

December 23, 2022 (revised)

Via email to EBelfance@AkronOhio.gov

Honorable Eve V. Belfance
City of Akron Director of Law
161 South High Street, Suite 202
Akron, Ohio 44308

Re: *Taxpayer demand under R.C. 733.59 for an injunction against the illegal sale of city real estate for the White Pond Development Project.*

Dear Director Belfance:

We write under R.C. 733.59, on behalf of City of Akron taxpayer David Guran and others, to demand that you stop the City of Akron's illegal planned sale of city real estate for the White Pond Development Project. Please respond by the close of business **on Friday, January 6, 2023.**

1. Taxpayers have the authority to make this demand under R.C. 733.56 to stop illegal activity by Akron officials.

R.C. 733.56 requires a law director to seek an injunction to “restrain the misapplication of funds of the municipal corporation, the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the municipal corporation in contravention of the laws or ordinance[s] governing it, or which was procured by fraud or corruption.”

2. Akron Codified Ordinance § 34.27 requires a two-thirds Council vote before City real estate may be sold to a named grantee, without open bidding.

As explained below, the City's effort to sell city property for the White Pond Development Project despite failing to properly authorize such a sale will result in misapplication of funds by Akron for the effort, is an abuse of its corporate powers, and would require execution and performance of a contract made in Akron's behalf in contravention of the laws and ordinances governing Akron.

Akron Codified Ordinance § 34.27 requires that, upon a finding by Council that real estate is not needed for public use, a two-thirds Council vote is required before the City no longer must use newspaper advertising to solicit bids.

The real estate may then be sold to a named grantee at a fixed price:

34.27 - Procedure for sale of City real estate.

On a finding by Council that real estate is not needed for public use, the property shall be advertised for sale once a week for three consecutive weeks in a newspaper of general circulation within the city, and shall be conveyed to the highest bidder upon approval of the Board of Control. However, advertising maybe dispensed with and the sale made to a named grantee at a fixed price when Council specifically so authorizes **by a two-thirds vote of its members.**

(Emphasis added.)

On December 12, 2022, Akron's City Council considered and voted on the sale of city property:

[ORDINANCE authorizing the execution of a development agreement with White Pond Reserve, LLC, or its designee; providing for the acquisition, sale and development of property within the White Pond-Frank Blvd. Urban Renewal Plan area; finding such Property is not needed for any public use, and related findings; and declaring an emergency. \(11/14/2022\) \(Substitute was offered as an amendment 12/5/2022\)](#)

The vote, though, was **7 to 6 (53.8%)** far short of the **two-thirds (66 2/3%)** majority required. Yet despite Codified Ordinance § 34.27's express two-thirds-majority requirement, the City is acting on magical thinking as though the ordinance for sale *proceeded* through the deficient 7-6 vote.

Casting the law aside, the Council has moved the matter forward to its January 9, 2023-meeting agenda:

[ORDINANCE NO. 349-2022 authorizing the execution of a development agreement with White Pond Reserve, LLC, or its designee; providing for the acquisition, sale and development of property within the White Pond-Frank Blvd. Urban Renewal Plan area; finding such Property is not needed for any public use, and related findings; and declaring an emergency. \(11/14/2022\) \(Substitute was offered as an amendment 12/5/2022\) Vote: 7-6 \(Holland, Kammer, Malik, Mosley, Neal, Omobien\).](#)

But because property sale to named-grantee White Pond Reserve, LLC or its designee¹ failed to pass by a *two-thirds* vote, the sale is dead in the White Pond water.

As a matter of law. And simple math.

Pretending to dispose of city property by illegally contracting is an abuse of Akron's corporate powers and will result in misapplication of city funds, including the value of employee, counsel, read my and elected-official and employee time engaging in such illegality.

¹ Purporting to sell to an unnamed "designee" also evades the plain language and purpose of A.C.O. § 34.27, which requires a "named grantee." A "designee" is not a "named grantee."

3. **As law director, you must act this corporate abuse—or the taxpayers will.**

Mr. Guran and his fellow taxpayers demand that you—as is your sworn duty—bring to an immediate end this abuse and effort to flout the plain language of the law. They request that you do so either through prompt persuasion, and, if that fails, through litigation for injunctive relief in the City’s name.

If you do not, R.C. 733.59 permits the taxpayers to sue in the City’s name to force officials to stop the illegal contract and collect misapplied funds:

733.59 Taxpayer’s suit.

If the village solicitor or city director of law fails, upon the written request of any taxpayer of the municipal corporation, to make any application provided for in sections 733.56 to 733.58 of the Revised Code, the taxpayer may institute suit in his own name, on behalf of the municipal corporation. Any taxpayer of any municipal corporation in which there is no village solicitor or city director of law may bring such suit on behalf of the municipal corporation. No such suit or proceeding shall be entertained by any court until the taxpayer gives security for the cost of the proceeding.

Again, the taxpayers will seek to determine and recover the value of any misspent property and city funds, including for wages misspent. If necessary, they will also name the developers to recover any squandered public property. As you probably know, under Ohio law, taxpayers are protected when city officials enter into illegal contracts, and private actors cannot benefit from such illegality, even if they relied detrimentally on city officials’ promises and actions. Public contracting is not like private contracting. There is no promissory estoppel. *Hortman v. Miamisburg*, 110 Ohio St.3d 194, 2006-Ohio-4251, at ¶ 1.

If you fail to act swiftly, you will be subjecting Akron’s taxpayers to needless litigation costs, and our clients will be entitled to their attorney fees and costs when they prevail.² And you will put even the developers in the difficult position of certain financial loss. **By copy of this letter, we request that they notify their financiers and insurance carriers.** The taxpayers will not permit them to financially benefit from ill-gotten City property.

4. **Respect the rule of law and the outcome of the vote. Please respond by January 6, 2023, an important anniversary.**

Unfortunately, we have seen in recent months what happens nationally when certain officials refuse to respect the rule of law and the outcome of votes. That contagion of contempt for the rule of law must not spread to Akron. Under A.C.O. §34.27, *there was no winning vote*. Project proponents must respect the outcome and the rule of law.

Again, given the January 9, 2023 Council-agenda item regarding the White Pond Development Project, we will expect to receive a **written affirmation by January 6, 2023**, an anniversary date

² R.C. 733.61 (providing for attorney fees and costs for successful taxpayer lawsuits); *State ex rel. Fisher v. City of Cleveland*, 109 Ohio St.3d 33, 2006-Ohio-1827, 845 N.E.2d 500, ¶ 45.

ironically symbolizing decisions by public officials about whether they will abide by the rule of law and democracy. For the taxpayers, there is genuine uncertainty here about their government officials because of the disrespect shown to those peaceful protesting the White Pond Development Project when the Council used police on December 12, 2022 to eject protestors, in violation of their First Amendment rights.

You may reach me by email at Subodh.Chandra@ChandraLaw.com and by phone on my mobile number, 216.965.6463. I look forward to hearing your affirmation that based on the failed vote under A.C.O § 34.27. City officials will pursue this matter no further—or that you will sue them. If we do not hear from you timely, the taxpayers will proceed with litigation.

Sincerely,



Subodh Chandra

Cc: Mayor Dan Horrigan <mayor@akronohio.gov>
Deputy Mayor Marco S. Sommerville <msommerville@akronoh.gov>
Council President Margo Sommerville <ward3@akronohio.gov>
Councilman Jeff Fusco <atlarge1@akronohio.gov>
Councilwoman Linda Omobien <atlarge2@akronohio.gov>
Councilwoman Ginger Baylor <atlarge3@akronohio.gov>
Councilwoman Nancy Holland <ward1@akronohio.gov>
Councilman Phil Lombardo <ward2@akronohio.gov>
Councilman Russel Neal <ward4@akronohio.gov>
Councilwoman Tara Mosley <ward5@akronohio.gov>
Councilman Brad McKitrick <ward6@akronohio.gov>
Councilman Donnie Kammer <ward7@akronohio.gov>
Councilman Shammas Malik <ward8@akronohio.gov>
Councilman Mike Freeman <ward9@akronohio.gov>
Councilwoman Sharon Conner <ward10@akronohio.gov>
Alan Gaffney <agaffney@att.net>