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,	)	No. 10C02-1701-CT-010
v.	)	
CITY OF CHARLESTOWN, INDIANA, a municipality, CHARLESTOWN BOARD OF PUBLIC WORKS AND SAFETY,	)	
Defendants.	)	

FIRST AMENDED COMBINED VERIFIED COMPLAINT FOR JUDICIAL REVIEW, DECLARATORY JUDGMENT, AND WRIT OF CERTIORARI

Plaintiffs, CHARLESTOWN PLEASANT RIDGE NEIGHBORHOOD ASSOCIATION CORPORATION, JOSHUA CRAVEN, TINA BARNES, DAVID AND ELLEN KEITH, AND BOLDER PROPERTIES, LLC, by their attorneys, complain against Defendants, the CITY OF CHARLESTOWN, INDIANA, a municipality, and the CHARLESTOWN BOARD OF PUBLIC WORKS AND SAFETY, as follows:

INTRODUCTION

1. This civil-rights action is in part an appeal from an illegal and unconstitutional $8,950 fine that Defendants City of Charlestown ("City") and Charlestown Board of Public Works and Safety ("Board") imposed on Plaintiff Charlestown Pleasant Ridge Neighborhood Association ("Association") for alleged deficiencies in a rental duplex that the Association owns in the low-income Pleasant Ridge neighborhood. More broadly, this action also seeks injunctive

and declaratory relief for the Association, its members, and Plaintiffs Joshua Craven, Tina Barnes, David and Ellen Keith, and Bolder Properties, LLC, to prevent the City and the Board from imposing illegal and unconstitutional fines on anyone in Pleasant Ridge.

2. The City imposed the $8,950 fine on the Association even though the deficiencies were modest and promptly corrected. The purpose of this fine is not public health and safety. Instead, the City is trying to force the Association to sell its property for as little as $10,000 per home to a private developer, which, as part of a plan with the City, intends to demolish Pleasant Ridge, disperse its residents, and build upscale homes for a new class of owners. The evidence indicates that the City will imminently engage in illegal and unconstitutional code enforcement against Plaintiffs Craven, Barnes, the Keiths, members of Plaintiff Association, and Bolder Properties for the purpose of forcing them to sell to the developer.

PARTIES

3. Plaintiff Charlestown Pleasant Ridge Neighborhood Association is an Indiana nonprofit corporation recognized by the Internal Revenue Service as tax exempt under Section 501(c)(3) of the Internal Revenue Code. The mission of the Association is to protect the Pleasant Ridge neighborhood from the City's plan to force the residents out and destroy the neighborhood. The Association owns the duplex at 114 & 116 Riley Avenue in Pleasant Ridge that is a subject of this action.

4. Plaintiff Joshua Craven lives in his home at 203 Guilford Avenue, which he is purchasing from his father on a contract. He is a member and the president of the Association.

5. Plaintiff Tina Barnes lives in her home at 222 & 224 Marshall Drive in Pleasant Ridge. She is a member of the Charlestown City Council and a member of the Association.

6. Plaintiffs David and Ellen Keith live in their home at 101 Clark Road in Pleasant Ridge. They are members of the Association.

7. Plaintiff Bolder Properties, LLC is an Indiana limited liability company solely owned and controlled by Ann Eldridge. Eldridge, through Bolder Properties, LLC, owns four duplexes in Pleasant Ridge at 301 & 303 Ridge Road, 324 & 326 Ridge Road, 325 & 327 Ridge Road, and 329 & 331 Ridge Road. Together, these eight units provide homes to 18 people. Eldridge is a member of Plaintiff Association, and resides in Jeffersonville, Indiana.

8. Defendant City of Charlestown is a municipality in Clark County, Indiana.

9. Defendant Board of Public Works and Safety is a three-member City entity. Its members are Mayor Robert Hall, City Council Member-at-Large Eric Vaughn, and Charlestown resident John Palmer. The Board is an entity of the City, subject to the City's supervision and control, and lacks any identity separate from the City. All actions of the Board are properly imputed to the City, and the City is jointly and severally liable for the harms that the Board causes.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this case under the Uniform Declaratory Judgment Act. I.C. Section 34-14-1-1, *et seq.*; 42 U.S.C. § 1983; Charlestown Ordinance 2008-OR-01, Section 111.7; and I.C. Section 36-7-9-8, which confers jurisdiction on the circuit courts to hear *de novo* appeals of municipal orders enforcing building standards.

11. This Court is the Preferred Venue because all parties are residents of Clark County, the property at issue is in Clark County, and all of the material acts occurred in Clark County. Ind. R. Trial P. 75(A).

STATEMENT OF FACTS

The Pleasant Ridge Neighborhood

12. Pleasant Ridge is a neighborhood of approximately 350 homes on a hill in Charlestown, Indiana, a town of approximately 8,000. The U.S. Army built most of the homes in Pleasant Ridge during World War II for personnel at a nearby munitions plant. The homes were assembled from prefabricated components built in nearby New Albany, Indiana. Under the Army's original construction, the homes were mainly duplexes, although a few were quadplexes and single-family homes.

13. The Army closed the munitions plant in 1952 and sold the homes to private parties.

14. Pleasant Ridge is now a low-income neighborhood.

15. Some of the properties remain duplexes.

16. Some of the duplexes have been consolidated into single-family homes.

17. Five properties remain quadplexes.

18. Approximately 75 percent of the properties are maintained by the owner as rental units. In general, each side of a duplex is a separate rental unit. In some cases, an owner will occupy one side of the duplex and rent the other side.

19. Approximately 25 percent of the properties are owner-occupied homes without rental tenants.

20. In some cases, renters rent the property under a contract that applies the rent toward the purchase of the property. Those renters are renting with an intention of eventually owning the home. For the vast majority of renters in this situation, renting to own is their only realistic path to home ownership because they earn so little money.

21. In some cases, the property is owner-occupied, but there is a mortgage on the property.

22. In some cases, the property is owner-occupied and the owner owns the property free and clear.

23. Many homeowners have lived in their homes for decades.

24. Many homeowners purchased their homes in recent years for amounts between $50,000 and $90,000.

25. The tax-assessed value of many properties is now in the $30,000 range.

26. One side of a duplex typically rents for between $400 and $500 per month.

27. Many elderly homeowners in Pleasant Ridge live on a fixed income provided by Social Security.

28. There is nowhere else in Charlestown where a Pleasant Ridge renter can rent a complete apartment for as little as $400 per month.

29. There is nowhere else in Charlestown where a Pleasant Ridge homeowner can buy a home in the $30,000 to $60,000 range.

Plaintiff Pleasant Ridge Neighborhood Association and Its Duplex

30. The Association is an Indiana nonprofit corporation that is recognized as a 501(c)(3) by the Internal Revenue Service. The Association has a corporate charter, a board, and it observes all of the formalities of an Indiana nonprofit corporation. The board routinely meets, creates a budget and strategic plan each year, and then implements that plan. All of the board members live in the neighborhood. Joshua Craven is the president. Melissa Crawford is the vice president. Ann Cain is the treasurer. Beverly Cairnes is the secretary. Judy Patrone is the alternate board member. The Association presently has about 50dues-paying members.

31. The Association was formed by Pleasant Ridge residents in 2014 in opposition to the City's plan that year to destroy the neighborhood and finance its demolition in part with grant money from the State of Indiana.

32. The Association's mission is the preservation of the Pleasant Ridge neighborhood for the benefit of its residents. To achieve that, the Association conducts neighborhood clean-ups and other beautification projects, helps residents (especially the elderly and disabled) maintain their homes, and owns a rental duplex as part of a direct effort to rehabilitate a property in the neighborhood.

33. Approximately 45 members of the Association live in their homes in Pleasant Ridge. They are overwhelmingly low-income citizens. Pleasant Ridge is the only realistic option for homeownership for most of them. The Association's members adamantly refuse to sell to the developer and are determined to resist the City's efforts to force them off of their land. The Association's members are convinced, based on the statements of City officials and the actions of City officials, that the City imminently intends to force them off their property through abusive code enforcement or eminent domain, and that abusive code enforcement will imminently commence against them.

34. The Association also has a handful of landlord members. Approximately seven members own rental property in Pleasant Ridge. Combined, these landlords own over 10 properties that, because most are duplexes, make up about 20 dwelling units. These properties currently have dozens of renters who also do not want to be forced out of Pleasant Ridge, where their rents are far more affordable than they can find anywhere else in Charlestown. The landlord members of the Association, such as Ms. Eldridge, who owns Plaintiff Bolder Properties, LLC, are worried that the City will imminently begin abusive code enforcement against their

properties in the same way that the City has used code enforcement against other landlords, including the Association itself.

35. The Association and its members have also engaged in extensive political speech and association in opposition to the City's plan to demolish the Pleasant Ridge neighborhood. Since its inception, the Association has rallied political opposition to the redevelopment of Pleasant Ridge, encouraged residents and non-residents alike to engage in speech opposed to redevelopment, participated in protests, and distributed lawn and window signs to residents with text and images opposing redevelopment. Association President Josh Craven has been particularly outspoken, appearing in video and print news pieces and installing various protest signs in his yard. This protected speech and association will continue into the future.

36. A major project for the Association is ownership of the duplex at 114 & 116 Riley Avenue that is the subject of this action. The Association purchased the property for $17,000 from the previous owner under an agreement signed in December 2015 specifying that half of the rental income each month will go to the previous owner until the debt is paid off. The other half of the rental income is retained by the Association for the purposes of maintaining the property and advancing its nonprofit mission.

37. The Association duly recorded its interest in the property with the Clark County recorder in January 2016.

38. Each side of the Association's duplex is a two-bedroom and one-bath unit.

39. After the Association purchased the duplex, but before the City issued the citations and fines at issue in this case, the Association made extensive improvements, often with volunteer labor and donated materials. The Association also secured a $3,000 grant from Home Depot to help with the renovations. The improvements to the duplex included:

a. A complete remodel of one side of the duplex;

b. The installation of a new bathroom and floor in the other side of the duplex;

c. Repainting the property inside and out; and

d. The installation of a new picket fence.

40. All of these improvements were made with proper building permits.

41. Each side of the Association's duplex presently rents for $450 per month.

42. Each side of the Association's duplex has three residents. Three moved into 114 Riley in January 2016, and three more into 116 Riley when it was ready in July 2016. All of the residents are gainfully employed in Charlestown or nearby but are employed at low wages. By renting a safe and affordable home in Pleasant Ridge, the residents have more income left over for other things than if they were forced to rent elsewhere for more money.

43. The Association has approximately $3,000 in cash on hand. Its 2017 budget projects cash assets of roughly $12,400 (rental income of $950 per month, member dues, and cash on hand). The budget projects expenditures roughly equivalent to projected cash assets ($5,400 to pay off debt for the duplex, roughly $3,000 for neighborhood home maintenance, roughly $1,500 for duplex maintenance and improvements, roughly $1,500 for neighborhood clean-up and other community activities, and $1,000 paid into a rainy-day fund).

Plaintiffs Barnes, Craven, the Keiths, and Bolder Properties LLC

Plaintiff Tina Barnes

44. Plaintiff Barnes lives at 222 & 224 Marshall Drive in Pleasant Ridge. She bought her property in 2012 following her divorce. The tax assessed value of her property is approximately $31,900.

45. Plaintiff Barnes is a member of the Association.

46. Plaintiff Barnes is a medical-billing clerk who commutes every morning into Louisville.

47. Plaintiff Barnes provides for three dependents in her Pleasant Ridge home. First, she cares for her disabled adult daughter who lives at home. Second, she is raising her two granddaughters, who are in middle school and high school, as her own.

48. Plaintiff Barnes does not oppose redevelopment of Pleasant Ridge as long as property owners are not forced off of their land and are permitted to remain if they want to do so. Plaintiff Barnes opposes the abuse of code enforcement or eminent domain to force people, especially low-income people, from their property in order to enable a private developer to create a new neighborhood for wealthier people.

49. Plaintiff Barnes ran for, and was elected to, the Charlestown City Council in 2015 as the representative of District Two, which includes Pleasant Ridge. She has used her elected office to oppose the City's plan to demolish every home in Pleasant Ridge and disperse its residents. Plaintiff Barnes cannot afford to pay fines such as the $8,950 code-enforcement fine levied on the Association. She also cannot afford to sell her home to the developer for the $10,000 that the developer has offered for other properties in Pleasant Ridge. If she is forced to

sell her home, she will be destitute and homeless, and she will have to move with her daughter and granddaughters to Florida to live with her brother.

50. Having heard the Mayor and other City officials repeatedly tell her that every home in Pleasant Ridge must be destroyed, and having witnessed the City implement that plan already, Plaintiff Barnes is worried that the City will commence abusive code enforcement against her imminently.

51. Plaintiff Barnes has been forced to spend an enormous amount of her time away from work engaged in the fight to stop the City's redevelopment plans from destroying her home or those of her neighbors. Scarcely a day goes by in which she is not working on some issue related to opposing redevelopment. All of this is time that Plaintiff Barnes would have preferred to spend with her family, pursuing friendships and other personally rewarding projects, or trying to improve her professional skills, among other endeavors.

52. Plaintiff Barnes lives in a state of continuous stress due to the City's redevelopment plans, and she is constantly concerned about the impact of those plans on her disabled daughter, her granddaughters, her neighbors, her constituents, and herself.

Plaintiff Joshua Craven

53. Plaintiff Craven lives at 203 Guilford Avenue in Pleasant Ridge. He lives there with his four-year-old daughter. He has lived there since 2007 and is purchasing the home on a contract from his father, who in turn pays a mortgage on the home. He grew up in Pleasant Ridge.

54. His monthly payment for the home is approximately $410.

55. The tax assessed value of his home is $25,400.

56. The Association uses Plaintiff Craven's covered garage to store its tools and supplies.

57. Plaintiff Craven does not oppose redevelopment of Pleasant Ridge as long as property owners are not forced off of their land and are permitted to remain if they want to do so. Plaintiff Craven opposes the abuse of code enforcement or eminent domain to force people, especially low-income people, from their property in order to enable a private developer to create a new neighborhood for wealthier people.

58. Mr. Craven would find it extremely difficult to pay fines such as the $8,950 fine levied on the Association. He would also find it very hard, if not impossible, to find a rental for himself and his daughter in Charlestown for a comparable price to what he currently pays on his purchase contract.

59. Having heard the Mayor and other City officials repeatedly tell him that every home in Pleasant Ridge must be destroyed, and having witnessed the City implement that plan already, Craven is worried that the City will imminently commence abusive code enforcement against him.

60. Plaintiff Craven has been forced to spend an enormous amount of his time away from work engaged in the fight to stop the City's redevelopment plans from destroying his home or those of his neighbors. Scarcely a day goes by in which he is not working on some issue related to opposing redevelopment. All of this is time that Plaintiff Craven would have preferred to spend with his family, pursuing friendships and other personally rewarding projects, or trying to improve his professional skills, among other endeavors.

61. Plaintiff Craven lives in a state of continuous stress due to the City's redevelopment plans, and he is constantly concerned about the impact of those plans on his daughter, his neighbors, and himself.

Plaintiffs David and Ellen Keith

62. Plaintiffs David and Ellen Keith live at 101 Clark Road in Pleasant Ridge. David obtained the home in 1974 from his mother when she passed away. They have lived in Pleasant Ridge for decades. One of their daughters, who is disabled, a granddaughter, and two great-grandsons live in a house next door to them.

63. The tax assessed value of their home is $35,900.

64. The Keiths are members of the Association.

65. Plaintiff David Keith is a retired autoworker. Plaintiff Ellen Keith is of retirement age but still works as a hairdresser in downtown Charlestown to help make ends meet and provide for their family members next door.

66. The Keiths do not oppose redevelopment of Pleasant Ridge as long as property owners are not forced off of their land and are permitted to remain if they want to do so. The Keiths oppose the abuse of code enforcement or eminent domain to force people, especially low-income people, from their property in order to enable a private developer to create a new neighborhood for wealthier people.

67. The Keiths take great pride in their home, which they maintain in excellent condition. They could not afford to purchase a home of similar quality anywhere else. They cannot afford to pay a fine such as the $8,950 fine levied against the Association, and they cannot afford to sell their home to the developer for $10,000, which the developer has offered for

other properties in Pleasant Ridge. The Keiths do not know what they will do or how they will afford retirement if they are forced to sell to the developer.

68. Having heard the Mayor and other City officials repeatedly tell them that every home in Pleasant Ridge must be destroyed, and having witnessed the City implement that plan already, the Keiths are worried that the City will imminently commence abusive code enforcement against them.

69. The Keiths have been forced to spend an enormous amount of their personal time engaged in the fight to stop the City's redevelopment plans from destroying their home or those of their neighbors. Scarcely a day goes by in which they are not working on some issue related to opposing redevelopment. All of this is time that the Keiths would have preferred to spend with their family, pursuing friendships and other personally rewarding projects, among other endeavors.

70. The Keiths live in a state of continuous stress due to the City's redevelopment plans, and they are constantly concerned about the impact of those plans on their children, grandchildren, and great-grandchild, some of whom live nearby in Pleasant Ridge as well.

Ann Eldridge and Bolder Properties LLC

71. Ann Eldridge, through Plaintiff Bolder Properties, LLC, bought four duplexes in Pleasant Ridge in 2015. They are newly remodeled and in excellent condition. She still owes over $200,000 for the mortgages. Ms. Eldridge bought the duplexes to fund her retirement, and to help provide for herself, her mother, and her brother.

72. Ms. Eldridge is an Association member.

73. Ms. Eldridge has eight units housing 18 people. She rents six of her units for $575 per month. All of her tenants are low income, and some have their rent subsidized through the federal Section 8 program. Those units are rented for $515 per month.

74. Her Section 8 tenants may be leaving soon because the local Section 8 administrator is telling Pleasant Ridge tenants to leave because the City is going to destroy all of the housing. The administrator also admits, however, that there are no current Section 8 openings in Charlestown outside of Pleasant Ridge.

75. The tax assessed values of her duplexes range from $39,400 to $51,400.

76. Ms. Eldridge's properties are registered with the City.

77. Ms. Eldridge also owns her own home in Jeffersonville, Indiana. In addition, she is responsible for the mortgage for the house where her mother lives and also owns a separate house where her brother lives. Her mother is 88 years old and her brother relies on Ms. Eldridge for support. Ms. Eldridge relies on the rental income from the Pleasant Ridge duplexes to pay for the duplexes, to help support herself, to support her brother, and to support her mother. Thus, the duplexes represent an investment in the independence and well-being of her family.

78. Ms. Eldridge takes great pride in the quality of her rental duplexes.

79. Ms. Eldridge does not oppose redevelopment of Pleasant Ridge as long as property owners are not forced off of their land and are permitted to remain if they want to do so. She opposes the abuse of code enforcement or eminent domain to force people, especially low-income people, from their property in order to enable a private developer to create a new neighborhood for wealthier people.

80. Ms. Eldridge would find it extremely difficult to pay fines, such as the $8,950 fine levied on the Association, for each of her four duplexes. She also owes approximately $200,000

on the properties, and she cannot afford to sell them to the developer for the $10,000 that the developer has offered for other properties in Pleasant Ridge. If she is forced to sell her properties to the developer, she will be destitute in her retirement. Her bank has told her she would personally still have to pay the note off for the properties, and that would then lead to her losing her own home, her mother's home, and her brother's home. It would also take away much of the financial support on which her mother and brother depend.

81. Having heard the Mayor and other City officials repeatedly tell residents that every home in Pleasant Ridge must be destroyed, and having witnessed the City implement that plan already against other landlords, Ms. Eldridge is worried that the City will imminently commence abusive code enforcement against her duplexes.

82. Ms. Eldridge lives in a continuous state of stress related to the City's plan to demolish her rental properties. She is concerned about the severe financial effects of this action on her mother, her brother, and herself.

In 2014, the City Establishes an Official Policy of Redeveloping Pleasant Ridge from Scratch

83. In 2014, the City—through Mayor G. Robert Hall, the City Council, and the Redevelopment Commission—adopted an official policy of redeveloping Pleasant Ridge from scratch by tearing down all of the existing homes and having a redeveloper build an entirely new neighborhood.

84. In 2014, the City attempted to advance its official policy of redeveloping Pleasant Ridge from scratch by applying on June 16, 2014, to the Indiana Housing and Community Development Authority (IHCDA) for an approximately $6,000,000 grant. *See generally* Ex. 1

(Charlestown Blight Elimination Program Application Packet).[1] The IHCDA had a Blight Elimination Fund with federal money disbursed by the U.S. Treasury as part of the Troubled Asset Relief Program, which the federal government implemented following the financial crisis of 2008. The City intended to use the grant money to demolish every home in Pleasant Ridge and then have a private developer build a new residential community.

85. In its application to the IHCDA, the City stated that the objective was the complete destruction of the neighborhood: "The size of this project includes demolition of approximately 354 homes covering 1.89 square miles in downtown Charlestown." Ex. 1, BEP Application Table at 12.

86. As part of its application for the Blight Elimination Funds from the IHCDA, the City included a February 2014 survey of Pleasant Ridge by City Building Inspector M. Anthony Jackson, who noted alleged deficiencies in essentially every property in Pleasant Ridge. This survey declared properties blighted regardless of how well-maintained they were, often on the basis of inherent structural characteristics associated with the prefabricated nature of the homes. *See* Ex. 1, Property Spreadsheet.

87. The IHCDA also identified Neace Ventures of New Albany, Indiana as the private developer. Ex. 1.[2]

88. The City was just as candid with the general public as with the IHCDA about the scope of its redevelopment plans. In a September 2014 document distributed to the public entitled "Pleasant Ridge Redevelopment: Reinventing a Community, Revitalizing a City," the

[1] Exhibits 1–14 were attached to the original complaint. Exhibits 15 and 16 are attached to this amended complaint.
[2] The BEP application is not properly paginated. The Neace material is in the first few pages.

City explained that the entire neighborhood had to be demolished and rebuilt from scratch. *See generally* Ex. 2.

89. The September 2014 document refers to Pleasant Ridge using the pejorative "The Projects," characterizes it as "a cloud over the city," and states that it is "a stigma that stymies economic growth." Ex. 2 at 2-3.

90. In a section of the 2014 document with the heading "Why not tear down the poorly kept homes," the City states that nothing short of wholesale redevelopment is possible. This section states that "no developer will want to build new homes in the middle of the remaining older homes." This section also states that the City tried piecemeal redevelopment before but concluded that that approach was not a success and should not be tried again. Ex. 2 at 2.

91. The City's 2014 pursuit of state funds to implement the official policy of destroying Pleasant Ridge generated considerable public outrage and media attention.

92. The vast majority of Pleasant Ridge homeowners and a great many renters opposed the 2014 plan to destroy their neighborhood. They participated in City Council meetings, put up protest signs in their yards, attended rallies, and spoke out in other ways.

93. In November 2014, in response to public outrage and the opposition of Pleasant Ridge residents, the City Council voted not to proceed with the plan to use state Blight Elimination Funds to destroy Pleasant Ridge.

The City Pursues a New Plan in 2016 Using Code Enforcement to Implement Its Official Policy of Destroying Pleasant Ridge and Redeveloping It from Scratch

94. In January 2016, the City began creating an additional set of ordinances, resolutions, policies, practices, and customs designed to advance its official policy of destroying Pleasant Ridge and redeveloping the entire neighborhood from scratch.

95. In summary, this additional set of ordinances, resolutions, policies, practices, and customs targeted Pleasant Ridge property owners with official inspections by City Building Inspector Jackson, citations by Mr. Jackson for alleged deficiencies in the property under the property-maintenance code, and exorbitant fines for those alleged deficiencies.

96. The purpose of the fines is not to force property owners to fix up their properties. The purpose of the fines is to make it unaffordable to own property in Pleasant Ridge and thereby force property owners to sell to a private developer created on June 23, 2016, called Pleasant Ridge Redevelopment LLC, which is owned by Neace Ventures, a property-development and business-management enterprise based in New Albany, Indiana, that was the City's redevelopment partner in 2014.

97. In 2016, the City pursued its official policy of redeveloping Pleasant Ridge in two overlapping phases. The first phase, which covered mainly the first half of 2016, focused on enacting new ordinances and resolutions designed to provide the City with the broadest possible range of tools to declare Pleasant Ridge properties deficient and subject to fines. The ordinances and resolutions of 2016 bolstered the City's primary tool for driving up the cost of property ownership: the 2008 property-maintenance code.

98. The second phase, which covered mainly the second half of 2016 and remains ongoing, consists of code enforcement against Pleasant Ridge property owners for the specific purpose of forcing property owners to sell to the newly created Pleasant Ridge Redevelopment LLC. This second phase also included additional resolutions, policies, practices, and customs designed to achieve the City's redevelopment goals.

2016 Plan: Phase I: Ordinances and Resolutions

99. In summary, the first phase of the City's 2016 plan consisted mainly of: (1) a City resolution declaring Pleasant Ridge to be an "area in need of redevelopment" (i.e. blighted); (2) a City rental-inspection ordinance (giving the City the power to inspect rental units inside and out); (3) a City public-nuisance code (giving the City the power to declare properties to be a "public nuisance"; and (4) a City Redevelopment Commission resolution adopting a map, which encompasses only Pleasant Ridge, declaring the neighborhood a "Redevelopment Area."

100. On January 18, 2016, the City Council enacted Resolution 2016-R-1, which declared Pleasant Ridge to be an "*area needing redevelopment*, as defined in **Indiana Code § 36-7-1-3**." (emphases in original). 2016-R-1 at 5. The Resolution referred to the Pleasant Ridge neighborhood by the stigmatizing pejorative "The Projects." *Id.* at 1.

101. On February 1, 2016, the City Council enacted a comprehensive rental-inspection ordinance. 2016-OR-2. The Ordinance requires landlords and tenants to submit to exterior and interior inspections of their property to evaluate compliance with various standards, including the 2008 property-maintenance code.

102. The rental-inspection ordinance authorizes Charlestown to impose penalties on property owners of "not less than one hundred dollars ($100.00) and not more than fifteen hundred dollars ($1,500.00) for each provision of th[e] Ordinance that is violated. . . . Each day any violation continues to occur or exist is considered a separate violation." 2016-OR-2 at 7.

103. On February 15, 2016, the City Council enacted a new public-nuisance code. *See* 2016-OR-07. This ordinance allows the City to declare properties to be a public nuisance if there are three instances of nuisance behavior in a calendar year. *Id.* at 2–3. An instance of nuisance behavior could be something as minor as a citation under the property-maintenance code for

weeds in the yard. *Id.* at 3; 2008-OR-02 at 10 ("All premises and exterior property shall be maintained free from weeds or plant growth in excess of eight (8) inches.").

104. The public-nuisance code authorizes Charlestown to fine property owners up to $2,500 and even to order the property closed and vacated. 2016-OR-07 at 5.

105. On March 24, 2016, the Charlestown Redevelopment Commission passed Resolution 2, adopting a specific map of Pleasant Ridge and declaring it to be a "Redevelopment Area." 2016-R-2 at 2.

106. These measures targeting Pleasant Ridge were promulgated against the backdrop of the City's 2008 property-maintenance code, which sets out general standards for property within the City. *See generally* 2008-OR-1.

107. The property-maintenance code authorizes the code-enforcement official to issue a "notice of violation" to a property owner. The "notice of violation" must:

> 1. Be in writing[.]
>
> 2. Include a description of the real estate sufficient for identification.
>
> 3. Include a statement of the violation or violations and why the notice is being issued.
>
> 4. Include a correction order allowing 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.
>
> 5. Inform the property owner of the right to appeal.
>
> 6. Include a statement of the right to file a lien in accordance with Section 106.3

2008-OR-1 at 4.

108. The City may impose a fine only if there is a failure to correct a deficiency after a property owner is given a reasonable amount of time. 2008-OR-1 §106.3 ("Prosecution of violation: Any person failing to comply with a notice of violation or order served in accordance

with Section 107 shall be deemed guilty of a civil infraction."); §107.2 (stating that a "notice of violation . . . shall . . . [i]nclude a correction order allowing a reasonable time to make the repairs and improvements . . . ."); § 107.4 ("Penalties for noncompliance with orders and notices shall be as set forth in Section 106.4.").

2016 Plan: Phase II: The City Goes After the Biggest Pleasant Ridge Landlords

109. In the summer of 2016, the City implemented its ordinances, resolutions, policies, practices, and customs through the use of code enforcement against Pleasant Ridge property owners to compel them to sell their properties to a private developer.

110. The City's official policy is to use code enforcement as a means of forcing the sale of property to a private developer—as opposed to bringing properties into compliance with the building code. In a November 7, 2016, email, Plaintiff and City Councilmember Tina Barnes, who represents the neighborhood (and lives there) and opposes its redevelopment, asked Mayor Hall to "promise now that every homeowner who wants to stay in their homes can do so and redevelopment will occur around them." The Mayor specifically rejected that, stating: "All indications are that successful redevelopment of PR is an 'all or nothing' undertaking. So, regarding the promise you ask for, the answer is no. The City will continue to move forward with redevelopment of PR." Ex. 3.[3]

111. In that same November 7, 2016 email, Ms. Barnes asked the Mayor "if the City issues any more property code violations, will you promise to let the homeowners stay if they fix up their property, regardless of any redevelopment by Neace [the parent company of the private developer] or someone else?" The Mayor also rejected that, stating: "No. I cannot promise that nor, as I said above, should any other honest and responsible person or organization make such a

[3] The original of Exhibit 3 was filed in color because Mayor Hall inserted his answers in red beneath the questions that Councilmember Barnes asked.

promise. I am told that homeowners in PR 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." The Mayor goes on to state that "it could be financially disastrous" for Pleasant Ridge property owners to fix up their properties in an attempt to resist the redevelopment plan, and in particular in an attempt to resist the use of code enforcement to force the sale of property to a private developer.

112. The first key event in the implementation of the code-enforcement plan was the creation of Pleasant Ridge Redevelopment LLC on June 13, 2016. Neace Ventures owns Pleasant Ridge Redevelopment LLC. Neace Ventures is based in New Albany and operates a variety of businesses, including property-development and property-management enterprises. Neace Ventures created Pleasant Ridge Redevelopment LLC and appointed John Hampton to head the LLC, for the specific purpose of acquiring Pleasant Ridge properties after the City imposed crippling code-enforcement fines. Neace Ventures was identified as the private developer in the City's 2014 application to the State of Indiana for Blight Elimination funds.

113. Neace Ventures, through Pleasant Ridge Redevelopment LLC, shares the City's commitment to redeveloping Pleasant Ridge from scratch. On July 15, 2016, the News and Tribune reported that John Hampton, the head of the LLC, stated that the goal for Pleasant Ridge is to replicate an upscale subdivision called Norton Commons in Prospect, Kentucky. Hampton was quoted as saying that he hoped "to bring the subdivision up to something the residents of Charlestown would be happy to live in."

114. Norton Commons is a planned subdivision where two-or three-bedroom apartments rent for $1,200 to $2,000 per month. Detached single-family homes in Norton Commons are currently listed at prices ranging from $309,000 to $1,450,000.

115. Because the rental units and owner-occupied homes in Norton Commons are so much more expensive than the housing in Pleasant Ridge, and because any new development in Pleasant Ridge that resembles Norton Commons would have housing that costs far more to rent or buy than the current housing, any plan to demolish the current Pleasant Ridge homes and replace them with a Norton Commons-style development necessarily means that the overwhelming majority—and perhaps even all—of the current Pleasant Ridge residents would be displaced.

116. Mayor Hall has repeatedly and specifically stated that Norton Commons represents his vision for Pleasant Ridge.

117. In August 2016, City Building Inspector Jackson began inspecting the properties of Pleasant Ridge's landlords who own multiple properties, identifying alleged deficiencies, and issuing substantial fines. These fines would typically amount to between $5,000 and $10,000 per property, and uncorrected deficiencies would be subject to daily accumulating fines. Some of the landlords accumulated fines in the six-figure range in a matter of weeks.

118. It is in this context of rapidly accumulating daily fines that Pleasant Ridge Redevelopment LLC would enter and make an offer to the landlord to obtain each property for $10,000, which was roughly a quarter to a third of its tax-assessed value, and far less than what the properties had been worth before the City's redevelopment pushes.

119. Pleasant Ridge Redevelopment LLC was only willing to pay $10,000 for the properties because it was purchasing them solely for demolition.

120. Pleasant Ridge Redevelopment LLC would only agree to buy a landlord's property if the landlord sold them all. If a landlord tried to hold back a property or two to develop personally, the LLC would refuse to buy any. By using an "all or nothing" strategy, the

LLC was able to acquire every rental property subjected to code-enforcement fines in 2016 (except one: the duplex owned by the Association that is at issue in this case).

121. Property owners were able to escape the fines by selling to Pleasant Ridge Redevelopment LLC because the LLC would accept responsibility for the fines as part of the purchase agreement.

122. Additionally, the LLC assumed responsibility for repairing the properties because the property maintenance code provides that purchasers are required to make all repairs necessary to address a notice of deficiency that has been issued against the property. 2008-OR-01, § 107.5.

123. But Pleasant Ridge Redevelopment LLC is not concerned about the fines or about any further liability that might accrue for failure to repair the properties because there is a written agreement between the LLC and the City stating that the fines on the properties will be waived when the properties have been demolished. Ex. 4.

124. Hundreds of Pleasant Ridge tenants presently occupy rental units now owned by Pleasant Ridge Redevelopment LLC, and they continue to occupy those units even though the City supposedly considers them so deficient that they were collectively subject to hundreds of thousands of dollars (perhaps more than one million dollars) in fines. The LLC has not been required to make any improvements at all. Nor has the LLC been required to pay any fines.

125. Some tenants are now leaving the homes the LLC now owns. This is overwhelming the local rental housing market for low income housing, including Section 8 subsidized housing.

126. By working hand-in-glove with the City during the second half of 2016, Pleasant Ridge Redevelopment LLC was able to acquire approximately 140 properties in a matter of months at far below market prices.

127. As Pleasant Ridge Redevelopment LLC obtained properties via the City's code-enforcement scheme, the City and its agencies continued to develop additional resolutions, policies, practices, and customs designed to advance the wholesale destruction and redevelopment of Pleasant Ridge.

128. On October 27, 2016, the Redevelopment Commission adopted another resolution identifying Pleasant Ridge as a redevelopment area and approving a redevelopment plan. It calls for a complete demolition of Pleasant Ridge, re-platting of the area, and their replacement with upscale homes. 2016-R-6 (stating Pleasant Ridge "is in need of redevelopment as it is a menace to the social and economic interest of the City and its inhabitants," p. 1, and singling out Association President Craven for frustrating the City in its redevelopment plans, Ex. IV ¶¶ 32-33).

129. The City Council approved the Redevelopment Commission's resolution on November 7, 2016. 2016-R-13.

130. Despite having a written agreement with Pleasant Ridge Redevelopment LLC to waive fines following demolition, and despite the fact that the LLC—and only the LLC—was sweeping up properties at the rate of dozens per week as a result of the City's code-enforcement scheme and fine-waiver promise, the redevelopment plan characterizes the property sales to the LLC as "arms-length sales transactions" occurring without any influence from the City. 2016-R-6, Ex. IV ¶ 36.

The City Also Targets the Smallest Landlord in Pleasant Ridge: The Association

131. The City's use of code enforcement in 2016 focused primarily on the big landlords who owned many properties each, but the City also turned its sights on the very smallest landlord in the neighborhood—the Association. As with the big landlords, this attack on the Association was motivated in part by a desire to force the Association to sell to Pleasant Ridge Redevelopment LLC.

132. This attack on the Association was also motivated by a desire to punish it (and its members) for its political speech, effectively destroy it as a source of political opposition, and demonstrate through the Association's destruction that the wholesale redevelopment of the neighborhood is inevitable.

Exterior Inspections and Hearing: September to November 2016

133. On September 26, 2016, City Building Inspector Jackson arrived at the Association duplex to inspect both sides from the exterior. He trespassed on the property without even seeking permission first, and that trespass included unconsented-to searches of non-public exterior locations such as the backyard and the crawlspace under the home.

134. For the 114 Riley Avenue side of the duplex, Mr. Jackson identified seven alleged deficiencies under the 2008 property-maintenance code (technically, one violation was under a 2002 predecessor to the 2008 code). These seven deficiencies concerned the foundation, vents, and positioning of an exterior HVAC unit. The citation order directed the Association to obtain the foundation work from a licensed professional and have that professional certify the repair. The order gave the Association ten days to complete all corrections, including the foundation work. Ex. 5.

135. For the 116 Riley Avenue side of the duplex, and also on September 26, 2016, Mr. Jackson identified four alleged deficiencies under the 2008 property-maintenance code. As with the 114 side, Mr. Jackson directed the Association to make all corrections within ten days. Ex. 6.

136. The two orders that Mr. Jackson generated on September 26, 2016 after his exterior inspections of the duplex resulted in $600 in fines ($400 for 114 Riley Avenue and $200 for 116 Riley Avenue). The orders specified that the fines would accumulate at a rate of $600 per day until the corrections were made. *See* Exs. 5 & 6.

137. The City mailed the orders to the Association via registered mail. Plaintiff and Association President Craven did not receive the two orders at the mailing address of the Association until October 4, 2016. There appears to have been an interval of several days between when Mr. Jackson inspected the duplex on September 26, 2016 and sent the orders to the Association. *See* Exs. 5 & 6 (registered mail receipts).

138. Except for the foundation, which required retaining a licensed professional and scheduling work with outside labor, the Association members took immediate steps in good faith to correct the alleged deficiencies, and did so within ten days.

139. With respect to the foundation, the Association also took immediate steps in good faith, promptly retaining Bill Egger, who is licensed with the State of Indiana. The earliest he could inspect the property was October 18, 2016. Mr. Egger provided a written recommendation to perform maintenance on certain piers of the foundation and anchor the home to the piers using galvanized steel straps.

140. The Association next took immediate steps to perform the work Mr. Egger required. Mr. Egger returned on November 3, 2016, and certified that the piers were in good

condition. Mr. Egger then returned on November 14, 2016, and certified that the home had been anchored. *See* Ex. 7 (report of Mr. Egger).

141. As the effort to perform the corrections related to the September 26, 2016, inspections was going on, the Association sought review of the orders before Defendant Board of Public Works and Safety.

142. Plaintiff and Association President Craven appeared at the November 7, 2016, meeting of the Board for a hearing on the orders. Plaintiff Craven requested that the hearing be postponed until the next meeting because City Building Inspector Jackson had not yet signed off on the corrections that had been completed and because the Association was still waiting for Mr. Egger to return to certify the completion of the foundation work.

143. Rather than postpone the hearing for those reasons, however, the Board continued the hearing to the next regular meeting of the Board two weeks later because it was uncertain whether the Association in fact had a cognizable interest in the property. The Board asked Plaintiff Craven to provide evidence of the Association's interest.

Interior Inspections and Hearing: October-November 2016

144. Meanwhile, as the Association was trying to comply with the September 26, 2016 orders as soon as possible and the hearing process concerning those orders, the City notified the Association and its tenants in a letter dated September 27, 2016 that the City intended to perform an interior inspection on October 19, 2016 at 1:00 p.m. pursuant to the 2016 rental-inspection ordinance. *See generally* Ex. 8

145. The Association and its six tenants who reside at the duplex perceived the interior inspection as part of the City's larger effort to force the sale of the property to Pleasant Ridge Redevelopment LLC and oust the tenants from their homes. Neither the Association nor the

tenants were willing to allow City officials to intrude into the rental homes to advance a fundamentally illegitimate plan to cripple the Association with fines, force a sale, and evict the tenants. Therefore, within 10 days of notice of the impending inspection and in writing, the Association and tenants asserted their rights under the Fourth Amendment of the U.S. Constitution and Article I, Section 11 of the Indiana Constitution not to allow the City to enter the two private residences without a warrant. This request was made pursuant to the procedure set out in the new rental-inspection ordinance. 2016-OR-02, § 2.12 (allowing objection to be made by an occupant of a unit if in writing and within 10 days of receiving a notice of an inspection).

146. The City did not attempt to perform interior inspections on October 19, 2016.

147. But, on November 2, 2016, the City obtained an inspection warrant from Judge Bradley B. Jacobs in the Clark County Circuit Court. *See generally* Ex. 9. The warrant process was highly irregular. The City did not initially obtain a docket number for the warrant, nor did the City return the warrant in a reasonable time, as is required by statute. I.C. § 35-33-5-7(b)(2).

148. In fact, it was only after this lawsuit was initially filed, that on January 12, 2017, the City opened a docket file for the warrant and returned it—over two months after it was executed. *See* Clark County Circuit Court Docket No. 10C02-1701-MI-05 (noting the file for a warrant issued and executed on November 2, 2016, was opened and closed, with the warrant returned, on January 12, 2017).

149. On November 2, 2016, City Building Inspector Jackson arrived at the duplex with the warrant and law enforcement to inspect the 116 Riley Avenue side. He returned on November 3, 2016 to inspect the 114 Riley side. Upon satisfying themselves that the warrant

appeared valid, the Association and tenants admitted Mr. Jackson to the homes. The inspections occurred without any conflict.

150. For the 114 Riley Avenue side, Mr. Jackson identified one supposed deficiency under the 2008 property-maintenance code. This deficiency involved erecting a simple drywall partition in the attic to enhance a firewall dividing the duplex.

151. For the 116 Riley Avenue side, Mr. Jackson identified four alleged deficiencies under the 2008 property-maintenance code. The deficiencies involved minor electrical repairs, the installation of additional smoke detectors, and simple tweaks to the hot-water heater.

152. The Association took immediate steps in good faith to address the deficiencies from the interior inspections and did so within ten days.

153. Mr. Jackson generated two orders following the interior inspections of the duplex. These orders imposed fines of $50 for the 114 Riley Avenue deficiency and $150 for the 116 Riley Avenue deficiencies. The orders specify that the fines accumulate on a daily basis until the deficiencies are corrected. *See generally* Exs. 10 & 11.

154. The Association did not receive the orders related to the interior inspections at the Association's mailing address until November 12, 2016. Exs. 10 & 11 (registered mail receipts).[4] As with the orders related to the exterior inspections, there appear to have been several days between when Mr. Jackson performed the inspections and when he sent the orders via registered mail to the Association.

155. On November 15, 2016, the Association sought review of the interior-inspection orders with Defendant Board of Public Works and Safety.

[4] There are typos on the orders for the interior inspections, Exs. 10 & 11, stating that they took place in early October. Those are obviously incorrect, as the inspections did not take place until November.

Consolidated hearing on all inspection orders: November 2016-January 2017

156. On November 16, 2016, City Building Inspector Jackson confirmed that every deficiency identified in his exterior and interior inspections of the Association duplex had been remedied, with the exception of the firewall enhancement and minor electrical work.

157. On November 21, 2016, Plaintiff and Association President Craven appeared again at the regular meeting of Defendant Board of Public Works and Safety to continue the appeal of the fines that had been levied. He informed the Board that Mr. Jackson had signed off on almost all of the corrections and that the remainder were in the process of correction and would be finished quickly. Plaintiff Craven made it clear that the Association wanted to provide safe and affordable housing to its tenants and serve the Pleasant Ridge neighborhood.

158. Once again, however, the Board did not take action to waive, reduce, or finalize the fines, and continued the hearing.

159. The following day, on November 22, 2016, Mayor Hall published a public post on Facebook specifically criticizing Plaintiff Craven and other neighborhood residents for their continuing efforts to encourage Pleasant Ridge property owners to maintain their properties and fight the City's plan to demolish their homes. Mayor Hall directed Pleasant Ridge residents to a supposed resource for relocating from the neighborhood (one the Association and many neighborhood residents consider essentially useless). He then concluded the post by stating: "I hope the [Pleasant Ridge] residents won't listen to Josh Cravens [sic] and his followers who have already cost property owners thousands of dollars by giving out false information, false claims and false hope." Ex. 12.

160. On November 26, 2016, City Building Inspector Jackson confirmed that the firewall, the electrical grounds, and the 220-volt electrical outlet had been remedied. At this

point, every deficiency the City had identified with both units had been corrected by the Association.

161. The Association paid $2,110 to make all of the corrections that Mr. Jackson required and eventually approved: $450 for the foundation engineer's recommendation, inspections, and certification; and $1,660 for labor and materials for the corrections.

162. On December 5, 2016, Association Vice President Melissa Crawford attended the next regular meeting of the Board to participate in the ongoing hearing on the Association's fines. Ms. Crawford asked that the fines be waived because the Association had corrected all alleged deficiencies in the property. At the suggestion of City Attorney Michael Gillenwater, the Board declined to make a final determination on the Association's fines.

163. Mr. Gillenwater apparently suggested that the Board not reach a final decision on the request to waive fines at the December 5, 2016, meeting because he knew that the Redevelopment Commission was going to pass a Resolution on December 8, 2016,[5] which the Commission in fact did (2016-R-8) under Mayor Hall's signature, instructing all City entities capable of imposing fines on Pleasant Ridge property owners to not waive those fines after property owners correct alleged deficiencies.

164. The Resolution specifically states that fines should only be waived once the Pleasant Ridge housing "is removed." The Resolution characterizes the removal of all Pleasant Ridge housing as part of the "permanent solutions" for Pleasant Ridge.

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[5] The precise date is unclear. The Resolution itself has the Mayor's signature and says the month of November, but not a specific date. The meeting prior to December 8, 2016, that would ordinarily have occurred in November fell in 2016 on Thanksgiving Day and thus did not happen. So either the Resolution was passed at the next regular meeting on December 8, 2016, and the copy of the Resolution that the Mayor signed was not updated to say "December," or the meeting occurred on some other date on or around December 8, 2016.

165. On January 2, 2017, Plaintiff and Association President Josh Craven appeared again before Defendant Board of Public Works and Safety to participate in the ongoing hearing on the Association's fines. Through Mr. Craven, the Association once again requested that the fines be waived because the Association had worked as quickly as possible in good faith to correct all of the deficiencies identified in the inspections. He presented a letter offering several grounds for waiving the fines:

- "The Association hasn't violated the ordinance. The ordinance says that you get punished for failing to comply with a notice of violation. A notice of violation must give a reasonable time for correction. Once we got the notices of violation, we took every reasonable step as quickly as possible to fix the problems. So we never violated the ordinance.
- "Also, Indiana's Unsafe Building Act doesn't allow the board to impose fines unless there has been a willful violation, or if it hasn't been complied with within 60 days. We complied with everything within 60 days.
- "The fines for the interior of the building can't be assessed because the warrant allowing the inspection violated the Fourth Amendment.
- "Any fines would be unreasonable and unconstitutional.
- "Neace isn't being forced to pay fines even though people are living in its buildings. We have people living in our building, and we actually fixed what Mr. Jackson said was wrong with it (unlike Neace). To make us pay fines, and not Neace, violates equal protection.
- "We didn't get proper notice that what you're really doing here is trying to force us to sell the land to Neace, not make the property better for our tenants.
- "You can't fine someone in order to force them to sell. That's what's really going on here."

Ex. 12.[6]

[6] Exhibit 13 does not bear the signature of Association President Craven because he inadvertently omitted his signature, but the exhibit does bear the stamp of the City, and the initials of a City employee, indicating that this unsigned document is the one that Mr. Craven submitted.

166. Pursuant to the Resolution barring waiver, the City, by and through Defendant Board, denied the Association's request for waiver. The City, by and through Defendant Board, voted unanimously to resolve the Association's appeal by imposing an $8,950 fine.

167. The Association does not actually understand how the City, by and through Defendant Board, calculated the $8,950 fine.

168. The Board issued its ruling orally at the January 2, 2017, meeting, but did not explain the basis for the final sum.

169. The Association immediately sought a written explanation, and copies of all materials from the January 2 meeting, but the City treated the Association's inquiry as a public-records request that it would respond to at some indefinite point in the future. The City Attorney did issue a letter to the Association president regarding the fines, but it also does not explain the basis for the final sum. *See generally* Ex. 14.[7] The Board later approved minutes of the meeting, but they, also, do not explain the basis for the final sum. Ex. 15.

170. Because any further written explanation of the Board's actions and the materials from the hearing would not arrive before the ten-day statute of limitations on the statutory claim would expire, the Association has filed this suit without any such written materials. If the Board produces them, the Association will obtain them as soon as possible and file them with the Court as necessary.

Code Enforcement Here Is an Attempt to Circumvent Indiana Law

171. The reason that the City is using pretextual code enforcement instead of eminent domain is that Indiana has expressly prohibited the use of eminent domain against non-blighted properties for the purposes of area-wide redevelopment. In the wake of the U.S. Supreme Court's

[7] The letter was dated January 2, 2016 (a holiday), but it was not received by the Association, through President Craven, until Saturday, January 7, 2016.

Kelo v. City of New London decision, 545 U.S. 469 (2005), which upheld the use of eminent domain solely for economic development, in 2006 Indiana enacted one of the most stringent eminent-domain reforms in the country. Under this statute, the City can use eminent domain to force the sale of property from one private owner to another only if the specific parcel at issue individually presents an immediate and urgent threat to public health and safety. I.C. § 32-24-4.5-7 (enumerating condemnation criteria).

172. The City is using code enforcement to compel private-to-private transfers of property to Pleasant Ridge Redevelopment LLC because Indiana has specifically outlawed the very sort of *demolish-everything* redevelopment scheme that the City is trying to implement. The City, in other words, is using code enforcement as a pretext for implementing a redevelopment scheme that is blatantly illegal under Indiana eminent-domain law. The statutory and constitutional injuries described below, and the statutory and constitutional claims that seek to remedy those injuries, are best understood in light of this larger context for the City's abuse of code enforcement.

Harm to Plaintiffs

Retrospective Harms to the Association

173. The Association has been fined $8,950.

174. The Association lacks the cash on hand to pay the $8,950 fine and has no realistic prospect of raising the money at all, much less of doing so quickly. It will be necessary to raise the money quickly because Defendant Board of Public Works and Safety specifically rejected a proposal at the January 2, 2017, hearing that would have allowed the Association to propose a long-term payment plan.

175. The Association's only real asset is the duplex and the only realistic way to escape the fine is to sell the duplex to the only plausible buyer, which is Pleasant Ridge Redevelopment LLC.

176. If the Association is forced to sell, it will also be harmed insofar as its six tenants will be evicted when Pleasant Ridge Redevelopment LLC demolishes the property, as part of the Association's nonprofit mission is providing safe and affordable rental housing to Pleasant Ridge tenants.

177. Without the duplex, the Association will not be able to demonstrate that it is possible to buy, fix up, and maintain a rental property in Pleasant Ridge responsibly. The loss of the duplex will constitute a decisive political victory for the City, which is why the City targeted the Association along with the big landlords in the first place.

178. If the Association is forced to sell to Pleasant Ridge Redevelopment LLC, the effort and expense of fixing up and maintaining the property (including making all of the corrections in response to the City's inspections) will have been a waste.

179. If the Association is forced to sell to Pleasant Ridge Redevelopment LLC, it will lose out on the future income stream from the two rental units in the duplex.

180. If the Association is forced to sell to Pleasant Ridge Redevelopment LLC, it will suffer a huge investment loss. The Association still owes more than $12,000 on the duplex. If forced to sell to Pleasant Ridge Redevelopment LLC for the $10,000 that the LLC has paid for other properties, the Association will have an outstanding debt to the previous owner to discharge without any clear way of paying that debt.

181. The Association was harmed when the City targeted the Association for code enforcement to retaliate against, undermine, embarrass, and ultimately ruin the Association

because the Association and its members have engaged in extensive speech (and encouraged such speech in others) in opposition to the City's redevelopment plan for Pleasant Ridge.

182. The Association was harmed when City Building Inspector Jackson trespassed on Association property on September 26, 2016, in the course of conducting exterior inspections.

183. The Association was harmed by being forced to endure an expensive, stressful, time-consuming, and ultimately meaningless charade in which the City pretended to care about the deficiencies and corrections for the duplex when the City did not in fact care and was instead trying to compel a sale to Pleasant Ridge Redevelopment LLC that the Association adamantly wanted to resist.

184. The Association was harmed by being subject to an interior inspection of the duplex that was unrelated to the probable cause that provided the basis for the warrant. The basis for legitimate probable cause was the inspection of a rental unit for health-and-safety purposes. The City did not, however, inspect for health-and-safety purposes, but rather to force the sale of the duplex to Pleasant Ridge Redevelopment LLC.

185. The Association was harmed by being forced to endure an expensive, stressful, time-consuming, and ultimately meaningless charade about property deficiencies for its duplex when Pleasant Ridge Redevelopment LLC, despite owning approximately 140 properties with hundreds of supposed deficiencies, is not being required by the City to take any corrective measures or pay any fines.

186. In addition to the loss of money, the Association was harmed by the $8,950 fine because it is grossly excessive and not remotely proportional to the *de minimis* injury to the public caused by the deficiencies that the City identified and the Association promptly corrected.

Prospective Harms to the Association

187. The Association is harmed in an ongoing manner into the future by ordinances, policies, practices, and customs related to the use of code enforcement to compel the sale of property to Pleasant Ridge Redevelopment LLC at far below market prices. Because the City's stated goal is the wholesale redevelopment of Pleasant Ridge from scratch, and because the City is pursuing that goal through aggressive, pretextual code enforcement (including enforcement specifically against the Association), the City will resume code enforcement against the Association to further raise the cost of owning the duplex.

188. The future use of code enforcement will once again re-impose all of the harms listed in paragraphs 173 to 187 as the City forces the Association to endure yet again another round of warrants, inspections, citations, corrections, hearings, and fines in which the City pretends to care about public health and safety when it only cares about forcing the sale of the duplex to Pleasant Ridge Redevelopment LLC and silencing the Association's speech.

Prospective Harms to the Association's Members

189. The Association's members are harmed by the imminent use of pretextual code enforcement because they are overwhelmingly low-income homeowners and landlords who do not have a realistic alternative to Pleasant Ridge.

190. With respect to Association homeowners, in addition to the various harms enumerated in paragraphs 173 through 189 above, they are harmed by the imminent use of pretextual code enforcement because:

a. They cannot afford to pay fines such as the $8,950 fine levied against the Association;

b. They cannot afford to sell their property to Pleasant Ridge LLC for the $10,000 that has been offered for other properties in Pleasant Ridge, and doing so will financially destroy most of the homeowners;

c. The City's threats of redevelopment have destroyed the market for Pleasant Ridge homes, leaving homes with much lower present market values and many homeowners owing more on their mortgages than their homes are worth, which means that the only realistic buyer right now is the developer with its $10,000 offer for homes;

d. Most homeowners have no realistic alternative to Pleasant Ridge and will not be homeowners if forced out of the neighborhood;

e. Forcing the homeowners out of their homes almost certainly means that most will be forced out of Charlestown altogether because there are no homes available in the City for the prices that most of the Association's members can realistically afford;

f. The perverse incentives the City has created mean that Association members are discouraged from maintaining their homes because the City has repeatedly stated that the homes will be imminently destroyed, which means that the City's policies create property problems that the City claims to want to correct;

g. The City's policies, practices, and customs related to pretextual code enforcement violate the property-maintenance code and the Indiana Unsafe Buildings Law;

h. The homeowners have been harmed insofar as they are targeted for pretextual code enforcement in retaliation for their political opposition to redevelopment;

i. The homeowners are harmed insofar as code enforcement is merely a pretext for compelling the sale of the property, rather than a legitimate government program intended to advance health and safety;

j. The homeowners are harmed insofar as pretextual code-enforcement requires them to pay fines and fix up their properties, while Pleasant Ridge LLC is not required to pay fines or fix up its properties;

k. The homeowners are harmed insofar as they face excessive fines that are grossly disproportionate to any injury suffered by the public due to technical violations of the property-maintenance code.

191. With respect to Association landlords, in addition to the various harms enumerated in paragraphs 173 through 190 above they are harmed by the imminent use of pretextual code enforcement because:

a. They cannot afford to pay fines such as the $8,950 fine levied against the Association;

b. They cannot afford to sell their properties to Pleasant Ridge LLC for the $10,000 that has been offered for other properties in Pleasant Ridge, and doing so will be financially ruinous;

c. The City's threats of redevelopment have destroyed the market for Pleasant Ridge homes, leaving homes with little present market value and many landlords owing more on their mortgages than homes are worth, which means that

the only realistic buyer right now is the developer with its $10,000 offer for homes;

d. Most landlords have no realistic alternative to Pleasant Ridge and will not be landlords if forced out of the neighborhood;

e. The perverse incentives the City has created mean that Association members are discouraged from maintaining their homes because the City has repeatedly stated that the homes will be destroyed, which means that the City's policies create property problems that the City claims to want to correct;

f. The landlords are harmed insofar as their tenants will no longer have safe and affordable housing if the landlords are forced to sell to the developer;

g. The City's policies, practices, and customs related to pretextual code enforcement violate the property-maintenance code and the Indiana Unsafe Buildings Law;

h. The landlords have been harmed insofar as they are targeted for pretextual code enforcement in retaliation for their political opposition to redevelopment;

i. The landlords will be harmed to the extent that their properties and their tenants are subject to search for the pretextual purpose of gathering evidence for abusive code enforcement, rather than for the purpose of public health and safety;

j. The landlords are harmed insofar as code enforcement is merely a pretext for compelling the sale of the property, rather than a legitimate government program intended to advance health and safety;

k. The landlords are harmed insofar as pretextual code enforcement requires them to pay fines and fix up their properties while Pleasant Ridge LLC is not required to pay fines or fix up its properties;

l. The landlords are harmed insofar as they face excessive fines that are grossly disproportionate to any injury suffered by the public.

Prospective Harms to Plaintiff Barnes

192. In addition to the various harms enumerated in paragraphs 173 through 191 above, Plaintiff Barnes suffers additional specific harms due to the imminent use of pretextual code enforcement:

a. Plaintiff Barnes cannot purchase a home anywhere else in Charlestown for the price that she paid for her Pleasant Ridge home;

b. Plaintiff Barnes's disabled adult daughter and two grandchildren live with her, and she cannot afford to care for these three dependents if she is forced out of her home;

c. Plaintiff Barnes believes that she and her family will be homeless if she is forced to sell to Pleasant Ridge LLC and that they will be forced to move in with her brother in Florida, which will tax their finances even more in moving and prove to be a huge disruption for her daughter and school-age granddaughters;

d. Plaintiff Barnes will suffer the loss of the community and friendships she has in Pleasant Ridge, including the loss of living near other family members who also live in Pleasant Ridge.

Prospective Harms to Plaintiff Joshua Craven

193. In addition to the various harms enumerated in paragraphs 173 through 191 above, Plaintiff Craven suffers additional specific harms due to the imminent use of pretextual code enforcement:

a. Plaintiff Craven cannot afford to buy a home anywhere else in Charlestown for the monthly payment that he is paying for his Pleasant Ridge home;

b. Plaintiff Craven cannot find rental housing in Charlestown for himself and his daughter for anything in the same range as the monthly payment he currently pays to his father for his home;

c. If Plaintiff Craven lost his home in the same way that many Pleasant Ridge landlords lost theirs in 2016, he and his father would still need to pay off the approximately $40,000 owed on the mortgage on his home;

d. Plaintiff Craven will suffer the loss of the community and friendships he has in Pleasant Ridge.

Prospective Harms to Plaintiffs David and Ellen Keith

194. In addition to the various harms enumerated in paragraphs 173 through 191 above, Plaintiffs David and Ellen Keith suffer additional specific harms due to the imminent use of pretextual code enforcement:

a. The Keiths cannot afford to buy a home of remotely similar quality anywhere else in Charlestown and thus they do not want to leave;

b. The Keiths live in Pleasant Ridge near many family members and they will lose their family closeness if forced to leave;

c. The Keiths cannot afford to pay a fine similar to the $8,950 fine levied against the Association;

d. The Keiths cannot afford to sell their home for $10,000 to the developer and will be left much poorer in their retirement if forced to do so;

e. The Keiths will suffer the loss of their community and friendships that they have in Pleasant Ridge if they are forced out.

Prospective Harms to Plaintiff Bolder Properties, LLC

195. In addition to the various harms enumerated in paragraphs 173 through 191 above, Plaintiff Bolder Properties LLC also suffers the additional specific harms due to the imminent use of pretextual code enforcement:

a. Ann Eldridge owes approximately $200,000 on the mortgage for the duplexes, and she, her mother, and her brother will be left destitute if forced to sell them to the developer for $10,000 each;

b. Ms. Eldridge cannot afford to pay fines for each duplex similar to the $8,950 fine levied against the Association;

c. Ms. Eldridge intends to use the income from the duplexes to pay for her retirement, and she already uses the income to help support her mother and brother. She and her family will be in desperate financial straits if she loses her investment in the duplexes due to the City's pretextual code enforcement;

d. Ms. Eldridge may already be about to lose tenants because those whose rent is subsidized through the federal Section 8 program are being encouraged to leave by the local Section 8 official, who believes that Pleasant Ridge will be

destroyed and thus believes that all Section 8 tenants should find housing elsewhere.

COUNT I
Charlestown Property-Maintenance Code: Imposition of Fines Is Unlawful

196. Plaintiffs adopts and realleges the allegations contained in paragraphs 1 through 195 of this Complaint.

197. The City, by and through Defendant Board, imposed the $8,950 fine on January 2, 2017 after concluding that the Association had violated the Charlestown property-maintenance code because City Building Inspector Jackson identified various deficiencies, as described in the citations he issued, when he inspected the rental duplex on three occasions.

198. The City lacks authority under the property-maintenance code to impose fines in this manner. The property-maintenance code does not allow the City to impose a fine simply because the City Building Inspector identifies a deficiency. Instead, the City may impose a fine only if there is a failure to correct a deficiency after a property owner is given a reasonable amount of time. Section 106.3 of the code, entitled "Prosecution of violation," provides that "[a]ny person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a civil infraction . . . ." Section 107.2 states that a "notice of violation . . . shall . . . [i]nclude a correction order allowing a reasonable time to make the repairs and improvements . . . ." Section 107.4 provides that "[p]enalties for noncompliance with orders and notices shall be as set forth in Section 106.4." Thus, a deficiency in the property does not, in and of itself, constitute an offense for which the City can impose a penalty. The City can impose a penalty only if the property owner fails to correct an identified deficiency within a reasonable amount of time.

199. In this case, the Association took immediate steps to rectify the deficiencies identified by City Building Inspector Jackson, correcting many within 24 hours and correcting others as quickly as possible when outside contractors needed to be hired. Because the Association corrected the deficiencies as quickly as possible, the Association acted within a reasonable amount of time, which is all that the code requires. The fact that it took more than ten days to correct deficiencies in some instances does not constitute a failure to comply because, as a matter of law, the ten days allotted in the order was not a reasonable amount of time under the ordinance.

200. The City's imposition, by and through Defendant Board, of a $8,950 fine is arbitrary, capricious, an abuse of discretion, unsupported by the evidence, and without legal authority.

201. Unless this Court declares the City's imposition, by and through Defendant Board, of the $8,950 fine to be unlawful, the Association will be unjustly deprived of its money and the lawful use of its property, and this illegal deprivation will occur in the service of the City's scheme to force the sale of the rental duplex to a private developer.

202. If the City is allowed to continue to issue fines in violation of the procedures in its own property maintenance code, the Association, its members, the other Plaintiffs, and other Pleasant Ridge property owners, will suffer harm through unlawful code enforcement unjustly depriving them of the lawful use of their properties, and this illegal deprivation will occur in the service of the City's scheme to force the sale of the rental duplex to a private developer.

COUNT II
Indiana Unsafe Buildings Law: Imposition of Fines Is Unlawful

203. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 202 of this Complaint.

204. The City, by and through Defendant Board, imposed the $8,950 fine on January 2, 2017, after concluding that the Association had violated the Charlestown property-maintenance code because City Building Inspector Jackson identified various deficiencies, as described in the citations he issued, when he inspected the rental duplex on several occasions.

205. The Association is not able to include the written findings of Defendants because Defendant Board made its decision orally at a hearing on January 2, 2017. The Association sought written findings prior to filing this Complaint, but it was informed by the City that such findings would not be ready until well after the ten-day statute of limitations for appealing such findings had elapsed. The Association has only received a letter from the City Attorney that does not explain the basis for the amount of the fines, and the minutes from the meeting, which also do not do so. Thus, out of an abundance of caution, the Association brings this claim now, and the written findings will be incorporated into the record of this case, when and if the City produces them.

206. The City lacks authority under Indiana's Unsafe Buildings Law, which the City has adopted. Under Indiana Code Section 36-7-9-5(a), the "enforcement authority may issue an order requiring action relative to any unsafe premises" for the "repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required . . . [under] an ordinance." Under Section 36-7-9-5(c), any order to correct a deficiency in a building must allow the owner "sufficient time . . . to accomplish the required action." The statute specifies ten criteria for an "order," none of which includes a fine for a deficiency that the order in this case identifies. *Id.* § 36-7-9-5(b).

207. A governmental entity may impose a fine to enforce building standards in two situations. First, if a hearing is not requested under Section 36-7-9-7, the "enforcement authority

may impose a civil penalty not to exceed two thousand five hundred dollars," but only "[i]f the person to whom the order was issued fails or refuses to comply with the order" within the time specified in the order, assuming such time was sufficient time. § 36-7-9-7.5(b). Second, if a hearing is requested, and if the hearing authority affirms the order of the enforcement authority, "in those cases in which the hearing authority finds that there has been a willful failure to comply with the order, the hearing authority may impose a civil penalty in an amount not to exceed five thousand dollars." Thus, in no situation is an "enforcement authority" (here, City Building Inspector Jackson) or a "hearing authority" (here, Defendant Board) authorized to impose a fine simply because the enforcement authority has identified a deficiency in a property. The enforcement authority may only impose a fine after the owner has failed to comply with the order following a sufficient opportunity to do so. The hearing authority may impose a fine only if the failure to comply with a valid order is willful.

208. In this case, the Unsafe Buildings Law does not allow the City to impose any fine on the Association because the Association corrected deficiencies identified by City Building Inspector Jackson (the "enforcement authority") as soon as possible, correcting many within 24 hours and correcting others as quickly as possible when outside contractors needed to be hired. Because the Association corrected the deficiencies as quickly as possible, the Association acted within a reasonable amount of time, which is all that the statute requires. The fact that it took more than ten days to correct deficiencies in some instances does not constitute a failure to comply because, as a matter of law, the ten days allotted in the order was not "sufficient time" under the statute.

209. In addition, the $8,950 fine is unlawful because it was imposed by the City "hearing authority" (Defendant Board) without the requisite finding that the Association

willfully failed to comply with any order. Not only was this finding absent, but there is no possible evidence that the Association willfully defied any order. To the contrary, the Association took immediate steps in good faith to correct all deficiencies as soon as possible.

210. In addition, even if there had been willful noncompliance with an order, the $8,950 fine is unlawful for the additional reason that it exceeds the $5,000 statutory cap on fines for willful noncompliance with valid orders.

211. Finally, the $8,950 fine is unlawful to the extent that it imposes liability for each day that the property is not in compliance with the property-maintenance code. Indiana Code Section 36-7-9-7.5(c) provides that "the enforcement authority may impose an additional civil penalty in an amount not to exceed one thousand dollars ($1,000) every ninety (90) days if the person to whom the order was issued continues to fail or refuse to comply with the order." This provision strictly limits the amount of liability that can accrue for a "continuing" failure to comply with an order, and it precludes the City from treating each day of noncompliance with the building maintenance code as a separate violation.

212. The City's imposition, by and through Defendant Board, of the $8,950 fine is arbitrary, capricious, an abuse of discretion, unsupported by the evidence, and without legal authority.

213. Unless this Court declares the City's imposition, by and through Defendant Board, of the $8,950 fine to be illegal under the Unsafe Buildings Law, the Association will be unjustly deprived of its money and the lawful use of its property, and this illegal deprivation will occur in the service of the City's scheme to force the sale of the rental duplex to a private developer.

214. If the City is allowed to continue to issue fines in violation of the procedures in the Unsafe Buildings Law, the Association, its members, the other Plaintiffs, and other Pleasant Ridge property owners, will suffer harm through unlawful code enforcement unjustly depriving them of the lawful use of their properties, and this illegal deprivation will occur in the service of the City's scheme to force the sale of the rental duplex to a private developer.

COUNT III
First Amendment: Retaliation for Protected Speech

215. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 214 of this Complaint.

216. The Association, its board members (particularly President Josh Craven), and its members have engaged continuously since at least 2014 in protected speech against the City, the Mayor, City agencies, Pleasant Ridge Redevelopment LLC and Neace Ventures (the LLC's parent), and the plan to destroy Pleasant Ridge and redevelop from scratch.

217. The City's 2016 campaign of code enforcement primarily targeted landlords that owned multiple properties in Pleasant Ridge. The Association is the only landlord the City targeted that owned a single property. The Association is the only landlord that the City has actually required to engage in corrections for the deficiencies identified by inspections. The Association is the only landlord that the City is actually requiring to pay fines.

218. The City was motivated in part in targeting the Association by a desire to retaliate for the Association's speech, deprive the Association of its property in retaliation for the Association's speech, and silence further speech critical of the City. The City has punished and harmed the Association for its speech by subjecting the Association's duplex to intrusive, time-consuming, and expensive inspections, citations, corrections, hearings, and fines.

219. Unless the application of the $8,950 fine, City ordinances, policies, practices, and customs to the Association is declared unconstitutional, the Association will have suffered grave tangible and intangible harms as a consequence of its protected political speech.

220. Unless the Court enjoins the unconstitutional future application of City ordinances, policies, practices, and customs to the Association as retaliation for the Association's protected political speech, the Association will again suffer grave tangible and intangible harms.

Count IV
Indiana Constitution, Article I, § 9: Retaliation for Protected Speech

221. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 220 of this Complaint.

222. The Association, its board members (particularly President Josh Craven), and its members have engaged continuously since at least 2014 in protected speech against the City, the Mayor, City agencies, Pleasant Ridge Redevelopment LLC and Neace Ventures (the LLC's parent), and the plan to destroy Pleasant Ridge and redevelop from scratch.

223. The City's 2016 campaign of code enforcement primarily targeted landlords that owned multiple properties in Pleasant Ridge. The Association is the only landlord the City targeted that owned a single property. The Association is the only landlord that the City has actually required to engage in corrections for the deficiencies identified by inspections. The Association is the only landlord that the City is actually requiring to pay fines.

224. The City was motivated in part in targeting the Association by a desire to retaliate for the Association's speech, deprive the Association of its property in retaliation for the Association's speech, and silence further speech critical of the City. The City has punished and harmed the Association for its speech by subjecting the Association's duplex to intrusive, time-consuming, and expensive inspections, citations, corrections, hearings, and fines.

225. Unless the application of the $8,950 fine, City ordinances, policies, practices, and customs to the Association is declared unconstitutional, the Association will have suffered grave tangible and intangible harms as a consequence of its protected political speech.

226. Unless the Court enjoins the unconstitutional future application of City ordinances, policies, practices, and customs to the Association as retaliation for the Association's protected political speech, the Association will again suffer grave tangible and intangible harms.

Count V
Indiana Constitution Article I, § 12: Substantive Due Process

227. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 226 of this Complaint.

228. The substantive guarantees of the Due Course of Law Clause of Article I, Section 12 of the Indiana Constitution prevent the City from depriving the Association of its property and liberty interests absent a rational relationship with a legitimate government interest.

229. The government has a legitimate interest in using code enforcement to ensure a reasonable standard of public health and safety.

230. The government does not have a legitimate interest in using code enforcement as a pretext for the compelled sale of private property from one owner to another private owner for the purpose of redevelopment. The State of Indiana, in its 2006 eminent-domain reforms, placed stringent limitations on the power of government to force a private-to-private transfer of property.

231. Because the use of code enforcement to force a private-to-private transfer of property for redevelopment is not a legitimate use of code enforcement, the City's use of code enforcement against the Association and other Pleasant Ridge property owners lacks a rational basis.

232. In addition, the City's pretextual use of code enforcement—including but not limited to imposing $8,950 in fines on a tiny nonprofit's perfectly safe housing for six low-income tenants in order to force a sale to a wealthy and powerful private developer—shocks the conscience.

233. Unless the application of the $8,950 fine, City ordinances, policies, practices, and customs to the Association is declared unconstitutional, the Association will have suffered deprivations of property and liberty interests protected by the substantive guarantees of the Due Course of Law Clause of Article I, Section 12 of the Indiana Constitution.

234. Unless the Court enjoins the unconstitutional future application of City ordinances, policies, practices, and customs to the Association, the Association, its members, the other Plaintiffs, and other Pleasant Ridge property owners, they will suffer deprivations of property and liberty interests protected by the substantive guarantees of the Due Course of Law Clause of Article I, Section 12 of the Indiana Constitution.

Count VI
Fourteenth Amendment: Substantive Due Process

235. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 234 of this Complaint.

236. The substantive guarantees of the Fourteenth Amendment's Due Process Clause prevent the City from depriving the Association of its property and liberty interests absent a rational relationship with a legitimate government interest.

237. The government has a legitimate interest in using code enforcement to ensure a reasonable standard of public health and safety.

238. The government does not have a legitimate interest in using code enforcement as a pretext for the compelled sale of private property from one owner to another private owner for

the purpose of redevelopment. The State of Indiana, in its 2006 eminent-domain reforms, placed stringent limitations on the power of government to force a private-to-private transfer of property.

239. Because the use of code enforcement to force a private-to-private transfer of property for redevelopment is not a legitimate use of code enforcement, the City's use of code enforcement against the Association lacks a rational basis.

240. In addition, the City's pretextual use of code enforcement—imposing $8,950 in fines on a tiny nonprofit's perfectly safe housing for six low-income tenants in order to force a sale to a wealthy and powerful private developer—shocks the conscience.

241. Unless the application of the $8,950 fine, City ordinances, policies, practices, and customs to the Association is declared unconstitutional, the Association will have suffered deprivations of property and liberty interests protected by the substantive guarantees of the Fourteenth Amendment.

242. Unless the Court enjoins the unconstitutional future application of City ordinances, policies, practices, and customs to the Association, its members, the other Plaintiffs, and other Pleasant Ridge property owners, they will suffer deprivations of property and liberty interests protected by the substantive guarantees of the Fourteenth Amendment.

Count VII
Indiana Constitution, Article I, § 23: Equal Protection

243. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 242 of this Complaint.

244. The City cannot treat people or classes of people differently unless the differential treatment is reasonably related to the inherent differences between the differently treated people

or classes. Any preferential treatment must be uniformly applicable and equally available to all people similarly situated.

245. Here, the City is treating Pleasant Ridge Redevelopment LLC and the Association differently without a reasonable relationship to any inherent difference between them. The LLC and the Association both own rental property. The LLC owns approximately 140 properties housing hundreds of people. The Association owns one property housing six people. Yet the LLC is not being required to fix up its properties even though those properties have been cited under the property-maintenance code. Nor is the LLC being required to pay fines even though there are massive fines attached to its properties. Only the Association is being required to fix up its property and pay fines.

246. The only legitimate government interest with respect to code enforcement is public health and safety. The government does not have a legitimate interest in using code enforcement only to compel the sale of the Association's property to Pleasant Ridge Redevelopment LLC for the purpose of redevelopment. A forced transfer of property from one private owner to another for the purpose of redevelopment is governed by Indiana eminent-domain law. Thus, the City's differential treatment of the Association as compared to the LLC lacks a reasonable relation to an inherent difference between the Association and the LLC.

247. Additionally, the City has extended to the LLC preferential treatment that is not universally available to all similarly situated people, as the Indiana Constitution requires.

248. Unless the application of the $8,950 fine, City ordinances, policies, practices, and customs to the Association is declared unconstitutional, the Association will have suffered deprivations of property and liberty interests in violation of its right to equal protection.

249. Unless the Court enjoins the unconstitutional future application of City ordinances, policies, practices, and customs to the Association, its members, the other Plaintiffs, and other Pleasant Ridge property owners, they will again suffer deprivations of property and liberty interests in violation of their right to equal protection.

Count VIII
Fourteenth Amendment: Equal Protection

250. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 249 of this Complaint.

251. Absent a suspect category, the City cannot treat similarly situated persons or entities differently unless that differential treatment is rationally related to a legitimate government interest.

252. Here, the City is treating Pleasant Ridge Redevelopment LLC and the Association differently without a rational relationship to a legitimate government interest. The LLC and the Association both own rental property. The LLC owns approximately 140 properties housing hundreds of people. The Association owns one property housing six people. Yet the LLC is not being required to fix up its properties even though those properties have been cited under the property-maintenance code. Nor is the LLC being required to pay fines even though there are massive fines attached to its properties. Only the Association is being required to fix up its property and pay fines.

253. The only legitimate government interest with respect to code enforcement is public health and safety. The government does not have a legitimate interest in using code enforcement only to compel the sale of the Association's property to Pleasant Ridge Redevelopment LLC for the purpose of redevelopment. A forced transfer of property from one private owner to another for the purpose of redevelopment is governed by Indiana eminent-

domain law. Thus, the City's differential treatment of the Association as compared to the LLC lacks a rational relationship to a legitimate government interest.

254. Unless the application of the $8,950 fine, City ordinances, policies, practices, and customs to the Association is declared unconstitutional, the Association will have suffered deprivations of property and liberty interests in violation of its right to equal protection.

255. Unless the Court enjoins the unconstitutional future application of City ordinances, policies, practices, and customs to the Association, its members, the other Plaintiffs, and other Pleasant Ridge property owners, they will suffer deprivations of property and liberty interests in violation of their right to equal protection.

Count IX
Fourth Amendment: Unreasonable Search

256. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 255 of this Complaint.

257. The Association has a right to be secure in its property and any warrant for an unconsented-to search may issue only if there is probable cause to believe that an illegal act is occurring that justifies the intrusion. In the case of an administrative search related to property-maintenance standards, the intrusion must be justified by a legitimate interest in public health and safety.

258. Here, both the warrant request and the search itself were not for health and safety, but instead for the illegitimate purpose of gathering evidence for a predetermined plan to impose fines in order to force the sale of the duplex to Pleasant Ridge Redevelopment LLC.

259. Unless the search and the $8,950 fine that resulted from the search are declared unconstitutional, the Association will have suffered a deprivation of its Fourth Amendment right to be free of unreasonable searches.

260. Unless the Court enjoins the unconstitutional future application of City ordinances, policies, practices, and customs to the Association, its members, the other Plaintiffs, and other Pleasant Ridge property owners, they will suffer a deprivation of their Fourth Amendment right to be free of unreasonable searches.

Count X
Indiana Constitution, Article I, § 16: Excessive Fines

261. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 260 of this Complaint.

262. The Association has a right against excessive fines.

263. Here, an $8,950 fine, imposed on a tiny nonprofit for minor and quickly corrected property-code deficiencies, is excessive. There is a gross, unmistakable disproportionality between the deficiencies that the City identified and the City's fines, which are intended to destroy the Association financially, render its ownership of the duplex untenable, and compel a sale to the private developer, Pleasant Ridge Redevelopment LLC.

264. Unless the application of the $8,950 fine, City ordinances, policies, practices, and customs to the Association is declared unconstitutional, the Association will have suffered an excessive fine.

265. Any fine is an excessive fine if the City issues it for the purpose of forcing a property owner to sell to a private developer. The Association, its members, and the other Plaintiffs all fear the City issuing such fines.

266. Unless the Court enjoins the unconstitutional future application of City ordinances, policies, practices, and customs to the Association, its members, the individual Plaintiffs, and other Pleasant Ridge property owners, they will suffer excessive fines.

Count XI
Eighth Amendment: Excessive Fines

267. Plaintiffs adopt and reallege the allegations contained in paragraphs 1 through 266 of this Complaint.

268. The Association has a right against excessive fines.

269. Here, an $8,950 fine, imposed on a tiny nonprofit for minor and quickly corrected property-code deficiencies, is excessive. There is a gross, unmistakable disproportionality between the deficiencies that the City identified and the City's fines, which are intended to destroy the Association financially, render its ownership of the duplex untenable, and compel a sale to the private developer, Pleasant Ridge Redevelopment LLC.

270. Unless the application of the $8,950 fine, City ordinances, policies, practices, and customs to the Association is declared unconstitutional, the Association will have suffered an excessive fine.

271. Any fine is an excessive fine if the City issues it for the purpose of forcing a property owner to sell to a private developer. The Association, its members, and the other Plaintiffs all fear the City issuing such fines.

272. Unless the Court enjoins the unconstitutional future application of City ordinances, policies, practices, and customs to the Association, its members, the individual Plaintiffs, and other Pleasant Ridge property owners, they will suffer excessive fines.

WHEREFORE, Plaintiffs pray for relief as follows:

A. Declare that the City's fine of $8,950 against Plaintiff Association is arbitrary, capricious, an abuse of discretion, unsupported by the evidence, and without legal authority under the Charlestown property-maintenance code (and any other applicable municipal law) and the Indiana Unsafe Buildings Law, and the free-speech, substantive due-process,

equal-protection, and excessive-fines guarantees of the Indiana and U.S. Constitutions, as well as the Fourth Amendment to the U.S. Constitution.

B. Declare that the City's ordinances, resolutions, policies, practices, and customs as applied to issuing citations against the Association, its members, the other Plaintiffs, and other Pleasant Ridge property owners violate the City's property maintenance code and the Unsafe Building Law, and are unconstitutional under the free-speech, substantive due-process, equal-protection, and excessive-fines guarantees of the Indiana and U.S. Constitutions, as well as the Fourth Amendment to the U.S. Constitution.

C. Permanently enjoin the unlawful and unconstitutional application of ordinances, resolutions, policies, practices, and customs against the Association, its members, the other Plaintiffs, and other property owners in Pleasant Ridge.

D. To the extent this Court determines it is needed for an appeal under 2008-OR-1, Section 111.7, issue a writ of certiorari to declare the $8,950 in fines unlawful and/or unconstitutional for the reasons stated above.

E. Award, against the City only, and in favor of Plaintiffs, nominal damages of $1.00 for every violation of a provision of the state and federal constitutions;

F. Award Plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. § 1988, I.C. Section 34-52-1-1, and all other applicable federal and state laws and doctrines; and,

G. Award such other relief as the Court deems just, equitable, and proper.

I affirm, under penalties for perjury, that the facts stated in this Verified Complaint for Judicial review and Declaratory Relief are true, excepting ¶¶ 44-52, 62-82, 192, and 194-95, which pertain to other plaintiffs.

Josh Craven
President, Pleasant Ridge Neighborhood Association

1/31/17
Date

Dated: February 2, 2017

Respectfully submitted,

s/Stephen W. Voelker

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Attorneys for Plaintiff

*Verified Petitions for Temporary Admission pending.

CERTIFICATE OF SERVICE

I certify that on February 2, 2017, I served a copy of this pleading either personally or by mail on Michael A. Gillenwater, 411 Watt St., Jeffersonville, IN 47130.

s/Stephen W. Voelker
Stephen W. Voelker

Exhibits in Original Complaint

Exhibit Description	Exhibit Number
Blight Elimination Program Application Packet	1
Pleasant Ridge Redevelopment: Reinventing a Community, Revitalizing a City	2
Mayor Bob Hall's email to Tina Dean	3
Pleasant Ridge Redevelopment, LLC's letter to Tony Jackson	4
114 Riley Avenue – Order and Fines – September 26, 2016	5
116 Riley Avenue – Order and Fines – September 26, 2016	6
Egger Report – Foundation approved	7
Tony Jackson letter to Pleasant Ridge Neighborhood Association Notice of initial inspection	8
Inspection Warrant	9
114 Riley Avenue – Order and Fines – November 3, 2016	10
116 Riley Avenue – Order and Fines – November 3, 2016	11
Mayor Bob Hall's Facebook post – November 22, 2016	12
Joshua Craven's letter to Tony Jackson regarding fines	13
Michael Gillenwater's letter to Joshua Craven confirming fines	14

Additional Exhibits

Exhibit Description	Exhibit Number
Board of Public Works and Safety Minutes – January 2, 2017	15
Mayor Bob Hall's Facebook post – January 25, 2017	16

EXHIBIT

15

MINUTES

THE BOARD OF PUBLIC WORKS AND SAFETY

January 02, 2017

9:00 A.M.

THE REGULAR MEETING OF THE CHARLESTOWN BOARD OF PUBLIC WORKS AND SAFETY FOR THE CITY OF CHARLESTOWN WAS HELD ON MONDAY, JANUARY 02, 2017 AT 9:00 A.M. AT CITY HALL WITH MAYOR BOB HALL PRESIDING.

Board members present were Mr. Eric Vaughn and Mr. John Palmer. Also present were Clerk Treasurer Donna Coomer and City Attorney Michael Gillenwater.

Pledge

Tony Jackson

Minutes

Mr. Vaughn made a motion to approve the Minutes for December 05, 2016, seconded by Mr. Palmer. Approved 3-0.

Claims

Mr. Palmer made a motion to approve the claims, seconded by Mr. Vaughn. Approved 3-0.

Payroll Allowance Docket

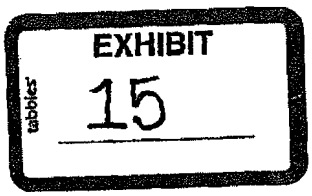
Mr. Vaughn made a motion to approve the Payroll Allowance Docket from December 04, 2016, through December 31, 2016, seconded by Mr. Palmer Approved 3-0.

Public Comment

None

114/116 Riley Avenue

Tony said he received a letter from the Pleasant Ridge Neighborhood Association (PRNA) asking that the fines be waived. Mr. Cravens spoke about the developer who purchased property in the subdivision and his fines will be waived once he demolishes the houses. Mr. Cravens said they decided to repair their homes and bring them up to code. The Board will not waive the fines if they don't tear them down, instead they will have to pay the fines. He thinks that is unfair. He is asking for them to make a decision today on the fines and what the next step is to appeal. City Attorney said the city is within their legal rights. They did pass an Ordinance on Property Maintenance Codes and it was after the inspections had been done that they started repairing the homes.



City Attorney addressed the letter from PRNA concerning the fines and disagreed with the PRNA reasons.

The letter says the city can't impose these fines and he disagrees.

It says fines on the interior can't be assessed because the warrant violated the fourth amendment, he disagrees. The warrant was issued by a judge in accordance with the statue.

He disagrees on the fines being unreasonable. The building inspector imposes the minimum, not the maximum fines. To his knowledge no fines in Pleasant Ridge on any properties have been waived since this inspection started last July. The fines only get waived if the problem is permanently resolved. The fines are still accruing until the problem is solved because of the age and the construction of the houses.

It says you can't fine someone to force them to sell. This Board has never asked anyone to sell. What has been happening is people have not been fixing their homes until after they are inspected. The purpose of the Ordinance is to encourage people to fix their property before the inspections. The Redevelopment Commission has recommended this board not waive any fines because their plan is to redevelop the area. We can move forward if we work together with the Redevelopment Commission and the Council. City Attorney said he recommends the Board make a decision today to waive the fines or not, so the PRNA knows what they can expect. His advice to the Board is they stay consistent, what you do for one, you do for all.

Mayor Hall said the difference is the developer is coming into compliance with the Redevelopment plan. They purchase the homes after inspections and agreed to demolish them bringing them into compliance with the Redevelopment plan. Mayor Hall said for clarity we will not waive the fines. He said the Board will give them a month to come back with a payment plan on the fines or bring it into compliance with the overall plan. Mayor Hall said Mr. Palmer will have to abstain.

Mayor Hall made a motion to continue our policy and not waive the fines, seconded by Mr. Vaughn. Approved 2-0. Mr. Palmer abstained.

Mayor Hall asked City Attorney to look at getting some type of schedule on how long they have to pay the fines and what are the next steps. We will look at it at the next meeting.

Saegesser Engineering

Mr. Shane Spicer presented three forms that address evaporation credits. NIBCO and Mitchell are requesting credits and eventually others will ask for credits. First the form is picked up at City Hall and once completed they have two options. Option A and Option B.

Option A: They put in a flow meter, then we will take 80% of that number and that will be their credit.

Option B: is to meter the lead line and incoming line and give credit for the difference.

Shane said most people will do Option A. He doesn't need any action today, but asked them to look at it and make changes if needed. He has been contacted by Joe from NIBCO asking when they could expect to start getting credit.

Adjournment

Mr. Vaughn made a motion to adjourn the meeting, seconded by Mr. Palmer. Approved 3-0.

MAYOR, G. ROBERT HALL — DATE 1/17/17

ATTEST:

CLERK TREASURER, DONNA S. COOMER — DATE 1/17/17

EXHIBIT

16

Mayor Bob

21 hrs

FYI- Some have asked about the lawsuit filed by the PR group. Here's my opinion on it. FRIVOLOUS!! I am not concerned about it at all. We are going forward with inspections and putting the pieces together for redeveloping PR.

Like Comment Share

15 Chronological

5 shares

Richard Ottersbach Progress

Like · Reply 1 18 hrs

Yolinda Parrish Can't wait for the growth!!

Like Reply 1 16 hrs

Justine Danielle Parrish This is my home and my 4yr olds homes and moving in heavy equipment.

I will Pray for you.

Like Reply 1 16 hrs

David Abbott Jr. You barely have enough money to pay the interest on the splash park, let alone pay for fees that's going to end up costing taxpayers in this lawsuit! But of course you're not worried, you're above the law.

Like Reply 4 15 hrs

Yolinda Parrish U can always tell the ppl that have never been out of Otown. They never want growth.

Like Reply 1 15 hrs

Stephanie Cleffman-miller Keep up the good work Bob Hall!

EXHIBIT 16