

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

A2604185

TODD ZINSER
% Curt C. Hartman, Legal Counsel
3478 Holly Ridge
Cincinnati, Ohio 45245,

Plaintiff,

v.

CINCINNATI PLANNING COMMISSION
% Emily Smart Woerner, City Solicitor
801 Plum Street, Room 214
Cincinnati, Ohio 45202,

and

CITY OF CINCINNATI, OHIO,
% Emily Smart Woerner, City Solicitor
801 Plum Street, Room 214
Cincinnati, Ohio 45202,

and

JACOB SAMAD
Member, Cincinnati Planning Commission
1570 Hollywood Avenue
Cincinnati, Ohio 45224,

and

DANIELLA BELTRAN
Member, Cincinnati Planning Commission
334 Milton Street #5
Cincinnati, Ohio 45202,

and

JOHN EBY
Member, Cincinnati Planning Commission
3315 Dartmouth Drive
Cincinnati, Ohio 45211

and

Case No. _____

Judge _____

COMPLAINT

ACTION PURSUANT TO
THE OPEN MEETINGS ACT

APPLICATION FOR
TEMPORARY RESTRAINING
ORDER / PRELIMINARY
INJUNCTION INCLUDED
HEREIN

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HAMILTON COUNTY

AUG 04 2026

COMMON PLEAS COURTS

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DARRICK DANSBY
Member, Cincinnati Planning Commission
1880 Huron Avenue
Cincinnati, Ohio 45207,

and

WILLIAM WEBER
aka BILLY WEBER
Designee Member, Cincinnati Planning Commission
3450 Whitfield Avenue
Cincinnati, Ohio 45220,

and

ANNA ALBI
Member, Cincinnati Planning Commission
5632 Bramble Avenue
Cincinnati, Ohio 45227,

Defendants.

Comes now TODD ZINSER and, for his *Complaint*, alleges as follows:

1. This action, brought pursuant to the Open Meetings Act (R.C. 121.22), arises from the members of the CINCINNATI PLANNING COMMISSION illegally meeting in an executive session held during the course of a meeting on June 5, 2026, and from which official action resulted.

2. Thus, pursuant to R.C. 121.22(I)(1), an injunction must issue to compel the members of the CINCINNATI PLANNING COMMISSION to comply with the provisions of the Open Meetings Act; pursuant to R.C. 121.22(I)(2), an award of a civil forfeiture, together with an award of attorney fees and costs, should be awarded; and pursuant to R.C. 121.22(H), any resolution, rule, or formal action resulting from deliberations in the illegal executive session must be invalidated.

* * * * *

3. Plaintiff TODD ZINSER is a resident and taxpayer of the City of Cincinnati, located in Hamilton County, Ohio.

4. Defendant CINCINNATI PLANNING COMMISSION is a commission of the CITY OF CINCINNATI, formed and existing pursuant to Article VII, Section 2 of the Cincinnati City Charter. The CINCINNATI PLANNING COMMISSION is a “public body” as defined in R.C. 121.22(B)(1).

5. Defendant CITY OF CINCINNATI, OHIO, is a municipal corporation organized and existing under the laws of the State of Ohio and pursuant to the Cincinnati City Charter. The CITY OF CINCINNATI is a “public office” as defined in R.C. 121.22(B)(4) which incorporates, by reference, the definition of “public office” in R.C. 149.011(A).

6. Defendant JACOB SAMAD is one of the six members of the CINCINNATI PLANNING COMMISSION.

7. Defendant DANIELLA BELTRAN is one of the six members of the CINCINNATI PLANNING COMMISSION.

8. Defendant JOHN EBY is one of the six members of the CINCINNATI PLANNING COMMISSION.

9. Defendant DARRICK DANSBY is one of the six members of the CINCINNATI PLANNING COMMISSION.

10. Defendant WILLIAM WEBER, also known as BILLY WEBER, serves as one of the six members of the CINCINNATI PLANNING COMMISSION as the designee of the Cincinnati City Manager.

11. Defendant ANNA ALBI is one of the six members of the CINCINNATI PLANNING COMMISSION.

12. The CINCINNATI PLANNING COMMISSION, the CITY OF CINCINNATI, and the COMMISSION MEMBERS are subject to, *inter alia*, the mandates and restrictions within the Open Meetings Act, *i.e.*, R.C. 121.22.

Overview of the Open Meetings Act

13. The Open Meetings Act, R.C. 121.22, was enacted in order to require that all governmental decisions, as well as the discussions or deliberations thereon, are undertaken publicly and only at properly called and noticed meetings of the pertinent public body conducted in conformity with the requirements of law, including the Open Meetings Act.

14. The Open Meetings Act mandates and imposes certain restrictions and limitations upon the conducting of private executive sessions by members of a public body, including the COMMISSION MEMBERS.

15. Executive sessions are closed-door sessions convened by a public body during the course of a meeting of the public body wherein the general public is excluded from observing the public business being considered by the public body, including the discussions and deliberations of the members of the public body.

16. Pursuant to R.C. 121.22(G), the members of a public body may hold an executive session but only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session and only for purposes specifically authorized by that division.

17. Pursuant to R.C. 121.22(G), “[i]f a public body holds an executive session ..., the motion and vote to hold that executive session shall state which one or more of the approved matters listed

in [R.C. 121.22(G)(1) to (G)(8)] are to be considered at the executive session.”

18. As developed below, during the course of the meeting of the CINCINNATI PLANNING COMMISSION on June 5, 2026, the COMMISSION MEMBERS held part of the meeting in an executive session in violation of the requirements and limitations of R.C. 121.22(G).

* * * * *

19. On June 5, 2026, the CINCINNATI PLANNING COMMISSION conducted a meeting that convened at approximately 9:00 *a.m.* and which concluded at approximately 2:14 *p.m.*

20. A video of the meeting of the CINCINNATI PLANNING COMMISSION held on June 5, 2026, is available at <https://archive.org/details/city-planning-6-5-26>.

21. One matter considered by the CINCINNATI PLANNING COMMISSION at its meeting on June 5, 2026, was listed as Item No. 4 on the meeting’s agenda and described as “A report and recommendation on a proposed zone change from CG-A-MH to Planned Development (PD), including a Concept Plan and Development Program Statement, at 2323 Ferguson Road in Westwood.”

22. Generally speaking, Item No. 4 at the meeting of the CINCINNATI PLANNING COMMISSION held on June 5, 2026, involved a change of zoning to the real property located at 2323 Ferguson Road.

23. Pursuant to Section 1429-11 of the Cincinnati Municipal Code, the CINCINNATI PLANNING COMMISSION simply makes a recommendation to the Cincinnati City Council as to whether the zoning on a particular parcel should be changed to Planned Development (PD).

24. Thus, any action by the CINCINNATI PLANNING COMMISSION as to Item No. 4 of the agenda for its meeting on June 5, 2026, would not constitute final approval of the change of

zoning but, instead, such approval is required to be given by the Cincinnati City Council.

25. Due to the schedule of the Cincinnati City Council, the next meeting of the Cincinnati City Council at which consideration of the recommendation of the CINCINNATI PLANNING COMMISSION as to Item No. 4 of the agenda for its meeting on June 5, 2026, would not be until the week of August 3, 2026.

26. Until final action by the Cincinnati City Council on the requested zone change for the real property at 2323 Ferguson Road, the zoning on the parcel has not legally changed.

27. At the meeting of the CINCINNATI PLANNING COMMISSION held on June 5, 2026, the COMMISSION voted 5-to-0, with one abstention, to recommend the proposed zoning change from CG-A-MH to Planned Development (PD) for the real property at 2323 Ferguson Road.

* * * * *

28. Another matter on the agenda for the meeting of the CINCINNATI PLANNING COMMISSION on June, 5, 2026, was listed as Item No. 5 and described as “A report and recommendation on a proposed Final Development Plan for the Planned Development (PD) located at 2323 Ferguson Road in Westwood.”

29. Generally speaking, Item No. 5 at the meeting held on June 5, 2026, of the CINCINNATI PLANNING COMMISSION concerned whether approval should be given for the final development plan for the real property located at 2323 Ferguson Road.

30. Pursuant to Section 1429-13 of the Cincinnati Municipal Code, “[f]ollowing approval of a PD District ..., a final development plan must be submitted to the City Planning Commission.”

31. Pursuant to Section 1429-15 of the Cincinnati Municipal Code, the CINCINNATI PLANNING COMMISSION is empowered to approve a final development plan submitted for

property zoned Planned Development (PD).

32. Thus, the CINCINNATI PLANNING COMMISSION has the final decision as to whether a final development plan should be approved for property zoned Planned Development (PD).

33. During the discussions amongst the COMMISSION MEMBERS with respect to Item No. 4 during the meeting of the CINCINNATI PLANNING COMMISSION held on June 5, 2026, *i.e.*, whether zoning on the property at 2323 Ferguson Road should change to Planned Development (PD), at least three of the COMMISSION MEMBERS expressed the desire that, even if Item No. 4 passed, to then delay or postpone consideration of Item No. 5 which concerned the approval of the final development plan for the real property at 2323 Ferguson Road, with the general indication being to wait until final action by the Cincinnati City Council on the zoning change addressed in Item No. 4.

34. Following the indication by at least three of the COMMISSION MEMBERS of the desire to delay or postpone consideration of the approval for the final development plan for the real property at 2323 Ferguson Road, *i.e.*, Item No. 5 on the agenda for the meeting on June 5, 2026, on the motion of JACOB SAMAD “to enter into executive session” (with no stated purpose indicated), the COMMISSION MEMBERS voted unanimously to enter into an executive session.

35. The foregoing conduct by the COMMISSION MEMBERS starts at approximately 4:44:36 of the video of the meeting (<https://archive.org/details/city-planning-6-5-26>).

36. At this stage, the COMMISSION MEMBERS then met in a private, closed door executive session from which the public was excluded.

37. This executive session lasted approximately 25 minutes, plus or minus.

38. The motion and vote to enter the executive session during the course of the meeting of the CINCINNATI PLANNING COMMISSION held on June 5, 2026, failed to state any purpose for the executive session.

39. Based upon information and belief, during the course of the foregoing executive session held during the meeting of the CINCINNATI PLANNING COMMISSION held on June 5, 2026, the COMMISSION MEMBERS considered, discussed and deliberated on Item No. 5 on the agenda, *i.e.*, whether to approve the final development plan for the real property at 2323 Ferguson Road, including considering, discussing, and deliberating whether to proceed at that meeting with consideration of Item No. 5.

40. Based upon information and belief, during the course of the foregoing executive session held during the meeting of the CINCINNATI PLANNING COMMISSION held on June 5, 2026, the COMMISSION MEMBERS agreed or decided to proceed forward with considering at that meeting Item No. 5 on the agenda, *i.e.*, whether to approve the final development plan for the real property at 2323 Ferguson Road.

41. Even though at least three of the COMMISSION MEMBERS previously expressed their desire to postpone or delay consideration of Item No. 5 on the agenda for the meeting of the CINCINNATI PLANNING COMMISSION held on June 5, 2026, upon exiting from the executive session held during the course of the meeting, the COMMISSION MEMBERS proceeded immediately to consider Item No. 5 oblivious to the prior stated desire of at least three members and, ultimately voting unanimously to approve the final development plan.

42. The decision of the CINCINNATI PLANNING COMMISSION to consider during the course of the meeting held on June 5, 2026, whether to approve the final development plan for the

real property at 2323 Ferguson Road was the result of discussions and deliberations by the COMMISSION MEMBERS in and during the executive session held during the meeting on June 5, 2026.

43. The decision of the CINCINNATI PLANNING COMMISSION to approve the final development plan for the real property at 2323 Ferguson Road at the meeting held on June 5, 2026, was the result of discussions and deliberations by the COMMISSION MEMBERS in and during the executive session held during the meeting on June 5, 2026.

Cause of Action
Violation of Open Meetings Act

44. The foregoing paragraphs are incorporated herein by reference as if fully restated.

45. In undertaking the foregoing conduct in and during the meeting of the CINCINNATI PLANNING COMMISSION held on June 5, 2026, the COMMISSION MEMBERS have violated or threaten to violate the requirements of the Open Meetings Act.

46. Due to the violations of or continued threatened violations of the Open Meetings Act, irreparable harm and prejudice is conclusively and irrebuttably presumed. *See* R.C. 121.22(I)(3).

47. Due to the violations of or continued threatened violations of the Open Meetings Act, the issuance of a statutory injunction is mandatory so as to compel the CINCINNATI PLANNING COMMISSION and the COMMISSION MEMBERS to comply with the provisions of the Open Meetings Act.

48. Because resolutions, rules, and/or formal action by the CINCINNATI PLANNING COMMISSION resulted from deliberations in meetings of the CINCINNATI PLANNING COMMISSION not open to the public and in violation of the Open Meetings Act, all such resolutions, rules, and/or formal action of any kind are invalid, *see* R.C. 121.22(H), including,

without limitation, the formal action of considering whether to approve the final development plan for the real property at 2323 Ferguson Road and the formal action of approving the final development plan for the real property at 2323 Ferguson Road.

49. Due to the violations of or continued threatened violations of the Open Meetings Act, Plaintiffs are entitled to a civil forfeiture against the CITY OF CINCINNATI and the CINCINNATI PLANNING COMMISSION in the amount of five hundred dollars for each distinct violation of the Open Meetings Act, together with an award of attorney fees and court costs. *See* R.C. 121.22(I)(2)(a).

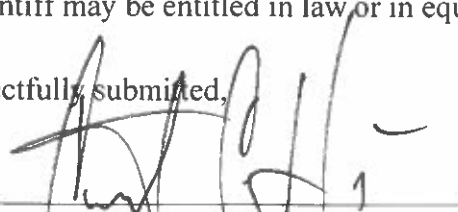
Wherefore, TODD ZINSER here prays that the Court:

- a. issue judgment in his favor and against the CINCINNATI PLANNING COMMISSION and the COMMISSION MEMBERS.
- b. declare that the CINCINNATI PLANNING COMMISSION and the COMMISSION MEMBERS have violated or threatened to violate the requirements and mandates of the Open Meetings Act in considering, discussing and/or deliberating illegally in the executive session held during the meeting of the COMMISSION on June 5, 2026, including considering, discussing, and/or deliberating therein on matters related to considering the approval of the final development plan for the real property at 2323 Ferguson Road;
- c. issue an injunction compelling the CINCINNATI PLANNING COMMISSION and the COMMISSION MEMBERS to comply with all provisions of the Open Meetings Act, including, without limitation, convening meetings in executive session only to those situations expressly allowed by R.C. 121.22(G)
- d. declare that all resolutions, rules, and/or formal action of any kind by the CINCINNATI PLANNING COMMISSION that resulted from deliberations in meetings of the COMMISSION not open to the public and in violation of the Open Meetings Act are invalid, as well as any ensuing or resulting resolutions, rules, and/or formal action by either the CINCINNATI PLANNING COMMISSION are likewise invalid, and, in particular, declare the action of the CINCINNATI PLANNING COMMISSION at its meetings of June 5, 2026, wherein it approved the final development plan for the real property at 2323 Ferguson Road to be invalid and of no legal effect.
- e. issue an injunction prohibiting the CINCINNATI PLANNING COMMISSION, the

COMMISSION MEMBERS and the CITY OF CINCINNATI from taking any further actions relative to effectuating or implementing the action of the CINCINNATI PLANNING COMMISSION at its meetings of June 5, 2026, wherein the COMMISSION approved the final development plan for the real property at 2323 Ferguson Road.

- f. issue an injunction or declaratory judgment invalidating all resolutions, rules, and/or formal action of any kind already undertaken by the CITY OF CINCINNATI a result of any action deemed illegal or invalid as a result of the CINCINNATI PLANNING COMMISSION, the COMMISSION MEMBERS violating the Open Meetings Act, including, without limitation, invalidating the action of the CINCINNATI PLANNING COMMISSION at its meetings of June 5, 2026, wherein it approved the final development plan for the real property at 2323 Ferguson Road.
- g. for matters discussed during any executive session that was held, in whole or in part, in violation of the Open Meetings Act, including, without limitation, discussions or actions at the executive sessions identified above, issuance of an injunction directing the CINCINNATI PLANNING COMMISSION and the COMMISSION MEMBERS to publicly declare, reveal, and document all discussions improperly held in executive session and to do so in a manner that complies fully with the legal obligations of the CINCINNATI PLANNING COMMISSION and the COMMISSION MEMBERS that the minutes of all meetings (including those illegally held in executive session) contain sufficient facts and information to permit the public to understand and appreciate the rationale behind the COMMISSION MEMBER's decisions;
- h. award Plaintiff a civil forfeiture of five hundred dollars for each distinct violation of the Open Meetings Act, as well as an award of all court costs and reasonable attorney's fees.
- i. grant such other relief to which Plaintiff may be entitled in law or in equity.

Respectfully submitted,



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Attorney for Plaintiff Todd Zinser

**APPLICATION FOR
TEMPOARY RESTRAINING ORDER / PRELIMINARY INJUNCTION**

Pursuant to Civil Rule 65(B)(1), Plaintiff TODD ZINSER hereby requests the issuance of a preliminary injunction precluding the CITY OF CINCINNATI, including the CINCINNATI PLANNING COMMISSION, from taken any action to implement the approval of the final development plan for the real property at 2323 Ferguson Road granted by the CINCINNATI PLANNING COMMISSION at its meeting on June 5, 2026, including treating or considering said approval as final and validity granted. In support hereof, the following in offered.

As is well established, “in determining whether to grant a preliminary injunction, a court must consider four factors: ‘1) whether there is a substantial likelihood that plaintiff will prevail on the merits; 2) whether plaintiff will suffer irreparable injury if the injunction is not granted; 3) whether third parties will be unjustifiably harmed if the injunction is granted; and 4) whether the public interest will be served by the injunction.’” *Youngstown City School Dist. Bd. of Ed. v. State*, 2017-Ohio-555 ¶50 (10th Dist.)(quoting *Vanguard Transp. Sys., Inc. v. Edwards Transfer & Storage Co.*, 109 Ohio App.3d 786, 790, 673 N.E.2d 182 (10th Dist.1996)). “All four of these factors must be balanced, with no single factor being dispositive.” *City of Cincinnati v. State*, 247 N.E.3d 960, 2024-Ohio-2425 ¶24 (1st Dist.). However, in light of the nature of the claims and certain presumptions mandated by statute, the first factor is likely to prove dispositive.

Codified at R.C. 121.22, the Open Meetings Act (the “OMA”) was enacted: (i) to ensure openness and accountability in government; (ii) to afford citizens the maximum opportunity to observe the conduct of public business by public bodies, including observing the discussions and debates leading to decisions of public bodies; and (iii) to effectuate the accountability of public

officials. See *Cincinnati Enquirer v. Cincinnati Bd. of Ed.*, 192 Ohio App. 3d 566, 949 N.E.2d 1032, 2011-Ohio-703 ¶9 (“[t]he OMA ... seeks to prevent public bodies from engaging in secret deliberations with no accountability to the public”). To advance and further the public interest being advanced by it, the OMA expressly provides that it “shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.” R.C. 121.22(A).

“Upon proof of a violation or threatened violation of [R.C. 121.22] in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.” R.C. 121.22(I). “Irreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed” upon the establishment of any violation or threatened violation of the Act. R.C. 121.22(I)(3). And, in addition to the issuance of injunctive relief, the OMA also provides for an award of statutory damages, attorney fees and costs. R.C. 121.22(I)(2).

The OMA imposes certain restrictions and limitations upon public bodies and their members when considering and conducting public business in executive sessions. “An executive session is a closed-door conference convened by a public body, after a roll call vote, that is attended by only the members of the public body (and those they invite), that excludes the public.” *Keystone Comm. v. Switzerland of Ohio Sch. Dist. Bd. of Ed.*, 67 N.E.3d 1, 2016-Ohio-4663 ¶25 (7th Dist.). Members of a public body may meeting in an executive session only for the narrow and specific purposes set forth in R.C. 121.22(G). Additionally, pursuant to R.C. 121.22(G), “[i]f a public body holds an executive session ..., the motion and vote to hold that executive session shall state which one or more of the approved matters listed in [R.C. 121.22(G)(1) to (G)(8)] are

to be considered at the executive session.”

Substantial Likelihood of Success. With respect to the executive session held during the course of the meeting of the CINCINNATI PLANNING COMMISSION on June 5, 2026, the video of the meeting confirms that Member SAMAD offered a motion which simply declared “to enter into executive session”, though no stated purpose was indicated with the motion or otherwise. The video then further indicates the COMMISSION MEMBERS then met in the executive sessions and that the public was excluded therefrom.¹ It should be noted that, immediately prior to making the motion “to enter into an executive session”, Member SAMAD inquired of legal counsel “given that Item No. 5 is quasi-judicial, can we call an executive session.” In response, an affirmative response was indicated on the video.²

Upon exiting from the executive session, Member SAMAD, as chairman of the CINCINNATI PLANNING COMMISSION, immediately proceeded to consider Item No. 5 of the agenda, even though at least three members of the COMMISSION (including Member SAMAD) had, prior to the executive session, indicated a desire to delay or postpone consideration of that matter at that meeting.³ No public discussions, debates or deliberations were had on the sudden

¹ The foregoing conduct by the COMMISSION MEMBERS starts at approximately 4:44:36 of the meeting video (<https://archive.org/details/city-planning-6-5-26>). As is apparent from the video, the video was edited to minimize the dead time when the COMMISSION MEMBERS were meeting in the executive session, though it is believed the executive session lasted approximately 25 minutes.

² These comments start at approximately 4:44:22 of the meeting video.

³ Comments by the COMMISSION MEMBERS in support of delaying or postponing consideration of Item No. 5 can be found on the meeting video at the following point: 4:14:52 to 4:16:53 (Member SAMAD), 4:21:50 to 4:22:53 (Member WEBER), 4:24:58 to 4:25:52 (Member BELTRAN), 4:28:27 to 4:31:02 (Member SAMAD, even expressing doubt that Item No. 5 would pass if it were considered at that meeting), 4:31:02 to 4:32:31 (Member WEBER). Additionally, at 4:25:52 to 4:26:55, Member ALBI indicated her deference to any decision on whether to proceed

reversal as to whether Item No. 5 should be considered at the meeting.

Under the OMA, in order to properly convene “the motion and vote to hold that executive session shall state which one or more of the approved purposes ... are the purposes for which the executive session is to be held.” Yet, with respect to the executive session held during the meeting of the CINCINNATI PLANNING COMMISSION, the video confirms undisputedly that the motion and vote to hold the executive session during the meeting on June 5, 2026, did not state any purpose. Thus, a clear and unequivocal violation of the OMA has occurred and the subject matter thereof is clearly tied to consideration (and the ultimate approval) of the final development plan for the real property at 2323 Ferguson Road, *i.e.*, Item No. 5 on the agenda.

In light of the inquiry by Member SAMAD about Item No. 5 being “quasi-judicial”, the CITY OF CINCINNATI and the CINCINNATI PLANNING COMMISSION will inevitably claim that the proceedings of the COMMISSION were quasi-judicial and, therefore, not subject to the requirements of the OMA. The basis for the assertion that the OMA does not apply to quasi-judicial proceedings is the Supreme Court’s decision in *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision*, 81 Ohio St. 3d 58, 689 N.E.2d 32, 1998-Ohio-445, wherein the Court considered whether the OMA applied to adjudicatory proceedings at the Board of Tax Appeals (“BTA”). In that case, the Court held that the OMA did not apply, explaining that the BTA, “like all judicial bodies, requires privacy to deliberate” and that for this reason, “the [Open Meetings Act] does not apply to adjudications of disputes in quasi-judicial proceedings, such as at the BTA.” *Id.* ¶20.

with Item No. 5 that day or not. The conduct immediately upon exiting the executive session wherein the COMMISSION proceeded immediately to consider Item No. 5 starts at approximately 4:46:07 of the meeting video.

This quasi-judicial exemption has also been found to apply to certain adjudicatory proceedings before election boards. *See State ex rel. Ross v. Crawford Cty. Bd. of Elections*, 125 Ohio St. 3d 438, 928 N.E.2d 1082, 2010-Ohio-2167 ¶¶16 & 24 (while the OMA “is only applicable to public bodies performing public functions at public meetings,” board of elections not subject to OMA as it exercised quasi-judicial authority because it was statutorily required “to hold a hearing resembling a judicial trial” on a challenge to an elector's eligibility to vote).

Despite these decisions, the Ohio Supreme Court has expressly “decline[d] to take ... a broad view” that “completely exempt[s] quasi-judicial proceedings from the Open Meetings Act.” *Barga v. Vill. Council of the Vill. of St. Paris*, 178 Ohio St. 3d 129, 255 N.E.3d 26, 2024-Ohio-5293 ¶26. Noting that any such quasi-judicial exception “is purely judge-made law, with no basis in the text of the Open Meetings Act,” the Court recognize it “must tread cautiously before widening the exception.” *Id.* ¶27.

Yet, with respect to the activities of the CINCINNATI PLANNING COMMISSION in approving the final development plan for the real property at 2323 Ferguson Road, it was not even acting in a quasi-judicial capacity by which a legitimate argument could be made that the OMA does not apply. “Quasi-judicial authority is the power to hear and determine controversies between the public and individuals that require a hearing resembling a judicial trial.” *State ex rel. Wright v. Ohio Bur. of Motor Vehicles*, 87 Ohio St. 3d 184, 186, 718 N.E.2d 908, 1999-Ohio-17. Ultimately, though, “whether a proceeding is a quasi-judicial one ... depends upon what the law requires the agency to do, not what the agency actually does.” *Harmon v. City of Cincinnati*, 176 Ohio St. 3d 379, 247 N.E.3d 370, 2024-Ohio-2889 ¶27 (quoting *State ex rel. Mun. Constr. Equip. Operators’ Labor Council v. Cleveland*, 141 Ohio St.3d 113, 22 N.E.3d 1040, 2014-Ohio-4364

¶36.

Nothing in Article VII, Sections 2 to 10 of the Cincinnati City Charter (addressing the CINCINNATI PLANNING COMMISSION, nor any provision of the Cincinnati Municipal Code provides specifically for the COMMISSION to conduct quasi-judicial hearings on considering the approval or denial of a final development plans on property zoned Planned Development (PD). *See also Cincinnati Municipal Code 1439-13(c)*(providing that the Planning Commission has the authority “[t]o approve, conditionally approve or deny final development plans in Planned Development District applications, pursuant to the provisions of Chapter 1429, Planned Development District”).⁴ Thus, even though the COMMISSION might characterize what it was doing as “quasi-judicial”, such self-serving appellation does not make it so. “[W]hether a proceeding is quasi-judicial is a question of law.” *Harmon v. City of Cincinnati*, 176 Ohio St. 3d 379, 247 N.E.3d 370, 2024-Ohio-2889 ¶18. And as there is no requirement that the approval of a final development plan for property in a Planned Development (PD) be undertaken by proceedings resembling a trial, any action by the COMMISSION related to the approval of the final development plan for 2323 Ferguson Road was not quasi-judicial. Accordingly, the entry into an executive session to consider, discuss, and deliberate on matters related thereto were subject to the OMA and, as the motion and vote failed to state a purpose (and, there is no legitimate purpose under R.C. 121.22(G) by which such an executive session could be held), the

⁴ Whereas *Cincinnati Municipal Code 1439-13(c)* provides the COMMISSION the authority “to approve, conditionally approve, or deny” final development plans, in contrast, *Cincinnati Municipal Code 1439-13(d), (e), (f)* grant the COMMISSION the authority “[t]o hear and decide” other matters. The language of “hearing” and “deciding” matters are more in line with quasi-judicial hearings, though such language still does not meet the requirements for a quasi-judicial hearing of *requiring* such a hearing resembling a judicial trial, *i.e.*, notice, the opportunity for introduction of evidence, cross-examination, *etc.*

COMMISSION and the COMMISSION MEMBERS clearly violated the OMA.

But regardless of whether the consideration of a final development plan by the CINCINNATI PLANNING COMMISSION satisfied the requirements to be a quasi-judicial proceeding, the Supreme Court has directly addressed the nature of the approval of a final development plan by a municipality. In *State ex rel. Crossman Communities of Ohio v. Greene County Bd. of Elections*, 87 Ohio St. 3d 132, 717 N.E.2d 1091, 1999-Ohio-308, the Supreme Court specifically addressed whether the approval of a final development plan in a planned-unit development was legislative in nature (such that any approval could be subject to referendum) versus administrative or quasi-judicial. In *Crossman Communities*, the Supreme Court explicitly held that, in zoning cases involving planned-unit development (PUD), “‘the implementation of a PUD, as well as its creation, is a legislative act subject to referendum’ because the action of approving a plat is the functional equivalent of traditional legislative zoning, although the entire PUD area is covered by the same nominal zoning classification both before and after the approval of the plat.” *Id.* at 136-37 (quoting *State ex rel. Zonders v. Delaware Cty. Bd. of Elections*, 69 Ohio St. 3d 5, 11, 630 N.E.2d 313, 317-318 (1994)). And, therefore, the implementation of a PUD “by approving the final development plan,” is a legislative act, *i.e.*, it is not a quasi-judicial action. *Id.* at 137; accord *Dittmer v. City of Lorain*, 2003-Ohio-2340 ¶ (9th Dist.)(in considering whether the “approval of the final development plans for [a PUD] was a legislative act, a judicial act, or a quasi-judicial act,” concluding that, based on *Crossman Communities* and *Peachtree Development Co. v. Paul*, 67 Ohio St.2d 345, 423 N.E.2d 1087 (1981), such action was legislative and, therefore, not subject to administrative appeal pursuant to R.C. Chapter 2506).

Thus, case law clearly establishes that approval of a final development plan by a

municipality is a legislative act, not a quasi-judicial act. Such binding precedent only further reinforces that the conduct of the CINCINNATI PLANNING COMMISSION in considering and ultimately approving the final development plan for 2323 Ferguson Road was *not* quasi-judicial and, thus, simply declaring it to be so was not sufficient for the executive session held during the meeting on June 6, 2026. Such action was legislative and, therefore, the conduct of the COMMISSION and the COMMISSION MEMBERS thereon was subject to the OMA. And the executive session held during that meeting clearly did not comply with the requirements of R.C. 121.22(G).

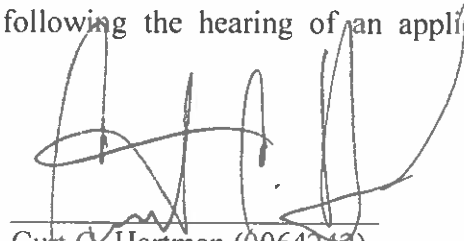
Based on the foregoing, Plaintiff has demonstrated a substantial likelihood of success on the merits to support issuance of the requested preliminary injunction.

Irreparable Injury. The OMA expressly provides that, upon the establishment of any violation or threatened violation of the OMA, “[i]rreparable harm and prejudice to the party that sought the injunction shall be conclusively and irrebuttably presumed” R.C. 121.22(I)(3). Thus, this preliminary-injunction factor is tied directly to the factor that considers substantial likelihood of success and, once the latter is established, the former also is met.

Harm to Third Parties / Public Interest. The third and fourth factors are related in that, while “[e]nforcement [of the OMA] occurs through private suits,” *Ames v. Rootstown Twp. Bd. of Trs.*, 172 Ohio St. 3d 1, 221 N.E.3d 793, 2022-Ohio-4605 ¶1, the inherent nature of the actions under the OMA is to vindicate the public interest with the plaintiff functioning as a private attorney general. Additionally, regardless of the impact on third parties, it is always in the public interest to ensure adherence and compliance to the law by public officials.

Based upon the foregoing, especially the readily-apparent violation of the OMA by the

COMMISSION MEMBERS, the preliminary-injunction factors weigh strongly in the issuance of a temporary restraining order/preliminary injunction so as to preclude the CITY OF CINCINNATI, including the CINCINNATI PLANNING COMMISSION, from taken any action to implement the approval of the final development plan for the real property at 2323 Ferguson Road granted by the CINCINNATI PLANNING COMMISSION at its meeting on June 5, 2026, or to otherwise treat or consider said approval as final and validity granted. Plaintiff retains the right to supplement the foregoing arguments following the hearing of an application for a preliminary injunction.



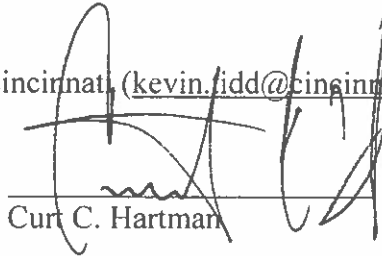
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was or will be served on the following on the date of filing via email:

Kevin Tidd, Assistant Solicitor, City of Cincinnati, (kevin.tidd@cincinnati-oh.gov)


Curt C. Hartman