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,	)	
	)	Case # 10C02-1701-CT-010
Plaintiffs,	)	HON. MARIA D. GRANGER, SPECIAL JUDGE
v.	)	
CITY OF CHARLESTOWN, INDIANA, a municipality, CHARLESTOWN BOARD OF PUBLIC WORKS AND SAFETY,	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiffs Charlestown Pleasant Ridge Neighborhood Association ("Association"), Joshua Craven, Tina Barnes, David and Ellen Keith, and Bolder Properties, LLC seek a preliminary injunction to prevent Defendants City of Charlestown and Charlestown Board of Public Works and Safety (collectively, "City") from continuing their illegal and unconstitutional scheme to drive the citizens of an entire neighborhood from their beloved homes and force the sale of their property to a private developer. For months, the City has been issuing huge, daily-accumulating fines under its property-maintenance code to homeowners in the Pleasant Ridge neighborhood to force them to sell. This scheme enabled the developer to acquire roughly 140 properties in the last four months of 2016. These fines are flatly illegal under the City's own ordinance and

Indiana's Unsafe Building Law, and they also violate equal protection under the Indiana and U.S. constitutions.

Plaintiffs need a preliminary injunction because the City has indicated it will continue this pattern of unlawful enforcement in the near future against Plaintiffs, Plaintiff Association's members, and others in the neighborhood. On January 25, 2017, Charlestown Mayor G. Robert Hall took to Facebook to state that this lawsuit would not change the City's plans, pledging that the City is "going forward with inspections and putting the pieces together for redeveloping [Pleasant Ridge]." Am. Compl. Ex. 16. On January 31, 2017, City officials conducted an unannounced inspection of the home where Plaintiffs David and Ellen Keith's daughter, granddaughter, and two great-grandchildren live. E. Keith Aff. ¶ 6. Because "inspections" are the precursor to illegal and unconstitutional fines, and because "putting the pieces together for redevelopment" has meant using fines to force people to sell to the developer, a preliminary injunction is critically necessary.

This brief begins with a statement of facts. Then, Plaintiffs demonstrate the likelihood of success on the merits of their two statutory and two equal-protection claims. Next, they explain that illegal and unconstitutional government conduct requires an automatic preliminary injunction under Indiana's *per se* rule. Plaintiffs then show that they are entitled to a preliminary injunction even without the *per se* rule because the loss of real property is a classic irreparable harm, the balance of equities—the loss of homes by vulnerable people versus the City's desire to initiate demolitions immediately—favors Plaintiffs, and the public interest favors protecting vulnerable property owners from the wrecking ball while the legality of the City's scheme can be adjudicated. Finally, Plaintiffs discuss the modest injunctive relief they seek: Ordering the City

to obey its ordinances and Indiana's Unsafe Building Law, and ordering the City to treat all Pleasant Ridge property owners evenhandedly.

STATEMENT OF FACTS

I. The Pleasant Ridge Neighborhood.

Pleasant Ridge is a neighborhood of roughly 350 homes on a hill above downtown Charlestown, Indiana, a town of 8,000. Am. Compl. ¶ 12.[1] The Army built the homes, which were mainly duplexes, in 1942 to house personnel stationed at a nearby munitions factory. *Id.* When it closed the plant in 1952, the Army sold the homes to private owners. Am. Compl. ¶ 13. Some of the duplexes have been consolidated into single-family homes. Am. Compl. ¶ 16.

Over the years, Pleasant Ridge became a neighborhood for people of modest means. Barnes Aff. ¶ 24. They work at gas stations, on assembly lines, and at construction sites. Some are elderly and/or disabled and on a fixed income. *Id.* Approximately 25 percent of the homes are owner-occupied. Am. Compl. ¶ 19. The other 75 percent are rentals. Am. Compl. ¶ 18.

II. Pleasant Ridge Homeowners Create an Association to Save Their Neighborhood.

The City wants to demolish Pleasant Ridge, disperse its low-income residents, and build an upscale subdivision for people with more money. Am. Compl. ¶¶ 113-115. Specifically, the plan is to turn Pleasant Ridge into a neighborhood like Norton Commons in Prospect, Kentucky. Am. Compl. ¶ 113. In Norton Commons, two or three-bedroom apartments rent for $1,200 to $2,000 per month, and homes range from $309,000 to $1,450,000. Am. Compl. ¶ 114. City documents disparage Pleasant Ridge as "the Projects," and describe it as "a cloud hanging over

[1] Both the original Complaint, filed on January 11, 2017, and the Amended Complaint, filed on February 2, 2017, are verified, and therefore are sworn testimony. Tr. R. 11(B). The Amended Complaint has 16 exhibits, the first 14 of which are attached to the original Complaint, and the last two to the Amended Complaint. This Memorandum relies upon the verified Amended Complaint, the exhibits to the Amended Complaint (including the exhibits attached to the original Complaint), and the affidavits accompanying this Memorandum.

the city" and a "stigma that stymies economic growth." Am. Compl. ¶ 89, Ex. 1. In 2014, the City partnered with Neace Ventures—a New Albany, Indiana property developer—to redevelop the neighborhood. Am. Compl. ¶¶ 86-87, Ex. 1. The City sought a $6,000,000 grant from the State of Indiana's Blight Elimination Fund to finance the demolition of the neighborhood. Am. Compl. ¶ 84, Ex. 1.

The residents of Pleasant Ridge—many of whom had nowhere to go—fought back. They spoke out at City Council meetings, held rallies, put up yard signs, appeared in the media, and worked together to improve their homes and neighborhood. Am. Compl. ¶¶ 91-92. They were determined to defend their homes, assert their legal rights, and maintain their dignity as citizens who could not be shoved aside. Barnes Aff. ¶ 9.

As part of their opposition to redevelopment, the residents formed Plaintiff Pleasant Ridge Neighborhood Association, which presently has about 50 members. Am. Compl. ¶¶ 30-31. To introduce just a few, Plaintiff Craven is the president of the Association. He is raising his four-year-old daughter alone while working as an exterminator. Craven Aff. ¶¶ 2-5. He grew up in Pleasant Ridge, buying his home from his father. Craven Aff. ¶ 2. Plaintiff Barnes, a medical billing clerk, has a disabled adult daughter living with her, and she is raising her two granddaughters. Barnes Aff. ¶ 5. She was elected to the Charlestown City Council in 2015 to represent District Two, which consists mainly of Pleasant Ridge, and she is a steadfast opponent of her neighborhood's destruction. Barnes Aff. ¶¶ 11-13. Plaintiffs David and Ellen Keith have lived in Pleasant Ridge for decades and raised their children there. D. Keith Aff. ¶ 2. David is a retired autoworker and Ellen is a hairdresser in Charlestown. D. Keith Aff. ¶¶ 4-5. They now have a daughter, granddaughter, and two great-grandchildren living next door, all of whom depend on the Keiths' support. D. Keith Aff. ¶ 7. Ann Eldridge owns Plaintiff Bolder Properties,

LLC, which in turn owns four Pleasant Ridge duplexes that provide safe and affordable homes for about 18 people. Eldridge Aff. ¶¶ 2, 9. Recently, Ann's properties were extensively remodeled and updated. Eldridge Aff. ¶ 4. She depends on the income from these homes not only to pay their mortgages, but also to help support herself, her elderly mother, and her brother. Eldridge Aff. ¶ 6.

The City never received the state grant in 2014, and, in November 2014, the City Council voted to halt its redevelopment plans. Am. Compl. ¶ 93; Barnes Aff. ¶ 10. But this cessation was short-lived.

III. 2016: The City Decides to Push Pleasant Ridge Residents Out Through Code Enforcement to Make Way for Redevelopment.

The demise of the 2014 redevelopment plan did not deter the City or its developer, Neace Ventures. Am. Compl. ¶¶ 94-98. In 2016, the City and Neace implemented a plan to use code enforcement to compel the sale of Pleasant Ridge property to Neace Ventures at fire-sale prices. Am. Compl. ¶¶ 118-20. In a nutshell, this scheme involves a city inspection and then the immediate imposition of crushing fines that accumulate daily starting on the first day. Am. Compl. ¶ 117. Property owners find themselves owing thousands of dollars in a matter of days. *Id.*

The purpose of these rapidly accumulating fines is to place the property owner in a position of financial desperation—the fines and the cost of satisfying the City's demand for repairs may be out of reach. Am. Compl. ¶¶ 117-26. This leaves property owners with one option: selling to Neace Ventures. On June 13, 2016, Neace Ventures formed a new company called Pleasant Ridge Redevelopment LLC ("Neace LLC") to purchase properties in the neighborhood. Am. Compl. ¶ 112. The Neace LLC has been assuming legal responsibility for the fines and repairs connected with the properties it buys. Am. Compl. ¶¶ 112-13, Ex. 4. But the

LLC never expects to pay any fines or make any repairs because an agreement with the City states that the fines and repair orders will be held in abeyance and waived once redevelopment commences. Am. Compl. Ex. 4.

And yet, people are still living in many of these homes. Am. Compl. ¶ 124. For many tenants, it has been months since the Neace LLC acquired their homes, as long ago as summer 2016. Miller Aff. Ex. C (sales dates of properties); Am. Compl. Ex. 4 (lease end dates). The Neace LLC has not been forced to repair these tenants' housing. Am. Compl. Ex. 4. The tenants sit there in those homes, waiting for them to eventually be torn down while their new landlord is allowed to ignore the fines and orders issued against their homes. *Id.*

The Neace LLC has been able to leverage the City's scheme to purchase roughly 140 properties in the last half of 2016. Am. Compl. ¶ 126. Not only that, the LLC has purchased the properties for about $10,000 each. *See* Miller Aff. Ex. C (Clark County property records). Significantly, the LLC demands an all-or-nothing transaction. Am. Compl. ¶ 120. If a landlord tries to hold back a property or two to develop him- or herself, the LLC threatens to buy nothing and leave the property owner to deal with the fines and repairs that the City demanded. Am. Compl. ¶¶ 120-21. The $10,000 purchase price is well below the average tax-assessed values in the $30,000-40,000 range, and well below what many Pleasant Ridge properties were worth on the open market before the City began its code-enforcement policy. Ann Eldridge, for example, paid over $62,000 for each of her four rental duplexes in 2015. Eldridge Aff. ¶ 4. By purchasing about 140 homes for $10,000 each, the Neace LLC saved at least $1.7 million from what it would have paid if the properties were at the tax-assessed-value price. Miller Aff. Ex. C.

The City has implemented its code-enforcement scheme in two overlapping phases corresponding roughly to the first half of 2016 and the second half of 2016 through today. Am.

Compl. ¶¶ 97-98. The first phase consisted mainly of bolstering the City's legal tools for forcing sales in Pleasant Ridge. Am. Compl. ¶¶ 99-108. The City did four things to lay the foundation for aggressive ticketing:

- City Resolution 2016-R-1: declaring Pleasant Ridge to be an "area needing redevelopment" (i.e. blighted) under Indiana blight law (January 18, 2016);
- Ordinance 2016-OR-2: authorizing Charlestown to execute interior and exterior inspections of rental property (February 1, 2016);
- Ordinance 2016-OR-07: authorizing Charlestown to declare property to be a public nuisance for violations of other city codes (February 15, 2016);
- Redevelopment Commission Resolution 2016-R-2: adopting a redevelopment zone consisting solely of Pleasant Ridge.

Am. Compl. ¶¶ 99-108. These new ordinances and resolutions were enacted against the backdrop of the 2008 property-maintenance code, which prescribes standards in meticulous detail. 2008-OR-1 (attached as Ex. A to Miller Aff.). Am. Compl. ¶ 106.

The second phase involved code enforcement against Pleasant Ridge properties to force sales to the Neace LLC. Am. Compl. ¶ 109. In August 2016, Building Inspector M. Anthony Jackson began conducting inspections of Pleasant Ridge rental properties. Am. Compl. ¶ 117. He then imposed significant, immediate, and daily-accumulating fines. *Id.* As the fines accumulated rapidly, the Neace LLC would step in to buy the properties for a small fraction of their tax-assessed value. Am. Compl. ¶ 118.

IV. A Specific Example of the City's Code-Enforcement Policy: The Association's Duplex.

The City's code enforcement against Plaintiff Association illustrates how the City imposes fines in an effort to force an unwilling sale to the Neace LLC. In December 2015, the Association bought the duplex at 114-116 Riley Avenue for $17,000 (to be paid with future rental income) to demonstrate how redevelopment could occur within Pleasant Ridge that would

provide low-income residents with safe, affordable housing. Am. Compl. ¶ 36. Using volunteer and paid labor, donated and purchased materials, and a $3,000 grant from Home Depot, the Association renovated one side of the duplex top to bottom, and, on the other side, put in a new bathroom and floor. Am. Compl. ¶ 39. The Association painted inside and out, and put in a new picket fence. *Id.* Three working-class tenants moved into 114 Riley in January 2016 ($450 per month), and, when 116 was ready, three more tenants moved in there in July 2016 (also $450 per month). Am. Compl. ¶ 42.

On September 26, 2016, City Building Inspector Jackson trespassed on the Association's duplex to conduct an unannounced inspection of the exterior, including nonpublic areas such as the backyard and crawlspace. Am. Compl. ¶ 133. He identified 11 alleged deficiencies under the 2008 property-maintenance code and assessed a $600 fine that would accumulate daily, from the day it was issued, until the corrections were made. Am. Compl. ¶¶ 134-36, Exs. 5 & 6. The citations concerned things such as the foundation, vents, and the positioning of the exterior HVAC unit. Am. Compl. ¶¶ 134, 136, Exs. 5 & 6.

Mr. Jackson's citations state on their face that the Association has ten days to make repairs. Am. Compl. Exs. 5 & 6. But that ten days was meaningless because he also imposed a fine immediately and specified that fines would accumulate on a daily basis starting immediately. *Id.* Given that fact, the ten-day period served no purpose.

The Association worked as quickly as possible to correct the deficiencies, remedying most within a matter of days. Am. Compl. ¶ 138. Only the foundation issue, which concerned preventative steps needed to give the duplex the longest possible life, took a matter of weeks to resolve because it was necessary to hire a structural engineer for recommendations and eventual sign-off on corrections. Am. Compl. ¶¶ 139-40, Ex. 7.

As the Association scrambled to address the deficiencies identified during the exterior search, Mr. Jackson also secured a warrant for an interior search and issued even more fines. On September 27, 2016, Mr. Jackson wrote to the Association stating that he would conduct an interior inspection on October 19 at 1:00 p.m. Am. Compl. ¶ 144, Ex. 8. Accurately perceiving that the purpose of the search was to find excuses to issue more fines, neither the Association nor its tenants wanted to admit Mr. Jackson voluntarily. Am. Compl. ¶ 145. Consequently, they informed the City in writing that it would need to obtain a search warrant, which the City obtained on November 2, 2016. Am. Compl. ¶ 147, Ex. 9. When presented with the warrant, the Association and its tenants admitted Mr. Jackson, who found five more deficiencies and imposed an additional immediate fine of $200 and stated that an additional $200 fine would immediately be imposed daily until corrections were certified. Am. Compl. ¶¶ 149-153, Exs. 10 & 11. These deficiencies concerned electrical outlets, a small problem with the hot water heater, additional smoke detectors, and the need to add to the firewall between units. Am. Compl. ¶¶ 150-51. All of these issues were corrected in a matter of days after receiving notice on November 12, 2016. Am. Compl. ¶¶ 156, 160.

On November 26, 2016, Mr. Jackson signed off on the last of the corrections. Am. Compl. ¶ 160. In sum, over the course of about seven weeks, the duplex had been inspected on three occasions and been issued written notices of violation for 16 technical deficiencies under the 2008 property-maintenance code. The Association took immediate steps to rectify the deficiencies and spent $2,110 doing so. Am. Compl. ¶ 161.

The Association also appealed its fines through the administrative process in order to defend its property. Am. Compl. ¶ 141. As part of this appeal to Defendant Board of Public Works and Safety, the Association sought to have the fines waived or reduced in light of its

prompt action in good faith to make all corrections. Am. Compl. ¶ 162. The Association also explained to the City that its fines are illegal and unconstitutional. Am. Compl. ¶ 165. Association Vice President Melissa Crawford appeared at the December 5, 2016 meeting of Defendant Board of Public Works and Safety. Am. Compl. ¶ 162. City Attorney Michael Gillenwater directed the Board to table the Association's hearing because the City was shortly going to reveal a new policy on fine waiver. Am. Compl. ¶ 163.

The City, through its Redevelopment Commission, unveiled this new policy on December 8, 2016. Am. Compl. ¶ 163; Miller Aff. Ex. B (Resolution 2016-R-8). In a nutshell, the new policy instructed city agencies, including Defendant Board, not to waive code-enforcement fines unless the owner demolishes the building in question. Am. Compl. ¶ 164. Thus, when the Board reconvened on January 2, 2017 to resume the Association's hearing, not only did the Board impose a final fine of $8,950, it refused to waive any part of that fine. Am. Compl. ¶ 166.[2] The Board itself formally adopted the Resolution against waiving fines at its February 6, 2017 meeting. Barnes Aff. ¶ 19.

V. Plaintiffs Are Seeking a Preliminary Injunction Because the City Intends to Resume Code Enforcement Against Them.

The City has Plaintiffs, the Association's members, and other Pleasant Ridge homeowners in its immediate sights. The Mayor bluntly said so in November 2016 in a frank exchange with Plaintiff Barnes, who is a City Council member as well as a Pleasant Ridge homeowner. In an email, she asked the Mayor to "promise now that every homeowner who

[2] The imposition of the $8,950 fine triggered a ten-day statute of limitations under the Unsafe Building Law to bring an appeal in this Court. Ind. Code § 36-7-9-8. On January 11, 2017, the Association filed an 11 count complaint arguing that the fine violated the Charlestown property-maintenance code, the Unsafe Building Law, and various provisions of the Indiana and U.S. constitutions. The Association sought reversal of the fine, nominal damages for each constitutional violation, and an injunction preventing the City from again using code enforcement in an illegal and unconstitutional manner.

wants to stay in their homes can do so and redevelopment will occur around them." Barnes Aff. ¶17; Am. Compl. Ex. 3. 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." *Id.* In that same email, Plaintiff 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 or someone else?" Barnes Aff. ¶ 18; Am. Compl. Ex. 3. 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 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." *Id.* The Mayor went 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. *Id.*

Additionally, in a public post on Facebook on November 28, 2016, Mayor Hall wrote that he "hope[s] the residents won't listen to [Association President and Plaintiff] Josh Craven[] and his followers who have already cost property owners thousands of dollars by giving out false information, false claims and false hope." Am. Compl. ¶ 159, Ex. 12. The Mayor believes that he is correct—that maintaining one's home in Pleasant Ridge is a waste of money—because the Mayor knows that the City intends to fine everyone into destitution if that is what it takes to compel the sale of every property to the Neace LLC.

The Mayor's own unambiguous statements are consistent with the City's actions. Not only is the City engaged in widespread code enforcement that is causing a massive shift in ownership to the Neace LLC, the new policy abolishing fine waiver can serve no purpose except facilitating sales to the Neace LLC. The City wants Pleasant Ridge property owners to understand that there is no hope—if we fine you, you pay or you sell. The City also likely wants its own employees, who might be sympathetic to the struggling homeowners of Pleasant Ridge, to understand that there is no hope—if the City fines a little old lady, the little old lady pays or she sells. This no-waiver policy is essentially unknown in Indiana and reflects a sharp departure from ordinary code-enforcement practices. Collester Aff. ¶¶ 5-7. Cities using code enforcement for the legitimate purpose of health and safety do not pass resolutions barring lenience. *Id.*

The City's actions against the remaining Pleasant Ridge homeowners are imminent. The Mayor took to Facebook again on January 25, 2017, to declare that the City "is moving forward with inspections and putting the pieces together for redevelopment." Am. Compl. Ex. 16. Because inspections are the necessary first step for crippling fines, because the City has now instituted a policy of never waiving fines, and because the Mayor's Facebook post candidly admits that the City is continuing to put "the pieces together for redevelopment," it is clear that Plaintiffs are in imminent danger. Indeed, on January 31, 2017, Mr. Jackson and another City official made an unannounced inspection of the Pleasant Ridge home where Plaintiffs David and Ellen Keith's daughter, granddaughter, and two great-grandchildren live. E. Keith Aff. ¶¶ 6-7.

VI. The City Is Abusing Code Enforcement Because the Legislature Reformed Eminent Domain Law to Prevent Exactly This Sort of Bulldoze-Everything Redevelopment.

The City has spent over a year using code enforcement to force unwilling Pleasant Ridge property owners to sell to the Neace LLC. This raises an obvious question. Why not use eminent domain, the usual vehicle for compelling an unwilling sale?[3]

The answer is that doing so would be illegal. The State of Indiana reformed its eminent-domain statutes in 2006 for the purpose of preventing exactly what the City is trying to do here: forced sales to a developer for area-wide private redevelopment. Ind. Code § 32-24-4.5-7. Under this reform, the City can only transfer a parcel of land from one private owner to another private owner if that specific parcel poses an immediate threat to the public by "constitute[ing] a public nuisance," being "unsafe" or "vermin infested," or constituting "a fire hazard." *Id.* In other words, even if some properties in Pleasant Ridge could legally be transferred to the Neace LLC through eminent domain because of maintenance issues, many properties—perhaps most—could not be transferred, and so the City cannot use eminent domain to place every property in the Neace LLC's hands. That is why, as will be explained below, the City has resorted not just to a code-enforcement scheme, but to one that is comprehensively illegal and unconstitutional.

SUMMARY OF ARGUMENT

This Court should enter a preliminary injunction against Defendants under Plaintiffs' statutory and equal-protection claims. Plaintiffs are likely to succeed on the merits for three reasons. First, the City's imposition of immediate and daily-accumulating fines is illegal under

[3] Plaintiffs certainly are not endorsing eminent domain or suggesting that the use of eminent domain would be constitutional in Pleasant Ridge, even if it were statutorily legal, which it is not. Plaintiffs are simply pointing out that the forced transfer of land for public use is supposed to be done directly through eminent domain, which has a variety of protections for property owners, not indirectly through pretextual code enforcement. Indeed, the City has resorted to pretextual code enforcement precisely to evade the statutory and constitutional rights that property owners have in the eminent-domain context.

its own property-maintenance code, which authorizes fines only after a failure to comply within a reasonable time of a written order. Second, Indiana's Unsafe Building Law also forbids immediate fines and daily-accumulating fines, requires a finding of a willful refusal to comply with a written order before fines may be imposed, and caps fines at $5,000. Finally, the equal-protection guarantees of the U.S. and Indiana constitutions do not allow the City to impose fines on ordinary Pleasant Ridge homeowners and require them to fix up their homes when the City does not require the Neace LLC to fix up its 140 Pleasant Ridge properties or pay any of the fines assessed on those properties.

The likelihood of success on the merits means that the preliminary injunction should automatically be granted because, under Indiana's *per se* rule, unlawful government conduct is an irreparable harm, the government has no equitable interest in perpetuating such conduct, and the public interest demands an immediate cessation of such conduct. Furthermore, even without the per se rule, Plaintiffs face the irreparable harm of losing their real property. The balance of equities also favors them because the hardship upon neighborhood residents of being displaced exceeds any hypothetical hardship the City incurs simply by not being able to force property owners to sell through fining them. Last, the public interest favors the protection of the modest homes of society's most vulnerable citizens before a developer is allowed to bulldoze them while this case is adjudicated.

Finally, Plaintiffs explain the scope of the injunction they seek. Plaintiffs ask the Court to do nothing more than order the City, while this case is pending, to obey its own ordinances and Indiana's Unsafe Building Law, and to treat the ordinary homeowners the same way the City treats the Neace LLC. Plaintiffs do not object to lawful code enforcement for public health and

safety. They object only to unlawful and unconstitutional code enforcement for the illegitimate purpose of forcing them to sell to the LLC.

ARGUMENT

I. The Preliminary Injunction Standard.

Under the familiar four-part test for a preliminary injunction, Plaintiffs must show: (1) a reasonable likelihood of success on the merits; (2) irreparable harm; (3) that the balance of equities favors Plaintiffs and not the City; and (4) that the public interest favors a preliminary injunction. *Paramanandam v. Herrmann*, 827 N.E.2d 1173, 1178-79 (Ind. Ct. App. 2005) (quoting *Hydraulic Exch. & Repair, Inc. v. KM Specialty Pumps, Inc.*, 690 N.E.2d 782, 785 (Ind. Ct. App. 1998)).

The analysis in this case is actually even simpler than it seems. Indiana applies a *per se* rule in which a preliminary injunction issues automatically when the plaintiff establishes a likelihood that the government is acting unlawfully. Indiana courts treat unlawful government conduct as an irreparable harm, as something the government has no equitable interest in continuing, and as something the public interest abhors. *Union Township Sch. Corp. v. State ex rel. Joyce*, 706 N.E.2d 183, 192 (Ind. Ct. App. 1998) (quoting *L.E. Servs. v. State Lottery Comm'n*, 646 N.E.2d 334, 349 (Ind. App. Ct. 1995)). Thus, if the Court finds it likely, as it should, that the City has acted illegally and will do so again, the preliminary injunction should be granted on that determination alone. *See Arbor Homes, LLC v. City of Greenwood*, No. 41D01-1606-PL-00053 (Johnson Sup. Ct. No. 1 2016) (granting preliminary injunction against the enforcement of an unlawful municipal building code) (attached as Exhibit 8 to this Memorandum). Thus, a finding by this Court that Plaintiffs are likely to succeed on the merits of their statutory and equal-protection claims requires that the preliminary injunction be granted.

II. Plaintiffs Are Likely to Succeed on the Merits Because the City's Code-Enforcement Scheme Is Illegal and Unconstitutional.

Plaintiffs are likely to succeed on the merits because the City's use of code enforcement is: (1) illegal under the City's own property-maintenance code (Count I of the Amended Complaint); (2) illegal under the Indiana Unsafe Building Law (Count II); and unconstitutional under the equal-protection guarantees of the (3) U.S. (Count VIII) and (4) Indiana (Count VII) constitutions.[4]

A. The City's Own Property-Maintenance Code Does Not Allow the City to Impose Fines Immediately and on a Daily-Accumulating Basis After Identifying an Alleged Deficiency.

The City's enforcement of its 2008 property-maintenance code has been illegal because the ordinance does not allow immediate fines, or fines that immediately begin to accumulate on a daily basis. Plaintiffs will use the citations against the 114 Riley Avenue side of Plaintiff Association's duplex to illustrate the illegality of the City's actions. But the Court should understand that this is the same approach to enforcement that the City used against other properties. *Supra* at 6 (describing scheme where property owners are hit with daily-accruing fines and told they could escape the fines by selling to the Neace LLC, but only if they sell all properties at once); Am Compl. ¶¶ 117-126; Miller Aff. Ex. 3 (properties sold to Neace LLC since August 2016, overwhelmingly for $10,000 or less each). This is the same approach that that the City will use again against Plaintiffs, Plaintiff Association's members, and other Pleasant Ridge property owners unless a preliminary injunction issues. Am. Compl. Ex. 16 (Mayor Hall stating the City's inspection program will continue).

On September 26, 2016, Building Inspector Jackson inspected the 114 Riley Avenue side of the Association's duplex. Am. Compl. ¶ 133. According to the citation, Mr. Jackson identified

[4] Plaintiffs brought 11 claims in their Amended Complaint, but raise only four in this motion.

eight deficiencies under the property-maintenance code. Am. Compl. Ex. 5. He imposed an immediate fine of $400 ($50 x 8 deficiencies = $400). He also stated that "[s]ubsequent fines in the amount of $400.00 per day ($50.00 per violation) will be assessed starting on the 26th of September, 2016 until which time the violation(s) are corrected." [5] *Id.*

These immediate fines were flatly illegal because the City is authorized by its own code to impose a fine only *after* a property owner fails to comply with a written order that allows a reasonable time to make repairs. 2008-OR-1§ 106.3 (**"Prosecution of violation.** Any person failing to comply with a notice of violation or order served in compliance with Section 107 shall be deemed guilty of a civil infraction . . . .") (emphasis in original). Section 107, in turn, requires not only written notice of an alleged violation, but also a written "correction order allowing a reasonable time to make the repairs and improvements . . . ." § 107.2(4). Under Charlestown's own ordinance, the City could only have fined the Association over 114 Riley Avenue if it "fail[ed] to comply with a notice of violation" that allowed "a reasonable time to make the repairs and improvements." Thus, the fines the City imposed on every property in Pleasant Ridge were illegal and such fines would be illegal again if imposed this way against Plaintiffs, the Association's members, or any other property owner in Pleasant Ridge.

B. The City's Enforcement of Its Property-Maintenance Code Violates the Indiana Safe Building Law.

Plaintiffs are also likely to succeed on the merits of Count II of the Amended Complaint because the City's enforcement of its property-maintenance code has violated the Indiana Unsafe

[5] The fines began to accumulate on a daily basis even before the Association received notice. For example, the 114 Riley citation states that Mr. Jackson made his determination on September 26, 2016, and that the fines will accumulate daily beginning on the 26th. Am. Compl. Ex. 5. Yet postal records indicate that the City did not mail the citation via registered mail until September 28, 2016, and it was not delivered until October 4, 2016. *Id.* This means that 114 Riley Avenue had accumulated $3,600 in fines by the time the citation arrived at the Association's doorstep (September 26-October 4, 2016, inclusive).

Building Law, Ind. Code § 36-7-9-1, *et seq.*, in five ways: (1) Building Inspector Jackson, as the "enforcement authority" under the statute, lacks authority to impose any fine when issuing a written order; (2) to the extent that an inspector may ever issue a fine, it cannot accumulate daily; (3) the City is not affording "sufficient time" to make repairs; (4) Defendant Board of Public Works and Safety, the "hearing authority" under the statute, is imposing fines absent a finding of willful noncompliance to comply with a written order; and (5) the City is imposing fines in excess of a $5,000 cap.

The Unsafe Building Law provides municipalities with certain powers, but also erects procedural safeguards for the benefit of property owners. The City has ignored those safeguards. *See also* Ind. Code § 36-1-3-6(a) ("If there is a constitutional or statutory provision requiring a specific manner for exercising a power, a unit wanting to exercise the power must do so in that manner.")

i. The City has no power to impose immediate fines.

The Unsafe Building Law specifically denies building inspectors the authority to impose immediate fines when they identify deficiencies in property. The statute specifies eight things that a building inspector (called an "enforcement authority") can require a property owner to do in a written order: (1) vacate the building; (2) seal it temporarily; (3) exterminate vermin; (4) remove trash; (5) make repairs; (6) demolish part of the building; (7) demolish the whole building; or (8) seal it for more than 90 days. Ind. Code § 36-7-9-5(a). There is no power to impose a fine, and thus every fine that Mr. Jackson issued was illegal and every fine that he issues in the same manner will again be illegal.

A building inspector may impose a fine only when three things happen. First, a property owner must be given a written order to make repairs under section 36-7-9-5(a)(5). Ind. Code § 36-9-7-7.5(a). Second, the building inspector can issue a fine after providing a written order only

if a "hearing was not requested [by the property owner]]." *Id.* Finally, a building inspector can issue a fine if there is no request for a hearing only if the property owner has "fail[ed] or refuse[d] to comply with the order within 60 days or the time specified in the order." Ind. Code § 36-9-7-7.5(b). In other words, Mr. Jackson has the statutory authority to impose a fine *after* a failure or refusal to comply with a written order that provides an adequate opportunity to make corrections. Thus, the fines the City imposed on every property in Pleasant Ridge were illegal and such fines would be illegal again if imposed this way against Plaintiffs, the Association's members, or any other property owner in Pleasant Ridge.

ii. The City has no power to impose fines that accumulate daily.

Even when a building inspector can impose a fine, that initial fine cannot be increased by more than $1,000 every 90 days. Ind. Code § 36-7-9-7.5(b)-(c). An inspector, in other words, is forbidden by law from imposing fines that accumulate daily. But that is exactly what Mr. Jackson has been doing. In the case of 114 Riley Avenue, for example, he immediately imposed a $400 daily fine that would accumulate daily until all corrections were completed. Mr. Jackson, in other words, imposed a fine that would accumulate at a rate of $1,200 every three days ($400 x 3), which is both *in excess* of $1,000 and accrues *30 times faster* than the statute allows (every three days rather than every 90). Thus, the fines the City imposed on every property in Pleasant Ridge were illegal and such fines would be illegal again if imposed this way against Plaintiffs, the Association's members, or any other property owner in Pleasant Ridge.

iii. The City does not allow "sufficient time" to make repairs.

Regardless of whether a fine is imposed by the "hearing authority" (here, the City) or the "enforcement authority" (here, Mr. Jackson), "the order must allow a sufficient time" of between ten and 60 days to correct alleged deficiencies. Ind. Code § 36-7-9-5(c). And, because fines may

be issued only after a failure to comply with a written order, it necessarily follows that fines cannot issue until after a failure to correct any problem within a "sufficient time" to do so. Here, however, the City has been imposing fines immediately, not after "sufficient time" to make corrections. While it is true that Mr. Jackson's written orders specify ten days to make the repairs, that ten days served zero purpose because the fines were imposed immediately and accumulated daily. Thus, the fines the City imposed on every property in Pleasant Ridge were illegal and such fines would be illegal again if imposed this way against Plaintiffs, the Association's members, or any other property owner in Pleasant Ridge.

iv. The City imposes fines absent a willful failure to comply.

When there is a hearing, a city can impose a fine only when "there has been a willful failure to comply with the order." Ind. Code § 36-7-9-7(e). Here, the City imposed the $8,950 fine against Plaintiff Association without any finding that the Association willfully failed to comply with a written order. Nor could the City have made such a finding. The Association took *immediate*, *good-faith* action to correct the identified deficiencies as quickly as possible after receiving the written order. Yet, despite the Association doing everything within its power to comply as quickly as possible and in fact complying, the City nevertheless imposed an enormous fine of $8,950. Thus, the fine the City imposed on the Association was illegal and such fines would be illegal again if imposed this way against Plaintiffs, the Association's members, or any other property owner in Pleasant Ridge.

v. The City violates the $5,000 cap.

The City's imposition of an $8,950 fine also violated the $5,000 statutory cap. Ind. Code 36-7-9-7(e) ("[If] 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 ($5,000).”). Thus, the fine the City imposed on the Association was illegal and such fines would be illegal again if imposed this way against Plaintiffs, the Association’s members, or any other property owner in Pleasant Ridge.

C. Plaintiffs Are Likely to Succeed on the Merits of Their Claim That the City’s Differential Treatment of Ordinary Property Owners and the Private Developer Violates the Equal-Protection Clause of the Fourteenth Amendment.

Plaintiffs are also likely to succeed on the merits of their federal equal-protection claim.[6] To prevail on a federal equal-protection claim, a plaintiff must show “(1) the defendant intentionally treated him differently from others similarly situated, (2) the defendant intentionally treated him differently because of his membership in the class to which he belonged, and (3) the difference in treatment was not rationally related to a legitimate state interest. “*Smith v. City of Chicago*, 457 F.3d 643, 650-51 (7th Cir. 2006). Here, elements (1) and (2) are indisputable. The City has intentionally treated, and is intentionally treating, ordinary Pleasant Ridge property owners such as the Association differently from the Neace, LLC. Ordinary property owners are required to pay fines and make repairs. The Neace LLC, on the other hand, is not required to pay fines or make repairs. Thus, the equal-protection question is whether this differential treatment is rationally related to the only legitimate government interest behind the property-maintenance code—public health and safety. *See* 2008-OR-1 § 101.3 (ordinance’s purpose is to “ensure public health, safety and welfare in so far as they are affected by the continued occupancy and maintenance of structures and premises”).

[6] This Court should address Plaintiffs’ federal and state equal-protection claims even after ruling on Plaintiffs’ statutory claims. This is because it is certain the City intends to try to force Plaintiffs out of their homes. Even if forced to abide by its own ordinance and the Unsafe Building Law, the City can still unconstitutionally target Plaintiffs with code enforcement with the intent of forcing them to sell (while ignoring the Neace LLC), and cause Plaintiffs much irreparable harm in the process.

The City is not enforcing the property-maintenance code for health-and-safety purposes. Instead, it is enforcing the code (*illegally*; *see* Parts I.A & B *supra*) to compel Pleasant Ridge homeowners to sell to the Neace LLC:

- The City's enforcement of the property-maintenance code has been illegal under the code itself and the Indiana Unsafe Building Law, which ought to create an essentially irrebuttable presumption that the City's actions are illegitimate. *See Geinosky v. City of Chicago*, 675 F.3d 743, 748-49 (7th Cir. 2012) ("bogus tickets" indicate improper purpose and violation of equal protection);

- People are still living in most of the homes the Neace LLC has acquired, and have been for several months, even though the City has supposedly determined their housing to be so bad it has issued massive fines against the properties.[7] Am. Compl. Ex. 4 (detailing lease end dates). The City has a policy of not requiring the LLC to make repairs or pay fines. *Id.*;

- The Mayor has explicitly told other Pleasant Ridge property owners not to fix up their homes and that it could be financially ruinous to do so because the homes will be destroyed soon anyway. *Supra* at 10;

- Nevertheless, the City is imposing financially ruinous fines on homeowners such as the Association that have not sold to the Neace LLC, has instituted a policy in which those fines cannot be waived, Miller Aff., Ex. B, Barnes Aff. ¶ 19, and is demanding that the fines be paid and the properties be fixed up;

- *Unless*, the property owner sells to the Neace LLC, which, again, does not have to fix the properties or pay the fines.

Using a property ordinance illegally to coerce citizens into selling against their will is not only unrelated to health and safety, it describes a "classic" selective-enforcement violation: "a public official, with no conceivable basis for his action other than spite or some other improper motive . . . comes down hard on a hapless private citizen." *Swanson v. City of Chetek*, 719 F.3d 780, 784 (7th Cir. 2013) (internal quotations omitted). The City is selectively going after

[7] Indeed, since the City treats these fines as accruing daily, and since many citations were issued as long ago as August 2016, the amount in fines that the Neace LLC would owe the City—if the City were treating the LLC and the Association the same—is now likely well into the millions of dollars.

property owners like the Association—and soon the other Plaintiffs and the Association's members—but not the Neace LLC. The City is doing this for the illegitimate purpose of forcing citizens to sell to the LLC for pennies on the dollar. *See Forseth v. Vill. of Sussex*, 199 F.3d 363, 371 (7th Cir. 2000) (forcing property owner to convey land valued at $51,000 for $6,000 is not a legitimate governmental objective).[8]

The federal courts have recognized that selectively enforcing a property code to compel unwilling home sales violates equal protection. In *Thorncreek Apartments III, LLC v. Village of Park Forest*, city officials had decided that the residents of a particular apartment complex were "draining our community's businesses, schools and local government services." 970 F. Supp. 2d 828, 834 (N.D. Ill. 2013). The city began a campaign of aggressive code enforcement, "routinely cit[ing]" the property owner for "minor or manufactured infractions," and even enacting new codes that it enforced selectively against the property. *Id.* at 835–36. The court denied the government's motion for summary judgment because the facts indicated the owner could prevail on its equal-protection claim. *Id.* at 843.

The situation in Pleasant Ridge is materially identical. The City has likewise declared that Pleasant Ridge is a "burden on the financial resources of the City, including but not limited to the City's building commissioner, animal control, police force, sanitation department, and the City-

[8] Although the equal-protection violation is readily apparent when one compares the City's treatment of the Neace LLC and Plaintiffs, this case is so egregious that comparisons are unnecessary. The Seventh Circuit has repeatedly recognized that when state actors use their enforcement discretion in an irrational manner, to advance improper purposes—as they have in Pleasant Ridge—then comparisons are unnecessary. *See Brunson v. Murray*, 843 F.3d 698, 707 (7th Cir. 2016) ("pattern of discriminatory behavior . . . can perform the same function as the similarly situated requirement"); *Swanson*, 719 F.3d 780, 785 (7th Cir. 2013) ("It would be oddly formalistic to then demand a near identical, one-to-one comparison to prove the readily-apparent hostility."); *Geinosky*, 675 F.3d 743, 748 (7th Cir. 2012) ("Here, the pattern and nature of defendants' alleged conduct do the work of demonstrating the officers' improper discriminatory purpose.").

owned utilities." Charlestown Resolution 2016-R-1, at 4. And Charlestown has the same strategy for dealing with its undesirable residents: selectively enforcing building codes, selectively ignoring fines and repair orders, and even enacting new ordinances and resolutions targeted at Pleasant Ridge, all to force the unwilling residents to sell their homes. As Plaintiffs' expert Christina Collester testified, the City's actions here do not resemble how legitimate code enforcement is conducted elsewhere in Indiana. Collester Aff. ¶¶ 3-8. It is her opinion that the City's code enforcement is not designed to protect public health and safety. Collester Aff. ¶¶ 4-8.

In sum, Plaintiffs are likely to succeed on the merits of their federal equal-protection claims because treating the Association and other property owners in Pleasant Ridge differently from the LLC is not rationally related to the City's legitimate interest in health and safety. It is, instead, related only to the illegitimate interest in using code enforcement pretextually to force sales to the Neace LLC. Because the City's actions lack a rational relationship with a legitimate government interest, Plaintiffs are likely to succeed on the merits. *See, e.g., St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013) (holding that serving the private economic interests of an industry group is not a legitimate government interest).

D. Plaintiffs Are Likely to Succeed on the Merits of Their State Equal-Protection Claim Because the Indiana Constitution Is Even More Protective than Its Federal Counterpart.

Plaintiffs' likelihood of success on the merits of their federal equal-protection claim means that they are even more likely to succeed on the merits of their state constitutional claim, under the Indiana Equal Privilege and Immunities Clause. Ind. Const. art. I, § 23. This is because the Indiana Constitution's test is more rigorous than that under the Fourteenth Amendment. Under the Indiana Constitution, "[u]nlike federal equal protection analysis, there is no varying or heightened level of scrutiny based on the nature of the classification or the nature of the right affected by the legislation." *Morrison v. Sadler*, 821 N.E.2d 15, 21 (Ind. Ct. App. 2005). And

whereas the federal rational-basis test requires only that legal distinctions have a rational relationship to a legitimate government objective, the Equal Privilege and Immunities Clause provides that whenever government treats people differently, the "disparate treatment . . . must be reasonably related to *inherent characteristics* which distinguish the unequally treated classes." *Collins v. Day*, 644 N.E.2d 72, 80 (Ind. 1994) (emphasis added). Crucially, "inherent characteristics" do not include one party being economically important to the city. *See Paul Stieler Enters., Inc. v. City of Evansville*, 2 N.E.3d 1269, 1275 (Ind. 2014). Additionally, any "preferential treatment must be uniformly applicable and equally available to all persons similarly situated." *Collins*, 644 N.E.2d at 80.

Application of the test is straightforward in this case. Owners that refuse to sell to the Neace LLC are forced to pay fines and make repairs. The LLC, meanwhile, is allowed to keep hundreds of people in roughly 140 properties that are supposedly in such a state that the City has issued daily-accumulating fines that must now run into the millions of dollars and ordered numerous repairs. *Supra* at 22 n.7. The LLC is not required to pay fines or make repairs. Am. Compl. Ex. 4. That differential treatment cannot be justified in terms of health and safety, and any economic advantage that accrues to the City from redevelopment is irrelevant. *See Paul Stieler Enterprises*, 2 N.E.3d at 1275 ("In comparing the disparate treatment . . . to the inherent differences of the two classes . . . the legislative purpose for consideration is public health, not economic advantage to the City."). To the contrary, the fact that the City and the LLC are engaged primarily in an economic enterprise reinforces the conclusion that there is an equal-protection violation because the Indiana Constitution has long been careful to forbid "privilege for purchase." *Id.* at 1276.

III. The Blatant Illegality and Unconstitutionality of the City's Enforcement of Its Property Maintenance Code Means that the Preliminary Injunction Should Issue Under Indiana's Per Se Rule.

The Court need proceed no further and should issue the preliminary injunction based on Plaintiffs' likelihood of success on the merits. Under Indiana's *per se* rule, unlawful government activity is an automatic irreparable harm, the balance of equities is irrelevant because the government has no valid interest in illegal conduct, and the public interest demands government compliance with the law. Thus, the preliminary injunction should be granted on the basis of the fact that the City's conduct has violated the plain language of its own ordinance and Indiana's Unsafe Building Law, as well as violated the most basic equal-protection guarantees of the federal and state constitutions. *Union Twp. Sch. Corp. v. State ex rel. Joyce*, 706 N.E.2d 183, 192 (Ind. Ct. App. 1998) ("When the *per se* rule is invoked, the court has determined that the defendant's actions have violated a statute and, thus, that the public interest is so great that the injunction should issue regardless of whether the plaintiff has actually incurred irreparable harm or whether the plaintiff will suffer greater injury than the defendant."); *see also L.E. Servs., Inc. v. State Lottery Comm'n of Indiana*, 646 N.E.2d 334, 349 (Ind. Ct. App. 1995).

IV. The City's Enforcement of the Property-Maintenance Code Inflicts Irreparable Harm on the Association and Its Members.

As noted in the previous section on the *per se* rule, Plaintiffs do not need to prove additional irreparable harms, because being forced to endure an illegal and unconstitutional code-enforcement process is an inherently irreparable harm. But there are other irreparable harms in addition to those inherent ones inflicted by the unlawfulness of the City's code enforcement.

First, the City aims to force homeowners to lose their property, and the loss of real property is a classic irreparable harm. *See Carpenter Tech. Corp. v. City of Bridgeport*, 180 F.3d

93, 97 (2d Cir. 1999). If the low-income residents of Pleasant Ridge are coerced by unlawful fines into selling their beloved homes, and especially if those homes are demolished while this case is pending, that is a harm for which no money damages would ever be adequate.

Second, the City's code enforcement is a source of unimaginable stress to Plaintiffs, the Association's members, and other Pleasant Ridge residents. Many elderly residents are homebound and on a fixed income. Association member Betty Dodson, for example, is confined to her home and on supplemental oxygen essentially around the clock. Barnes Aff. ¶ 25. Her husband Ronald, also an Association member, cares for her daily. *Id.* They believe that being forced to endure bogus fines and being ousted from their home will have drastic, possibly even fatal, consequences for Betty. *Id.* Association member Kevin Satterly lost his elderly mother in October 2016, and she suffered tremendously from the stress of facing the loss of her home. *Id.* Infirm and on a fixed income, she spent the final years of her life in a state of persistent worry, a state that many elderly and disabled Association members find themselves in. *Id.* Many elderly and disabled residents simply do not have the physical and economic reserves necessary to withstand being forced to sell to the Neace LLC. *Id.*

Third, there are a plethora of other irreparable harms at stake. The dislocation associated with losing a home can have drastic consequences that are not readily measured in monetary terms. Plaintiffs such as David and Ellen Keith and Plaintiff Barnes have extended family also living in the neighborhood. In many cases, forcing them out of their homes represents not just the loss of the home, but also the loss of an entire family network that may have existed for decades. The disruptions associated with the loss of a home can also inflict irreparable harms on children. Plaintiff Barnes will have to take her family, which includes thirteen and sixteen year old granddaughters, to Florida to live with her brother while she figures out what to do. Forcing her

granddaughters to move and change schools at a sensitive time in their lives will cause profound injury that is not readily susceptible to monetary damages.

Finally, the harms associated with an unlawful enforcement practice are irreparable even if the fines associated with the practice could, theoretically, be overturned through appeal to this Court. Low-income and elderly homeowners cannot be expected to suffer through the time, stress, and money of rapidly hiring contractors and fixing up minor and questionable repairs that the Mayor himself has said are a waste of money; appealing those fines to a Board whose policy is not to waive fines unless the home has been torn down; and then appealing again to this Court. Indeed, the City Attorney himself said at the Board hearing on December 5, 2016—while reviewing the Association's appeal—that "it's not really… uh… a good idea for [Pleasant Ridge property owners] to pump a bunch of money into a structure when the City is planning on redeveloping that whole neighborhood." Morton Aff. ¶ 3, Ex. A.

Similar cases bear this out. In *Geinosky v. City of Chicago*, for example, the Seventh Circuit held that Chicago's selective enforcement of its parking ordinances against the plaintiff constituted a distinct irreparable harm in itself that was not remedied by the fact that the plaintiff could appeal the citations, and it was found that every citation was bogus. 675 F.3d 743 at 749 (7th Cir. 2012). Thus, the fact that the City's unlawful code enforcement is technically subject to judicial review—and even if every bogus fine and repair order were overturned—Plaintiffs, members of the Association, and other Pleasant Ridge homeowners would still have been irreparably harmed simply by having to go through the process of vindicating their statutory and constitutional rights.

In sum, the City's actions present extensive irreparable harms to Plaintiffs, the Association's members, and to other Pleasant Ridge residents beyond the inherent irreparable

harm inflicted by the sheer illegality of the City's actions. Thus, Plaintiffs have satisfied the irreparable-harm prong of the preliminary-injunction test.

V. The Balance of Hardships Favors Granting the Injunction.

The balance of hardships also weighs heavily in favor of granting the injunction. The City is threatening a financially vulnerable population with economic and emotional ruin if they do not acquiesce in the City's plans to destroy the only neighborhood where they can afford to live. The City is not actually concerned about code violations, as is evident in its allowing hundreds of tenants to continue to live in the Neace LLC's 140 properties with no enforcement against the LLC. Suffering through the City's illegal code enforcement, not to mention losing one's home, with no reasonable likelihood of finding another, are extreme hardships that far outweigh any "hardships" the City might experience by delaying its plans.[9]

VI. The Public Interest Favors Granting the Injunction.

Because the City's actions are illegal and unconstitutional, the public interest automatically favors the preliminary injunction. The public has no interest in the perpetuation of illegal and unconstitutional government conduct. *Baskin v. Bogan*, 983 F. Supp. 2d 1021, 1029 (S.D. Ind. 2014) ("The State does not have a valid interest in upholding and applying a law that violates these constitutional guarantees."). As will be discussed in the next section, Plaintiffs ask the Court to enter a preliminary injunction that simply orders the City to obey its ordinances, Indiana law, and the state and federal constitutions. The public cannot possibly have any interest that is contrary to that.

[9] The City can mitigate even the trivial harm that delay causes because the Neace LLC can begin redevelopment on the roughly 140 properties it has already acquired via the City's unlawful code-enforcement scheme.

The public interest also favors a preliminary injunction to avoid an avalanche of duplicative litigation in this Court. As Plaintiffs have demonstrated, the City has engaged in a widespread pattern of illegal and unconstitutional code enforcement. Any future citations issued under this pattern will almost certainly be overturned on appeal to this Court, after much time, stress, and expense suffered by the property owners. The public's interest in judicial economy favors a preliminary injunction preventing the City from enforcing its code in an illegal and unconstitutional manner because that pattern of enforcement is going to generate at least dozens of costly appeals that will needlessly tax the resources of this Court and its personnel. It makes more sense to enjoin the City now rather than deal with dozens of separate appeals later.

VII. The Scope of Preliminary Injunctive Relief.

Plaintiffs seek an injunction to prevent the illegal and unconstitutional enforcement of the property-maintenance code while this case is pending. The terms of the injunction are included in the proposed order, but Plaintiffs will summarize them here. Plaintiffs ask that the injunction separately address both the illegality of the City's conduct and its unconstitutionality.

With respect to illegality, Plaintiffs ask that the City be required to enforce the property-maintenance code in a manner that conforms to the plain language of the ordinance and Indiana's Unsafe Building Law. In a nutshell, this means that the Association, its members, and similarly situated property owners in Pleasant Ridge must be given written notice of alleged deficiencies. That written notice must provide a time period that is reasonable and sufficient to perform corrections, and cannot be arbitrarily short (such as ten days for work that will, of necessity, require more than ten days). Neither the City nor its agents such as Building Inspector Jackson can impose immediate fines or fines that accumulate daily. A property owner may be deemed guilty of a civil offense only based on a willful failure to perform corrections required in a

written order. The Resolution forbidding the City from reducing or waiving fines should also be enjoined because it conflicts facially with the Unsafe Building Law, which expressly states that a "hearing authority" may "reduc[e] or strik[e] the civil penalty." Ind. Code § 36-7-9-(e). Finally, a civil penalty for willfully failing to comply with a written order may not exceed $5,000.

With respect to unconstitutionality, Plaintiffs ask that the City be preliminarily enjoined from enforcing the property-maintenance code any differently against the Neace LLC or any other private developer than against other Pleasant Ridge property owners, such as Plaintiffs. There is no rational relationship between the government's interest in enforcing the code for public health and safety, and the City's policy of ignoring the largest landowner in Pleasant Ridge (the Neace LLC) while expecting individual homeowners to repair alleged deficiencies and pay fines for not doing so.

CONCLUSION

The City is ignoring its own ordinance, state law, and the state and U.S. constitutions in order to force mostly vulnerable people of modest income to sell to a wealthy developer for pennies on the dollar. Plaintiffs, the Association's members, and other Pleasant Ridge property owners are in imminent danger of the City moving on to them. Plaintiffs ask this Court to issue a preliminary injunction to stop the City from continuing its illegal and unconstitutional policy while this case is pending.

Dated: February 10, 2017

Respectfully submitted,

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*Verified Petitions for Temporary Admission pending.

CERTIFICATE OF SERVICE

I certify that on February 10, 2017, the foregoing document has been duly filed and served through the Indiana e-filing system on Michael A. Gillenwater, 411 Watt St., Jeffersonville, IN 47130 and Hon. Maria D. Granger, City County Bldg., 311 Hauss Square, Ste. 421, New Albany, IN 47151-3570.

s/Stephen W. Voelker
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