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CUYAHOGA COUNTY CLERK OF COURTS
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Cleveland, Ohio 44113

Court of Appeals

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By: ROBERT E. CAHILL 0072918

Confirmation Nbr. 890950

MICHAEL J. SKINDELL

CA 15 103976

vs.

MARY LOUISE MADIGAN, ET AL.

Judge:

Pages Filed: 29

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

MICHAEL J. SKINDELL,	)	
	)	CASE NO. CA-15-103976
Plaintiff/Appellant,	)	
	)	
v.	)	
	)	On Appeal from Cuyahoga County
MARY LOUISE MADIGAN, et al.,	)	Court of Common Pleas
	)	Case No. CV-15-855961
Defendants/Appellees.	)	
	)	

APPELLEES' MOTION TO DISMISS

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APPELLEES' MOTION TO DISMISS

NOW COME Appellees Mary Louise Madigan, Ryan Nowlin, David W. Anderson, Thomas R. Bullock III, Shawn Juris, Cindy Marx, Samuel T. O'Leary, Lakewood City Council, and the City of Lakewood, by and through counsel, and hereby move to dismiss this appeal because it is moot. The relief sought by Appellant to enjoin "City Council from formally acting on Ordinance 49-15 and the agreement to close Lakewood Hospital or any substantially similar ordinance or agreement" (R. 1, pg. 29) cannot be granted because Ordinance 49-15 was enacted on December 21, 2015, the City and the parties to the Master Agreement have been performing under the agreement, and Lakewood Hospital has been closed for in-patient care since February 6, 2016. As such, the Appellants cannot obtain the relief they seek because what they sought to enjoin has already transpired and this appeal should be dismissed as moot.

I. FACTS¹

On December 21, 2015, Lakewood City Council enacted Ordinance 49-15, which authorized the City of Lakewood to enter into the Master Agreement with the Cleveland Clinic

¹ Appellees have supplemented the record by attaching affidavits from the City of Lakewood's Finance Director, Jennifer Pae, the City of Lakewood's Senior City Planner, Bryce Sylvester, the President of the Cleveland Clinic Regional Hospitals and Family Health Centers, Dr. J. Stephen Jones, and the City of Lakewood's Fire Chief, Scott K. Gilman. "Normally, an appellate court can only consider what is in the record on appeal. When it comes to deciding whether an event has caused an issue to be moot, however, it may 'be proved by extrinsic evidence outside the record.'" *Gajewski v. Board of Zoning Appeals*, 8th Dist. Cuyahoga No. 91101, 2008 Ohio 5270, ¶ 14 quoting *State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info. Network, Inc. v. Dupuis*, 98 Ohio St.3d 126, 2002 Ohio 7041, 781 N.E.2d 163, ¶ 8.

Foundation (“CCF”) and Lakewood Hospital Association (“LHA”). ¶¶ 2 and 3 of the affidavit of Jennifer Pae, which is attached as Exhibit A (hereafter referred to as “Pae Affidavit”). Per the terms of the Master Agreement, Lakewood Hospital would cease providing in-patient care, properties would be sold and transferred, monies would be exchanged, the professional office building and garage on the southwest corner of Belle and Detroit would be demolished, and CCF would construct a new \$34,000,000 Family Health Center and garage on the southwest corner of Belle and Detroit. R. 20. Since December 21, 2015, the parties have been performing under the Master Agreement and have already accomplished the following closure of the hospital to in-patient care, transfer of monies, and transfer of properties, and have commenced demolition of buildings as set forth below.

A. Closure of Lakewood Hospital

1. On February 6, 2016, Lakewood Hospital ceased providing in-patient care and was closed, except for a small part of the building which provides emergency service and certain out-patient medical services. ¶ 4 of the affidavit of the President of the Cleveland Clinic Regional Hospitals and Family Health Centers, Dr. J. Stephen Jones, which is attached as Exhibit B (hereinafter referred to as “Jones Affidavit”).
2. Closing a hospital is a complex process that involves coordinating patient care while transitioning doctors and staff to other employment, notifying regulatory bodies, terminating vendor contracts, and responsibly disposing of real estate. Jones Affidavit, ¶ 5. These tasks have been undertaken with care and already have been completed. Jones Affidavit, ¶ 5.

3. The provider agreement between Lakewood Hospital and the Centers for Medicare and Medicaid Services (“CMS”) has been terminated. Jones Affidavit, ¶ 6. As a consequence, Medicare and Medicaid coverage is no longer available for patients at Lakewood Hospital. Jones Affidavit, ¶ 6. It would be extremely difficult for Lakewood Hospital to meet the current CMS requirements. Jones Affidavit, ¶ 6.
4. Contracts between Lakewood Hospital and commercial payors (insurance companies) have been terminated. Jones Affidavit, ¶ 7. It would be extremely unlikely that new payor contracts could be negotiated in light of the status of the facilities and lack of accreditation by a recognized agency like The Joint Commission. Jones Affidavit, ¶ 7.
5. Contracts between Lakewood Hospital and its suppliers have all been cancelled. Jones Affidavit, ¶ 8.
6. Lakewood Hospital currently has no employees. Jones Affidavit, ¶ 9. Its former employees have moved to new employment opportunities or retired. Jones Affidavit, ¶ 9.
7. Many of the physicians who provided services at Lakewood Hospital provided services pursuant to contracts. Jones Affidavit, ¶ 10. Those contracts have all been terminated or amended to provide for the provision of services elsewhere. Jones Affidavit, ¶ 10.
8. Certain independent physicians who provided services at Lakewood Hospital maintained private offices in the Professional Office Building located adjacent to the former hospital. Jones Affidavit, ¶ 11. The building has undergone asbestos

abatement and is in the process of being demolished. Jones Affidavit, ¶11. It is not suitable for the restoration of physician offices. Jones Affidavit, ¶ 11.

9. Equipment, furniture, and other items that were necessary to the provision of in-patient services at Lakewood Hospital are no longer available for use. Jones Affidavit, ¶ 12. Disposition of these items was provided for in the agreement reached between the City, LHA, and the Clinic, and that process has been or is nearly completed. Jones Affidavit, ¶ 12.
10. The former hospital building itself has been secured to ensure that the portions of the building that are no longer being used do not create safety hazards. Jones Affidavit, ¶ 13. Steps were taken to ensure appropriate management of the facilities to allow for the operation of the emergency department and out-patient services while closing off unused portions of the building, including heating and air conditioning facilities. Jones Affidavit, ¶ 13.
11. Lakewood Hospital cannot be restored to its prior status as a fully operational hospital. Jones Affidavit, ¶ 14. Reopening the in-patient hospital could not be accomplished without seriously compromising the health and safety of patients, especially considering that the entire hospital staff has departed for other employment. Jones Affidavit, ¶ 14.

B. Transfer of Monies

1. On December 31, 2015, the City received \$6,644,731 (\$6,800,000 payment less title and closing costs) of the total \$8,200,000 required to be paid by the Master Agreement from CCF for the sale of LHA's property at 850 Columbia Road, Westlake, Ohio to CCF. Pae Affidavit, ¶ 4. The remaining \$1.4 million will be

paid to the City by CCF when the new Family Health Center (“FHC”) opens on the southwest corner of Belle and Detroit. Pae Affidavit, ¶ 4.

2. On February 22, 2016, \$500,000 (of the total \$7,000,000 required to be paid by the Master Agreement) was paid to the City by CCF for demolition and/or rehabilitation of the current Lakewood Hospital site (the southeast corner of Belle and Detroit) to be used at the City’s sole discretion. The remaining \$6,500,000 will be paid by CCF when the FHC opens. Pae Affidavit, ¶ 5.
3. On February 22, 2016, the City received \$1,557,083.89 (the appraised fair market value of \$1,576,000.00 less closing costs) from CCF for the sale of the land on the southwest corner of Belle and Detroit on which the parking garage and professional office building resided and on which the new FHC and garage will be built. Pae Affidavit, ¶ 6.
4. On February 23, 2016, the City paid \$1 to LHA for the Curtis Block building (permanent parcel number 314-07-007) and three residential homes that were owned by LHA (permanent parcel numbers 314-04-042, 314-04-030, and 314-04-034). Pae Affidavit, ¶ 7.
5. On March 31, 2016 and June 30, 2016, CCF and/or LHA made payments of \$383,333.33 to the City under the modified 1996 Lease of Lakewood Hospital to LHA. In addition to the \$766,666.66 already paid, CCF and/or LHA are required by the Master Agreement to pay to the City up to another \$2,120,833.34 through June 30, 2018. Pae Affidavit, ¶ 8.
6. On March 1, 2016, \$200,000 was paid by CCF to the City to begin the process of forming a new community wellness foundation. The Master Agreement requires

an additional \$32,200,000 be paid to the City by CCF for the community wellness foundation in various installments over 15 years commencing when the FHC opens. Pae Affidavit, ¶ 9.

7. To date, the City of Lakewood has received a total of \$9,668,481.55 in payments from CCF and/or LHA as a result of entering into the Master Agreement. Pae Affidavit, ¶ 10.
8. The Master Agreement requires that CCF and/or LHA make additional payments to and/or for the benefit of the City totaling \$42,220,833.34. Pae Affidavit, ¶ 11.
9. The total payments and/or benefits provided to the City by CCF and/or LHA's payments as a result of the Master Agreement will total \$51,889,314.89. Pae Affidavit, ¶ 12.

C. Transfer of Properties

1. On December 21, 2015, LHA's leasehold of seven homes was terminated and the City regained control over those homes (permanent parcel numbers 314-04-045, 314-04-044, 314-04-043, 314-04-041, 314-04-029, 314-04-031, and 314-04-033). ¶ 4 of the affidavit of the City of Lakewood's Senior City Planner Bryce Sylvester, which is attached as Exhibit C (hereafter referred to as "Sylvester Affidavit").
2. On December 31, 2015, LHA sold the 850 Columbia Road, Westlake, Ohio property to CCF and the proceeds of the sale were paid to the City, with some additional proceeds to be paid later. Sylvester Affidavit, ¶ 5.
3. On February 19, 2016, the City sold the land on the southwest corner of Belle and Detroit on which the parking garage and professional office building resided

(including some or all of permanent parcel numbers 314-04,001, 314-04-054, 314-04-053, 314-04-052, 314-04-051, 315-04-050, 314-04-002, 314-04-055, 314-04-003, and 314-04-025) to CCF. Sylvester Affidavit, ¶ 6.

4. On February 23, 2016, LHA conveyed by deed the Curtis Block building (permanent parcel number 314-07-007) and three homes (permanent parcel numbers 314-04-042, 314-04-030, and 314-04,034) to the City. Sylvester Affidavit, ¶ 7.
5. To date and as a result of the Master Agreement, the City of Lakewood has purchased one commercial building and three homes, has regained control over seven homes on which the leasehold was canceled, and has received the proceeds of a sale of LHA's property located in Westlake to CCF. Sylvester Affidavit, ¶ 8. The City has also sold a number of parcels to CCF upon which CCF's new FHC and garage will be built. Sylvester Affidavit, ¶ 8.

D. Construction of New FHC and Demolition of Buildings

1. CCF will construct a new \$34,000,000.00 Family Health Center across the street from the current Lakewood Hospital site with a new emergency room that will operate at a level of service generally consistent with or greater than the level of service that is being offered at Lakewood Hospital's existing emergency room. R. 20, ¶2.1(a) and ¶2.4.
2. After extensive discussion at public meetings held on May 5, May 12, June 2, June 9, July 7, and July 14, 2016, the new FHC and garage were approved by the City's architectural board of review. Sylvester Affidavit, ¶ 10.

3. On September 16, 2016, the City issued a permit to CCF for the demolition of the professional office building and garage that reside on the southwest corner of Belle and Detroit. Sylvester Affidavit, ¶ 11.
4. The professional office building has undergone asbestos abatement and is in the process of being demolished. Jones Affidavit, ¶11 and the affidavit of the City of Lakewood's Fire Chief, Scott K. Gilman (hereinafter referred to as "Gilman Affidavit"), Gilman Exhibits 2, 3, and 4.
5. Demolition of the garage began on October 24, 2016. Gilman Affidavit, ¶ 3 and Gilman Exhibit 1.

II. LAW AND ARGUMENT

For at least more than a century, Ohio courts have refrained from deciding moot cases. In *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21 (1910), the Supreme Court held:

The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it. It necessarily follows that when, pending an appeal from the judgment of a lower court, and without any fault of the defendant, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. And such a fact, when not appearing on the record, may be proved by extrinsic evidence.

Miner at 238-239 quoting *Mills v. Green*, 159 U.S. 651, 653 (1895).

The relief sought by Appellants to enjoin "City Council from formally acting on Ordinance 49-15 and the agreement to close Lakewood Hospital or any substantially similar ordinance or agreement" (R. 1, pg. 29) cannot be carried into effect because the City adopted

Ordinance 49-15, the City entered into the Master Agreement, and the parties to the Master Agreement have been performing under that agreement for the last ten months.

As a result of entering into the Master Agreement, all of the following have occurred:

- On February 6, 2016, Lakewood Hospital ceased providing in-patient care and closed, except for a small part of the building which provides emergency service and certain out-patient medical services. Jones Affidavit, ¶ 4.
- Lakewood Hospital's agreements with Medicare and Medicaid and insurance companies have been terminated. Jones Affidavit, ¶¶ 6 and 7.
- Lakewood Hospital no longer has employees because they were transferred or retired. Jones Affidavit, ¶ 9.
- Lakewood Hospital's physicians have been moved elsewhere or had their contracts terminated and the independent physicians are no longer able to use the professional office building which is in the process of being demolished. Jones Affidavit, ¶¶ 10 and 11.
- Equipment, furniture, and other items that were necessary to the provision of in-patient services at Lakewood Hospital are no longer available. Jones Affidavit, ¶ 12.
- Lakewood Hospital cannot be restored to its prior status as a fully operational hospital. Jones Affidavit, ¶ 14.
- The City of Lakewood has thus far received a total of \$9,668,481.55 in payments from CCF and/or LHA. Pae Affidavit, ¶ 10.
- The City of Lakewood has purchased one commercial building and three homes, has regained control over seven homes on which the leasehold was canceled, has

received the proceeds of a sale of LHA's property located in Westlake to CCF, and has also sold a number of parcels to CCF upon which CCF's new FHC and garage will be built. Sylvester Affidavit, ¶ 8.

In addition to the closure of Lakewood Hospital for in-patient care over eight months ago and the inability to restore Lakewood Hospital to a fully operational hospital, the nearly \$9.7 million the City has received to date, and numerous real estate transactions, this case is also moot because Appellants failed to obtain a stay of the execution of the trial court's ruling and demolition of the buildings upon which the new Family Health Center will be constructed has already commenced.

In *Ardire v. City of Westlake City Council*, 8th Dist. Cuyahoga No. 99347, 2013 Ohio 3533, ¶ 4, this Court held that:

In construction cases, the courts have held that “where an appeal involves the construction of a building or buildings and the appellant fails to obtain a stay of execution of the trial court's ruling and **construction commences**, the appeal is rendered moot.” *Schuster v. Avon Lake*, 9th Dist. Lorain No. 03CA008271, 2003 Ohio 6587, ¶ 8.

Ardire at ¶ 4; emphasis added. See also *Gajewski v. Board of Zoning Appeals*, 8th Dist. Cuyahoga No. 91101, 2008 Ohio 5270, ¶¶ 14 and 18 and *Pinkney v. Southwick Investments, L.L.C.*, 8th Dist. Cuyahoga Nos. 85074 and 85075, 2005 Ohio 4167, ¶ 14.

In this case, Appellant failed to obtain a stay of the execution of the trial court's ruling. Appellant did not seek an injunction to stop the performance of the Master Agreement authorized by Ordinance 49-15 in this Court pursuant to App.R. 7(A). Appellant did not even attempt to have this appeal assigned to the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1, which may have enabled this appeal to be heard before construction commenced.

Construction of the new Family Health Center has commenced. The professional office building has undergone asbestos abatement and is in the process of being demolished. Jones Affidavit, ¶11 and Gilman Affidavit, Gilman Exhibits 2, 3, and 4. Demolition of the garage began on October 24, 2016. Gilman Affidavit, ¶3 and Gilman Exhibit 1. The first step in constructing any new structure on an already built site is demolition of those existing structures. Thus, construction has commenced and this appeal has been rendered moot.

III. CONCLUSION

The parties to the Master Agreement have been performing under the agreement for the last ten months. Lakewood Hospital has been closed to in-patient care for over eight months and cannot be restored to its prior status as a fully operational hospital. Millions of dollars and numerous properties have exchanged hands. The demolition of the buildings upon which the new Family Health Center will be constructed has already commenced. Simply put, Appellant cannot obtain the relief he seeks because what he sought to enjoin has already transpired.

For all the foregoing reasons, this appeal should be dismissed because it is moot.

Respectfully submitted,

s/Kevin M. Butler

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Attorneys for Defendants/Appellees Mary Louise Madigan, Ryan Nowlin, David W. Anderson, Thomas R. Bullock III, Shawn Juris, Cindy Marx, Samuel T. O'Leary, Lakewood City Council, and The City of Lakewood, Ohio

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2016, the foregoing Appellees' Motion to Dismiss was electronically filed with the Clerk of the Court using the Court's Electronic Filing system which will send notification of to each party to this action. In addition, the following have been served with this motion via e-mail:

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Counsel for Plaintiff/Appellant Michael Skindell

s/Robert E. Cahill

ROBERT E. CAHILL (0072918)

MICHAEL J. SKINDELL,	)	
	)	CASE NO. CA-15-103976
Plaintiff/Appellant,	)	
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v.	)	
	)	On Appeal from Cuyahoga County
MARY LOUISE MADIGAN, et al.,	)	Court of Common Pleas
	)	Case No. CV-15-855961
Defendants/Appellees.	)	
	)	

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

1. I am the Finance Director for the City of Lakewood and have served the City in that capacity since February 6, 2006.
2. As part of my duties as Finance Director, I am aware of the financial transactions that have occurred and will occur as a result of the passage of Ordinance 49-15 on December 21, 2015, which authorized the City to enter into the Master Agreement

with the Cleveland Clinic Foundation (“CCF”) and Lakewood Hospital Association (“LHA”).

3. The City entered into the Master Agreement with CCF and LHA on December 21, 2015 after the passage of Ordinance 49-15.
4. On December 31, 2015, the City received \$6,644,731 (\$6,800,000 payment less title and closing costs) of the total \$8,200,000 required to be paid by the Master Agreement from CCF for the sale of LHA’s property at 850 Columbia Road, Westlake, Ohio to CCF. The remaining \$1.4 million will be paid to the City by CCF when the new Family Health Center (“FHC”) opens on the southwest corner of Belle and Detroit.
5. On February 22, 2016, \$500,000 (of the total \$7,000,000.00 required to be paid by the Master Agreement) was paid to the City by CCF for demolition and/or rehabilitation of the current Lakewood Hospital site (the southeast corner of Belle and Detroit) to be used at the City’s sole discretion. The remaining \$6,500,000 will be paid by CCF when the FHC opens.
6. On February 22, 2016, the City received \$1,557,083.89 (the appraised fair market value of \$1,576,000.00 less closing costs) from CCF for the sale of the land on the southwest corner of Bell and Detroit on which the parking garage and professional office building resided and on which the new FHC and garage will be built.
7. On February 23, 2016, the City paid \$1 to LHA for the Curtis Block building (permanent parcel number 314-07-007) and three residential homes that were owned by LHA (permanent parcel numbers 314-04-042, 314-04-030, and 314-04-034).

8. On March 31, 2016 and June 30, 2016, CCF and/or LHA made payments of \$383,333.33 to the City under the modified 1996 Lease of Lakewood Hospital to LHA. In addition to the \$766,666.66 already paid, CCF and/or LHA are required by the Master Agreement to pay to the City up to another \$2,120,833.34 through June 30, 2018.
9. On March 1, 2016, \$200,000 was paid by CCF to the City to begin the process of forming a new community wellness foundation. The Master Agreement requires an additional \$32,200,000 be paid to the City by CCF for the community wellness foundation in various installments over 15 years commencing when the FHC opens.
10. To date, the City of Lakewood has received a total of \$9,668,481.55 in payments from CCF and/or LHA as a result of entering into the Master Agreement.
11. The Master Agreement requires that CCF and/or LHA make additional payments to the City totaling \$42,220,833.34.
12. The total cash payments that the City will receive from CCF and/or LHA as a result of the Master Agreement will total \$51,889,314.89.

FURTHER AFFIANT SAYETH NAUGHT.


JENNIFER PAE

SWORN TO AND SUBSCRIBED before me and in my presence this 13 day of October, 2016.

**KEVIN M. BUTLER, ATTORNEY
NOTARY PUBLIC • STATE OF OHIO
My commission has no expiration date
Section 147.03 O.R.C.**


NOTARY PUBLIC

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

MICHAEL J. SKINDELL,	)	
	)	CASE NO. CA-15-103976
Plaintiff/Appellant,	)	
	)	
v.	)	
	)	On Appeal from Cuyahoga County
MARY LOUISE MADIGAN, et al.,	)	Court of Common Pleas
	)	Case No. CV-15-855961
Defendants/Appellees.	)	
	)	

AFFIDAVIT OF DR. J. STEPHEN JONES

STATE OF OHIO	)
	) SS:
COUNTY OF CUYAHOGA	)

Dr. J. Stephen Jones, being first duly sworn according to law, states as follows:

1. I, Dr. J. Stephen Jones, am a physician employed by The Cleveland Clinic Foundation (the "Clinic"). I have been employed at the Clinic since 2000. I am currently the President of the Cleveland Clinic Regional Hospitals and Family Health Centers. Lakewood Hospital was one of the Cleveland Clinic Regional Hospitals over which I had responsibility, until it closed earlier this year. I have personal knowledge of the facts stated herein and am competent to testify.

2. Lakewood Hospital was a community hospital located in Lakewood, Ohio, that was governed by the Lakewood Hospital Association ("LHA"). LHA contracted with the Clinic to provide medical services and management at Lakewood Hospital in 1996.

3. Over the past several years, Lakewood Hospital's patient volumes declined as the demand for inpatient services at community hospitals declined. Lakewood Hospital was faced with financial challenges, which were discussed among the LHA Board of Trustees and the City of Lakewood over the last several years.

4. That process continued through 2014 and 2015, during which experts were consulted, extensive review was undertaken, and City Council publicly deliberated over potential options. The process culminated in an agreement to transition to an outpatient model of care and close Lakewood Hospital. Consistent with that agreement, Lakewood Hospital's inpatient operations were terminated on February 6, 2016 and Lakewood Hospital was closed. A small part of the building remains open for the provision of emergency services and certain outpatient medical services. These operations will be transferred to a new facility, once construction of that facility is completed.

5. Closing a hospital is a complex process that involves coordinating patient care while transitioning doctors and staff to other employment, notifying regulatory bodies, terminating vendor contracts, and responsibly disposing of real estate. These tasks have been undertaken with care and already have been completed.

6. The provider agreement between Lakewood Hospital and the Centers for Medicare and Medicaid Services ("CMS") has been terminated. As a consequence, Medicare and Medicaid coverage is no longer available for patients at Lakewood Hospital. In addition, lack of a valid provider agreement means that it is no longer CMS accredited by a recognized agency like The Joint Commission.

7. Contracts between Lakewood Hospital and commercial payors (insurance companies) have been terminated. It would be extremely unlikely that new payor contracts

could be negotiated in light of the status of the facilities and lack of accreditation by a recognized agency like The Joint Commission.

8. Contracts between Lakewood Hospital and its suppliers have all been cancelled.

9. Lakewood Hospital currently has no employees. Its former employees have moved to new employment opportunities or retired.

10. Many of the physicians who provided services at Lakewood Hospital provided services pursuant to contracts. Those contracts have all been terminated or amended to provide for the provision of services elsewhere.

11. Certain independent physicians who provided services at Lakewood Hospital maintained private offices in the Professional Office Building located adjacent to the former hospital. The building has undergone asbestos abatement and is in the process of being demolished. It is not suitable for the restoration of physician offices.

12. Equipment, furniture, and other items that were necessary to the provision of inpatient services in Lakewood Hospital are no longer available for use. Disposition of these items was provided for in the agreement reached between the City, LHA, and the Clinic, and that process has been or is nearly completed.

13. The former hospital building itself has been secured to ensure that the portions of the building that are no longer being used do not create safety hazards. Steps were taken to ensure appropriate management of the facilities to allow for the operation of the aforementioned emergency department and outpatient services while closing off unused portions of the building, including heating and air conditioning facilities.

14. I do not believe that Lakewood Hospital currently could be restored to its prior status as a fully operational hospital. Moreover, the health and safety of patients would

Further affiant sayeth naught, this 24 day of October, 2016.


J. Stephen Jones, M.D.

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) SS.

Subscribed and sworn to before me
this 24th day of October, 2016.



Notary Public

My Commission Expires: 4/28/19



PATRICIA K. BUTLER
NOTARY PUBLIC
STATE OF OHIO
My Commission Expires
April 28, 2019

MICHAEL J. SKINDELL,	)	
	)	CASE NO. CA-15-103976
Plaintiff/Appellant,	)	
	)	
v.	)	
	)	On Appeal from Cuyahoga County
MARY LOUISE MADIGAN, et al.,	)	Court of Common Pleas
	)	Case No. CV-15-855961
Defendants/Appellees.	)	
	)	

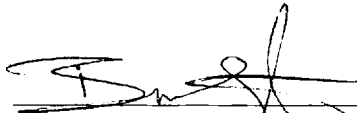
STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

1. I am the Senior City Planner for the City of Lakewood and have served the City in that capacity since February 2016, and have served in the department as a Planning Official since 2012.
2. As part of my duties as Senior City Planner, I am aware of the real estate transactions that have occurred as a result of the passage of Ordinance 49-15 on December 21,

- 2015, which authorized the City to enter into the Master Agreement with the Cleveland Clinic Foundation (“CCF”) and Lakewood Hospital Association (“LHA”).
3. The City entered into the Master Agreement with CCF and LHA on December 21, 2015 after the passage of Ordinance 49-15.
 4. On December 21, 2015, LHA’s leasehold of seven homes was terminated and the City regained control over those homes (permanent parcel numbers 314-04-045, 314-04-044, 314-04-043, 314-04-041, 314-04-029, 314-04-031, and 314-04-033).
 5. On December 31, 2015, LHA sold the 850 Columbia Road, Westlake, Ohio property to CCF and the proceeds of the sale were paid and/or will be paid to the City.
 6. On February 19, 2016, the City sold the land on the southwest corner of Belle and Detroit on which the parking garage and professional office building resided (including some or all of permanent parcel numbers 314-04,001, 314-04-054, 314-04-053, 314-04-052, 314-04-051, 315-04-050, 314-04-002, 314-04-055, 314-04-003, and 314-04-025) to CCF.
 7. On February 23, 2016, LHA conveyed by deed the Curtis Block building (permanent parcel number 314-07-007) and three homes (permanent parcel numbers 314-04-042, 314-04-030, and 314-04,034) to the City.
 8. To date and as a result of the Master Agreement, the City of Lakewood has purchased one commercial building and three homes, has regained control over seven homes on which the leasehold was canceled, and has received the proceeds of a sale of LHA’s property located in Westlake to CCF. The City has also sold a number of parcels to CCF upon which CCF’s new FHC and garage will be built.

9. As part of my duties as Senior City Planner, I am also aware of the status of the construction of CCF's new Family Health Center ("FHC") and garage that will be built on the southwest corner of Belle and Detroit.
10. After extensive discussion at public meetings held on May 5, May 12, June 2, June 9, July 7, and July 14, 2016, the new FHC and garage were approved by the City's architectural board of review.
11. On September 16, 2016, the City issued a permit to CCF for the demolition of the professional office building and garage that reside on the southwest corner of Belle and Detroit.
12. The first step of demolition of the professional office building – interior asbestos abatement – has been underway since September 16, 2016.
13. Demolition of the garage will begin on October 24, 2016.

FURTHER AFFIANT SAYETH NAUGHT.


BRYCE SYLVESTER

SWORN TO AND SUBSCRIBED before me and in my presence this 14 day of October,
2016.


NOTARY PUBLIC



JOHANNA SCHWARZ
Notary Public, State of Ohio
Cuyahoga County
My Commission Expires
February 24, 2020

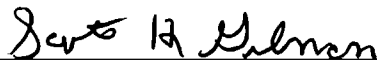
MICHAEL J. SKINDELL,	)	
	)	CASE NO. CA-15-103976
Plaintiff/Appellant,	)	
	)	
v.	)	
	)	On Appeal from Cuyahoga County
MARY LOUISE MADIGAN, et al.,	)	Court of Common Pleas
	)	Case No. CV-15-855961
Defendants/Appellees.	)	
	)	

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

1. I am the Fire Chief for the City of Lakewood's Division of Fire and have served the City in that capacity since 2011.
2. As part of my duties as Fire Chief, I am monitoring the demolition of the professional office building and parking garage on the southwest corner of Belle and Detroit.
3. Demolition of the parking garage began on October 24, 2016.

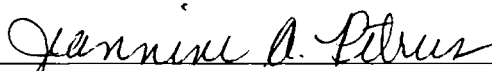
4. A photograph, which fairly and accurately depicts the progress of demolition to the west side of the parking garage on the morning of October 24, 2016, is attached as Gilman Exhibit 1.
5. Demolition of the interior of the professional office building began on or about September 16, 2016.
6. Photographs, which fairly and accurately depict the progress of demolition to the interior of the professional office building as of October 24, 2016, are attached as Gilman Exhibits 2, 3 and 4.

FURTHER AFFIANT SAYETH NAUGHT.

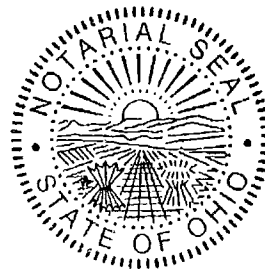


SCOTT K. GILMAN

SWORN TO AND SUBSCRIBED before me and in my presence this 24th day of October, 2016.



NOTARY PUBLIC



JEANNINE A. PETRUS
NOTARY PUBLIC
STATE OF OHIO
Recorded in
Cuyahoga County
My Comm. Exp. 1/22/17



Gilman Exhibit 1



Electronically Filed 10/27/20 8:15:29 / MOTION / CA 15 103976 / Confirmation Nbr. 890950 / CLEJL

Gilman Exhibit 2





Gilman Exhibit 4