

**Montgomery County Land Reutilization Corporation (MCLRC)**  
**Annual Board Meeting**  
July 19, 2022

**Attendees:** Sheila Crane, Realtor/Community Dev. Specialist, HER Realtors (Vice-Chair of the Board)  
John McManus, Montgomery County Treasurer (Board Member)  
Todd Kinskey, Director of Plan. & Comm. Dev., City of Dayton (Board Member)  
Joanna White, Commission Aide to Judy Dodge (Commission Representative)  
Mike Grauwelman, MCLRC (Executive Director)  
David Williamson, MCLRC (General Counsel)  
Darren Andrews, Dir. of Finance, Treasurer's Office (Treasurer)  
Angela Lilly, Montgomery County Treasurer's Office (Secretary)  
Cory Frolik, Reporter, Dayton Daily News

**Absent:** Carolyn Rice, Montgomery County Commissioner (Chair of the Board)  
**(Copies To)** Sharon Lowry, Trustee, Washington Township (Board Member)

### **Call to Order**

Sheila Crane, Vice-Chair of the Board, noting a quorum, called the meeting to order. A copy of the agenda is attached for reference.

### **Approval of Minutes**

John McManus moved to approve the June 21, 2022, Board meeting minutes. The motion was seconded by Todd Kinskey and approved unanimously by voice vote.

### **New Business – Item No. 1: Board Appointment**

Due to scheduling conflicts, John Lumpkin elected to resign from the Board. After reviewing suggested replacements, the Steering Committee recommended appointing Brian Sharp to the Board. Brian is Director of Market Development with Berkshire Hathaway HomeServices, is a realtor, and meets the statutory requirements required for the position. John McManus moved to appoint Brian Sharp to the Land Bank Board. The motion was seconded by Todd Kinskey and approved unanimously by voice vote.

### **Monthly Financials**

The numbers are consistent, with the most significant variance coming from the legal consulting line, which is typical. The DIY program has approximately \$80K in expenditures which is higher than normal due to pre-sale improvement costs. Inventory is low, so we have been pulling from the City of Dayton forfeitures. These properties require more work to prepare them for the program. On the revenue side, there has been a loss of approximately \$15,000, which is the cost of one demolition. If four or five houses are renovated with a loss of \$15K, the net effect is a positive for the program and community. The Commercial program has \$27K in expenses, mostly tied to costs associated with 34 N. Main Street.

The Land Banking program has high revenue due to the repayment of funds from the City of West Carrollton from Phase I environmental work. The ODOD demolition line item reflects costs for environmental surveys being completed on properties to prepare them for demolition. The first demolition contract for seven units was signed today. TFAP has 35 properties in the BOR system, with hearings scheduled to resume on July 29, 2022. There is \$70K in deferred revenue waiting on those properties to come through the system. The cash balance after financial commitments and obligations is approximately \$5.7 million.

### **ODOD Site Revitalization Program Award**

ODOD announced that the Land Bank would receive \$500,000 and, within the next two months, will complete evaluations and determine additional awards regarding the original \$14.5M requested. The funding lookback date is January 1, 2022, for reimbursement of expenditures associated with properties approved for the program. In addition, legal assistance to the more rural townships that would like to remove nuisance properties is moving forward.

### **ARPA Role and Pilot**

The Board discussed the Dayton housing effort and the land bank's roles in those efforts. We will be involved in acquisition through foreclosure and market. Renovation activities are another area we will work in, leveraging the DIY program as it stands today. Also, doing enhanced DIY meaning more work on a house, (such as putting on a new roof or siding) before putting it in the program for bid. Land Bank renovating the entire structure is another option of the program. In this instance the Land Bank would do everything from acquisition through disposition. A part of this effort is to do one or two renovation pilots under the DIY program. The objectives would be to gain staff experience, support contractor agreements, and prepare for scale when the ARPA funds are received.

### **Foreclosure Processes and Court Ruling Implications and Pier Response**

There has been a restart to the Board of Revision Foreclosure process, and the first case is scheduled for July 29, 2022. The new policy is that a property's impositions must be more than the County Auditor's assessed value to be eligible for the BOR process. We are also working through some legal items on discounted tax liens.

David Williamson gave an overview of the court ruling in the BOR Expedited foreclosure case. The Cleveland ruling decided that there was no basis for holding a class action and assessed property valuation is not evidence of value for non-tax purpose. In the Montgomery County case, the judge concurred with an earlier decision involving a Cuyahoga County case, and the case was denied the certification as a class.

The Land Bank staff reviewed properties in the Twin Towers neighborhood. There are over 700 properties in this neighborhood, with 278 of those currently tax delinquent. Forty-five properties are on payment plans. Twenty-nine properties are eligible for the BOR program, with only three of those properties viable for reuse; the rest are either demolition or are lots. The 204 parcels where the value exceeds the impositions are eligible for judicial foreclosure. Ninety-two are owner-occupied; of those, ninety-two, twenty-eight or 30% are vacant. One hundred twelve are rental units, with fifty-seven or 51% being vacant, and are all eligible for foreclosure. The Board discussed the significance of the new BOR policy and how many properties that are vacant are no longer available to the Land Bank.

The implication is that the area is at risk of significant future blight if these properties are not somehow repositioned and reused, which is an objective of the Land Bank programming utilizing the BOR process.

### **OLBA 2023 Conference**

The Ohio Land Bank Conference will be held in Dayton in 2023.

### **Announcement**

The next Board meeting is scheduled for Tuesday, August 16, 2022, at 3:30 p.m.

### **Call to Adjourn**

There being no further business, John McManus moved to adjourn the meeting. Todd Kinskey seconded the motion.

**I hereby certify that the minutes related to the Board of Directors' monthly meeting July 19, 2022, set forth above, are the minutes approved by the Board of Directors at their meeting of September 20, 2022.**

**/s/ Angela Lilly**  
**Angela Lilly, Secretary**  
**Montgomery County Land Reutilization Corporation**



# Board Agenda

## Montgomery County Land Reutilization Corporation

July 19, 2022 3:30 pm  
Montgomery County Administration Building  
11<sup>th</sup> Floor Conference Room

**Call to Order:** Vice Chair, Sheila Crane

**Roll Call:**

**Approval of Minutes:** June 21, 2022 (Attached)

**Old Business:**

**New Business:**

- **Item No1. Board Appointment** (Attachment)
  - Presentation and Discussion
  - Motion to Approve

**Other Business:**

- Monthly Financials
- ODOD Site Revitalization Program Award
- ARPA Role and Pilot
- Foreclosure Processes and Court Ruling Implications and Pier Response
- OLBA 2023 Conference

**Next Meeting:** August 16, 2022 @ 3:30 pm

**Adjourn**

Brian Sharp  
2750 Hayward Avenue  
Dayton, OH 45414  
937-776-7489  
[soldbybriansharp@gmail.com](mailto:soldbybriansharp@gmail.com)

### **CAREER EXPERIENCE**

2021 to Current

Berkshire Hathaway HomeServices Professional Realty  
Director of Market Development – Southern Ohio Region

2016 to 2021

Irongate Inc., Realtors  
Manager, North Region

2016 to Current

Licensed and Practicing Realtor with the following designations:  
GRI, SRES, MRP, PSA, C2EX

### **PREVIOUS CAREER EXPERIENCE**

1979 TO 1996

Rike's, Shillito-Rike's, Lazarus, Macy's  
Store Management, Director of Hiring and Training, Human  
Resources Director

1996 to 2015

Elder-Beerman, Bon-Ton, Saks Inc.  
Senior VP, Regional VP, Store Director, Store Management

### **COMMUNITY INVOLVEMENT**

Current Board Positions

Chair – Emeritus, Dayton Playhouse Inc.  
Board Member - Dayton Convention and Visitors Bureau  
Board Member - Miami Valley Presbytery  
Finance Committee Member - Dayton Realtors  
Board Member – Dayton Gay Mens Chorus  
Grievance Committee Chair – Dayton Realtors  
Ombudsman – Dayton Realtors

Previous Board Positions

Shiloh House Adult Day Care  
Gem City Ballet  
MUSICA

### **PERSONAL INVOLVEMENT**

Current

Member, Westminster Presbyterian, Dayton  
Chair, Music, Worship and Fine Arts Committee  
Ordained Elder  
Sing in the Choir

### **EDUCUCATION**

Attended, Wright State University  
Attended, Sinclair Community College  
Attended, Hondros College

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

Alana Harrison,

*Plaintiff,*

v.

Case No. 3:19-cv-288  
Judge Thomas M. Rose

Montgomery County, Ohio,

*Defendant.*

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**ENTRY AND ORDER GRANTING DEFENDANT'S  
MOTION FOR LEAVE TO FILE SUPPLEMENTAL  
MEMORANDUM, DOC. 47, GRANTING DEFENDANT'S  
MOTION TO STRIKE CLASS ACTION ALLEGATIONS,  
DOC. 38, AND FINDING MOOT DEFENDANT'S MOTION  
TO STAY CLASS-BASED DISCOVERY. DOC. 39.**

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Pending before the Court are Defendant's Motion to Strike Class Action Allegations, doc. 38, Defendant's Motion to Stay Class-Based Discovery, doc. 39, and Defendant's Motion for Leave to File Supplemental Memorandum. Doc. 47. Plaintiff's response to Doc. 47 was due July 7, 2022.

Defendant's Motion for Leave to File Supplemental Memorandum, Doc. 47, is **GRANTED**, and the Court has considered Defendant's proposed supplemental memorandum. Doc. 47-1. Because determination of the composition of Plaintiff's proposed class is an elusive task, Defendant's Motion to Strike Class Action Allegations, doc. 38, will be **GRANTED**. Because there is no need for class discovery, Defendant's Motion to Stay Class-Based Discovery, doc. 39, is **MOOT**.

Defendant asserts there is a “central defect” in Plaintiff’s claim that precludes class certification under Fed. R. Civ. P. 23. See *Pilgrim v. Universal Health Card, LLC*, 660 F.3d 943, 949 (6th Cir. 2011). According to Defendant, the takings claims at issue are not susceptible to class action treatment because Plaintiffs are legally barred from using or relying upon the county auditor’s most recent tax appraisal to demonstrate the fair market value of each tax-foreclosed property at the time of each alleged transfer. Doc. 39 (citing *Tarrify Properties, LLC v. Cuyahoga Cty.*, No. 1:19-CV-2293, 2020 WL 7490096, \*3-5 (N.D. Ohio Dec. 21, 2020)). Thus, Defendant posits, the proposed class action cannot satisfy the ascertainability, predominance, and superiority requirements under Fed. R. Civ. P. 23(b)(3), because each proposed member of the class would have to present individualized appraisal evidence to demonstrate that they are a member of the plaintiff class, have a potential takings claim and should be awarded damages. Doc. 38, PageID 750.

The Sixth Circuit recently affirmed the case Defendant cites, *Tarrify Properties*. “While the claimants share a common legal theory—that the targeted Ohio law does not permit them to capture equity in their properties after the county transfers them to a land bank—they do not have a cognizable common theory for measuring the value in each property at the time of transfer.” *Tarrify Properties, LLC v. Cuyahoga Cnty., Ohio*, No. 21-3801, 2022 WL 2128816, at \*1 (6th Cir. June 14, 2022). Put briefly:

The district court did not abuse its discretion in denying Tarrify's motion to certify this class. Its decision does not require us to dig too deep into the weeds of class action law because the key impediment to certifying the class—identification of proposed members of the class—haunts every consideration. Although our court typically analyzes each Civil Rule 23 requirement independently, *Hicks v. State Farm Fire & Cas. Co.*, 965 F.3d 452, 459–65 (6th Cir. 2020), the analysis may sometimes overlap. Over

and over, courts have explained that elusive class composition often undermines efforts to meet the ascertainability, predominance, and superiority requirements. *Cf. Sandusky Wellness Ctr.*, 863 F.3d at 471–72 (collecting cases and noting how class identity problems can be analyzed under all three requirements).

*Tarrify Properties, LLC v. Cuyahoga Cnty., Ohio*, No. 21-3801, 2022 WL 2128816, at \*3 (6th Cir. June 14, 2022). Particularly, “the ‘general rule’ in Ohio [is] that ‘the assessed valuation of property is not evidence of value for’ non-tax purposes.” *Tarrify Properties, LLC v. Cuyahoga Cnty., Ohio*, No. 21-3801, 2022 WL 2128816, at \*5 (6th Cir. June 14, 2022) (citing *Ohio Cas. Ins. Co. v. D & J Distrib. & Mfg., Inc.*, No. L–08–1104, 2009 WL 2356849, at \*4 (Ohio Ct. App. July 31, 2009) (quotation omitted); *Cincinnati v. Jennewein*, No. C-77240, 1978 WL 216461, at \*1 (Ohio Ct. App. June 7, 1978)).

Plaintiff counters that Defendant’s motion to strike is improper for two reasons. First, the motion was filed after Defendant filed its Answer. According to Rule 12(f), such motions are to be filed before filing a responsive pleading. Second, Rule 12(g) requires all motions under Rule 12 to be joined together. Because Defendant has previously filed a motion to dismiss, Plaintiff asserts, it cannot now file a motion to strike.

Defendant previously moved this Court for dismissal of Plaintiff’s complaint pursuant to Rule 12(b)(6). Although this Court granted that motion on res judicata grounds, the Sixth Circuit reversed the dismissal and remanded the case for further proceedings. Defendant then filed its Answer to the Amended Complaint. Answer to Amended Complaint, Doc. 37, PageID 733. Immediately after filing its Answer, Defendant filed its Motion to Strike Class Action Allegations. Motion to Strike Class Action Allegations, Doc. 38, PageID 745. Defendant reminds the Court that Rule 12(f) requires that a motion to strike be filed before a responsive pleading.



However, a motion to strike class action allegations is authorized by Rule 23(c)(1)(A), and “a defendant may freely move for resolution of the class-certification question whenever it wishes . . .” *Pilgrim v. Universal Health Card, LLC*, 660 F.3d 943, 949 (6th Cir. 2011). “Either plaintiff or defendant may move for a determination of whether the action may be certified under Rule 23(c)(1),” and that the court is not “obliged to wait for a motion” for class certification by the Plaintiff in order to decide whether a class may be certified. *Id.* (citing Mary Kay Kane, *Wright & Miller*, 7AA FED. PRAC. & PROC. CIV. § 1785 (3d ed.)). While some federal courts have cited Rule 12(f) as authorizing a motion to strike class action allegations, the Sixth Circuit has held that motions to strike class action allegations are also authorized by Rule 23(c)(1) and can be filed at any time. *Pilgrim*, 660 F.3d at 949.

Moreover, Defendant’s Motion did not ask the Court to consider evidence outside the pleadings, since the Amended Complaint references the Board of Revision’s Adjudication of Foreclosure, Findings of Fact, and Order to Sheriff that are attached as Exhibits 2, 3, and 4 to Defendant’s Motion to Strike. (Doc. 15, Amd. Compl. ¶ 29-31). Thus, the rule governing the conversion of a motion to dismiss into a motion for summary judgment [Fed. R. Civ. P. 12(d)] does not apply to a motion to strike class action allegations.

Finally, class actions often involve a “huge amount of judicial resources.” *Pipefitters Local 636 v. Blue Cross Blue Shield of Michigan*, 654 F.3d 618, 630 (6th Cir. 2011). Thus, “the district court should decide whether to certify a class ‘at the earliest possible time’ in the litigation,” and thus has expressly upheld the defendant’s right to file a motion to strike the class action allegations where, as here, the plaintiff cannot satisfy the class action requirements, and no “discovery and

further development would alter the central defect in this class claim.” *Pilgrim v. Universal Health Card, LLC*, 660 F.3d 943, 949 (6th Cir. 2011).

Fed. R. Civ. P. 26(b)(1), requires that federal courts ensure that any discovery is “proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to the relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs the likely benefit.” *Id.* (emphasis added).

District courts have “broad discretion under the rules of civil procedure to manage the discovery process and to control their dockets.” *Marie v. Am. Red Cross*, 771 F.3d 344, 366 (6th Cir. 2014); *ACLU of Ky. v. McCreary County*, 607 F.3d 439, 451 (6th Cir. 2010); *In re Air Crash Disaster*, 86 F.3d 498, 516 (6th Cir. 1996). Moreover, they also have broad discretion to “adopt[ ] special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems.” *A&P Tech., Inc. v. Lariviere*, No. 1:17- CV-534, 2017 WL 6606961, at \*7 (S.D. Ohio Dec. 27, 2017) (citations omitted). In so doing, the court generally “weighs the burden of proceeding with discovery upon the party from whom discovery is sought against the hardship which would be worked by a denial of discovery.” *Bowens v. Columbus Metro. Library Bd. of Trs.*, No. 2:10-cv-219, 2010 WL 3719245, at \*1 (S.D. Ohio Sept.16, 2010) (citing *Ohio Bell Tel. Co., Inc. v. Global NAPs Ohio, Inc.*, No. 2:06- cv-549, 2008 WL 641252, at \*1 (S.D. Ohio Mar. 4, 2008)).

The threshold legal issues presented in Defendant’s Motion to Strike do not rise or fall with whether Plaintiff can develop a class-based methodology for determining the amount of damages. Rather, the central legal defects in the proposed Rule 23(b)(3) class action arise from the fact that

individualized factual determinations would be necessary to prove that an individual (a) is a member of the proposed class, as defined by the Amended Complaint, (b) has suffered an injury-in-fact, and (c) has a valid takings claim under the Plaintiff's legal theory of the case. (Doc. 38, Motion to Strike Class Action Allegations, pp. 10-18, PageID 759-67). Thus, any discovery on class-based damages is not necessary at this juncture and would only cause the parties to incur the significant time, burden and expense of conducting class-based discovery about an issue that ultimately may not be relevant if Harrison cannot overcome the threshold legal issues presented in Defendant's Motion.

Because determination of the composition of Plaintiff's proposed class is an elusive task, Defendant's Motion to Strike Class Action Allegations, doc. 38, will be **GRANTED**. Because there is no need for class discovery, Defendant's Motion to Stay Class-Based Discovery, doc. 39, is **MOOT**.

**DONE and ORDERED** in Dayton, Ohio, this Monday, July 11, 2022.

s/Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE