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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LEHMAN INVESTMENT COMPANY, LLC,

Appellant,

Circuit Court Appeal No. 21-186123-AA

v.

Agency Case No. 17-024366-REM

CITY OF THE VILLAGE OF CLARKSTON, a
Municipal Corporation and its Historic
District Commission,

Appellee.

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**APPELLEE’S BRIEF IN OPPOSITION TO APPELLANT’S MOTION FOR
MISCELLANEOUS RELIEF**

NOW COMES Appellee, City of the Village of Clarkston, a municipal Corporation and its Historic District Commission, by and through its attorney, Thomas J. Ryan, P.C., and for its Brief in Opposition to Appellee’s Motion for Miscellaneous Relief and states as follows:

The request by Appellant to amend this proceeding with the addition of alleged “new evidence” is simply legally untenable on many levels.

1. Procedure. Basically, the Appellant is requesting this Honorable Court to allow it to proceed with a whole new cause of action based upon the Notice to Proceed statute, MCL 399.205(6)(A)(C), wherein the record below and all the proceedings included in the record

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below involved, MCL 399.205(6)(D).

The Appellant is further hampered by its own acknowledgement of the Administrative Procedures Act, MCL 24.305, that additional evidence may be presented when "...the court shall order the taking of additional evidence before the agency on such conditions as the court deems proper." Continuing, "...the agency may modify its findings, decision or order because of the additional evidence and shall file with the court the additional evidence and any new findings, decision or order, which shall become part of the record." (Emphasis added)

Because this is an appeal under the Administrative Procedures Act, and a decision made by the State Historical Preservation Review Board, this court does not exercise original jurisdiction, but only reviews the record produced to the court from the administrative agency below. At the very least, since this is a brand new position and argument by Appellant, the matter would have to be remanded to the Historical District Commission for the City of the Village of Clarkston for initial review and then proceed through the administrative process to the hearing officer as determined by the State Historical Preservation Review Board. In Appellee's view the Appellant can't short circuit the administrative process in spite of its displeasure with the process to date.

2. Substance. The Appellant is attempting to proffer to this court an alleged legal duty on behalf of Clarkston to have provided information regarding this property to the Purchaser/Appellant. The Appellant cites no law indicating such a legal obligation for there is none. Further, it is more telling in this filing of this motion the Appellant/Purchaser alleges that the information given by the seller of the property in this private transaction did not fully disclose the nature of the structural problem with the property in question. The information in the possession of the City regarding the prior lawsuit in 2009 with the Seller to Appellant was publicly available to Appellant based upon the Settlement Agreement reached between the City and the owner of the property at that time.

Further, the Appellant/Purchaser indicates in their motion that they knew of the cracks and viewed the cracks, but apparently took no further action or any due diligence to determine the extent or nature of these cracks.

Under the circumstances, the Appellant/Purchaser, now owner of the property, should either look to the seller of the property for any improper disclosure or failure to disclose, or should look in the mirror to determine why it did not act upon information it had at the time of the sale.

To attempt to foist on the City some legal obligation and attempt to short circuit the administrative procedure process by having this court allow new evidence and make a ruling based on that new evidence, is not allowed by law, equity or good conscience.

WHEREFORE, Appellee prays that Appellant's Motion be denied.

Respectfully submitted,

BY: Thomas J. Ryan

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Dated: January 20, 2022

Proof of Service

I hereby certify that on January 20, 2022, I electronically filed the foregoing document with the Clerk of the Court using the MiFile System, which will send notification to such filing to the attorney(s) of record.

/s/ Kelly Nesbitt

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