IN THE CIRCUIT COURT NO. 2 FOR CLARK COUNTY
STATE OF INDIANA

CHARLESTOWN PLEASANT RIDGE NEIGHBORHOOD ASSOCIATION CORPORATION, JOSHUA CRAVEN, TINA BARNES, DAVID AND ELLEN KEITH, AND BOLDER PROPERTIES, LLC, an Indiana Limited Liability Company,	)	
Plaintiffs,	)	Case # 10C02-1701-CT-010 HON. JASON M. MOUNT, SPECIAL JUDGE
v.	)	
CITY OF CHARLESTOWN, INDIANA, a municipality, CHARLESTOWN BOARD OF PUBLIC WORKS AND SAFETY,	)	
Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled matter came before the Honorable Jason M. Mount, Special Judge, for an evidentiary hearing on Plaintiffs' Motion for a Preliminary Injunction on September 1, 2017 at the Scott County Circuit Court in Scottsburg, Indiana. Anthony Sanders, Keith Diggs, Jeffrey Redfern, and Stephen Voelker appeared on behalf of Plaintiffs Charlestown Pleasant Ridge Neighborhood Association, Joshua Craven, Tina Barnes, David and Ellen Keith, and Bolder Properties, LLC. Michael Gillenwater and Mark Crandley appeared on behalf of Defendants City of Charlestown and the Charlestown Board of Public Works and Safety. The fact record for the preliminary-injunction motion closed on September 1, 2017. The Court granted the parties until September 8, 2017 to file authorities and citations, and until September 22, 2017 to file proposed findings of fact and conclusions of law.

Based upon the Court's prior orders, files, and records, as well as the testimony, exhibits, submissions, and arguments of counsel in this case, the Court issues the following findings of fact, conclusions of law, and order granting the motion for a preliminary injunction.

FINDINGS OF FACT

The Parties

1. Plaintiff Charlestown Pleasant Ridge Neighborhood Association ("Association") is a nonprofit entity incorporated under the laws of Indiana. The Association has approximately 50 members, all of whom own property in the Pleasant Ridge neighborhood in Charlestown, Indiana. The Association owns a duplex at 114–116 Riley Avenue in the Pleasant Ridge neighborhood of Charlestown.

2. Plaintiff Joshua Craven is a longtime resident of the Pleasant Ridge neighborhood where he now owns a home. He lives there with his four-year old daughter. He is the president of Plaintiff Association.

3. Plaintiff Tina Barnes is a longtime resident of Pleasant Ridge where she also owns a home. She lives there with her disabled adult daughter and two grandchildren. She is a member of the Charlestown City Council. She is also a member of Plaintiff Association.

4. Plaintiff Ellen Keith has lived in her home in Pleasant Ridge with her husband, Plaintiff David Keith, for over 40 years. She is also a member of Plaintiff Association. They live next door to their daughter, granddaughter, and great grandchild.

5. Plaintiff Bolder Properties, LLC owns four duplexes in Pleasant Ridge, and is owned by Ann Eldridge, a resident of Jeffersonville, Indiana. Ms. Eldridge, through Bolder Properties, LLC, purchased the properties in 2015 and borrowed over $200,000 to do so. She is now paying off that loan through the rent she receives from her tenants.

6. Defendant City of Charlestown ("City") is a municipality in Clark County, Indiana. The mayor of Charlestown is G. Robert Hall.

7. Defendant Charlestown Board of Public Works and Safety ("Board") is an entity within the City of Charlestown government. As is relevant to this case, the Board hears appeals from citations issued to property owners for code violations. Mayor Hall is a member of the Board.

The Pleasant Ridge Neighborhood

8. Pleasant Ridge is a neighborhood within the City of Charlestown. The residents are primarily people of modest means.

9. The neighborhood originated during World War II when the Army constructed housing for personnel at a since-abandoned munitions factory in Charlestown. The Gunnison Housing Corporation built the Pleasant Ridge homes at its factory in New Albany, Indiana and then assembled the components onsite. The primary original layout in Pleasant Ridge was a 1,250 square-foot duplex. Many of the properties remain duplexes, while others have been consolidated into single-family units.

10. Over the years, many of the Pleasant Ridge properties became rental units. In recent years, approximately sixty to seventy percent of the residents were low-income renters.

11. Pleasant Ridge provides affordable housing in Charlestown, whether from the perspective of a renter or a home buyer. It would be difficult if not impossible to rent or buy a home in Charlestown outside of Pleasant Ridge for the same prices that are available within Pleasant Ridge.

12. It would be difficult if not impossible for Plaintiffs to purchase homes elsewhere with the same space and amenities that their Pleasant Ridge homes have.

13. Defendant City believes that Pleasant Ridge is in dire need of redevelopment. Mayor Hall testified that Pleasant Ridge consumes a disproportionate share of city resources. City Inspector Michael Anthony Jackson testified that, due to the materials and methods of construction, the Gunnison homes were only ever intended to be temporary.

The 2014 Effort at Redevelopment

14. In 2014, the City applied to the State of Indiana for a multi-million-dollar grant under the State's Blight Elimination Program ("BEP"). According to the City's BEP application, the redevelopment plan for Pleasant Ridge involved "the demolition of 354 homes," which represents every home in the neighborhood, including the homes owned by Plaintiffs and members of Plaintiff Association.

15. For the BEP application, the City partnered with a property developer called Neace Ventures. Neace Ventures is owned by John Neace.

16. Plaintiffs Craven, Barnes, David and Ellen Keith, and other neighborhood residents formed Plaintiff Association in 2014 to oppose the BEP application and the demolition of their entire neighborhood, including their own homes.

17. In November 2014, the Charlestown City Council voted down the plan to redevelop Pleasant Ridge. Charlestown did not receive any grant money under the Blight Elimination Program.

The Latest Effort at Redevelopment

18. In November 2015, Mayor Hall stood for reelection. A major issue was the redevelopment of Pleasant Ridge. Mayor Hall and his slate of allied candidates for City Council seats won their elections.

19. In that same election, Plaintiff Barnes won election to the City Council as an opponent of wholesale redevelopment in Pleasant Ridge. Plaintiff Barnes has consistently voted against ordinances and resolutions that she believes target Pleasant Ridge for destruction.

20. In early 2016, the City Council, under Mayor Hall's leadership, and the City of Charlestown Redevelopment Commission, of which Mayor Hall is the president, began laying the groundwork for the next attempt to redevelop Pleasant Ridge.

21. On January 18, 2016, the City Council passed Resolution 2016-R-1, which is entitled "A Resolution Authorizing Action to Develop and Implement Plans for Improvement of Conditions in the Pleasant Ridge Subdivision." Resolution 2016-R-1 declared Pleasant Ridge to be an "area needing redevelopment" under Indiana's redevelopment statutes, Ind. Code. §§ 36-7-1-3, *et seq*. Plaintiff Barnes was the sole City Council vote against Resolution 2016-R-1.

22. On February 1, 2016, the City enacted Ordinance 2016-OR-2, which established "An Inspection Program for At-Risk Residential Properties in the City of Charlestown, Indiana." Plaintiff Barnes was the sole City Council member to vote against the rental-inspection ordinance.

23. On February 15, 2016, the City enacted Ordinance 2016-OR-7, which is entitled "An Ordinance Prohibiting Public Nuisances." Plaintiff Barnes was the sole City Council member to vote against the public-nuisance ordinance.

24. On October 27, 2016, the Redevelopment Commission passed Resolution 2016-R-6, which declared Pleasant Ridge to be an area in need of redevelopment under Indiana's redevelopment statutes, Ind. Code. §§ 36-7-1-3, *et seq*. Redevelopment Commission Resolution 2016-R-6 also approved a redevelopment plan for Pleasant Ridge.

25. On November 7, 2016, the City Planning Commission passed Resolution 2016-R-3, which approved Redevelopment Commission Resolution 2016-R-6 declaring Pleasant Ridge to be an area in need of development and adopting the Redevelopment Commission's plan for redevelopment.

26. On November 7, 2016, the City Council passed Resolution 2016-R-13, which approved Redevelopment Commission Resolution 2016-R-6 declaring Pleasant Ridge to be an area in need of redevelopment and adopting the Redevelopment Commission's plan for redevelopment. Plaintiff Barnes was the sole City Council member to vote against the Resolution.

27. In November 2016 (specific date was not noted), the Redevelopment Commission passed Redevelopment Commission Resolution 2016-R-8, which called for all City boards, commissions, and councils to follow a policy in which fines levied for violations of the City's property-maintenance code are never waived.

28. On December 8, 2016, the Redevelopment Commission passed Resolution 2016-R-9, which confirmed Redevelopment Commission Resolution 2016-R-6 declaring Pleasant Ridge to be an area in need of redevelopment and adopting the plan for redevelopment.

Coordination with Neace and Enforcement of the Property-Maintenance Code

29. The City's relationship with developer John Neace did not end with the demise of the 2014 BEP application and the original plan to redevelop Pleasant Ridge in partnership with Neace Ventures.

30. On January 25, 2016, one week after the City Council passed Resolution 2016-R-1 declaring Pleasant Ridge to be an area in need of redevelopment, Mayor Hall emailed John

Neace to tell him that "We are having landlords calling wanting to sell their properties, because they know code enforcement is coming June 1st."

31. The Mayor intended his January 25, 2016 email to alert Mr. Neace to the possible opportunity to buy large numbers of properties in Pleasant Ridge from landlords who owned multiple units. At that time, a small handful of landlords owned dozens of Pleasant Ridge properties. The Mayor anticipated that the plan to enforce the 2008 property-maintenance code against Pleasant Ridge properties, as set forth in City Council Resolution 2016-R-01, would impose such steep fines on the owners of the Pleasant Ridge properties that they would be willing to sell to a developer such as Mr. Neace for demolition.

32. The Mayor could not recall sending an email to any other developer besides Mr. Neace alerting him or her to property-acquisition opportunities in Pleasant Ridge that the City's declared plan of code enforcement might create. There are no such emails in the record.

33. The Mayor wrote Mr. Neace again on April 8, 2016, asking for Mr. Neace's input on Pleasant Ridge redevelopment, and noting that the Mayor gets "very nervous because I don't like making decisions that ultimately affects your money and the success of this project." By "this project," the Mayor was referring to the redevelopment of Pleasant Ridge.

34. The Mayor could not recall sending an email to any other developer besides Mr. Neace asserting that the Mayor was personally nervous because he was making decisions that affected the developer's money and the success of Pleasant Ridge redevelopment. There are no such emails in the record.

35. On June 2, 2016, the Mayor wrote Mr. Neace again, this time notifying him that the City had sent letters to Pleasant Ridge landlords announcing that rental inspections would soon begin. The Mayor attached a copy of this letter to the email to Mr. Neace. As with his

January 25, 2016 email, the Mayor was alerting Mr. Neace to the fact that the inspections of Pleasant Ridge rental properties for compliance with the property-maintenance code would soon result in buying opportunities for Mr. Neace.

36. The Mayor could not recall sending an email to any other developer notifying him or her that the City had sent letters to Pleasant Ridge landlords announcing that rental inspections would soon begin. There are no such emails in the record.

37. On June 13, 2016, Mr. Neace, through his agent John Hampton, created a new limited liability corporation called Pleasant Ridge Redevelopment, LLC ("PRR").

38. According to an email that Mr. Hampton sent Mr. Neace on July 6, 2016, the Mayor, the City Attorney, and Mr. Hampton met to discuss the redevelopment of Pleasant Ridge. That discussion included speculation that 30-40 property owners would refuse to sell and that eminent domain would eventually be required.

Inspections and Fines in Pleasant Ridge and Continued Coordination with Neace

39. In August 2016, City Inspector Michael Anthony Jackson began inspecting Pleasant Ridge rental properties pursuant to City Resolution 2016-R-1 and the new rental-inspection ordinance. Mr. Jackson inspected exteriors and interiors for violations of the City's 2008 property-maintenance code. The City has a policy and practice of issuing fines against Pleasant Ridge property owners where properties are fined immediately from the date of a citation.

40. The City has a policy and practice of issuing fines against Pleasant Ridge property owners where the fines accrue daily.

41. The City has a policy and practice of issuing fines against Pleasant Ridge property owners where the fines are for more than $2,500, once a few days of accruing fines have past.

42. The citations that Mr. Jackson issued to Pleasant Ridge landlords beginning in August 2016 conformed to this policy and practice. The citations imposed a separate fine for each violation that Mr. Jackson identified. Moreover, the citations did not allow for any grace-period during which landlords could make repairs without being fined. The fine for each violation was imposed immediately and would accumulate on a daily basis. Collectively, the various fines assessed on each property would add up to significant sums very quickly.

43. For example, on August 29, 2016, City Inspector Jackson issued citations to landlord Jimmy Woods based on Mr. Jackson's inspection of the exteriors of fourteen rental properties that Mr. Woods then owned in Pleasant Ridge. The various fines on all of the properties added up to $5,600 per day. Mr. Jackson did not mail the citations until August 31, 2016, meaning that Mr. Woods already owed $16,800 in fines on the day that Mr. Jackson placed the notices in the mail.

44. Faced with these fines, the large landlords in Pleasant Ridge elected to sell their properties to the newly created PRR, which paid $10,000 for each one. Between September 2016 and September 2017, PRR has acquired roughly 150 properties in Pleasant Ridge.

45. Under City policy, and an agreement entered into between the City and PRR, PRR theoretically assumes responsibility for the daily accumulating fines. But the City's policy and its agreement with PRR also allows all fines to be waived if the property is demolished. Because PRR has pledged to demolish its Pleasant Ridge properties at some point, the City has not collected on any of the fines. Most of these homes have not in fact been demolished and remain standing and unoccupied, creating a nuisance and health and safety hazard in and of themselves.

46. Technically, PRR now owes the City many millions of dollars because it has not yet demolished its Pleasant Ridge properties. The $5,600 in daily fines against the 14 properties formerly owned by Jimmy Woods, for example, have now accumulated for over one year, meaning that the fines for just those 14 properties now exceed two million dollars.

47. The agreement between PRR and the City was memorialized in an October 24, 2016 letter from Mr. Hampton to Mr. Jackson, acknowledging the City's policy of the waiver of fines for the Pleasant Ridge properties that PRR has acquired. As part of this agreement, PRR is required to update the City periodically about how many properties it owns and when they are slated to be demolished.

48. Once PRR acquired a Pleasant Ridge property, the City did not and presently does not require PRR to make any of the repairs that the citations identified. This is true even if tenants remained in the rental units, which hundreds did until roughly April 2017 when leases began to expire.

49. After the tenants move out of properties PRR has acquired, PRR boards many of them up.

50. New problems have arisen at many PRR properties since they were boarded up, including the presence of vermin, garbage, and tall grass. Plaintiff Ellen Keith and other Pleasant Ridge residents have complained to the City about these problems. But after the City failed to have PRR correct the problems, the neighborhood residents contacted the Clark County Health Department. The Health Department subsequently inspected several PRR properties and tried to work to have both the City and PRR address their problems.

51. The City has not issued any citations against any PRR properties since PRR acquired them, despite the complaints about vermin, garbage, and tall grass.

52. As recently as September 2017, some of the properties owned by PRR were still occupied by renters.

53. On November 8, 2016, Mayor Hall texted John Neace, Brigadier General Larry Lunt, and John Hampton (the head of PRR). Brigadier General Lunt is a part owner of PRR, and Mayor Hall introduced him to John Neace in August 2016. In this text, Mayor Hall wrote "Great News. The city council voted to pass the pleasant ridge redevelopment plan last night."

54. Mayor Hall did not recall writing any other developer to report that it was great news that the redevelopment plan passed, and the record contains no evidence of such communications.

55. Although there was no written redevelopment agreement between the City and PRR throughout the process of fines and property acquisition in Pleasant Ridge, the City and Mr. Neace entered a formal development agreement in 2017 regarding a project called Springville Manor. This project is located in Charlestown, but outside of Pleasant Ridge. On March 15, 2017, Springville Manor LLC was formed, with John Hampton as the registered agent. Springville Manor is a real-estate development currently under construction with 32 small homes. The public materials for Springville Manor indicate that it is also owned by John Neace. The Mayor testified that one purpose of Springville Manor is to provide a relocation option for senior citizens living in Pleasant Ridge.

Plaintiff Association's Duplex, Inspections, and Fines

56. In late 2015, Plaintiff Association acquired a duplex at 114–116 Riley Avenue in Pleasant Ridge. The Association refurbished the duplex to create two separate rental units. Both sides of the Association's duplex are occupied by tenants.

57. The Riley Avenue property serves two purposes. First, it is a source of revenue for the Association's efforts to maintain members' homes, as well as the neighborhood at large, in good condition. Second, the duplex furthers the Association's goal of revitalizing the neighborhood, which its members prefer to the City's goal of redeveloping the neighborhood by forcing them out, demolishing their homes, and replacing them with higher-income residents.

58. As a Pleasant Ridge rental unit, the Riley Avenue property was subject to inspection under the 2016 rental-inspection ordinance. City Inspector Jackson conducted an inspection of the duplex's exterior on September 26, 2016. Then, after securing a warrant, he returned to inspect the interior of each side of the duplex on November 3, 2016.

59. The exterior inspection resulted in Mr. Jackson imposing $600 in fines on Plaintiff Association on September 26, 2016. As with the fines imposed on other Pleasant Ridge landlords, additional $600 fines also accumulated daily.

60. The postal tracking number for the citations for the exterior violations indicates that the notice and order was not mailed until September 28, 2016 and was not delivered until October 4, 2016. According to the citations themselves, this means that the Association had already accumulated $5,400 in fines from the exterior inspection (September 26 through October 4, inclusive) when it received the mailing from Mr. Jackson.

61. The citations for the interior inspections followed the same pattern. The citations were issued on November 3, 2016, imposing a $200 fine for violations on both sides of the Riley Avenue duplex. The citations were not delivered to the Association until November 14, meaning that the Association had accumulated $2,400 in fines from the interior inspections (November 3 through November 14, inclusive). These citations, like the other citations issued in Pleasant

Ridge, did not allow for any grace-period during which property owners could make repairs without incurring fines.

62. In contrast to the other landlords who had been issued large fines, the Association did not sell its Riley Avenue property to PRR. Nor would the Association pledge to demolish its duplex. As a consequence, and in contrast to PRR, the City required the Association both to make repairs to its property and to pay the fines. If the Association had sold its duplex to PRR, the City would not have required PRR to pay any fines or make any repairs as long as PRR pledged to demolish the property at some point.

63. The Association took steps immediately upon receipt of the citations from Mr. Jackson to perform the indicated repairs. Most repairs were accomplished quickly. Others, such as a foundation repair, required a few weeks to resolve and have the appropriate professional sign off. The Association performed all of the mandated repairs, and the Riley Avenue property is presently in compliance with the property-maintenance code, as Mr. Jackson acknowledges.

64. Plaintiff Craven, the Association's president, asked Defendant Board of Public Works and Safety, the entity within the City responsible for hearing appeals from citations, to waive the fines in light of the Association's immediate effort to comply with the citations. The Board refused.

65. The Board eventually performed a final calculation of the Association's fines, apparently subtracting the 10-day notice period as indicated on the face of the notice. In the end, the Board imposed a total fine of $8,950. The Association filed a timely appeal as part of its original complaint in this case. The appeal of the fine will be resolved as part of this case going forward and is not at issue in the present motion for a preliminary injunction.

Plaintiffs' Credible Fear of Immediate, Daily Fines Against Their Properties

66. The Association and its members perceive the inspections of Pleasant Ridge rental properties as part of the City's avowed plan to redevelop the Pleasant Ridge neighborhood from scratch. The Association and its members view the inspections as a coordinated effort to ensure that PRR is able to acquire as many properties as possible via transactions that have the appearance of legitimacy.

67. Plaintiffs and other Association members have a credible fear that the City will come after their property with immediate, daily fines.

68. First, the City is coordinating with John Neace, through PRR and Springville Manor, to accomplish the complete redevelopment of Pleasant Ridge, including the destruction of Plaintiffs' homes and the homes of the Association's members.

69. Second, Mayor Hall has made statements indicating to property owners that, notwithstanding the wave of inspections that has been occurring in Pleasant Ridge, property owners should not waste their money repairing their homes or bringing them up to code. In a November 8, 2016 email to Plaintiff Barnes, Mayor Hall wrote that he was being "told that homeowners in [Pleasant Ridge] are being asked by some opposed to redevelopment to make significant investments to renovate their homes, even when that might possibly not be in their best financial interest....[I]f they proceed with inaccurate or incomplete information it could be financially disastrous to them." Although Mayor Hall, when questioned about this statement, testified that he was merely suggesting that people should not invest more in their houses than the houses were worth, the Court does not find that testimony credible. Mayor Hall's statement was made in answer to the question, by Plaintiff Barnes, about whether people who fixed up their homes would be allowed to keep them. Mayor Hall said he would not make that promise and that the redevelopment of Pleasant Ridge is an all-or-nothing deal. He was clearly stating that money

spent repairing homes would be wasted because the City intends to demolish the homes regardless of any repairs that property owners might make.

70. Additionally, on November 22, 2016, Mayor Hall posted on Facebook that he "hope[s] the residents [of Pleasant Ridge] won't listen to Josh Craven[] and his followers [i.e., Plaintiffs in this lawsuit] who have already cost property owners thousands of dollars by giving out false information, false claims and false hope." Although Mayor Hall, when questioned about this statement, testified that he had been referring to the fact that the City had lost the opportunity to take advantage of the Blight Elimination Program grant in 2014, the Court does not find the Mayor's present gloss on his own writing persuasive in light of what the Mayor actually wrote and the context of that written statement. Mayor Hall was clearly referring to expenditures by individual property owners to maintain their Pleasant Ridge properties, which Mayor Hall characterized as a waste because the Mayor is convinced that every home in the neighborhood will be demolished for redevelopment.

71. During the hearing on the preliminary-injunction motion, the Mayor again refused to promise that the Pleasant Ridge homeowners who want to stay in their homes will be allowed to do so if they maintain their properties in good condition.

72. In response to the filing of Plaintiffs' lawsuit on January 11, 2017, Mayor Hall posted a vow on Facebook to continue inspections. On April 17, 2017, as part of the City Resolution ratifying the redevelopment agreement with Mr. Neace's Springville Manor, the City stated that it intended to expand the inspection program to owner-occupied homes. Plaintiff Ellen Keith testified that Mayor Hall personally told her and her husband, Plaintiff David Keith, that he intended to use a combination of fines and eminent domain to force the complete redevelopment of Pleasant Ridge.

73. The Plaintiffs and Association members would struggle to afford the kinds of daily-accruing fines that the City has a practice of issuing in Pleasant Ridge.

74. In light these facts, including the inspections and property transfers that have previously occurred and the Mayor's public statements, the Association and its members reasonably fear that any expenditures to maintain their homes would be a futile waste and that the City will use a combination of inspections and fines to force them to sell their homes.

CONCLUSIONS OF LAW

75. Although the testimony and documentary evidence spans much of the history of Pleasant Ridge and the City's recent effort to engage in redevelopment, the motion for a preliminary injunction before the Court presents only a narrow set of issues. Plaintiffs seek a preliminary injunction ordering the City, in the enforcement of its Property Maintenance Code, to adhere to what they say is the plain language of Indiana's Unsafe Building Law, adhere to what they say is the plain language of the Code, and to enforce the Code evenhandedly among all owners of property in Pleasant Ridge, including PRR. Broadly speaking, Plaintiffs argue that neither the code nor the Unsafe Building Law allow the City to impose immediate, daily accumulating fines for violations of the code. Plaintiffs also argue that the City's differential treatment of PRR and other property owners in Pleasant Ridge violates the federal and state constitutional rights to equal protection.

76. Importantly, Plaintiffs are not arguing that the City should be altogether barred from enforcing its property-maintenance code to ensure appropriate standards of responsible property ownership. Nor are Plaintiffs arguing that they (or the Association's members) should be exempt from the requirements of the property-maintenance code. Plaintiffs agree that safe housing is a legitimate concern of the government, and that tenants and owner-occupied

homeowners should live in safe housing. Their motion, and their arguments in support of that motion, are confined to whether the City is ignoring statutory and constitutional protections for Pleasant Ridge property owners in enforcing the code. Thus, the Court will address only the specific claims raised by Plaintiffs' motion, and not reach any of the larger issues concerning the redevelopment of Pleasant Ridge.

Standard for a Preliminary Injunction

77. Generally, for this Court to issue a preliminary injunction, a plaintiff must establish, by a preponderance of the evidence, the following elements: (1) likelihood of success on the merits; (2) irreparable harm if a preliminary injunction is not issued; (3) the balance of harms weighs in favor of the preliminary injunction; (4) a preliminary injunction is in the public interest. *State v. Econ. Freedom Fund*, 959 N.E.2d 794, 803 (Ind. 2011); *Paramandandam v. Herrmann*, 827 N.E.2d 1173, 1178-79 (Ind. Ct. App. 2005).

78. Further, in suits against a governmental body, such as in this matter, that allege a violation of the law, a plaintiff need only prove that he is likely to succeed on the merits. This is known as Indiana's "per se rule." If a plaintiff does demonstrate he is likely to succeed on the merits "the court has determined that the defendant's actions have violated a statute and, thus, that the public interest is so great that the injunction should issue regardless of whether the plaintiff has actually incurred irreparable harm or whether the plaintiff will suffer greater injury than the defendant." *Stuller v. Daniels*, 869 N.E.2d 1199, 1214 (Ind. Ct. App. 2007).

79. In this matter, the Court determines that Plaintiffs are likely to succeed on the merits of three out of four of their claims. Therefore, under the per se rule, a preliminary injunction should issue.

80. The Court also determines that Plaintiffs meet the other prongs of the preliminary-injunction standard, even if the per se rule did not apply.

Plaintiffs Are Unlikely to Prevail on Their Claim under the Unsafe Building Law

81. Plaintiffs seek a preliminary injunction pursuant to Count II of their Amended Complaint, which alleges violations of Ind. Code § 36-7-9-1, *et seq.*, commonly known as the Unsafe Building Law ("UBL"). Plaintiffs argue that the citations that City Inspector Jackson issued to Pleasant Ridge landlords in 2016, including to Plaintiff Association, violated the procedural protections for property owners in the UBL. Plaintiffs request a preliminary injunction ordering the City to abide by the procedural protections in the UBL in any future enforcement of the City's Property Maintenance Code, 2008-OR-1 ("PMC").

82. The only real dispute here is whether the UBL even applies to the City's enforcement of its PMC. The City has made no effort to argue that it has complied with the procedural requirements of that statute. The City argues, instead, that the PMC is wholly authorized as an exercise of the City's legislative power under the Home Rule Act, Ind. Code §§ 36-1-3-1 *et seq.*, and that the PMC has force independent of the UBL. The City's theory is that the UBL provides a catch-all power for municipalities to address dangerous conditions that are not expressly covered by ordinances, while the PMC concerns more detailed and specifically enumerated requirements.

83. Based on the plain language of the statutes, the Court cannot find that the UBL supersedes or overrides the PMC.

84. However, based upon the plain language of the citations themselves, and the 2001 adoption of the UBL by the City, the UBL does have relevance to the case.

85. Municipalities may choose to adopt the UBL by ordinance. Ind. Code § 36-7-9-3, and the City acknowledges that it has done so.

86. As is relevant here, the UBL "**encourages** (emphasis added) local governmental bodies to adopt maintenance and repair standards appropriate for the community in accordance with this chapter and other statutes." Ind. Code § 36-7-9-4.5(k). The PMC, which the City adopted after its adoption of the UBL, constitutes Charlestown's maintenance and repair standards in addition to the UBL.

87. Additionally, the Home Rule Act, which the City claims as its authorization for enforcing the PMC without regard to the UBL, also provides that "[i]f there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner." Ind. Code § 36-1-3-6(a).

88. The UBL specifically authorizes the "enforcement authority" to issue an order requiring the "repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use by a statute, a rule adopted under IC 4-22-2, or an ordinance." Ind. Code § 36-7-9-5(a)(5) (emphasis added). So, the UBL provides an explicit means of enforcing property-maintenance codes.

89. In reviewing the relevant statutes as cited by both parties, the Court finds that the UBL does not REQUIRE a specific manner of enforcement, as outlined in the Home Rule Act at I.C. 36-1-3-6. Further the UBL itself states that a municipality MAY (not "shall") issue an order requiring action pursuant to its terms (I.C. 37-7-9-5). The UBL is merely "encouraged" and not required, so the Court must find that the Home Rule interpretation of the Defendant's prevails.

90. The City has chosen to implement the UBL, with certain provisions superseded and/or modified by the PMC.

91. The citations that the City issued for PMC violations explicitly cite the UBL. The ten-day appeal period that the citations identify is also from the UBL, *see* Ind. Code § 36-7-9-7(a), not the PMC, which specifies a twenty-day appeal period. *See* PMC § 111.1. The use of the term "hearing authority," which the citations explicitly state, is from the UBL and not the PMC. *See* Ind. Code § 36-7-9-2. Finally, the search warrant that the City secured to inspect the interiors of Plaintiff Association's rental units was issued pursuant to the UBL. *See* Ind. Code § 36-7-9-16 (authorizing the issuance of property inspection warrants).

92. The citation is confusing as to what provisions of the UBL and/or the PMC it is that the City intends to operate under, but the court cannot find that they are REQUIRED to do one or the other exclusively.

93. Plaintiff requests the Court to make findings of the many instances in their enforcement scheme that the City runs afoul of the UBL. Certainly, if the UBL were mandatory, the City is not in compliance. As the Court finds that the UBL is not mandatory, there is no need to make such findings.

94. As the Defendants are likely to succeed in defense of this claim, the Court declines to issue any injunctive relief for the reasons raised in this count by the Plaintiffs.

Plaintiffs Are Likely to Prevail in Their Claim under the Property-Maintenance Code

95. Although the Unsafe Building Law does not strictly apply, the City is still required to follow the PMC when it uses the PMC against properties in Pleasant Ridge. Plaintiffs argue that the City violated the plain language of its own PMC by imposing immediate, daily accumulating fines, as well as by not providing a grace period within which to bring property

into compliance. The City responds by conceding that certain provisions of its PMC provide procedural protections to property owners, but that another provision in the PMC authorizes the City to issue immediate fines not subject to these protections.

96. The Court agrees with Plaintiffs. The plain language of the PMC requires the City to provide a written order specifying the alleged problems and provide a reasonable opportunity to make repairs before fines may be imposed. In no case does the PMC allow the City to impose immediate, daily accumulating fines for violations of the PMC.

97. The PMC requires that its code official "shall serve a notice of violation or order in accordance with Section 107" of the PMC. PMC § 106.2 (emphasis added).

98. Section 107 provides various procedural protections for property owners. It requires that property owners be given a written notice of violation and "a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the pro-visions [sic] of this code." PMC § 107.2(4).

99. Section 106.4 of the PMC states that when a fine is issued against a property, "each day that a violation continues after due notice has been served shall be deemed a separate offense." PMC § 106.4.

100. The phrase "due notice" in section 106.4 must be read in conjunction with sections 106.2 and 107, which require written notice of violation and a "reasonable time to make the repairs and improvements." PMC §§ 106.2, 107.2(4).

101. The City's issuance of immediate fines against property owners, without written notice of violation or a "reasonable time" for corrective action, violated the PMC. This was true of the fines issued against the Association, Tom Brown, Jimmy Woods, and any other property owners who received immediate fines without an opportunity to correct alleged violations.

102. If the City issues more immediate fines against property owners without a reasonable time to correct alleged violations, the City will violate the PMC again.

103. To find otherwise would be irrational. The City argues that it makes no sense to require property owners who commit to razing their homes to fix deficiencies, despite the fact that they may continue to contain occupants, regardless of the City's supposed paramount concern over the serious health and safety issues these residences pose. What makes no sense is to continue to insist on imposing fines, with no meaningful right to appeal, on homeowners who resolve the problems and bring their residences into compliance, in good faith and in a reasonable time period. If the City's concern over health and safety is to be believed, then these concerns are addressed in either instance – in the first case by razing and in the second by repairing. Ergo, fees should be waived, or not even assessed, in both instances.

104. The City relies upon, among other evidence, the increased statistical risk of fires these homes pose along with instances of deficient and dangerous electrical wiring. Despite these concerns, the City through enforcement of its policy is nevertheless allowing landlords to continue to have occupants live under those dangerous conditions without repair, or to allow such dangerous structures to remain standing indefinitely, while at the same time enforcing fines against responsible owners who correct the problems. This is antithetical to the City's stated goals.

105. It is further irrational to allow these structures to continue to stand indefinitely on a promise that they will be leveled, when allowing them to remain standing and at the same time seeking no code enforcement against them CREATES health and safety problems, and acts to drive down the value and use of the other properties in the area, further putting responsible owners in a "trick-bag" of "sell or lose all value in your property."

106. The City argues that homeowners have three choices: 1) pay the fine; or 2) bring your property up to specifications; or 3) sell to a developer or commit to razing the structure. So long as there is no meaningful opportunity to fix the property and/or to appeal the findings and fines, the options available to homeowners are in fact: 1) pay the fine AND bring your property up to specifications; or 2) sell to a developer (at a significant loss) or commit to razing the structure.

107. Plaintiffs are likely to prevail in their claim that the City has violated the PMC.

108. Plaintiffs have demonstrated by a preponderance of the evidence that the City is likely to violate the PMC again.

109. The City is committed to inspecting all rental properties, including those of Plaintiff Bolder Properties, LLC, and other Association members who are Pleasant Ridge landlords, and to perform those inspections on an annual basis. 2016-OR-01, § 2.3.

110. The City is also committed to inspecting owner-occupied properties in Pleasant Ridge, as it stated in a resolution passed by the Redevelopment Commission in March 2017, thereafter approved by the City Council in April 2017. 2017-R-2, Ex. 3, ¶ 17.

111. These inspections, whether exterior or interior, are likely to result in fines that would be issued in violation of the PMC, just like the inspections of the Association's duplex and the properties of Tom Brown and Jimmy Woods did.

Plaintiffs Are Likely to Prevail on Their Federal Equal Protection Claim

112. Plaintiffs allege that the City has denied them the equal protection of the law, as guaranteed by the Fourteenth Amendment to the United States Constitution, by discriminating against them in favor of a private developer, PRR. Because there is no "suspect classification" at

issue, this equal protection claim is resolved under the "rational basis" standard of review. *Smith v. City of Chicago*, 457 F.3d 643, 650 (7th Cir. 2006).

113. Under the rational-basis standard, Plaintiffs have the burden of showing that "(1) the defendant intentionally treated [them] differently from others similarly situated, (2) the defendant intentionally treated [them] differently because of [their] membership in the class to which [they] belonged, and (3) the difference in treatment was not rationally related to a legitimate state interest." *Id.* at 650–51.

114. Although rational-basis review is deferential to the government, it "is not a toothless" standard. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 439 (1982). Plaintiffs can prevail by "negat[ing] a seemingly plausible basis" for the differential treatment "by adducing evidence of irrationality," and the government's actions cannot be sustained on the basis of a mere "fantasy." *St. Joseph Abbey v. Castille*, 712 F.3d 215, 223 (5th Cir. 2013).

115. Plaintiffs have satisfied the first factor of the rational-basis test, and Defendants do not argue otherwise: The Plaintiffs are a class of property owners who do not wish to sell or demolish their properties. They are similarly situated to the developer because both the developer and the plaintiffs own properties that are currently occupied, or were occupied for several months after they were fined.

116. The City has intentionally treated the developer differently from people who do not wish to demolish their properties. The developer is permitted to continue renting out properties, despite acknowledged violations of the PMC. The developer is not required to make any repairs to protect the health and safety of its tenants. The developer is also not required to pay any fines, and the City has promised to waive all fines when the developer demolishes the

properties it owns. By contrast, Plaintiffs are required to repair their properties immediately, are subjected to massive fines, and cannot have those fines waived.

117. Plaintiffs have also satisfied the second factor, and again, Defendants do not argue otherwise: The City's code-enforcement policy explicitly states that fines should be waived "once the substandard housing is removed." 2016-R-8. So, the differential treatment is related to membership in the Plaintiffs' class—people who do not wish to demolish their properties.

118. The only dispute concerns the third equal-protection factor—whether this differential treatment is rationally related to a legitimate governmental interest. Defendants have proposed one interest: health and safety.

119. Promoting health and safety is a legitimate governmental interest, but the City's differential treatment of the developer and other property owners is not rationally related to that interest.

120. From the standpoint of health and safety, it is irrational to treat someone who immediately brings their property into compliance with the PMC, such as Plaintiff Association, worse than a developer who continues to rent out a property with acknowledged code violations—arguably endangering the tenants who live there and the surrounding homes as well—simply because the developer intends to eventually demolish the property. Plaintiffs are providing safe housing that endangers neither tenants nor neighbors, and Plaintiffs should be treated at least as well under the law as the developer who is providing unsafe housing.

121. It is also irrational, from the standpoint of health and safety, for the City to inspect properties and to impose heavy fines on Plaintiffs for PMC violations while at the same time instructing them not to repair their properties because it would be a waste of money—or even "financially disastrous," as the Mayor stated in one email—to do so.

122. The equal-protection problem extends to the City's policy, as reflected in its agreement with PRR and the testimony of Mayor Hall, that a property owner must pay fines unless the property is demolished. If a property owner refuses to demolish a property, then, under City policy, the fines cannot be waived. This is irrational. The purpose of fines is to penalize a property owner for maintaining unsafe conditions in the Pleasant Ridge neighborhood. Therefore, the ultimate demolition of the property is irrelevant. Demolition does not alter the fact that the property owner allowed unsafe conditions to exist. In the case of PRR, it owns dozens of properties with daily accumulating fines now in the many millions of dollars.

123. The City cannot rationally penalize Plaintiff Association (or any other Pleasant Ridge property owner) for having maintained unsafe conditions in Pleasant Ridge while simultaneously waiving fines for a property owner like PRR that has allowed unsafe conditions to persist in the neighborhood in many properties and for much longer than the Association. Therefore, given that ultimately demolishing properties has nothing to do with having maintained unsafe conditions, the City cannot waive fines for PRR unless it also waives fines for other property owners who the City has penalized for maintaining unsafe conditions.

124. "Finding no rational relationship to any of the articulated purposes of the [City], we are left with the more obvious illegitimate purpose," *Craigmiles v. Giles*, 312 F.3d 220, 228 (6th Cir. 2002), to compel people to sell their properties to a private developer. This is the only conceivable objective for the City's policy towards property owners in Pleasant Ridge—anything else is mere "fantasy." *St. Joseph Abbey*, 712 F.3d at 223.

125. Using selective code enforcement to compel Plaintiffs to sell their property is not legitimate. *Thorncreek Apartments III, LLC v. Vill. of Park Forest*, 970 F. Supp. 2d 828, 842 (N.D. Ill. 2013) (denying City's motion for summary judgment on equal-protection claim where

plaintiff had produced evidence that the city had selectively targeted the plaintiff for code enforcement in order to compel the plaintiff to sell its property); *see also Forseth v. Vill. of Sussex*, 199 F.3d 363, 371 (7th Cir. 2000).

126. If there were any doubt about the illegitimacy of the City's efforts to compel property transfers to a private developer, Indiana's eminent-domain reforms settle the matter in favor of Plaintiffs. In 2005, the United States Supreme Court held, in *Kelo v. City of New London*, 545 U.S. 469 (2005), that the Fifth Amendment to the Constitution permits government to take private property for the mere purpose of promoting economic development. Less than a year later, Indiana enacted a comprehensive reform statute rejecting the *Kelo* decision as a matter of state law. Ind. Code. § 32-24-4.5-7. The statute prohibits the transfer of property seized by eminent domain to other private parties except under narrow and enumerated circumstances. Ind. Code. § 32-24-4.5-7.

127. Under the new law, the fact that a property happens to be located in "an area needing redevelopment" is not a justification for transferring it to another private party. Rather, there must be a serious problem with the specific parcel at issue, such as the parcel containing "a structure that is unfit for human habitation." Ind. Code. § 32-24-4.5-7(B).

128. The prohibition on transfers to private parties persists for 30 years after eminent domain is used. Ind. Code. § 32-24-4.5-1(c).

129. Indiana has therefore rejected the kinds of compelled transfers that the City is attempting in this case.

130. On the record before the court, I find that the Plaintiffs are likely to prevail on their Equal Protection claim.

Plaintiffs Are Likely to Prevail on Their Indiana Equal Privileges or Immunities Claim

131. The Indiana Equal Privileges or Immunities Clause requires an analysis that is "separate" and distinct from federal equal-protection analysis. *Worman Enters., Inc. v. Boone Cty. Solid Waste Mgmt. Dist.*, 805 N.E.2d 369, 381 (Ind. 2004). Under the Equal Privileges or Immunities Clause, Ind. Const. art. I, § 23, there are no varying levels of scrutiny. *Morrison v. Sadler*, 821 N.E.2d 15, 21 (Ind. Ct. App. 2005). Nor is there a "similarly situated" requirement. There is just one test: When the government treats classes of people differently, the "disparate treatment...must be reasonably related to inherent characteristics which distinguish the unequally treated classes." *Collins v. Day*, 644 N.E.2d 72, 80 (Ind. 1994).

132. As explained above, the relevant Collins classes are (1) the Plaintiff property owners, who wish neither to sell nor demolish their houses, and (2) the developer, who does plan to demolish houses. The differential treatment is that one class (Plaintiffs) is subjected to extraordinarily vigorous property-code enforcement, while the other (the developer) is subjected to essentially no enforcement.

133. In determining whether differential treatment is justifiable, "the legislative purpose may be considered." *Paul Stieler Enters., Inc. v. City of Evansville*, 2 N.E.3d 1269, 1275 (Ind. 2014). In this case, the purpose is straightforward: The PMC declares that its purpose is "to ensure public health, safety and welfare in so far as they are affected by the continued occupancy and maintenance of structures and premises." PMC § 101.3.

134. The differential treatment in this case cannot be justified by any concern for "public health, safety and welfare." In fact, the differential treatment actually works against that goal by penalizing property owners, such as the Plaintiff Association, who have diligently brought their properties into compliance with the PMC, while giving a free pass to the developer, who has continued to rent out properties with acknowledged PMC violations.

135. The inherent differences in the two *Collins* classes—whether property owners plan to eventually demolish their properties—has nothing to do with whether these property owners are providing safe housing, which is the objective of the PMC. *See Paul Stieler*, 2 N.E.3d at 1275 ("In comparing the disparate treatment...to the inherent differences of the two classes...the legislative purpose for consideration is public health, not economic advantage to the City.").

136. As under the federal constitution, the equal-protection problem extends to the City's policy, as reflected in its agreement with PRR and the testimony of Mayor Hall, that a property owner must pay fines unless the property is demolished. If a property owner refuses to demolish a property, then, under City policy, the fines cannot be waived. This is irrational. The purpose of fines is to penalize a property owner for maintaining unsafe conditions in the Pleasant Ridge neighborhood. Therefore, the ultimate demolition of the property is irrelevant. Demolition does not alter the fact that the property owner allowed unsafe conditions to exist. In the case of PRR, it owns dozens of properties with daily accumulating fines now in the many millions of dollars.

137. The City cannot rationally penalize Plaintiff Association (or any other Pleasant Ridge property owner) for having maintained unsafe conditions in Pleasant Ridge while simultaneously waiving fines for a property owner like PRR that has allowed unsafe conditions to persist in the neighborhood in many properties and for much longer than the Association. Therefore, given that ultimately demolishing properties has nothing to do with having maintained unsafe conditions, the City cannot waive fines for PRR unless it also waives fines for other property owners who the City has penalized for maintaining unsafe conditions.

138. Accordingly, I find that the Plaintiffs are likely to prevail on their Indiana Equal Privileges and Immunities Claim.

Indiana's Per Se Rule

139. Indiana has a per se rule requiring the Court to issue a preliminary injunction when a plaintiff establishes the likelihood of succeeding on the merits of a claim that the government is violating the law. *E.g., State v. Econ. Freedom Fund*, 959 N.E.2d 794, 804 (Ind. 2011).

140. Here, Plaintiffs have demonstrated a likelihood of success on the merits of their statutory claims under the PMC, as well as a likelihood of success on the merits of their federal and state equal-protection claims. Having accomplished this, the Court is required to issue the preliminary injunction.

141. Furthermore, the result would be the same even if the per se rule did not exist. The Court will now analyze each additional element of preliminary injunctive relief.

Irreparable Harm

142. The loss of real property is an irreparable harm. *Carpenter Tech. Corp. v. City of Bridgeport*, 180 F.3d 93, 97 (2d Cir. 1999).

143. Plaintiffs and Plaintiff Association's members stand to lose their real property in Pleasant Ridge if the City issues fines against them similar to the immediate, daily fines it issued against the Association itself and other Pleasant Ridge landlords.

144. The Mayor and other City officials have made it clear that the ultimate objective of Mayor Hall's administration is the complete destruction of the homes in Pleasant Ridge, including the homes owned by the Plaintiffs and members of Plaintiff Association. The City partnered formally with the developer John Neace in 2014 to accomplish that goal as part of a

plan to obtain money from the State's Blight Elimination Program. Since the demise of that 2014 effort, Mayor Hall and others under his supervision have not just been in regular contact with Mr. Neace and his employee running PRR, but they have also coordinated with Mr. Neace to enable PRR to sweep up roughly 150 Pleasant Ridge properties in a few months. The Court finds that Mayor Hall's communications with Mr. Neace, including the Mayor stating that he is nervous when making decisions affecting Mr. Neace's money without sufficient input from Mr. Neace, indicate deliberate and conscious coordination in furtherance of the City's intent to destroy Pleasant Ridge.

145. The evidence supports a preliminary finding that the Mayor told Plaintiffs Ellen and David Keith of his plan to use code enforcement to compel the sale of property from Pleasant Ridge homeowners to a private developer. The Mayor publicly stated after the filing of the instant lawsuit that inspections would continue. In April 2017, the City Council ratified a formal development agreement, that was shortly before ratified by the Charlestown Redevelopment Commission, with Springville Manor, LLC, an entity owned by John Neace, and that agreement called for an expansion of the inspection program to owner-occupied homes. 2017-R-2, Ex. 3, ¶ 17.

146. During the hearing, Plaintiff Barnes testified that she had not yet been inspected by the City and had not received any notices of violation under the property-maintenance code. Those facts are not in dispute. Nevertheless, the Court finds that the City has plainly indicated its intention to implement the same code enforcement program against the owner-occupied homes like Ms. Barnes.