

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

GREATER NEW ORLEANS FAIR HOUSING ACTION CENTER, and WALLACE RODRIGUE,	* CIVIL ACTION * * NO. 2:06-CV-07185 *
Plaintiffs,	* SECTION C *
and PROVIDENT REALTY ADVISORS, INC., Plaintiff-Intervenor,	* JUDGE BERRIGAN * * MAGISTRATE JUDGE SHUSHAN *
vs.	*
ST. BERNARD PARISH and ST. BERNARD PARISH COUNCIL,	*
Defendants.	*
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**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CONTEMPT**

## INTRODUCTION

In defiance of two orders of this Court, Defendants St. Bernard Parish and the St. Bernard Parish Council continue to block Provident's proposed multi-family, mixed-income housing developments for the same racially discriminatory reasons that motivated the passage of the 2008 multi-family moratorium. After this Court ordered Defendants to repeal the 2008 moratorium because it was passed with a discriminatory intent and had a discriminatory effect in violation of the 2008 Consent Order and federal law, Defendants resorted to a different, but just as effective approach to preventing Provident from breaking ground on its developments. In the most recent iteration of Defendants' racially-motivated opposition to Provident's projects, Defendants have employed the local re-subdivision process to effectively halt construction of Provident's developments.

Before it can obtain building permits and begin construction, Provident must receive approval to re-subdivide the land tracts on which its developments will be built. Re-subdivision simply refers to the re-drawing of the Parish map to reflect that the land sellers sold Provident only a portion of larger tracts of land. Yet Parish officials have hijacked what should have been a routine re-subdivision process and in complete disregard of their own rules, procedures, and staff recommendations, have denied Provident's simple request to re-subdivide the tracts.

Following this Court's Order of March 25, 2008, Provident renewed its efforts to obtain Parish approval to begin construction. Provident worked with Parish staff to complete the preliminary re-subdivision approval requirements and its applications were placed on the April 28, 2009 Commission meeting agenda. Unbeknownst to Provident at the time, the Parish staff submitted reports to the Commission recommending approval of Provident's applications.

Parish President Taffaro then took the unusual step of advertising on the Parish website that Provident's re-subdivision applications would be considered at the St. Bernard Parish Planning Commission meeting and invited the public to attend and be heard. Predictably, hundreds of residents responded to Taffaro's announcement and came to the meeting to express their opposition to Provident's

developments. The comments from the public and from Commissioners at the meeting were full of references to blight, crime, drugs, and Village Square, echoing the *St. Bernard Voice* editorial that triggered the 2008 multi-family moratorium. Moreover, the Commissioners ambushed Provident with questions that were irrelevant to its applications and that the Parish staff had not raised with Provident.

After a long and hostile hearing, the Commission voted to deny all of Provident's re-subdivision applications against the recommendation of its professional staff. When Provident appealed the Commission's decision to the Parish Council, the Council effectively denied its appeal by declaring that the Council would take no action on the appeal. The Council did not read Plaintiffs' appeal letter, which provided responses to the questions unexpectedly raised at the Commission hearing. When Plaintiffs' counsel attempted to speak at the Council meeting, they cut short his remarks and refused to allow representatives from Provident or the Greater New Orleans Fair Housing Action Center ("GNOFHAC") to speak.

The Commission and Council's actions have the same effect as the 2008 moratorium—they completely halt construction of Provident's developments. Applying the factors laid out by the Fifth Circuit in *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989), it is clear from the historical background, sequence of events leading up to the re-subdivision decision, departures from normal procedure, substantive departures, and legislative history that Defendants were acting with discriminatory intent. The Parish and the Council's latest efforts are nothing more than a continuation of their efforts to "maintain the demographics" of St. Bernard Parish.

Indeed, the discriminatory pattern is eerily similar to what transpired with the moratorium: Provident submits its application; staff approval follows; enabled by Council members, residents vent thinly veiled racially motivated opposition; and the Council changes its rules and constructs pretextual excuses in order to cover its tracks. Defendants are clearly undeterred by the 2008 Consent Order and this Court's Order of March 24, 2009. Their recent actions constitute blatant disregard for this Court's orders. In the words of the Parish Council President, this dispute has now been reduced to a "Texas

hold ‘em poker game” pitting “developers … with their federal court ruling” against St. Bernard Parish’s “way of life.” For these reasons and for those that follow, the Parish and the Council should be held in contempt and sanctioned.

## **BACKGROUND**

### **I. After the Court’s Order, Provident Attempts to Move Forward With Its Developments**

After this Court’s favorable ruling on March 25, 2009, Provident redoubled its efforts to obtain the approvals necessary to begin construction in St. Bernard Parish. (Docket #233.) These efforts represented a continuation of a process that Provident had begun prior to the Court’s ruling, and had been stymied by the 2008 moratorium. In order to begin construction, Provident needs two approvals from the Parish. First, the Parish must formally recognize the re-subdivision effected by the sale contracts. Second, the Parish must issue building permits. (Exh. 33.)

#### **A. *Re-Subdivision Approval***

Re-subdivision is the process of re-drawing the Parish map to reflect changes in the division of land parcels. (Declaration of Matt Harris, hereinafter “Harris Decl.” at ¶ 7.) The Parish map reflects ownership of land by parcel and when the division of those parcels changes through land conveyances, the map must be updated. (*Id.*) The land that Provident bought for its developments constituted only portions of larger tracts of land, requiring re-drawing of the Parish map to reflect the change.

Under the Parish subdivision regulations, the Department of Community Development (“DCD”) staff is required to meet with applicants for re-subdivision, discuss the applicant’s plan, classify the plan as a major or minor subdivision, and guide applicants through the application process. St. Bernard Parish, La., Code app. A, § 2.1 (2008). For a minor re-subdivision, applicants must submit a one-page application, thirty copies of the property survey, and letters of support from the Water and Sewerage Board (“WSB”) and the Department of Public Works (“DPW”). (Harris Decl. at ¶¶ 8-9.) When all of the required materials are submitted, DCD staff reviews the application and prepares a report and recommendation. (Exh. 17, art. 4, ¶ 11.) Once an applicant has submitted its re-subdivision application

and obtained the required letters of support, the matter is placed on the agenda of the monthly Commission meeting. (Harris Decl. at ¶ 9.) A public notice of the hearing is printed in the *St. Bernard Parish Voice*. (*Id.*)

The Commission's members are selected by the Council. St. Bernard Parish, La., Code ch. 18, art.1 § 18.1(2008). The Commission's responsibility is to, among other things, administer the subdivision regulations. (*Id.* at app. A, § 4.) All applications for re-subdivision are considered by the Commission at a public hearing. (Exh. 17, art. 2.) The Director of the DCD also serves as the "Director/Secretary of the Planning Commission" and acts as "the technical advisor to the Commission concerning all ... resubdivisions." St. Bernard Parish, La., Code app. A, § 4 (2008); (Exh. 17, art. 4, ¶ 10.) The reports and recommendations of the DCD staff are required to be presented at the Commission meeting. (Exh. 17, art. 4, ¶ 11.) After the Commission votes to approve or deny the re-subdivision petition, it must send a report to the Parish Council. (*Id.*, art. 4.) If the Commission denies the request, it must communicate its reasons to the Council. (*Id.*)

#### *B. Building Permit Process*

In addition to meeting the re-subdivision requirements, anyone wishing to construct a building must obtain a building permit. St. Bernard Parish, La., Code ch.5, art.1, § 5.1 (2008). A building permit is not issued until the re-subdivision process is complete. *Id.* at app. A, § 1.6 (2008). There are no public hearings on building permit applications.

#### *C. Provident Complies With the Parish Re-Subdivision Process*

At the February 4, 2009 hearing on Plaintiffs' Motion to Enforce the Consent Decree, Provident requested that the Parish allow it to proceed through the construction approval process while the litigation was pending. (Harris Decl. at ¶ 5.)<sup>1</sup> After Provident made that request, DCD staff met with Provident to discuss the re-subdivision process and clarify the requirements. (*Id.* at ¶ 6.) The staff

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<sup>1</sup> Prior to the evidentiary hearing in March, Provident attempted to begin the construction approval process. (Harris Decl. at ¶¶ 3-8.) In December 2008 and January 2009, Provident contacted Jerry Graves, Jr., the Director of DCD and the Director/Secretary of Commission, to inquire about the process. (*Id.* at ¶ 3.) Mr. Graves did not respond. (*Id.*)

classified Provident's plans as minor re-subdivisions and directed Mr. Harris to provide surveys and letters of approval from the SWB and the DPW. (*Id.* at ¶ 9.) Mr. Harris was explicitly told that those requirements were standard for minor re-subdivisions like Provident's, and that the substantial additional procedures required for major re-subdivisions would not be applicable to these requests. (*Id.*)

Provident submitted its four re-subdivision applications and promptly requested support letters from the WSB and the DPW. (*Id.* at ¶¶ 8, 11.) On March 6, 2009, the WSB determined that with respect to one of the proposed re-subdivisions, the water line would have to be looped back to a nearby street and a lift station would have to be upgraded to accommodate the increase in volume. (Exh. 3.) Provident agreed to make those street and sewer improvements. (Harris Decl. at ¶ 13.) With respect to the three other re-subdivision requests, the staff noted that Provident would have to "construct necessary extension and/or tie-in to existing services" at its own expense. (Exhs. 2, 4.) Provident agreed to do so. (Harris Decl. at ¶ 13.) After the Board's concerns were satisfied, Provident received letters of approval from the WSB for each of its re-subdivision applications on March 12, 2009. (*Id.*)

Provident then worked with the DPW staff to respond to their questions and concerns. Although it was slow to process Provident's requests, the DPW staff eventually worked with Provident and requested some minor changes to Provident's surveys.<sup>2</sup> (Harris Decl. at ¶¶ 14-15, 19-22.) Provident made all of the requested changes. On April 9, 2009, Provident was informed that its re-subdivision applications would be placed on the April 28th Planning Commission meeting agenda. (*Id.* at ¶ 22.)

#### *D. DCD Staff Recommends Approval of Provident's Re-Subdivision Applications*

Provident did not know at that time that the DCD staff, under the direction of Mr. Graves, had prepared reports with recommendations to approve Provident's re-subdivision applications. (Harris Decl. at ¶ 24.) Three of the four reports stated "THE STAFF RECOMMENDS FINAL APPROVAL" and the fourth stated "THE STAFF RECOMMENDS TENTATIVE APPROVAL." (Exh. 23.) The fourth approval was tentative because Provident would be required to improve a lift station and extend a

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<sup>2</sup> On March 3, 2009, Provident learned that the DPW approval letter would take longer than initially projected. (*Id.* at ¶ 12.) The staff also commented that a moratorium was in place prohibiting the construction of apartments. (*Id.*)

road, which it had agreed to do. (*Id.*) Upon meeting those conditions, Provident would be entitled to final approval. (*Id.*)

Walking into the April 28, 2009 Planning Commission meeting, Provident believed that it had complied fully with the re-subdivision regulations. (Harris Decl. at ¶ 23.) Additionally, based on Mr. Harris's experience in handling subdivision and re-subdivision requests on other developments, Provident understood that the approval of its requests would be a routine matter. (*Id.*)

## **II. President Taffaro Incites Public Outcry Over Provident's Developments**

Immediately prior to the April 28, 2009 Commission meeting, President Taffaro took the unusual step of announcing on the Parish website when and where Provident's re-subdivision applications would be heard and making a personal appeal to Parish residents to attend and voice their views. (Exh. 13.) He specified that the tracts at issue were the sites of Provident's "proposed mixed-income, multi-family developments" – information that could not be gleaned from the description of the tracts alone. (*Id.*) Notably, President Taffaro's announcement did not include the other re-subdivision applications scheduled for consideration at the April 28 hearing. (*Id.*)

President Taffaro's announcement triggered the desired public outcry. At least one citizen prepared a petition inciting others to oppose the developments by speaking out against the re-subdivision applications at the meeting. The petition stated:

VOICE YOUR OPINION TO OUR PARISH COUNCIL! TELL THEM YOU DO NOT WANT LOW INCOME HOUSING DEVELOPMENTS IN OUR PARISH! THE CRIMINAL ELEMENT IS SPILLING OVER INTO OUR BEAUTIFUL PARISH! LET'S KEEP ST. BERNARD PARISH SAFE FOR OUR CHILDREN. . . IF YOU DON'T THINK CRIME IS ON THE RISE, TAKE IT FROM ME PERSONALLY—I WAS CARJACKED AT GUNPOINT IN MY OWN DRIVEWAY THE NIGHT OF APRIL 19TH 2009!

(Exh. 36.)

## **III. Provident Is Ambushed at the Planning Commission Meeting**

Approximately 200 members of the public packed the St. Bernard Parish Council's chambers on April 28, 2009 to voice their opposition to Provident's developments. Among the attendees were

Councilmen Lauga and Landry, and counsel for Defendants, Francis Mulhall and Michael Gorbaty.

(Harris Decl. at ¶ 28.)

*A. Commissioners Raise Issues Not Ordinarily Considered at Re-Subdivision Hearings*

At the hearing, members of the Commission asked Provident's representative a multitude of questions of which he had no prior notice. The questions were inconsistent with the DCD staff's requests throughout the application process, and irrelevant to a minor subdivision request. For example, Commissioners asked whether the developments would have 24-hour security and whether they would bring crime to the Parish. (Exh. 37 at Part C, 10, 12-13.) Other questions pertained to the impact of the developments on traffic patterns, drainage plans that would be submitted with the building permits, and whether wetlands existed on the tracts. (*Id.* at Part B, 8-10, 61, Part C, 8.) Provident was never told that this information would be requested at the hearing, nor did the staff request it during the application process. Commissioners also made repeated references to Article VI of the "Rules, Procedures & Policy for the St. Bernard Planning Commission," despite the fact that the rules were never provided to Provident and they are not available among the published rules and ordinances of the Parish. (*Id.* at Part B, 17-18; Harris Decl. at ¶ 39.)

Even though many of the questions were unexpected and irrelevant to the re-subdivision applications, Provident's representative did his best to respond to some of the inquiries. He confirmed that the plans conform to the zoning ordinance, official map, and capital budget programs. (Exh. 37 at Part B, 8.) He also assured the Commission that the necessary public facilities to support Provident's plans either existed or were proposed. (*Id.* at Part B, 7.)

*B. The Opposition at the Hearing Is Rife With Racially Camouflaged Language*

More disturbing than the departure from normal procedures were the comments and "camouflaged racial expressions" made at the hearing. Commissioners and attendees repeatedly made references to Village Square and New Orleans East, expressed concerns about crime, and inveighed against Section 8 vouchers and the prospect of living near those who lacked "similar values."

The following are examples of the statements made at the hearing:

- One Commissioner commented, “Apartments draw criminals.” (*Id.* at Part B, 63.)
- A member of the public commented, “[N]ow we’re going to have 4 Village Squares.” (*Id.* at Part B, 24.) The same person stated that Section 8 housing brings crime into communities and a Commissioner responded, “I agree with you.” (*Id.* at Part B, 26.) When asked whether he was saying he did not want St. Bernard Parish to be like New Orleans, he responded that if two councilmen from the city can say they do not want “it,” “why can’t we say it? If you don’t want it—if you don’t pay taxes, keep your a\*\* out.” (*Id.* at Part B, 27.)
- A citizen commented that the Parish “had enough problems in the past with Village Square . . . [w]e don’t want] people who are going to sit in the yard or on the balcony all day with the music up, screaming at their neighbors, dealing drugs.” (*Id.* at Part B, 27-28.)
- A member of the public stated “I don’t want to live like in New Orleans East. I don’t want to put bars on my windows. I want to feel safe in my yard.” (*Id.* at Part B, 32.)
- A member of the public stated that although St. Bernard Parish is often accused of being racist, “we make choices about where we want to live based on our value system. And, typically, you live near people who share similar values to you...” (*Id.* at Part B, 39.)
- A Parish citizen stated: “We want middle-income people, upper-income people to invest in this community. . . . We do not need a large influx of low-income...” (*Id.* at Part E, 19.)
- A member of the public commented “I’ve got a black family living by me. They’re very responsible. They don’t never play their music. They’re very polite. I wave to them in the morning. They wave to me. Hey, I don’t have a problem with them people. I have a problem with someone that’s going to be coming up the street, gang-banging somebody or they’re kicking the door down every couple days.” (*Id.* at Part B, 65-66.)
- A Commissioner asked about if there would be 24 hour security at the developments and commented that the complexes will bring crime to the Parish. (*Id.* at Part C, 10, 12-13.)
- When Provident’s representative suggested that some of the concerns being raised were the subject of Judge Berrigan’s recent judicial decision, a Commissioner stated “let’s not discuss anything that happened in a previous court case today . . . the Court ain’t making that decision today.” (*Id.* at Part C, 27-28.)

#### *C. The Commission Rejects the Staff Recommendations*

After several hours of public comment expressing fervent opposition to Provident’s developments, the staff reports recommending approval of the re-subdivision requests were finally read aloud and the Commissioners discussed the applications.

Director/Secretary Graves counselled the Commission that many of the questions they had asked of Provident, such as those pertaining to drainage and wetlands, were “typically addressed at the building permit level not necessarily at the re-subdivision level . . . [and that] typically at this point, at this point in the process, we wouldn’t ask Provident to provide [that.]” He then implored the Commission to “keep that in mind when you vote on these subdivisions.” Two Commissioners

attempted to table the applications to give Provident the opportunity to submit a traffic study, drainage plan, and wetlands determination, but they were outvoted by the other Commissioners. When the applications were put to a vote, every Commissioner in attendance ignored the recommendations of their professional staff and voted to deny Provident's applications. (Exh. 24.) The Chairman explained that "the most obvious" reason for his opposition to the developments is "the health and welfare of St. Bernard Parish as everybody who came up and spoke about it."

#### **IV. The Parish Council Denies Provident a Fair Hearing of Its Appeal**

After the Commission meeting, Provident sought to appeal the denial of its re-subdivision petitions to the Parish Council. On May 4, 2009, Provident sent a letter to the Parish Clerk of Council giving notice that it planned to appeal the Commission decision and requesting to be put on the agenda of the May 19, 2009 Council meeting. (Exh. 19.)

##### **A. *Parish Officials Make Public Statements Opposing Provident's Developments***

The day after the Commission meeting, the *Times Picayune* reported that Councilman Wayne Landry stated that he "had discussed the issue with the other six council members and believes they would side with the planning commission if the matter was brought before them." (Exh. 14.)

In the May 5, 2009 edition of Craig's Corner, President Taffaro analogized the dispute in this case to a game of Texas Hold 'em poker. He wrote in relevant part:

After seeing the few hundred people and reading the transcript of the Planning Commission's Public Hearing relative to the resubdividing of land for the four proposed apartment complexes, it reminds me of a very high stakes game with some very dramatic potential outcomes. **The developers are at the table with their federal court ruling, already filed land purchases (which have land bought presuming it to be resubdivided), "lined up" financing, and a mantra of the project will assist in providing housing in a market that is short on housing.** We sit at the table with our commitment to our way of life, with thousands of people who sunk everything into rebuilding our community, the financial challenge of a recovering community, and the knowledge of having an already oversupply of rental and single family home sites.

The risk we face is obviously linked to the high stakes stand-off in which we are engaged. To fold at this point is to surrender everything that we have fought to rebuild, like throwing in our cards with a pot full of our money. To hold at this point is to potentially create a financial judgment against St. Bernard for millions of dollars. We

have never been a community that has surrendered and when one looks back over the last three and half years, it was not through giving in that has us where we are in the Recovery of our parish. . . . If we are to ultimately lose this fight for our survival, it will not be because we as a people or as a government simply folded. If we are to survive and win this fight, it will be because we stood together and demanded that justice to our community not be ignored.

When these proposed developments started, the concern of too much too fast was ignored despite the fact that the more the discussion went forward, the more the market around it began to fall apart. So the developers look to draw a Full House (four housing developments with no regard for the outcome) – we will play a Royal Flush (a community of citizens of all backgrounds banded together committed to what is best for St. Bernard).

I'm not professional card player, but I believe our Royal Flush will beat a Full House every time.

(Exh. 20.) (emphasis added). President Taffaro also asked the Commission to send transcripts of the Commission hearing to Governor Bobby Jindal and the Louisiana Housing Financing Agency in an attempt to jeopardize Provident's financing. (Exh. 35.)

President Taffaro had previously likened affordable, multi-family housing to murder in his “Craig’s Corner” column entitled “Ten Commandments of Recovery.” Under the heading “Thou Shall Not Murder,” President Taffaro wrote:

While there are no obvious incidents of our citizens losing their lives to one another in the Recovery and Growth, there is a different type of killing of which we must be aware. It is the systematic killing of our community by individuals seeking to capitalize on the recovery for personal gain and profit at the expense of our community. There is certainly room for economic infusion to our community from the recovery work that is ongoing, **but when the push to disrupt the investment of neighborhoods through allowing blight, an overabundance of rental properties, and a lack of accountability for one's area becomes the focus, it is murderous to our Recovery.”**

(Exh. 38.) (emphasis added)

#### *B. The Parish Refuses to Give Provident the Reasons for the Commission’s Decision*

After the Commission hearing, Provident repeatedly requested the reasons for the Commission’s denial, including copies of the actual decisions issued, and copies of any staff reports or recommendations. (Harris Decl. at ¶¶ 29-31, 33; Exhs. 15, 18-19, 39-40.) None were provided. (Harris Decl. at ¶ 34.) Provident was eventually able to obtain the DCD’s reports to the Parish Council through

a third party. (*Id.* at ¶ 39.) The reports summarized the public comments made at the hearings and recorded the vote, but did not explain the reasons for denial. (Exh. 24.)

*C. Provident Prepares an Appeal Letter and Offers to Address Every Reasonable Concern*

Without the benefit of knowing the reasons for the Commission's denial, counsel for Provident prepared an appeal letter.<sup>3</sup> Despite the fact that under the Parish rules and pursuant to the staff's instructions the questions raised at the Commission meeting were inappropriate for Provident's applications, Provident provided answers to those questions and more in its letter. (Exh. 29.) The letter systematically addressed every issue for consideration listed in Article VI of the "Rules, Procedures & Policy for the St. Bernard Parish Planning Commission" and offered to respond to any other legitimate issues. (*Id.*)

*D. Two Business Days Before the Council Meeting, the Council Finally Informs Provident That its Appeal Is on the May 19, 2009 Meeting Agenda*

Provident repeatedly requested confirmation that its appeal would be heard at the May 19, 2009 Parish Council meeting, but did not receive confirmation until after 12 p.m. on the Friday before the meeting. (Harris Decl. at ¶ 28.) Then, on May 18, 2009, the day before the Parish Council meeting, at 4:58 p.m., Director/Secretary Graves sent a letter to counsel for Provident officially notifying him that the Commission had denied the re-subdivision applications and provided the purported reasons for the denial. (Exh. 30.) Mr. Graves wrote: "There were several issues raised at the meeting, including, *but not limited to*, drainage, wetlands and traffic, your representative was either unable or unwilling to address. If you would like further consideration by the Planning Commission, please be prepared to respond to the issues raised during the hearing and Chapter 22, Appendix A of the St. Bernard Parish Code of Ordinances." (*Id.*) (emphasis added). By inserting the caveat "*but not limited to*" into the list of reasons,

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<sup>3</sup> Provident requested a copy of the transcript of the hearing to identify and respond to the questions raised at the Commission meeting. (Exh. 39.) None was provided. Provident obtained a videotape of the hearing from a third party (recorded from the re-airing of the hearing on a public television channel) and, at its own expense, reviewed the tape and created a rough transcript. (Harris Decl. at ¶ 41.) Provident also obtained through a third party the "Rules, Procedures & Policy for the St. Bernard Parish Planning Commission" that was repeatedly mentioned at the meeting, but never provided to Provident. (*Id.* at ¶ 39.)

Defendants still have not provided Provident with a complete list of the reasons for the denial of its re-subdivision applications. Notably, Mr. Graves omitted from his public report to Provident some of the issues he had noted in a parallel internal report to the Parish Council, e.g., that the public was concerned about crime, creating another Village Square, etc. (Exh. 24.) The Parish never provided Provident with the internal report.

*E. The Council Refuses to Hear Provident's Appeal*

At the Council meeting, the Council spent approximately two hours in Executive session discussing this case. After the Council returned for its public session, Wayne Landry announced that although he would “really like to vote to uphold the City Planning Commission,” the Council had decided not to take any action on the issue and, instead, stated that Provident could, if it chose, request that the Commission reconsider its decision. (Exh. 31 at 2-3.) Counsel for Provident was allowed to speak briefly in support of overturning the Commission’s decision, but Councilman Landry interrupted him, cut him off, and eventually turned off his microphone. (*Id.* at 4-15.)<sup>4</sup>

The Council then let several members of the public speak. Earl Dauterive, the Chairman of the Commission, admitted that the Commission never gave reasons for its decision:

There is no answer from the Planning Commission as to why we denied it. We denied it. We denied it. So there is no answer. I would like to know if the applicant was really in the room during the public hearing process, how could they ask for an answer of why it was a denial, he must not have been in the room because it was very evident from the public opinion as well as all of the questions that we asked and not have answered.

(*Id.* at 24.)

Several members of the public voiced their opposition to Provident’s developments. Their comments echoed the comments made at the Commission meeting and primarily pertained to their fear that the Provident developments would bring crime to the Parish. One resident stated: “The first and foremost reason for our concern and objection is for our own safety, health, and welfare that will undoubtedly be negatively affected by these low income apartments being next door to us due to the

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<sup>4</sup> Members of the public coughed loudly while counsel was speaking to prevent him from being heard. (Harris Decl. at ¶ 47.)

hardcore crime that we will no doubt be subjected to because of these apartments next door to us.” (*Id.* at 17.) Another declared that “we don’t need that in our community, we don’t need drugs, more drugs and we don’t need more crime.” (*Id.* at 32.)

When James Perry, the Executive Director of GNOFHAC and one of two African-American individuals in the room full of approximately 100 people, got up to speak, Councilman Landry asked if he was signed up. (*Id.* at 35.) Councilman Landry had not asked this of any other speaker.<sup>5</sup> Councilman Landry, without actually looking through the cards filled out by those who wished to speak, refused to let him speak. (Harris Decl. at ¶ 49.) Mr. Harris, who had also signed up to speak, tried to cede Mr. Perry his time, but before he could make the offer, Mr. Landry closed discussion on the matter. (*Id.*) When Plaintiffs’ counsel objected that neither Mr. Perry nor Mr. Harris had been given an opportunity to speak, Councilman Landry threatened to escort him out of the building. (Exh. 31 at 36-37.) A member of the public shouted “Go back to Washington, we don’t want you here.” (Harris Decl. at ¶ 49.)

#### *F. Councilman Landry Publicly States His Intent to Block Provident’s Developments*

After the meeting, Councilman Landry joined an online discussion forum about St. Bernard Parish hosted by www.nola.com. He submitted signed postings under the screen name “WLandry.” One post thanked Councilman Landry for announcing at the meeting that he would have voted to uphold the Commission decision. (Exh. 32.) Councilman Landry responded with a post entitled “You’re Welcome!” (*Id.*) A Parish citizen posted that she did “not understand why [the Council] didn’t vote to stick by the planning commission.” (*Id.*) Councilman Landry replied by explaining his strategy:

The action we took actually did uphold the planning commission decision. By taking the approach [sic] which we did, we produced the effect of upholding the planning commission decision without pulling any exposure for a judge to say we acted unjust. Thus accomplishing the same thing and putting us in the best position possible to defend a potential future lawsuit.

(*Id.*)

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<sup>5</sup> At first, Mr. Perry mistakenly stated that he had not signed up to speak, but immediately corrected himself after being told by GNOFHAC’s General Counsel that he was signed up to speak. (Exh. 31 at 35.)

*G. Provident's Projects Have Been Halted By Defendants' Denial of Re-Subdivision*

The Commission's denial of Provident' re-subdivision applications and the Council's refusal to overturn its denials have the effect of completely blocking Provident's developments. (Harris Decl. at ¶ 51.) Provident cannot obtain building permits or move forward with construction without re-subdivision approval. (*Id.*) The project has again reached an impasse.

## ARGUMENT

**I. Defendants' Persistent Efforts to Block Construction of Provident's Developments Constitute Contempt of This Court's Orders**

The Parish and the Council's most recent efforts to block Provident's developments are motivated by the same racially discriminatory purpose that prompted the 2008 multi-family moratorium. After the Court ordered Defendants to rescind the 2008 moratorium, Defendants simply recycled their playbook and applied it to the Parish's re-subdivision process. The circumstances surrounding the April 28, 2009 Commission meeting, the denial of Provident's re-subdivision applications, and the Parish Council's refusal to consider Provident's appeal amount to nothing more than a continuation of the same discriminatory conduct that the Court found violated the 2008 Consent Order. They no longer have an ordinance barring multi-family developments, but Defendants' manipulation of the subdivision process achieves the same racially-motivated goal of halting construction of Provident's developments. It is clear that the Parish and the Parish Council are undeterred by federal law and this Court's orders.

Under Fifth Circuit case law, a party is in contempt of a court order when it is established by clear and convincing evidence: "1) that a court order was in effect, 2) that the order required certain conduct by the respondent, and 3) that the respondent failed to comply with the court's order."

*American Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581 (5th Cir. 2000) (quoting *Martin v. Trinity Indus., Inc.*, 959 F.2d 45, 47 (5th Cir.1992)) (internal quotation marks omitted). Each of these elements is satisfied here.

*A. A Court Order Was in Effect*

The first element required for contempt is not in dispute. In February 2008, the Parish and the Council entered into a Consent Order enjoining them from violating the Fair Housing Act, and 42 U.S.C. §§ 1981, 1982, and 1983 for three years. (Docket #114.) The Court signed the Order on February 27, 2008. “A consent order, while founded on the agreement of the parties, is nevertheless a judicial act, enforceable by sanctions including a citation for contempt.” *Whitfield v. Pennington*, 832 F.2d 909, 913 (5th Cir. 1987). Thus, there can be no question that the February 2008 Consent Order constitutes a court order that remains in effect.

*B. The Order Enjoined Defendants From Discriminating on the Basis of Race*

The second element – that the Order required certain conduct by Defendants – is also clearly met. The Consent Order enjoined Defendants from violating the Fair Housing Act and other federal civil rights statutes by discriminating on the basis of race or national origin.<sup>6</sup> (Docket #114.) The Consent Order makes clear that St. Bernard Parish and the Parish Council are prohibited from engaging in racially discriminatory conduct. Additionally, the Court’s Order of March 25, 2009 holding that the passage of the 2008 moratorium constituted intentional racial discrimination continues to bind Defendants and places them on notice that their racially-motivated efforts to block construction of Provident’s developments violate the 2008 Consent Order. (Docket #233.)

*C. Defendants Failed to Comply With This Court’s Orders When They Denied Provident’s Re-Subdivision Applications for Racially Discriminatory Reasons*

In defiance of this Court’s two orders, Defendants continue to engage in racially discriminatory conduct by using the Parish re-subdivision process to block Provident’s affordable, multi-family

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<sup>6</sup> The Consent Order enjoined Defendants from “violating the terms of the federal Fair Housing Act, and 42 U.S.C. §§1981, 1982, and 1983. Specifically, St. Bernard Parish agrees that it shall not: A. Refuse to rent a dwelling unit, or otherwise make unavailable or deny a dwelling unit, to any person because of race or national origin; B. Deny minority citizens the same rights as are enjoyed by white citizens to make and enforce contracts; C. Deny minority citizens the same rights as are enjoyed by white citizens to lease, hold and otherwise enjoy real property; D. Deny any person equal protection of the law by discriminating on the basis of race and national origin in the leasing of real property; and, E. Retaliate against Plaintiffs or any other person who alleges that Defendants have violated the Fair Housing Act, 42 U.S.C. §3601 et seq. (Docket #114.)

developments. Defendants' denial of Provident's re-subdivision applications is motivated by the same purpose and has the same effect as the 2008 multi-family moratorium on construction that this Court ordered rescinded. As this Court has already held, the appropriate standard for determining whether Defendants' conduct in this matter constitutes intentional discrimination is set out by the Fifth Circuit in *Overton v. City of Austin*, 871 F.2d 529, 540 (5th Cir. 1989). (Docket #233 at 7-8.) The relevant factors for analysis include: "(1) the historical background of the decision, (2) the specific sequence of events leading up to the decision, (3) departures from the normal procedural sequence, (4) substantive departures, and (5) legislative history, especially where there are contemporary statements by members of the decision-making body." *Overton*, 871 F.2d at 540 (citing *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977)).

#### 1. Historical Background of the Decision

Defendants' denial of Provident's re-subdivision applications represents the next chapter in their long history of attempting to prevent African Americans from moving to the Parish. The same officials who in the aftermath of Hurricane Katrina have tried to keep mixed-income, multi-family housing developments out of the Parish with the blood relative ordinance and two moratoria on multi-family housing, are once again central figures – this time in blocking Provident's re-subdivision applications.

Parish President Craig Taffaro has attempted to "maintain the racial demographics" of St. Bernard Parish since Hurricane Katrina. (Docket #233 at 9.) As a councilman he sponsored a series of restrictive housing ordinances in 2005 and 2006, including the blood relative ordinance. (Docket #233 at 8-10.) As Parish President, Mr. Taffaro declined to veto the 2008 moratorium. (*Id.* at 10.). More recently, President Taffaro compared the construction of mixed-income, multi-family housing to murder in his Craig's Corner column. Under the heading "Thou Shall Not Murder," he wrote that "when the push to disrupt the investment of neighborhoods through allowing blight, an overabundance of rental properties, and a lack of accountability for one's area becomes the focus, it is murderous to our Recovery." (Exh. 38.) He has now posited this dispute as a "Texas hold 'em poker" game pitting

“developers … with their federal court ruling” against St. Bernard Parish’s “way of life.” (Exh. 20.)

When viewed in this historical context, it becomes clear that President Taffaro deliberately took the unusual step of announcing the Commission’s consideration of Provident’s re-subdivision applications for the racially discriminatory purpose of enabling public opposition and sabotaging Provident’s developments.

Councilman Wayne Landry is also a recurring character in this story. He voted to pass the 2008 moratorium and co-authored a letter to the Louisiana Housing Authority opposing Provident’s developments and citing reasons that this Court found to be pretextual. (Docket #233 at 17-22; Exh. 34.) More recently, Councilman Landry was quoted immediately after the Commission meeting declaring that he would vote to uphold the denial of Provident’s re-subdivision applications and expected the rest of the council would do the same. (Exh. 14.) When the Council declined to affirm or reverse the Commission’s decision, Councilman Landry explained that it was a strategic decision to protect them from a lawsuit, but bragged that it had the same effect as upholding the denials. (Exh. 32.) In other words, he acknowledged his intention to evade this Court’s reach.

In addition, Defendants’ recent conduct is the same pattern and approach that they have historically used in their uncompromising opposition to multi-family housing and Provident’s developments in particular. In fact, as described *infra*, the sequence of events leading up to the denial of Provident’s re-subdivision applications is eerily similar to that preceding the passage of the 2008 moratorium and which the Court found particularly troubling. (Docket #233 at 10-15.)

## 2. The Specific Sequence of Events Leading up to the Decision

The pattern is clear. At first, Provident receives apparent cooperation from Parish employees and staff with an initial application. Racially-motivated public outcry ensues. Next, Council members ambush Provident by changing rules and processes or enacting a moratorium; the Council reveals its true intentions, misuses its power to block the developments; and then, to cover its tracks, the Council invokes various pretextual justifications.

The Court noted that it was “disturbed” by the timeline of events leading up to the passage of the 2008 moratorium. (*Id.* at 15.) The Court found that the Parish’s “initial positive reaction” to Provident’s developments “immediately eroded following the publication of the editorial” in the *St. Bernard Voice* containing camouflaged racial language. (*Id.*) It further held that the racially-motivated public-outcry that ensued “was a factor in the introduction and eventual passage of the moratorium.” (*Id.*) The sequence of events leading up to the denial of Provident’s re-subdivision applications is quite similar and equally disturbing.

After some initial resistance, DCD staff worked with Provident to prepare the re-subdivision applications. Provident responded to the few issues raised by the staff, but the staff never stated that it had any problems with the applications or requested information about traffic, drainage, or wetlands. (*Id.* at 13-14, 21-22.) Indeed, the staff forwarded the applications for placement on the Commission’s agenda and submitted reports recommending approval of Provident’s re-subdivision requests. (Exh. 23.) It was then that President Taffaro took the unusual step of advertising the Commission meeting, identifying the tracts of land as the sites for Provident’s “mixed-income, multi-family developments,” and expressly stating that the meeting was “the public’s formal opportunity to be heard.” (Exh. 13.)

President Taffaro’s announcement drew a large crowd of hostile St. Bernard Parish citizens to the Commission meeting. The public comments at the meeting echoed the inflammatory August 16, 2008 *St. Bernard Voice* editorial that this Court held contained camouflaged racial language. (Docket #233 at 12-14.) Commissioners and members of the public referenced their shared community values, predicted that crime would increase, and expressed their fear that the developments would become another Village Square and turn St. Bernard Parish into New Orleans East. (Exh. 37 at Part B, 24, 32, 63.) Those references are nearly identical to the language in the editorial. (Docket #233 at 12-14.) The Court specifically held with respect to the language in the *St. Bernard Voice* editorial that: “references to ghetto, crime, drugs, violence, the Village Square, and to the Housing and Urban Development New Orleans Projects juxtaposed against their ‘threat’ to the ‘shared values’ of overwhelmingly Caucasian St.

Bernard Parish clearly is an appeal to racial as well as class prejudice.” (*Id.* at 13-14.) After hours of questions and comments of this nature, the Commission voted unanimously to deny Provident’s re-subdivision applications in contravention of the DCD staff recommendations. (Exh. 24.)

The pattern of events following the public outcry is also similar to what took place earlier. The Commission proceeded to invoke justifications that are clearly pretextual to give the Parish cover. As discussed in section 4 *infra*, concerns about wetlands, drainage and traffic are devoid of any factual basis – just like the concerns asserted in support of the 2008 multi-family moratorium, e.g., lack of infrastructure, no need for affordable housing, etc. (Docket #233 at 17-19 (crediting testimony of K. Rose).) The sequence of events leading up to the Commission’s denials leave no doubt that the same racially discriminatory motive behind the 2008 multi-family moratorium is driving the continued opposition to Provident’s affordable housing developments.

### 3. Departures From the Normal Procedural Sequence

The Commission’s departures from its normal procedures are a strong indication of discriminatory intent. At the April 28th meeting, Commissioners did not begin discussion of Provident’s developments by reading the staff report and recommendations. Indeed, the Commissioners made no mention of the staff recommendations until the end of hours of hostile public comments. Nor did the staff intervene to defend Provident’s applications.

Commissioners asked Provident’s representative questions pertaining to traffic, drainage, and wetlands. (Exh. 37 at Part B, 8-10, 61, Part C, 8.) As Mr. Graves, the Director of DCD and the Director/Secretary of the Planning Commission, advised the Commission, those types of issues are “typically addressed at the building permit level not necessarily at the re-subdivision level.” Mr. Graves implored Commissioners to “keep that in mind when you vote on these subdivisions.” Nevertheless, the Commission voted to deny Provident’s petitions and Mr. Graves’ letter of explanation to Provident specifically cited traffic, wetlands, and drainage as reasons for the decision. (Exh. 30.)

The Commissioners ignored the staff's determination that Provident had met all of the Parish's requirements. According to Parish regulations, it is the staff's responsibility to classify a subdivision as a major or minor re-subdivision. St. Bernard Parish, La., Code app. A, § 2.1 (2008). The Commissioners ignored the staff's classification, asked irrelevant questions, and then scoffed at Provident's response that a re-subdivision request did not require consideration of issues pertinent to zoning or the building permit process.

Finally, the rules require the Commission to explain its reasons for denying any re-subdivision petitions to the Parish Council. (Exh. 17, art. 2.) However, the Commission's reports to the Parish Council regarding Provident's applications simply state that the applications are denied; they do not provide any reasons for the decision. (Exh. 24.)

The Commission's numerous departures from its ordinary procedures impeach the fairness of its process and the legitimacy of its decision. The staff communicated a set of rules and expectations to Provident, which Provident faithfully followed, but the Commission changed those rules unexpectedly at the hearing in order to render an unfavorable decision and block Provident's developments. The Commission's departures from procedure are further evidence of discriminatory intent.

#### 4. Substantive Departures

As this Court explained in its March 25 decision, “[s]ubstantive departures’ are usually indicated when ‘factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.’” (Docket #233 at 17 (quoting *Vill. of Arlington Heights*, 429 U.S. 252, 267).) The Court found that: “St. Bernard Parish officials recognized significant beneficial aspects of the proposed development, including the economic investment of \$60 million dollars in their parish and the estimated annual \$40,000 tax revenues” and held that, in light of those benefits, “[m]any of the justifications now cited by defendants to legitimate their opposition to the developments appear contrived, particularly in light of the substantial benefits of Provident’s plan.” (*Id.*) Given the substantial benefits the Parish will receive from Provident’s developments, the Commission’s reasons

for denying Provident's re-subdivision applications appear just as "contrived" or pretextual as the Defendants' alleged non-discriminatory explanations for passing the 2008 moratorium. (*Id.*)

In Mr. Graves's letter to Provident explaining the Commission's re-subdivision denials, he cited three specific concerns: traffic, drainage, and wetlands. (Exh. 30.) There is strong evidence that these are not the actual reasons, and even if they were, the evidence does not support denial on that basis.

- a. Defendants' asserted justifications are pretextual and not the actual reasons for the denial

Although genuine concerns about traffic, drainage, and wetlands may be legitimate at some point in the process, the Commission was not actually concerned about any of those issues. If those were true concerns, they would have solicited the information necessary to determine the impact of Provident's re-subdivision plans in those areas. Instead, the Parish Council refused to give Provident an opportunity to prove that its re-subdivision plans would not have a negative effect in any of those areas. In Provident's many conversations with the DCD staff, including Mr. Graves, who serves as the technical advisor to the Commission, the issues of traffic, drainage, and wetlands never came up. (Harris Decl. at ¶¶ 13-14, 21-22.) Had the staff asked Provident to provide the information about drainage, wetlands, and traffic, Provident would have done so.

At the Commission hearing, a Commissioner introduced a measure to table Provident's applications until Provident could provide the necessary answers and documentation. (Exh. 24.) If the Commission had actually been interested in Provident's answers, it would have passed the measure. Instead, the Commissioners voted it down and then voted to deny Provident's applications. (*Id.*) At the end of the meeting, the Chairman of the Commission, Earl Dauterive, revealed his true reasons for denying Provident's applications. He stated that "the most obvious" reason for voting to deny "is of course the health and welfare of St. Bernard Parish as everybody who came up and spoke about it." He went on to state that "from a planning perspective, this is a bad thing because we are in the process of redoing our code of ordinances, . . . re-doing and applying to get a Master Plan for the Parish." The first stated reason clearly refers to the public comments about crime, Village Square, drugs, and blight –

comments that this Court has held “appeal to racial as well as class prejudice.” (Docket #233 at 14.) The second stated reason was rejected by this Court as a “contrived” explanation for the 2008 moratorium. (*Id.* at 17.)

The Parish Council was equally uninterested in the drainage, traffic, and wetlands implications of Provident’s developments. Provident carefully prepared a letter brief, which explained that the developments would not have a negative impact on traffic and drainage and contained numerous exhibits to support its claims. (Exh. 29.) Provident offered to respond to any legitimate additional questions or concerns the Council might have. (*Id.*) The Council did not consider the brief or Provident’s arguments before deciding to take no action on Provident’s appeal.

The Parish Council refused to give Provident a full and fair hearing. When Plaintiffs’ counsel attempted to speak in support of Provident’s appeal, Councilman Wayne Landry cut him off and turned off his microphone. (Harris Decl. at ¶ 47.) And, when James Perry, the Executive Director of GNOFHAC and one of two African-American individuals present at the Council meeting, stood up to testify, Councilman Landry would not allow him to speak. (*Id.* at ¶ 49.) Nor did Mr. Landry permit Mr. Harris to speak. (*Id.*) It is clear from the Council’s refusal to allow Plaintiffs to speak at the hearing that it was not interested in fairly considering Provident’s applications.

- b.      Provident’s developments will not have a negative effect on traffic, drainage or wetlands in the Parish

If Defendants had solicited evidence from Provident about the impact of its developments on traffic in the Parish, it would have learned that the impact is negligible. The firm of Kelly McHugh and Associates, Inc. studied the potential traffic impact of Provident’s projects through field observations of intersections near the proposed sites. (Declaration of Kelly McHugh, hereinafter “McHugh Decl.” at ¶ 7.) They found that added vehicle trips caused by the developments will have only “minor impacts to the traffic in the area and intersection delays.” (*Id.*) In fact, the developments would add, at most, one car to those waiting at the nearby intersections at peak traffic hours. (*Id.*) It is also noteworthy that the

traffic added by the developments would not bring the traffic level in the Parish even close to pre-Katrina levels. (*Id.*)

Similarly, there will be no negative effect on drainage. According to the Hydrologic Studies performed by Kelly McHugh and Associates, Inc., Provident's "construction plans will result in stormwater runoff flows of less than or equal to that presently occurring on the undeveloped sites." (*Id.* at ¶ 6.) Moreover, all four sites are designed to tie in to existing drainage systems. (*Id.*) Nor is there concern with respect to wetlands. The Louisiana Office of Community Development solicited analysis from the Corps of Engineers regarding the impact of Provident's developments on wetlands when it considered Provident's funding application. (*Id.* at ¶ 8.) The Corps of Engineers concluded that there are no wetlands on Provident's sites. (*Id.*)

Thus, the developments' impact on traffic, drainage, or wetlands are not legitimate reasons to deny Provident's re-subdivision requests.

##### 5. *Legislative History*

Defendants have made many public comments about the denial of Provident's re-subdivision petitions that are indicative of discriminatory intent. During the Commission meeting, Commissioners made veiled racial comments such as "apartments draw criminals," and asked questions that appealed to racial prejudice such as whether there would be 24-hour security protection at the developments. (Exh. 37 at Part B, 37, Part C, 12.) One Commissioner made a statement that was openly hostile to this Court's authority. When Provident's representative stated that some of the concerns expressed had already been found to be pretextual, a Commissioner replied: "Let's not discuss anything that happened in the previous court case today . . . that court ain't making this decision today." (Exh. 37 at Part C, 27-28.) At the end of the meeting, the Chairman of the Commission stated that "the most obvious" reason for his vote to deny Provident's re-subdivision applications "is of course the health and welfare of St. Bernard Parish as everybody who came up and spoke about it." He was clearly referring to the racially-camouflaged public comments about crime, blight, drugs, and Village Square. At the Parish Council

meeting, the Chairman testified that the reason for the Commission's denial was "very evident from public opinion." (Exh. 31 at 24.)

There were also public statements explaining the Parish Council's decision to take no action on Provident's appeal of the Commission's denials. At the Council meeting, before hearing any testimony, Councilman Landry, acting as Council Chair that day, announced that although he "would really like to vote to uphold the City Planning Commission," the matter would be sent back to the Commission. (Exh. 31 at 2-3.) He later posted a message on an online discussion forum and clarified that the Council's decision "actually did uphold the planning commission decision. By taking the approace [sic] which we did, we produced the effect of upholding the planning commission decision without pulling any exposure for a judge to say we acted unjust." (Exh. 32.) Councilman Landry's post indicates that he and the other Councilmen knew that they had no legitimate grounds on which to uphold the Commission's denials and that they deliberately refused to consider Provident's appeal because they thought that was a safer position to defend to this Court. The public statements made by key officials explaining the reasons for their decisions reveals their discriminatory motives and their intent to defy this Court's orders.

#### *6. Additional Evidence of Defendants' Intent to Defy This Court's Orders*

Perhaps the most telling indication of how Defendants view this litigation is President Taffaro's May 5, 2009 edition of Craig's Corner, in which he analogized this dispute to a Texas Hold 'em poker game pitting "developers ... at the table with their federal court ruling" against St. Bernard Parish "with [its] commitment to [its] way of life." (Exh. 20.) President Taffaro's column makes plain that Defendants view this litigation as a game and that they view this Court as only one hand in an on-going game rather than as the ultimate arbiter of the dispute. President Taffaro announced that Defendants will not concede the game and will instead continue to oppose Provident's developments in defiance of this Court's orders. According to Taffaro, the Parish's winning hand is "a community of citizens of all backgrounds banded together committed to what is best for St. Bernard." (*Id.*) The comments at the

Commission meeting leave no doubt that what the “community of citizens” believes is “best for St. Bernard” is to maintain the nearly all-white demographics of the Parish by blocking the construction of affordable multi-family housing in patent violation of federal law and this Court’s orders.

When considered in conjunction with the five *Overton* factors discussed above, Defendants’ overt statements in defiance of this Court’s orders leave no doubt that Defendants have violated and intend to continue violating the 2008 Consent Order. Defendants are continuing to block Provident’s developments with the purpose of preventing African-American renters from moving to the Parish.

## **II. The Court Should Impose Sanctions on Defendants**

The Parish and the Council show no signs of retreat in their battle against Provident’s developments. Neither the February 2008 Consent Order nor the Court’s Order of March 25, 2009 was sufficient to curtail the Parish and the Council’s discriminatory conduct. In order to protect the authority and preserve the integrity of the Court, Defendants should be held in contempt and ordered to compensate Plaintiffs for the expense that they have incurred in this most recent effort to enforce Defendants’ compliance with federal law and court orders. *See Petroleos Mexicanos v. Crawford Enterprises, Inc.*, 826 F.2d 392, 400 (5th Cir.1987) (“[C]ivil contempt can be used to compensate a party who has suffered unnecessary injuries or costs because of the contemptuous conduct.”).

## **CONCLUSION**

For all of the reasons stated above, Plaintiffs respectfully request that the Court hold Defendants in contempt and order them to compensate Plaintiffs for the damages, costs, and fees incurred as a result of Defendants’ contemptuous treatment of Provident’s re-subdivision applications.

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Respectfully submitted,

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