leaders "trust us"—leaders

who were there and are still alive view these as words from con men. Several Trustees have agreed with me that the City will have little or no control over CCF and the proposed FHC once the deal is signed and the FHC is built. Drs. Jones and Donley both admitted in recorded statements before City Council that the \$34M proposed FHC is an “investment in us” (referring to CCF). While the role of the proposed new foundation remains very uncertain, the recorded discussions at the April 30, 2015 meeting make it very clear that the new foundation and the proposed FHC will not amount to a “partnership” between the City and CCF.

11. A Family Health Center is not an “Exciting” or New “Opportunity” For Lakewood as Dr. Donley claimed in his recorded comments before City Council. A FHC is not at all new or cutting edge. Page 2 of the 1996 DA refers to “development of family health centers.” Drs. Donley and Jones said they first met and worked together at a family health center earlier in their careers. Dr. Jones said FHCs have been a CCF “strategy” for 10-15 years. Per the LHA minutes of January 14, 2015 at page 4, Dr. Donley admitted that the FHC is a “specialty referral center”—it will have “family medicine” residents refer patients out of Lakewood to other CCF facilities and specialists. Dr. Donley offered no specifics concerning anything highly technological or cutting edge about the new FHC other than it would be an “enhanced facility.” Ankit Chhabra stated that the number of employees that will serve at the proposed FHC will depend on the services CCF decides to offer. The services they will offer and the number of employees CCF will employ is uncertain—what is certain is that CCF will decide what is in CCF’s best interest. It is clear why CCF sees the LOI as an “exciting opportunity.” This FHC is not exciting to Lakewood beneficiaries—they see it for what it is.

12. Every resident of Lakewood is a third party beneficiary under the Lease and constructive trust and each is owed fiduciary duties by the trustees. LHA Board meetings are required to be open to the public “to assure full disclosure of the operations of the Hospital.” (See Lease p 2) Also, under Section 9.11 (c) of the Lease, LHA “covenants that it shall...open to the public all meetings of its Governing Board to assure full disclosure of the operations of [LHA].” Article II Section 2.2 of the Lease provides, in part, “Purpose. [LHA] will... operate... as Hospital Facilities for the service of the general public...” Section 9.11(b) p 35 requires LHA to “faithfully and efficiently administer, operate, and maintain as Hospital Facilities...rendering Required Services...to patients who are residents of the City and all members of the general public...” The Lease also provides that LHA agreed “to continue to provide healthcare services in accordance with [the Lease] to the residents of the City without regard to their ability to pay...” (Page 3 of the Lease). The Lease imposes a constructive trust whereby LHA is in possession of the public assets and owes duties to the citizens of Lakewood to operate the hospital. CCF is leaving Lakewood because of the payer mix--they don’t really want to serve residents without regard to their ability to pay. Metro wants to come to Lakewood to do just that. Your duties as trustees are to ensure that beneficiaries without the ability to pay are protected. The LOI enables CCF to abandon the people you are tasked with protecting.

In summary, the course I propose would be for LHA to grant the City an option under the lease and free the City from the grip and control of CCF as the perceived only option. A competitive rebid with all bidders for the first time on an even playing field would maximize the City's options and assets.

"A long habit of not thinking a thing wrong, gives it a superficial appearance of being right, and raises at first a formidable outcry in defense of custom. But the tumult soon subsides. Time makes more converts than reason." "Common Sense", Thomas Paine, 1776. There is a hierarchy of longstanding habits and customs involving the CCF, LHA and City relationships that have been thought of as not wrong, giving them a superficial appearance of being right. When leaders make a mistake and persist in denying it while the followers know the mistake has been made, trust and confidence in leadership is eroded. Trust and confidence can only be restored if the leaders acknowledge the mistake or at least pivot from it and take corrective action. Each of you has the opportunity to change the things that are wrong and make them right—or at least improve the bad dynamic.

I want to continue to interact with each and every one of you who are willing to work with me in an effort to resolve this crisis. I would also like the opportunity to address the trustees on May 13, 2015 to provide further details supporting the request set forth above.

Sincerely,
Brian J. Essi

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