

U.S.C. §§ 1981, 1982 and 1983 and the terms of the February 2008 Consent Order. The Court ordered Defendants to rescind the moratorium and enjoined them from enforcing the moratorium until such time as it was rescinded. The Court further ordered Plaintiff GNOFHAC and Plaintiff-Intervenor Provident (collectively “Plaintiffs”) to submit evidence of their damages, and requested briefing on whether Defendants should be held in contempt of the February 27, 2008 Order of the Court.

2. Plaintiffs filed a Motion for Contempt and Sanctions pursuant to that Order. (Docket #252.) That motion was granted by the Court on July 22, 2009, and the Court referred the determination of damages to Magistrate Judge Shushan. (Docket #271.)

3. Currently pending before the Court is a Motion for Contempt filed on June 9, 2009, by GNOFHAC and Provident, asking the Court to hold the Parish and the Council in contempt for continuing to block Provident’s mixed-income, affordable housing developments since the time of the Court’s March 25, 2009 Order. (Docket #241.) The Motion also seeks sanctions to compensate Plaintiffs for the alleged contempt. (*Id.*)

4. The Court held an evidentiary hearing on Plaintiffs’ Motion on August 3, 2009.

B. After the Court’s March 25 Order, Provident Attempts to Move Forward with Its Developments

5. Following this March 25, 2009 ruling, Provident redoubled its efforts to obtain the approvals necessary to begin construction in St. Bernard Parish. 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.

6. 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. (Docket #241-36, Exh. 33; Tr. at 13-18.)

Re-Subdivision Approval

7. 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.,” Docket #241-3 at ¶ 7; Tr. at 17:13-18.) 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.*; Tr. at 13.) 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. (Tr. at 13.)

8. 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). (Tr. at 304:1-7.) **Jerry Graves, Director of Community Development and the Secretary of the St. Bernard Parish Planning Commission, testified that an applicant for re-subdivision is required to ask the DCD staff what is required to meet the re-subdivision requirements.**¹ (Tr. at 304:1-7.) 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., Docket #241-3 at ¶¶ 8-9.) When all of the required materials are submitted, DCD staff reviews the application and prepares a report and recommendation. (Docket #241-20, art. 4, ¶ 11; Tr. at 305-306.) Once an applicant has

¹ Citations to the rough hearing transcript have been provided throughout the brief. Bold font indicates substantive material added after the August 3 evidentiary hearing.

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., Docket #241-3 at ¶ 9.) A public notice of the hearing is printed in the *St. Bernard Parish Voice*. (*Id.*)

9. Planning Commissioners are appointed by the Parish Council. (Tr. at 333:20-22, 358:23-25.) *See also* 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. (Docket #241-20, 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); (Docket #241-20, art. 4, ¶ 10; Tr. at 308: 13-16.) The reports and recommendations of the DCD staff are required to be presented at the Commission meeting. (Docket #241-20, 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. 2; Pls.' Evid. Hr'g Ex. 30; Tr. at 158-161.) If the Commission denies the request, it must communicate its reasons to the Council. (Docket #241-20, art. 2; Tr. at 159-160, 348:24-385:1.)

Building Permit Process

10. 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); (Tr. at 50-51, 317.) There are no public hearings on building permit applications. (Tr. at 50:15-16.)

Provident's Deadlines

11. **Mr. Harris testified that Provident is facing federal deadlines that require Provident to place its developments in service by December 31, 2010 or lose its tax credits. (*Id.* at 21:14-24.) He explained that Provident needs 15 months to complete construction, which means beginning construction in October 2009. (*Id.* at 22.) It is undisputed that Provident needs re-subdivision approvals and building permits before it can begin construction.**

Provident Complies With the Parish Re-Subdivision Process

12. Prior to the February 4, 2009 hearing on Plaintiffs' Motion to Enforce the Consent Order, Provident attempted to begin the construction approval process. (Harris Decl., Docket #241-3 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.*; Tr. at 28-29.)

13. At the February 4, 2009 hearing on Plaintiffs' Motion to Enforce the Consent Order, Provident requested that the Parish allow it to proceed through the construction approval process while the litigation was pending. (Harris Decl., Docket #241-3 at ¶ 5.) 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 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; Tr. at 17.) 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.*) **Mr. Graves**

testified that Provident had correctly consulted with Parish staff and that the staff was correct in advising Provident to complete the application form for re-subdivisions of less than five lots or a minor re-subdivision. (Tr. at 305-306.) He testified that the staff did not request from Provident any of the information specified in the regulations for a major re-subdivision, which included a wetlands determination, drainage study, or traffic study. (Id. at 307-308.)

14. Provident submitted its four re-subdivision applications and promptly requested support letters from the WSB and the DPW. (Harris Decl., Docket #241-3 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. (Docket #241-6.) Provident agreed to make those street and sewer improvements. (Harris Decl., Docket #241-3 at ¶ 13; Tr. At 23-26.) 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. (Docket #241-5, 6, 7.) Provident agreed to do so. (Harris Decl., Docket #241-3 at ¶ 13; Tr. At 29-30.) 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.)

15. Provident then worked with the DPW staff to respond to their questions and concerns. 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.) 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. (Id. at ¶¶ 14-15, 19-22; Tr. at 22-23.) 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.)

DCD Staff Recommends Approval of Provident's Re-Subdivision Applications

16. 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., Docket #241-3 at ¶ 24; Tr. at 29:5-7.) Three of the four reports stated "THE STAFF RECOMMENDS FINAL APPROVAL" and the fourth stated "THE STAFF RECOMMENDS TENTATIVE APPROVAL." (Docket #241-26.) The fourth approval was tentative because Provident would be required to improve a lift station and extend a road, which it had agreed to do. (*Id.*; Tr. at 29-30.) Upon meeting those conditions, Provident would be entitled to final approval. (*Id.*)

17. Walking into the April 28, 2009 Planning Commission meeting, Provident believed that it had complied fully with the re-subdivision regulations. (Harris Decl., Docket #241-3 at ¶ 23; Tr. 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. (Tr. at 23.)

C. President Taffaro Incites Public Outcry Over Provident's Developments

18. 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. (Docket #241-16.) He specified in his announcement 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.

(Docket #241-16.) Notably, President Taffaro's announcement did not include the other re-subdivision applications scheduled for consideration at the April 28 hearing. (*Id.*; Tr. at 135.)

19. 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 BEATIFUL 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!

(Docket #241-36, Exh. 36.)

D. Provident Is Ambushed at the Planning Commission Meeting

20. 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., Docket #241-3 at ¶ 28.)

Commissioners Raise Issues Not Ordinarily Considered at Re-Subdivision Hearings

21. 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. (Docket #241-36, 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. **Mr. Graves admitted that neither he nor any member of his staff raised concerns about or asked for any information regarding traffic, drainage or wetlands from Provident.** (Tr. at 307-308, 346.) 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. (Docket #241-36, Exh. 37 at Part B, 17-18; Harris Decl., Docket #241-3 at ¶ 39; Tr. at 303.)

22. 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. (Docket #241-36, 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.)

The Opposition at the Hearing Is Rife With Racially Camouflaged Language

23. 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” (Tr. at 352.) Statements made at the hearing included the following:

- a) One Commissioner commented, “Apartments draw criminals.” (Docket #241-36, Exh. 37 at Part B, 63.)

- b) 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.)
- c) A citizen commented that the Parish “had enough problems in the past with Village Square ... [we 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.)
- d) 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.)
- e) 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.)
- f) 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.)
- g) 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.)
- h) 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.)
- i) 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.)

24. **Councilman Landry testified that although he attended the April 28 hearing, he did not recall whether comments at the April 28 Commission hearing were made about how Provident’s developments would create 4 Village Squares or resemble New Orleans East, or comments such as not wanting those who “sit in the yard or on the**

balcony all day with the music up, screaming at their neighbors, dealing drugs.” (Tr. at 272-273.) He also testified that he could not recall whether he heard the comment that people who were going to live in Provident’s developments would not have the same values as St. Bernard Parish residents. (*Id.* at 273.) Mr. Landry claimed that he “do[es] not know” whether those statements were racially camouflaged language, but he does not dispute that racially camouflaged statements were made. (*Id.* at 275.) He testified that he did recall the statement of a Commissioner that “we don’t need to worry about that because the Court ain’t making that decision today.” (*Id.* at 273.)

The Commission Rejects the Staff Recommendations

25. 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. (Tr. at 308; Pls.’ Evid. Hr’g Ex. 1.)

26. 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.]” (Pls.’ Evid. Hr’g Ex. 1 at 4; Tr. at 308.) He then implored the Commission to “keep that in mind when you vote on these subdivisions.” (Pls.’ Evid. Hr’g Ex. 1 at 4.)

27. 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. (Docket #241-27.)

28. At the evidentiary hearing, Planning Commission Chair Earl Dauterive admitted that the "public's opinion was against" Provident's developments and that the public opposition was based on concerns about crime, Section 8, and Village Square. (Tr. at 352.) He explained that one of the reasons for his vote to deny Provident's applications was "the health and welfare of St. Bernard Parish as everybody who came up and spoke about it," referring to the public comments made at the hearing, including those referencing crime, Section 8 and Village Square. (*Id.* at 352-353; Pls.' Evid. Hr'g Ex. 1 at 8.) He testified that other Commissioners expressed concerns about crime at the time of the vote. (Tr. at 353:9-12, 354:9-13.)

29. Mr. Graves conceded that leading up to the April 28 Planning Commission hearing, Provident was on track to receive approval and to be able to move forward with construction. (*Id.* at 336-337.) Mr. Graves testified that if Provident's re-subdivision applications had been approved in April 2009, Provident would likely have been able to begin construction of its developments in May 2009. (*Id.* at 336:15-337:5.)

E. The Parish Council Denies Provident a Fair Hearing of Its Appeal

30. 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. (Docket #241-22.) **President Taffaro testified at the August 3 evidentiary hearing that the Council has the power to**

overturn the decision of the Planning Commission and that the party seeking to appeal the Commission decision has the right to a vote by the Council on its appeal. (Tr. at 159-164.)

Parish Officials Make Public Statements Opposing Provident's Developments

31. 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.” (Docket #241-17.) **Mr. Landry confirmed at the evidentiary hearing that this quote was accurate. (Tr. at 247-248.) He testified that he had polled the other Council members and they all said they would side with the Commission. He testified that his support for the Commission was “unwavering” and he admitted that he made that clear at the May 19 Council meeting by stating that “if it was my vote, I’d be voting to tell you I’d be upholding their position.” (Id. at 247-249.)**

32. **Councilman Landry’s immediate statement of opposition was consistent with previous actions taken to oppose Provident’s developments. Councilman Landry ran for office on a campaign platform that included as one of his top three priorities opposing Provident’s developments. (Tr. at 230, 232:4-7.) He testified that he developed that agenda after walking the Parish and hearing constituents’ concerns. (Tr. at 227; Pls.’ Evid. Hr’g Ex. 4 at 38-40.) One of his first acts upon taking office was to send a letter to the LHFA in November asking the LHFA not to issue Provident’s tax credits. (Tr. at 232:8-17.) Councilman Landry testified that nothing had changed for him with respect to his views about Provident since last November. (Id. at 237.)**

33. **Councilman Landry admitted signing an online petition opposing Provident’s developments after the Court’s March 25 ruling. (Tr. at 238; Pls.’ Evid. Hr’g**

Ex. 46.) Although he signed it “as a resident of St. Bernard Parish” and not in his official capacity, he testified that in his official capacity as a Councilman, he is “even more opposed” to Provident’s developments. (Tr. at 238.) The petition stated: “Sign this petition if you object to the development of four low/mixed income apartment complexes to be built in St. Bernard Parish. Law allows up to 70 percent of residents to be low income and no less than 30 percent. Each complex will have 72 units and are to be placed around the Parish most likely close to where you live. We had enough problems with Village Square. Do we need more?” (Pls.’ Evid. Hr’g Ex. 46; Tr. 241-242.) The online signatures and comments that came before Councilman Landry’s signature on the petition opposing Provident’s developments contain camouflaged racial expressions, including references to Village Square, slums, and crime. (Pls.’ Evid. Hr’g Ex. 46.) Mr. Landry testified that he does not know whether those are camouflaged racial expressions, but then acknowledged that he was aware that in the Court’s March 25 opinion references to Village Square were found to be racially camouflaged statements when made in the specific context of opposition to Provident’s developments. (Tr. at 242-244.)

34. Councilman Landry conceded that the language in the petition stating that the Provident developments were “to be placed around the Parish most likely close to where you live” is inaccurate, (Tr. at 242:25-243:4), thus supporting the conclusion that this petition was fear mongering designed to incite NIMBYism. Mr. Landry claimed that he could not recall if he saw the first page of the petition before signing it; that contention is simply not credible in light of the fact that he had to access the first page of the online petition to click the option to sign on to the petition. (Tr. at 240-242.) Nor is it credible that he could not recall seeing the other names and statements on the petition. (Tr. at

240:11-24.) Notwithstanding the fact that Councilman Landry denied seeing the language of the petition, he refused to state that he regretted signing the petition even after being presented with that language. (Tr. at 254:22-24.)

35. 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 no professional card player, but I believe our Royal Flush will beat a Full House every time.

(Docket #241-23.)

36. 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. (Docket #241-36, Exh. 35.)

37. 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.**"

(Docket #241-36, Exh. 38.) (emphasis added) **During his testimony, President Taffaro attempted to deny that he was referring to Provident specifically in the above column, but admitted that he believes that Provident's developments will cause blight in the Parish – a claim he also made at the March 11 hearing and that was found to be pretextual. (Tr. at 133:3-8.) Given that the same pretextual justification was provided at the earlier hearing to attempt to justify the moratorium blocking Provident's developments, his assertion that the above column does not refer to Provident is not credible.**

The Parish Continues to Make Significant Progress in its Recovery

38. **Both President Taffaro and Councilman Landry acknowledged that since March, the recovery in St. Bernard Parish has continued to make progress. Specifically, businesses continue to start up and money continues to flow into the Parish. President Taffaro testified that Wal-Mart is going to re-open in the Parish in March 2010 and that it**

is in close proximity to at least three of Provident's proposed developments. (*Id.* at 100.) He acknowledged that Wal-Mart will bring a full year's tax revenue of close to \$1 million into the Parish. (*Id.* at 102.) President Taffaro testified that approximately twenty businesses are set to open in the fall of 2009 at the mall on Judge Perez Drive and that those businesses are very close to Provident's four sites. (*Id.* at 102-103.) He testified that all of these businesses would need workers and that those workers will need housing. (*Id.* at 105.) In addition, a Lowe's is opening up in the Parish and that will provide many jobs. (*Id.* at 106.) President Taffaro testified that \$25.2 million in recovery payments are coming into the Parish. (*Id.* at 107.) The state of Louisiana recently approved \$11 million for a recreation center in Chalmette, a project that will provide jobs. (*Id.* at 109.) More jobs will be created by a project to create a new surge barrier at the Bayou Bienvenue and the hospital, which is scheduled to be designed within the next four months. (*Id.* at 112-113.) The workers for these newly created jobs will need a place to live. (*Id.* at 105, 224-225.)

The Parish Refuses to Give Provident the Reasons for the Commission's Decision

39. 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., Docket #241-3 at ¶¶ 29-31, 33; Docket #241-18, 21-22; Docket #241-36, Exh. 39-40.) None were provided. (Harris Decl., Docket #241-3 at ¶ 34.) Provident was eventually able to obtain the DCD's reports to the Parish Council through a third party. (*Id.* at ¶ 39; Tr. at 31:6-9.) The reports summarized the public comments made at the hearings and recorded the vote, but did not explain the reasons for denial. (Docket #241-27; Tr. at 28:4-29:4, 30:25-31:9.)

40. **Mr. Dauterive testified that under state law, the Planning Commission was required to notify Provident of the reasons for the denial of its re-subdivision requests. (Tr. at 348-349.) Despite this obligation, Mr. Dauterive admitted that the Planning Commission has never given Provident a reason for the denial of its requests. (Id. at 349-350.) Chairman Dauterive testified that the letter Mr. Graves sent to Provident listing the reasons for the denial of Provident’s re-subdivision applications as traffic, drainage, and wetlands, was not accurate. (Id. at 350.) He admitted that the Planning Commission never provided a reason for its denial of Provident’s re-subdivision applications. (Id.) Moreover, when asked at the evidentiary hearing what those reasons were, he stated that he could not provide an answer because he could not answer for the other commissioners, that he would only be speculating about why they voted to deny, and that he could “only answer for myself.” (Id.) Chairman Dauterive admitted telling the Council at the May 19 hearing that “there is no answer as to why” the Commission denied Provident’s applications. (Id. at 351.) He testified that other Commissioners expressed concerns about crime at the time of the vote. (Tr. at 353:9-12, 354:9-13.)**

41. **Notably, the DCD reports to the Parish Council reveal that President Taffaro refused to place the issue on the Council agenda, writing “NOT APPROVED” for addition to the Council agenda, thus blocking Provident’s opportunity to appeal before the Council was even informed of the denial. (Docket #241-27.) Although President Taffaro initially testified that he did not have the power to place a matter on the Parish Council’s agenda, he later admitted that he refused to put Provident’s appeal on the Council agenda after being shown the DCD reports with what he admitted to be his handwriting stating that**

Provident's applications were "NOT APPROVED" to be placed on the Council's agenda.
(Tr. at 157-158; Docket # 241-27.)

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

42. Without the benefit of knowing the reasons for the Commission's denial, counsel for Provident prepared an appeal letter. Although Provident made several requests for the transcript of the April 28 Commission hearing, it was not provided until after the May 19 Council meeting. (Docket #241-36, Exh. 39.) 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 transcript. (Harris Decl., Docket #241-3 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.)

43. 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 in its letter. (Docket #241-32.) 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.*)

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

44. 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., Docket #241-3 at ¶ 28.)

45. 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. (Docket #241-33.) 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); Tr. at 343:23-344:4.) By inserting the caveat “but not limited to” into the list of reasons, Defendants failed to provide Provident with a complete list of the reasons for the denial of its re-subdivision applications. **Mr. Dauterive, the Chairman of the Planning Commission testified that he had never seen Mr. Graves’s letter and that he did not agree that the letter conveyed the reasons for the Commission’s denial of Provident’s re-subdivision applications. (Tr. at 350.)**

46. Significantly, 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. (Docket #241-27; Tr. at 344:5-7.) The Parish never provided Provident with the internal report. (Tr. at 31:18-32:9.)

The Council Refuses to Hear Provident’s Appeal

47. 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. (Docket #241-34 at 2-3; Tr. at 32:17-33:1.) 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. (Docket # 241-34 at 4-15.) Members of the public coughed loudly while counsel for Provident was speaking to prevent him from being heard, without any admonition from the Council. (Harris Decl., Docket #241-3 at ¶ 47; Tr. at 296:1-3.)

48. The Council then let other individuals speak on the topic of Provident's developments. Earl Dauterive, the Chairman of the Commission, addressed the Council and 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.

(Docket #241-34 at 24.)

49. 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 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.)

50. 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. 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. (*Id.*) Councilman Landry, without actually looking through the cards filled out by those who wished to speak, refused to let him speak. (Harris Decl., Docket #241-3 at ¶ 49.) **A member of the public said to Mr. Perry, who is African American, "Go back to New Orleans" and "Go back to your ghetto."** (*Id.* at 360.) 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. (Docket #241-34 at 36-37; Tr. at 290.) A member of the public shouted "Go back to Washington, we don't want you here." (Harris Decl., Docket #241-3 at ¶ 49; Tr. at 360:10.)

51. The Council adamantly refused to hear Provident's appeal, despite that it has the power to overturn the Planning Commission. St. Bernard Parish Code of Ordinances provides that the Council may overrule the denial of re-subdivision applications upon a two-thirds vote. St. Bernard Parish, La., Code app. A, § 2.2(3)(D) (2008). *See also* Pls.' Evid. Hr'g Ex. 30.

52. **President Taffaro conceded during his testimony at the August 3 evidentiary hearing that the Council has the power to overturn the decision of the Planning Commission; that the party seeking to appeal the Commission decision has the right to a**

vote on its appeal; and that the Council did not do this with respect to Provident's appeal. (Tr. at 159-164.) President Taffaro testified that he *may* have read Provident's appeal letter. (*Id.* at 162-164.)

53. **Councilman Landry testified at the August 3 evidentiary hearing that he never read Provident's appeal letter and admitted that he never considered delaying the vote so that the Council could review the exhibits to the appeal letter. (Tr. at 250:2-9, 252.) Provident prepared a 12-page letter, detailing all of the information that could reasonably be considered, yet he did not bother to review its contents. (Docket # 241-32.) Councilman Landry did not deny that the Council had the appeal letter when the meeting started and admitted the exhibits were at the meeting. (Tr. at 251:17-20.) Despite the fact that there was an executive session for nearly two hours at the beginning of the Council meeting during which the Council had an opportunity to discuss the appeal, the Council refused to consider the appeal – Councilman Landry testified that the Council members did not discuss delaying Provident's appeal in order to consider the letter or take more time to review the exhibits to the letter. (*Id.* at 252:8-14.)**

Councilman Landry Publicly States His Intent to Block Provident's Developments

54. 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. (Docket #241-35.) 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.) Councilman Landry admitted during his testimony that he wrote the above posts and that the sentiments expressed were his own. (Tr. at 254.) Councilman Landry’s language evidences an intent to evade and ultimately to defy the Court’s orders without getting caught doing so.

F. President Taffaro and Councilmembers Make Public Their Campaign to Block Provident’s Developments by Attempting to Persuade LHFA to Pull Provident’s Tax Credits

55. If there was any doubt that the objections raised at the Planning Commission on April 28 were pretextual, Defendants’ true intent and purpose became clear when Parish officials got together and attempted to convince the LHFA to pull Provident’s tax credits. On June 10, President Taffaro, Council members Landry, Cavignac, and Everhardt traveled to Baton Rouge for the purpose of convincing the Louisiana Housing Finance Agency (“LHFA”) to pull Provident’s tax credits. (Docket #258-3, Exh. 1.) Council members Taffaro, Landry, Cavignac, and Everhardt undertook this effort on behalf of the Parish, knowing that if they were successful in convincing LHFA to withdraw Provident’s tax credits, the developments could not be constructed. This is the identical tactic employed by Council members Landry and Cavignac in November 2008 when they wrote to the LHFA with their “OFFICIAL OBJECTION” to the award of tax credits, stating that the Parish did not need affordable housing and that the Parish lacked the necessary infrastructure – both justifications the Court found to be pretextual.

(Docket #233 at 17-19.) Councilman Landry acknowledged during his testimony that the

November letter was both his and Councilman Cavnac's official position. (Tr. at 233-234.)

56. On June 10, President Taffaro and Council members Landry, Cavnac, and Everhardt made presentations to LHFA, stating that St. Bernard Parish does not need affordable rental housing. **President Taffaro testified at the evidentiary hearing that he and the Council members went as an official delegation of the Parish. (Id. at 166.)** In making this argument, they relied on a report prepared by the same expert, Wade Ragas, that the Court earlier found was not persuasive, and relied on a methodology for evaluating housing need that the Court has expressly rejected. Evincing the clear intent to disobey this Court's orders, President Taffaro stated to the LHFA that he was "not allowed to ask you guys to pull the tax credits" while providing the LHFA with statistics about the need for affordable housing in the Parish. (Docket #258-3, Exh. 1.) **President Taffaro admitted that when he was asked during the LHFA meeting whether the Parish was asking the LHFA to remove the tax credits, he responded that "because of the litigation that I could not ask for that in a public meeting, but certainly we wanted them to re-examine the information," and went on to admit that the purpose of the meeting was to get the tax credits pulled, stating that "we would not have been displeased if the Housing Finance Agency reversed their decision." (Tr. at 167.) Both President Taffaro and Councilman Landry admitted this effort was consistent with the November letter sent to the LHFA by Councilmen Landry and Cavnac. (Id. at 169, 259:20-23.)** The Parish also invited the LHFA Board to tour St. Bernard Parish as part of their effort to persuade the LHFA that St. Bernard Parish does not need affordable rental housing by letting them hear directly from opponents of Provident's developments in St. Bernard Parish. (Id. at 170-172.) **These efforts show that the Parish is asserting the same justification**

offered previously in support of the multi-family moratorium – a justification the Court already found was pretextual and racially motivated. The fact that this evidence shows that Parish officials are continuing to try to block Provident’s developments without any proper justification raises serious doubts about whether the Parish was fairly processing Provident’s re-subdivision applications. These actions represent a deliberate effort to evade the spirit, purpose and intent of the Court’s decision.

57. The LHFA initially accepted the invitation to tour the Parish and the tour was set for July 13, 2009. (Pls.’ Evid. Hr’g Ex. 37.) The Parish announced that in addition to the tour, the group would attend a public gathering at the St. Bernard Parish Council Chambers, the purpose of which was to make sure the LHFA heard the opposition of St. Bernard Parish residents to Provident’s affordable housing developments. Notably, the public was encouraged to attend the meeting and the tour, but “any resident” who wanted to address the LHFA panel, had to register in advance with the Parish. (*Id.*) The announcement noted “[t]he visit by the multi-family committee members comes as a result of ongoing and growing opposition to four 72 unit low income housing units scheduled to be placed in St. Bernard Parish, three in District A and one in District B. A critical aspect of the developments includes the link between the developments and the tax credits awarded to the Provident group which makes the developments possible.” (*Id.*)

58. **St. Bernard Parish residents discussed the upcoming LHFA visit on the nola.com blog. Councilman Landry admitted during his testimony that he used the blog to communicate with his constituents. In response to a question about whether he was aware of any efforts by his constituents to try and falsely inflate the appearance of the number of rental properties that were for rent when the LHFA toured the Parish, he responded that**

he recalled seeing one blog and that “it might have been” the blog posting shown by counsel earlier suggesting that Parish residents put out “for rent” signs on every rental property. (Tr. at 264.) He later claimed that he had only not seen the blogs regarding putting “for rent” signs on properties that were not for rent, in an effort to dupe the LHFA. (*Id.* at 266.) Upon being presented with the blogs suggesting an effort to dupe the LHFA by misrepresenting the number of rental units available in the Parish, Councilman Landry stated he would not investigate the issue. (*Id.* at 268.) Councilman Landry’s testimony that he *may* remember seeing only the blog regarding putting signs on rental property, but not the blog about putting rental signs in front of properties that were not for rent, raises questions for the Court about whether he knew about these efforts.

G. The Planning Commission Continues to Block Provident’s Developments

59. After the Parish Council denied Provident’s appeal, Provident went back to the Commission and asked it to reconsider Provident’s re-subdivision applications. (Harris Decl., Docket # 258-2 at ¶ 3.) The Commission placed Provident’s re-subdivision applications on the agenda for its June 23, 2009 meeting. (*Id.*) After several hours of a public hearing on Provident’s applications, the Commission again failed to grant the re-subdivision applications. (*Id.* at ¶ 12.) Just like the first hearing, hostile members of the public voiced their opposition to Provident’s developments using racially camouflaged language. (*Id.* at ¶ 10.)

60. Members of the public and Commissioners spoke about the crime that they feared the developments would bring and invoked Village Square in a manner that this Court has already held appeals to “racial as well as class prejudice.” (Docket #233 at 13-14.) For example, one Commissioner asked a member of the public whether Village Square was a high crime rate area and whether crime stays within an apartment complex or “bleed[s]” out into the surrounding

areas. (Pls.' Evid. Hr'g. Ex. 2 at 129:24-130:4.) The individual responded that Village Square was a high crime rate area. (*Id.* at 131:1-4.) He then stated that "lower income" people moved into Village Square and "the lower income you get the worse people you get." (*Id.* at 127:19-25.) A member of the public stated "I'm told [] Orleans Parish doesn't want[] them either." (*Id.* at 65:15-17.)

61. Later in the hearing, when a member of the public who owns a funeral home near one of Provident's proposed developments spoke in opposition to the developments, a Commissioner commented that the development would bring so much crime to the Parish that he should construct a "catwalk between the apartment complex and the funeral home." (*Id.* at 170:23-171:2.) Several members of the public stated that the affordable housing developments would bring drugs, rape, and murder to the Parish. (*Id.* at 65:2-4, 63:20-64:11; Tr. at 361:14-21.) A member of the public referenced a time when "the Black Panthers" came into the Parish and "organized crime" in the Parish, stating that "we had [to] patrol the entire area around the projects." (Pls.' Evid. Hr'g. Ex. 2 at 130:6-15.) A commissioner engaged the individual who made these comments, asking about the Black Panthers. (*Id.* at 132:14-19.)

62. **Mr. Perry heard some Commissioners use language and references that the Court previously found to be racially camouflaged statements. (Tr. at 361.) For example, he testified that connections were drawn "between crime and housing and Provident." (*Id.*) Mr. Perry testified that one of the Commissioners discussed that the Provident developments would cause rape, murder, theft, and robbery, inside the development and throughout the Parish and that the Provident developments were going to draw criminals. (*Id.* at 361, 364.) He also testified that he heard at least one person say that they did not want St. Bernard Parish to become another New Orleans East. (*Id.* at**

362-363.) He explained that New Orleans East is a majority African American community. (Id.) Mr. Perry heard references to Village Square from Commissioners and from members of the public. (Id. at 363.)

63. **Mr. Dauterive acknowledged that there were expressions by a number of Commissioners about crime when they were voting on Provident's applications. (Id. at 354:6-13.)**

64. In addition to the extensive discussion about crime, the Commissioners insisted that Provident submit traffic studies for its proposed developments, despite the fact that Provident had submitted a declaration from its engineer attesting to the minimal effect on traffic that the proposed developments would have. (Harris Decl., Docket # 258-2 at ¶¶ 6, 12.) Counsel for Provident explained to the Commissioners that the engineer determined that at the main intersection near one of the developments, there are approximately 22,000 cars throughout the day and that Provident's development would only add 200 to 300 cars. (Pls.' Evid. Hr'g. Ex. 2 at 15-16.) The Commission Chair, Earl Dauterive, simply responded that the Commission wanted a traffic study. (Id. at 17-19.)

65. After hours of testimony, the Commissioners began the voting process by reading the staff recommendations. For each application, the same staff that had previously recommended approving the re-subdivision requests declined to make a recommendation. (Harris Decl., Docket # 258-2 at ¶ 11; Tr. at 320:13-16.)

66. **Mr. Graves testified at the August 3 evidentiary hearing that Section 2.5 of the Parish's subdivision regulations regarding non-residential subdivision is binding on Provident. (Tr. at 305.) However, he admitted that neither he nor his staff ever told Provident that they needed to comply with the requirements of Section 2.5. (Id. at 346.)**

Neither he nor the Parish engineer requested a traffic study as specified in the regulations. (*Id.* at 342.) In addition, even if that provision were binding on Provident, Mr. Graves conceded that the information provided by Provident in its appeal to the Parish Council satisfied the regulation’s traffic requirements. (*Id.* at 342:16-343:7.)

67. Rather than voting to grant or deny Provident’s applications, the Commission took the requests under advisement, purportedly to allow Provident time to complete a traffic study. (Harris Decl., Docket #258-2 at ¶12.) In deliberating, one Commissioner stated “I hope we make a solid decision because when we get shooting, drive by shootings, juveniles [pointing] guns [in] teachers’ face[s], ... this is something we will have to live with the rest of our life.” (Pls.’ Evid. Hr’g. Ex. 2 at 195-196.)

68. The Commissioners have now demanded a traffic study for each of Provident’s developments and stated that “other issues” may also arise. (*Id.* at 194:5-11, 189.) The Commission also requested copies of an archaeological study Provident already conducted at one of its proposed sites that is near a historical battlefield, as well as copies of studies referenced by James Perry regarding the need for affordable housing in the Parish. In addition to these requests, the Commission made clear that it may raise “other issues” regarding Provident’s applications, but declined to identify them, despite Provident’s repeated requests. (Pls.’ Evid. Hr’g. Ex. 2 at 193-194, 199.)

69. **The Court also notes the racially charged context in which the Commission and the Council were making these decisions. Mr. Perry testified about an email received by his General Counsel, Morgan Williams, from Russell Pitre, a resident of St. Bernard Parish. (Tr. at 186-188, 364.) The email had the subject line “Nobody has guts.” (Pls.’ Evid. Hr’g Ex. 46.) It then went on to say, “But I do. We don’t want black**

people in St. Bernard. We don't want public housing. Can't you see how bad the crime is in New Orleans?" (*Id.*; Tr. at 188.) Mr. Perry testified that the sentiment in the email did not surprise him because it was consistent with the attitude of those present at the meetings he had attended. (Tr. at 365.) He stated that although no one at the meetings he attended explicitly said what Mr. Pitre had put bluntly – "We don't want black people in St. Bernard" – he stated that Mr. Pitre's sentiment was "consistent with [his] experience at those meetings." (*Id.* at 366.)

70. The Commission has reconfirmed its intent to block Provident's developments. The Commission's statements that it not only wants traffic studies, but that it may raise other issues, which it refuses to define, has the effect of continuing to obstruct Provident's developments. Without approved re-subdivision applications, Provident cannot move forward with construction. (Harris Decl., Docket # 258-2 at ¶ 51.)

H. The Parish and the Council Continue Efforts to Block Provident's Developments by Asking Governor Jindal to Persuade the LHFA to Pull Provident's Low Income Housing Tax Credits

71. Despite the fact that the LHFA Board later cancelled the tour and meeting and reaffirmed its support for Provident, saying it would not revoke the tax credits, the Parish went ahead with a public meeting. (Pls.' Evid. Hr'g Ex. 19; Pls.' Evid Hr'g Ex. 20.) The Parish called the meeting to let the public know that they had instituted efforts to enlist Governor Jindal in their efforts to persuade the LHFA to revoke Provident's tax credits and whip up more public opposition to Provident's developments.

72. Refusing to give up, the Parish hosted the public meeting on mixed-income housing, during which, yet again, more racially-camouflaged language was used when discussing Provident's proposed developments. President Taffaro, Councilmen Landry, Auderer, and

Everhardt all attended. (Pls.' Evid. Hr'g Ex. 4 at 10.) President Taffaro made the intent of the Parish government clear: "we continue to [] suggest and state very clearly that there is not a need and that the Louisiana Housing Finance Agency should indeed take a second look at their decision to grant the low-income housing tax credits." (*Id.* at 7.) During the public comment portion of the meeting, one gentleman commented, "I say maybe Louisiana Housing Agency ought to also finance burglar bars for the surrounding neighbors of their development." (*Id.* at 17.) Another individual stated, "There's very few homicides in this parish every year and there's a multitude in Orleans and Jefferson. So you're absolutely right. We are afraid of change." (*Id.* at 28.) Another individual invoked Village Square and opined that the Provident developments would cause "blight[]" just "as Village Square did." (*Id.* at 33-34.)

73. Near the conclusion of the meeting, Councilman Landry addressed the crowd and explained that he and Councilman Cavnac had written to the Louisiana Housing Finance Agency previously to voice their objection to the awarding of tax credits to Provident. (*Id.* at 41.) He explained that "we were going to have a letter with three councilmen on it, [but] because we had to hurry up and get it off so we can try and prevent the LHFA from awarding the tax credits," Councilman Everhardt was unable to sign the objection letter in time. (*Id.*) President Taffaro and Councilman Landry then encouraged everyone in attendance to write to Governor Jindal to oppose mixed-income housing in St. Bernard Parish. (*Id.* at 49-50.) **President Taffaro admitted that he had received letters from residents to Jindal opposing Provident and that the letters are being sent to Governor Jindal. (Tr. at 178:20-179:6.)** Councilman Landry explained that the purpose of the letters was to persuade Governor Jindal to use his influence to persuade the LHFA to pull the tax credits: "certainly the Governor would want to be influential in correcting something that's wrong." (Pls.' Evid. Hr'g Ex. 4 at 44.) At that meeting,

Councilman Landry's message of defiance to the people was clear. He stated in no uncertain terms, referring to this case, "This story doesn't end this way for us." (Pls.' Evid. Hr'g Ex. 4 at 42.) He explained to his constituents that, "So now here we are today in a situation where we, as a government, and we, the people of the parish, have a judicially committed, basically, project in our parish that they want to take our voice away from having. And I don't think that's the way this needs to end. This story doesn't end this way for us." (*Id.*) The Parish made it clear that they have always opposed Provident's developments and will continue to do so, despite this Court's ruling and the Consent Order.

74. Providing further evidence of the Parish's discriminatory motive, President Taffaro admitted that he would not oppose Provident's developments if they no longer had the low-income housing tax credit component. (Tr. at 180:16-23, 182:7-11; Pls.' Evid. Hr'g Ex. 31 at 16-17.) This demonstrates that the part of the development that President Taffaro objects to is the part that is most likely to be filled by African-American renters. (Docket #233 at 6.)

75. Councilman Landry admitted that he had never bothered to look to see what Provident's other developments in the New Orleans area looked like, how they were doing, or what his political peers in other jurisdictions thought of Provident's developments. (Tr. at 283-284.) Councilman Landry explained in his testimony that that information was irrelevant to St. Bernard Parish. (*Id.*) He made clear that he would continue to oppose Provident's developments in any way possible. He testified that his "mind is made up that with your current situation, we can't afford any developers to go forward." (*Id.* at 284:9-10.)

II. Expert Testimony

A. Calvin Bradford

76. In the challenge to Defendants' 2008 multi-family moratorium, Plaintiffs proffered the expert report and testimony of Dr. Calvin P. Bradford in support of their contention that the moratorium had a disproportionate adverse effect on African Americans in the New Orleans area. Dr. Bradford was certified as an expert by this Court in the areas of disparate impact analysis and housing discrimination. (Docket #233 at 5, n.4.) Dr. Bradford's report and testimony were credited and relied on by this Court in finding that the multi-family moratorium caused a discriminatory disparate effect. (*Id.* at 5-6, 24.)

77. The Court found that the moratorium had a disparate impact on African-Americans by reducing the amount of available housing structures with five or more units. Dr. Bradford determined that 17.61% of African-American households live in structures with five or more units, compared with 9.54% of whites. (*Id.* at 5.) African-American households are 85% more likely to live in structures with 5 or more units than white households. (*Id.*)

78. It is undisputed that Provident's developments will have more than 5 units. Each development will have 72 units. (*Id.* at 3.)

79. The Court found that the moratorium also disproportionately affected African Americans because the moratorium reduced the supply of rental properties. Dr. Bradford determined that 51.70% of African-American households are renters, compared with 25.03% of whites. (*Id.* at 5.) The disparity ratio is 2.06. (*Id.* at 5.) This means that African-American households are twice as likely to live in rental housing as white households. (*Id.* at 5.)

80. It is undisputed that Provident's apartments will consist solely of rental units. (*Id.* at 3.)

81. The Court also found that African-American households are far more likely to have incomes within the income ranges for Provident's developments. (*Id.* at 6.) Just over 17% of African-American households have incomes in the lowest income range served by the affordable housing developments (30% of AMI), compared to 9.27% of white households. (*Id.*) Focusing on families instead of households, Dr. Bradford determined that 14.29% of African-American families fall within the lowest income range, compared to 4.6% of white families. (*Id.*) Put differently, African-American families are three times more likely to have qualifying incomes in the lowest income range than white families. (*Id.*) For the higher income range, those households earning between 30% and 60% of AMI, 21.7% of African-American households have qualifying incomes, as compared to 14.28% of white households. (*Id.*) Again, focusing on families, 22.17% of African-American families have qualifying incomes for the higher income range, as compared to 11.88% of white families. (*Id.*) This means that African-American families are 87% more likely to have qualifying incomes in the higher income range than white families. (*Id.*)

82. The Court has previously noted the strength of Dr. Bradford's analysis. (*Id.* at 24.) Dr. Bradford found that all of his disparity ratios were statistically significant at a confidence level of 99%. (*Id.*) This is more conservative than the 95% confidence level ordinarily used in disparate impact cases and commonly accepted by courts.

83. The Court found that the moratorium, which prohibited the construction of Provident's developments, had a disproportionate adverse impact on African Americans in the New Orleans area, and a disproportionate adverse impact on African-American renters both qualified to rent and likely to rent at the developments proposed by Provident to be built in St. Bernard Parish. (*Id.* at 5-6.)

84. In Dr. Bradford's expert opinion, the moratorium had an exclusionary effect on African Americans in the New Orleans area because it prevents the construction of housing units in which they would disproportionately qualify to live. (Tr. of Mar. 11 Hr'g at 110.)

85. In Dr. Bradford's expert opinion, the moratorium also had a segregative effect because it maintains the existing racial segregation of the New Orleans area. (*Id.* at 111.)

86. It is undisputed that without approved re-subdivision applications, Provident cannot build its proposed developments. Thus, the denial of the re-subdivision application has the same effect as the 2008 multi-family moratorium.

B. Kalima Rose

87. Kalima Rose was previously certified as an expert by this Court on the affordable housing needs of the New Orleans area. (Pls.' Evid. Hr'g Ex. 22 at 159:21-23.) In the challenge to Defendants' 2008 multi-family moratorium, Plaintiffs proffered the expert report and testimony of Kalima Rose to demonstrate the need for affordable housing in St. Bernard Parish. (Docket #233 at 16, 18-19.) Ms. Rose's report and testimony were credited and relied on by the Court. (*Id.*)

88. Based on her exhaustive review of the many data sources cited in her report and testimony, Ms. Rose made the following key findings in her report and in her testimony at the March 11 hearing with respect to the need for affordable housing in St. Bernard Parish.

89. First, the imminent phasing out of the Disaster Housing Assistance Program and the FEMA Temporary Assistance Program will leave thousands of families in need of housing that is affordable to households earning between 50 and 100 percent of AMI. In St. Bernard Parish alone, there are 1,585 such families. (Docket #204-5 at 3.)

90. Second, the tax credit programs that will partially fund Provident's proposed

developments serve families in that demographic. (*Id.*)

91. Third, if St. Bernard Parish utilizes all of the allocated federal housing recovery resources, including those allocated for Provident's proposed developments, new construction would replace only 20% of the rental stock lost in the hurricane. (*Id.*)

92. Fourth, twenty-five percent of workers in critical job sectors in St. Bernard Parish cannot afford current market rate rents. (*Id.*)

93. Fifth, population growth in the region, and in St. Bernard Parish in particular, is expected to continue. (*Id.*)

94. Sixth, FEMA is projected to invest almost \$1 billion in rebuilding public infrastructure in St. Bernard Parish, which will create more jobs in the sectors that are currently unable to afford market rate rents. (*Id.*)

95. Seventh, investing in affordable housing projects now will help meet the projected growth in demand for affordable housing by new workers, households currently burdened by high rents, households transitioning from temporary housing support, and former homeowners who cannot afford to rebuild. (*Id.*)

96. Eighth, while communities should balance planning with the provision of new housing, the severe lack of affordable housing in St. Bernard Parish should compel the Parish to take advantage of the one time, short-term federal investment in housing development. (*Id.* at 4.)

97. Ninth, the extreme loss of rental units, the projected growth in population and jobs, the minimal resources allocated to development of affordable housing, and the housing cost burden currently experienced by workers in the Parish ensure that any affordable units developed will be fully leased. (*Id.*)

98. Tenth, Provident's proposed developments will help close the affordable housing gap in St. Bernard Parish. (Tr. of Mar. 11 Hr'g at 156:12-15.) Based on all the available data and after examining all relevant socio-economic trends, Ms. Rose expects that when construction is completed, Provident's developments will be fully occupied. (*Id.* at 156:16-21.)

99. At the August 3 evidentiary hearing, Ms. Rose testified that the findings contained in her expert report and provided in her testimony at the March 11, 2009 evidentiary hearing have not changed. (Tr. at 198.) In Ms. Rose's expert opinion, there is still a need for affordable housing in St. Bernard Parish. (*Id.* at 199:11-13.) **In preparation for her testimony at the August 3 hearing, Ms. Rose reviewed publicly available data that is published by the Department of Housing and Urban Development, the Louisiana Recovery Authority, the Office of Community Development, and newspaper articles regarding recovery in the Parish. (Tr. at 208, 211-216.)**

100. She explained that there has been a decrease in overall household income in St. Bernard Parish between 2004 and 2007. (*Id.* at 199, 200:6-19.) People in St. Bernard Parish are earning less than before Hurricane Katrina, but at the same time fair market rents have increased by approximately 40%. (*Id.* at 199.) Essentially, housing costs have increased, while incomes have decreased.

101. Ms. Rose testified that new infrastructure projects have been approved and that private companies such as Walmart and Lowe's are planning to open in the Parish. (*Id.*) The opening of these businesses will create new minimum wage positions, and the employees filling those positions will need affordable housing. (*Id.*) **In addition, the commercial strip**

along the town center will offer minimum wage jobs and those employees will need affordable housing. (*Id.* at 199-200.)

102. Ms. Rose testified that there has been no change in the \$1 billion in public assistance that the Parish has been allocated, the jobs the projects will create, and the need for housing that the projects will generate over the next decade. (*Id.* at 199.)

103. Ms. Rose explained that the Disaster Housing Assistance Program (“DHAP”) expires at the end of August and approximately 60% of DHAP voucher holders (approximately 650) in St. Bernard Parish do not qualify for permanent vouchers and therefore will have no further housing subsidy to use in the Parish. (*Id.*) Those individuals may have to find lower cost housing. (*Id.*)

104. Ms. Rose explained that because the incomes in the Parish have decreased by 9.5% and \$1 billion worth of infrastructure projects are coming back online as well as two large stores opening in the Parish, combined with the ending of the DHAP voucher program, in her opinion, there will continue to be upward pressure on rents and a need for housing that is affordable to households of varying incomes. (*Id.* at 205-206.)

105. Ms. Rose testified that St. Bernard Parish’s percentage of subsidized housing is lower than Orleans Parish. (*Id.* at 202.) After adjusting for the loss of DHAP vouchers on August 31, 2009, the proportion of households in St. Bernard Parish with some form of subsidy attached will be 8.6%. (*Id.*) That percentage is lower than Orleans Parish, which has 15%. (*Id.*)

106. Finally, President Taffaro made a passing reference in his testimony to a supposed recent report authored by Wade Ragas with respect to current housing need in St. Bernard Parish. This report was never offered into evidence by Defendants. Ms. Rose

testified that she had reviewed it and that it relied on the same flawed methodology that this Court rejected in its March 25 Order. (*Id.* at 206.)

107. Defendants offered no new evidence refuting Ms. Rose’s data, analysis, or conclusions. President Taffaro and Councilman Landry offered no support for their assertions that the Parish does not need affordable housing. Mr. Landry characterized Ms. Rose’s data, analysis, and conclusions as “mumbo jumbo,” but offered no contrary evidence. (Tr. at 269-270.)

C. Kelly McHugh

108. Mr. McHugh is an expert in land surveying and civil engineering and testified regarding traffic impact analysis. Mr. McHugh has 27 years of experience as a civil engineer working in Southern Louisiana. The Defendants’ did not object to Mr. McHugh’s qualifications as an expert. The Court certified Mr. McHugh as an expert. (Tr. at 72.)

109. Mr. McHugh testified that after performing field observations of the intersections near the proposed developments during peak AM and PM hours of traffic and calculating the impact of additional cars from Provident’s developments, he concluded that Provident’s developments will have only minor effects on traffic. (*Id.* at 75-81.) The proposed developments would add, at most, only one car to those waiting at intersections near the Provident communities. (*Id.* at 80:23-25.) The traffic added by the developments would not bring the traffic level in the Parish even close to pre-Katrina levels. (*Id.* at 78.)

110. In addition, Mr. McHugh testified that he recently completed traffic studies on Provident’s proposed developments modeled on a traffic study that the Planning Commission stated was the type of study it wanted performed. (*Id.* at 73.) Mr. McHugh attended the June 23 Planning Commission meeting and testified that the Planning Commission offered to provide

Provident with a sample traffic study, but when Mr. McHugh requested the traffic study, the Parish staff never responded. (*Id.* at 92-93.)

111. **Mr. McHugh testified that in his opinion, there was no point to doing a traffic study and that it was in effect a needless requirement. (*Id.* at 84:21-25.) He did not believe it would reveal any crucial facts. (*Id.*) He explained that the analysis he conducted and provided in his declaration to the Parish Council attempted to explain to the Council why additional traffic studies would not be necessary. (*Id.* at 77:25-78:5.) Mr. McHugh testified that the type of traffic study the Planning Commission insisted on costs approximately \$10,000 per site and normally takes approximately 60-75 days to complete four studies. (*Id.* at 72:22-73:5.)**

112. Mr. McHugh submitted a declaration that is in the record in which he explained that he performed hydrologic studies and that Provident's proposed developments meet the drainage requirements of St. Bernard Parish. (Docket # 242-4 at ¶ 6.)

113. He also attested in his declaration that there are no wetlands on the sites where Provident's developments are to be built. 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. The Corps of Engineers concluded that there are no wetlands on Provident's sites. Mr. McHugh stated that the Corps of Engineers' determinations are considered authoritative and definitive assessments on the subject. (Docket # 242-4 at ¶ 8.)

PROPOSED CONCLUSIONS OF LAW

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

114. 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 and have the same discriminatory effect. 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. Although the 2008 multi-family building moratorium is no longer in place, Defendants' deliberate manipulation of the subdivision process has achieved the same purpose and effect as the moratorium. Their continued efforts to block Provident's developments through a campaign to pull Provident's tax credits are simply an extension of the moratorium **and provides support to Plaintiffs' claims that they were treated unfairly in the re-subdivision process.** It is clear that the Parish and the Parish Council are undeterred by federal law and this Court's orders. The Parish's continued efforts to block Provident's developments thus violates both the February 2008 Consent Order and the March 25 Order.

115. 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). The Court finds that each of these elements is satisfied.

A. A Court Order Was in Effect

116. The parties do not dispute that a Court order was in effect. 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.

117. In addition, the March 25 Order clearly finds the Parish to have violated the Fair Housing Act by blocking Provident’s developments through the moratorium. The Defendants’ manipulation of the re-subdivision process and efforts to pull Provident’s tax credits to achieve the same goal as the moratorium with the same discriminatory purpose and effect, violate the spirit, the purpose, and the intent of the March 25 Order.

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

118. The second element – that the Order required certain conduct by Defendants – is also clearly met. The Consent Order enjoined the Parish and the Council were enjoined 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.) GNOFHAC and St. Bernard Parish specifically agreed to the continuing jurisdiction of this Court for a period of three years from February 27, 2008 to resolve disputes regarding interpretation or compliance with the Consent Order. (Docket #233 at 2-3.)

119. 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 and had a discriminatory disparate effect 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 Blocked Provident's Re-Subdivision Applications and Tried to Pull its LHFA Tax Credits for Racially Discriminatory Reasons and with a Discriminatory Effect

120. 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 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. Likewise, Defendants have engaged in a persistent and discriminatorily motivated campaign to stop Provident by killing its LHFA tax credits. The justification Defendants have asserted for this campaign is no different from the one that the Court already found unsupported and pretextual. These efforts have the same purpose and effect as the earlier moratorium, because without tax credits Provident cannot

build its developments. Defendants' continued opposition represents a blatant and brazen effort to defy and evade the spirit, purpose, and intent of the Court's March 25, 2009 Order.

D. The Parish and the Council's Intent in Blocking Provident's Developments Is Racially Discriminatory

121. 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. et al.*, 429 U.S. 252, 266-68 (1977)).

Historical Background of the Decision

122. Defendants' denial of Provident's re-subdivision applications represents the next chapter in the Parish's 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 and trying to pull Provident's award of LHFA tax credits.

123. The Court finds it noteworthy that the same public officials involved in the passage of the moratorium continue to actively oppose Provident's developments. 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. (*Id.* at 8-10.) As Parish President, Mr. Taffaro declined to veto the 2008 moratorium. (*Id.* at 10.)

124. More recently, President Taffaro compared the construction of mixed-income, multi-family housing to murder in his Craig's Corner column. **Five days after the Court's March 25 Order, President Taffaro**, under the heading "Thou Shall Not Murder," 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." (Docket #241-36, Exh. 38.) **Although he denied he was referring to Provident, he conceded that the ill effects he was referring to are the same as those that he claims Provident will bring. President Taffaro testified that he continues to maintain that Provident will contribute to an overabundance of rental properties and will create blight. (Tr. at 132:6-21.)** 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." (Docket # 241-23; Tr. at 145-148.) **President Taffaro admitted that the royal flush is the people of St. Bernard Parish and the full house is the federal court ruling, and that a royal flush beats a full house. (Tr. at 151:21-152:12.)** 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.

125. Councilman Wayne Landry is also a recurring figure. **He opposed Provident from the start. Councilman Landry ran for office on a campaign platform that included as one of his top three priorities opposing Provident's developments. (Tr. at 230, 232:4-7.) He testified that he developed that agenda after walking the Parish and hearing constituents'**

concerns. (Tr. at 227; Pls.' Evid. Hr'g Ex. 4 at 38-40.) He co-authored a letter to the Louisiana Housing Finance Authority opposing Provident's developments and citing reasons that this Court found to be pretextual. (Docket #233 at 17-22; Docket #241-36, Exh. 34.)

Councilman Landry also signed an online petition the day before the Council meeting to hear Provident's appeal. (Pls.' Evid. Hr'g Ex. 46.) The petition opposed Provident's developments using racially camouflaged language and appealing to NIMBYism. (Tr. at 242:25-243:4.) Despite these troubling statements, Councilman Landry testified that he does not regret signing the petition. (Id. at 254:22-24.)

126. 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. (Docket #241-17; Tr. at 247-248.) Then, when the Council declined to affirm or reverse the Commission's decision, Councilman Landry explained in a post on nola.com that it was a strategic decision to protect them from a lawsuit, but bragged that it had the same effect as upholding the denials. (Docket #241-35; Tr. at 242-244.) In other words, he acknowledged his intention to evade this Court's reach.

127. Even after GNOFHAC and Provident filed the current Motion for Contempt, President Taffaro, along with Councilmen Landry, Cavignac, and Everhardt, all traveled to Baton Rouge to try to convince the Louisiana Housing Finance Authority ("LHFA") to revoke Provident's tax credits in an effort to permanently block the Provident developments. (Docket #258-3, Exh. 1; Tr. at 262-263.) The Parish Council members and President Taffaro reiterated an argument they had previously made in support of the Motion to Enforce – that the Parish has no need for affordable housing. (Docket #258-3, Exh. 1.) The Court previously determined that this argument was without support and pretextual and Defendants have not offered any new

evidence to the contrary. (Docket #233 at 18-19.) The Parish's continued assertion of this pretextual justification in order to block Provident's developments – despite this Court's clear ruling that there is a need for affordable housing in the Parish – represents an effort to evade and defy this Court's March 25 Order and the Consent Order. Further, Councilmen Landry and Cavnac are the same individuals who wrote to the LHFA in November 2008 to oppose the award of tax credits to Provident in the first place, citing the same justifications the Court found were pretextual. **Both President Taffaro and Councilman Landry admitted that the Baton Rouge trip was consistent with the November letter sent to the LHFA by Councilmen Landry and Cavnac. (Tr. at 169, 259:20-23.) In admitting that this earlier effort was consistent, they concede that nothing about their purpose or intent has changed.** And then, after being told by the LHFA that it would not rescind the tax credits awarded to Provident, these same individuals, along with President Taffaro, have persisted in their efforts to stop the developments by attempting to persuade Governor Jindal to influence the LHFA tax credit process. (*Id.* at 177:24-178:3.) Through its actions, the Parish has made clear that it intends to continue its campaign to ensure that Provident's affordable housing communities are not built in St. Bernard Parish, regardless of Provident's good faith efforts to satisfy each and every step of the building approval and re-subdivision process.

128. **Parish officials have paid scant attention to the Court's March 25 Order and the Consent Order. Councilman Landry testified that he never gave the Court's opinion more than a cursory look and President Taffaro testified that he has never read the entire opinion. (*Id.* at 235:22-236:2; 113:17-23.) President Taffaro went on a radio talk show and misrepresented the Court's ruling to the public, ignoring the finding that the Parish was motivated by the discriminatory intent to exclude African Americans from St.**

Bernard Parish. (Pls.’ Evid. Hr’g Ex. 31; Tr. at 142:24-43:2 (testifying that the radio transcript is accurate).)

129. 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 strikingly similar to that preceding the passage of the 2008 moratorium and that the Court found particularly troubling. (Docket #233 at 10-15.)

The Specific Sequence of Events Leading up to the Decision

130. The pattern of events that preceded this Motion for Contempt is strikingly similar to events discussed in the Court’s March 25 Order. At first, Provident received apparent cooperation from Parish officials, employees and staff. Racially-motivated public outcry ensued. Next, Council members ambushed Provident by changing rules and processes or enacting a moratorium and the Council revealed its true intentions and misused its power to block the developments. Then, to cover its tracks, the Council proffered various pretextual justifications.

131. 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.

132. 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. (Tr. at 307-308, 346.) Indeed, the staff forwarded the applications for placement on the Commission's agenda and submitted reports recommending approval of Provident's re-subdivision requests. (Docket #24-26; Tr. at 306:9-14.) 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." (Docket #241-16; Tr. at 133:20-134:20.) **President Taffaro acknowledged that he had not issued a public announcement about any of the other applications on the Planning Commission agenda for the same day. (Tr. at 136.)**

133. 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 citing *Smith v. Town of Clarkton, N.C.* 682 F.2d 1055, 1066 (4th Cir. 1982) (affirming that statements about "undesirables" and concerns about personal safety due to "new" people are "camouflaged racial expressions"); *Atkins v. Robinson*, 545 F. Supp. 852, 871-72 (E.D. Va. 1982) (finding statement that she "feared the projects 'would degenerate to slum-like conditions, with an abundance of crime' to be a veiled reference to race); *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 348 (5th Cir. 2007) (noting isolated references to "ghetto children" as "perhaps racially inappropriate"); *Harrington v. Disney Reg'l Entm't, Inc.*, 276 Fed. Appx. 863, 876-77 (11th Cir. 2007) (indicates "ghetto"

was a racial slur); *Clark ex rel T.M.J. v. Pielert*, 2009 WL 35337, at *8 (D. Minn. 2009) (noting “ghetto” was a “racially-charged word” in the § 1983 context preventing summary judgment on qualified immunity)).

134. 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.” (Docket #233 at 13-14.) At the April 28 Planning Commission meeting, 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. (Docket #241-36, Exh. 37 at Part B, 24, 32, 63.) Those references are nearly identical to the language in the editorial. (Docket #233 at 12-14.)

135. In both the editorial and the comments at the April 28 meeting, references to “shared values” of the Parish, crime, drugs, violence, and Village Square were made. The editorial stated, *inter alia*, “Village Square became what can only be described as a ghetto with drugs, crime, vandalism, and violence.” (Docket #126-16.) Comments at the April 28 meeting were similar, and included such statements as: “Now we’re going to have 4 Village Squares,” “typically you live near people who share similar values to you,” “Apartments draw criminals,” “I don’t want to live like in New Orleans East,” and the Parish does not want “people who are going to sit in the yard or on the balcony all day ... dealing drugs.” (Docket #241-36, Exh. 37 at Part B, 28.) **The comment “Apartments draw criminals,” was made by a Commissioner,**

and several Commissioners voted on the basis of concerns about crime. (Tr. at 352-353:9-12, 354:9-13.)

136. 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. (Docket #241-27; Tr. at 28:4-7.) The nature of the comments at the June 23 Planning Commission hearing and the July 13 public meeting did not change from those made at the April 28 Planning Commission hearing and the May 19 Council meeting. (Tr. at 360-364.)

137. The pattern of events following the public outcry is also similar to what took place with respect to the moratorium. The Commission – just like the Parish Council had with the moratorium – proceeded to invoke justifications that are clearly pretextual. As discussed *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 justification for the meeting with LHFA, that there is no need for affordable housing, is also the same justification offered previously and found by the Court to be pretext. The sequence of events leading up to the Commission's denials, the Parish's refusal to hear Provident's appeal, and the Parish's campaign to persuade LHFA to pull Provident's tax credits, 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.

Departures from the Normal Procedural Sequence

138. The Commission's departures from its normal procedures are a strong indication of discriminatory intent. At the April 28 meeting, Commissioners did not begin discussion of Provident's developments by reading the staff report and recommendations. (Tr. at

27-28.) 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.

139. Commissioners asked Provident's representative questions pertaining to traffic, drainage, and wetlands. (Docket #241-36, 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." (Pls.' Evid. Hr'g Ex. 1 at 4-5; Tr. at 308:13-309:7.) Mr. Graves implored Commissioners to "keep that in mind when you vote on these subdivisions." (*Id.*) Nevertheless, the Commission voted to deny Provident's petitions and Mr. Graves' letter of explanation to Provident specifically cited traffic, wetlands, and drainage (as well as other unspecified issues) as the reasons for the decision. (Docket #241-33; Tr. at 325:16-23.)

140. **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' treatment of Provident's re-subdivision requests was inconsistent with the staff's classification of those requests as a minor re-subdivision. Although Mr. Graves stated that Provident's requests were more similar to major re-subdivision requests than minor subdivision requests, he admitted that Provident was not requesting re-subdivision of "over three lots" as the regulations for major re-subdivisions require. (Tr. at 304-305, 307.) St. Bernard Parish, La., Code app. A § 2.2 (2008). Additionally, Mr. Graves admitted that the form Provident was told to complete was for a minor re-subdivision rather than a major one and he testified that**

Provident had completed the correct form. (Tr. at 302, 305.) It is clear that Provident's re-subdivision requests were properly classified as minor and any application of the regulations pertaining to major re-subdivisions to their requests was a departure from procedure.

141. **Even if Provident's requests were classified as requests for major re-subdivision, the Commission's request for a full traffic study would be a departure from the procedure dictated by the Parish re-subdivision regulations. The regulations provide that an applicant for a major re-subdivision may be required to submit a traffic impact study at the request of the "parish engineer and/or community development director." St. Bernard Parish La. Code app. A § 2.2 (1)(A)(IX) (2008). Mr. Graves testified that neither he nor the parish engineer required Provident to provide a traffic study. (Tr. at 342:7-15.) Mr. Graves also invoked Section 2.5 and claimed that Provident was a "non residential subdivision." However, Mr. Graves testified that the relevant regulations for a non-residential subdivision require that the applicant demonstrate only the "volume of traffic anticipated . . . based upon accepted D.O.T.D. traffic analysis standards." St. Bernard Parish, La., Code app. A § 2.5 (2)(A) (2008). Mr. Graves conceded that the declaration of Kelly McHugh, submitted by Provident at the June 23 Commission hearing, estimated the volume of traffic. (Tr. at 342:21-343:7.) He also admitted that he had not told Provident that Section 2.5 applied or asked Provident to provide information required by that regulation. (Tr. at 346.)**

142. **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 Appx. 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. (Tr. at 27:4-28:3.)

143. **Commissioner Dauterive testified that his reasons for voting to deny Provident's re-subdivision applications were based on the concerns of the Parish residents about crime. (Tr. at 352-353; Pls.' Evid. Hr'g Ex. 1 at 8.) Mr. Graves conceded that voting to deny a re-subdivision application on the basis of a concern about crime is an improper basis to deny a re-subdivision application. (Tr. at 315:20-316:9.) In addition, Mr. Graves testified that the nature of the structures to be built on the property sought to be re-subdivided – in this case, multi-family housing – is irrelevant to the re-subdivision process. (Id. at 317:1-5.) He admitted that the St. Bernard Parish zoning laws permit Provident to build multi-family properties as a matter of right. (Id. at 316:12-19.)**

144. The rules require the Commission to explain its reasons for denying any re-subdivision petitions to the Parish Council. (Docket #241-20, 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. (Docket #241-27.)

145. The Court also notes that the Planning Commission has consistently refused to provide Provident with a reason for the denials. (Pls.' Evid. Hr'g. Ex. 2) **Mr. Dauterive admitted that the Planning Commission never told Provident the reasons for the denials and specifically disavowed that the reasons set forth in the letter from Mr. Graves to Provident – wetlands, drainage, and traffic – were the reasons for the denial. (Tr. at 349-350.) Yet Mr. Dauterive acknowledged that state law requires the Planning Commission to notify Provident of the reasons for the denial of its re-subdivision requests. (Id.)** The Parish

Council also refused to even consider Provident's appeal, though it is undisputed that it had the power to do so. (*Id.* at 159-164.)

146. 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 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.

Substantive Departures

147. 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 Parish's reasons for its continued opposition to Provident's developments appear just as "contrived" or pretextual as the Defendants' alleged non-discriminatory explanations for passing the 2008 moratorium. (*Id.*)

148. Defendants have at various times offered four different reasons for the denial of Provident's re-subdivision applications. First, in Mr. Graves's letter to Provident explaining

the Commission's re-subdivision denials, he cited three specific concerns: traffic, drainage, and wetlands. (Docket #241-33; Tr. at 325:16-23.) 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 (Tr. at 352-354, 34:24-35:7.)

149. Second, Defendants argued in their Opposition that the Planning Commission denied Provident's re-subdivision applications because Provident's representative was unprepared to answer the Commission's questions. Defendants' excuse is pure pretext. Their fabricated excuse does not square with the facts. What they call "lack of preparation" is simply evidence of the ambush.

150. Third, Defendants assert in their Opposition that the Planning Commission's denial of Provident's re-subdivision applications and the Council's refusal to overturn the decision is not preventing Provident from moving forward, but that it is Provident's "inability to secure investors to purchase the tax credits that has rendered it impossible to proceed with construction." (Docket #251 at 2.) This argument ignores the relevant issues before the Court – whether or not the Parish is acting with a discriminatory motive or that its actions have a discriminatory effect. Moreover, it relies on an erroneous premise; it is the Parish's blockage of the developments that have prevented the construction of Provident's developments, not the difficulty in the current tax credit investor market.

151. Fourth, the Parish has renewed its argument that it does not need affordable rental housing, although it has not offered any new evidence for this contention. This issue has been litigated and the Court already found that this justification is pretextual. (Docket #233 at 18-19.) Defendants have offered no basis for the Court to re-examine its finding.

152. None of the four justifications, individually or collectively, are persuasive as legitimate reasons for the St. Bernard Parish government's continued blocking of Provident's developments. The Court will address each argument *seriatim*.

Justification #1: Traffic, Drainage and Wetlands

153. Although genuine concerns about traffic, drainage, and wetlands may be legitimate at some point in the re-subdivision process, the Court finds that the weight of the evidence demonstrates that 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 staff never mentioned the issues of traffic, drainage, or wetlands. (Harris Decl., Docket #241-3 at ¶¶ 13-14, 21-22; Tr. at 307-308, 346.) Had the staff asked Provident to provide the information about drainage, wetlands, and traffic, Provident would have done so.

154. At the April 28 Commission hearing, a Commissioner introduced a measure to table Provident's applications until Provident could provide the necessary answers and documentation. (Pls.' Evid. Hr'g Ex. 1 at 9.) 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. (Docket #241-27.) 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.” (Pls.’ Evid. Hr’g Ex. 1 at 8; Tr. at 344:16-23, 352:25-353:8.) 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.” (Pls.’ Evid. Hr’g Ex. 1 at 8.) 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.)

155. **Chairman Dauterive admitted during his testimony that he voted to deny the re-subdivision applications based on the public concerns expressed about Village Square, crime, and Section 8. (Tr. at 352-353.) Tellingly, he testified that he had never seen the letter sent to Provident from Mr. Graves listing as reasons for the denial traffic, drainage, and wetlands, and that the letter was not accurate as to the reasons for the denial. (Id. at 350.) Indeed, he testified that the Planning Commission has not provided any reason for the denials. (Id. at 350-351.)** The second stated reason was rejected by this Court as a “contrived” explanation for the 2008 moratorium. (*Id.* at 17.)

156. The Parish Council was equally uninterested in the drainage, traffic, and wetlands implications of Provident’s developments. Provident 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. (Docket #241-32.) 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. **Defendants made much of the fact that the appeal brief was not provided to the Council until the day before the hearing – Monday, May 18 – but the Council did not notify Provident it was on the Council agenda until the afternoon of**

Friday, May 15. (Harris Decl., Docket #241-3 at ¶ 28.) And no reasons were provided to Provident for the denial until Mr. Graves sent a letter to counsel for Provident at 4:58 p.m. on the day before the hearing. (Docket #241-33.) The Council had the appeal letter at the time of the hearing. They held a two hour executive session at which they could have read and discussed the letter if they wanted to fairly consider Provident’s appeal. They could have delayed making a decision on Provident’s appeal to look at the exhibits. They did none of these things – demonstrating that they were not interested in providing Provident with a fair review of its appeal.

157. The Parish Council refused to give Provident a full and fair hearing. **Councilman Landry admitted during his testimony that his support for the Commission is “unwavering” and that he made that clear during the Council meeting. (Tr. at 247-249.)** 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., Docket #241-3 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; Tr. at 359:25-360:6.) Nor did Mr. Landry permit Mr. Harris to speak. (*Id.*) The Council’s refusal to allow Plaintiffs to speak at the hearing demonstrates that it was not interested in fairly considering Provident’s applications.

158. Despite their continued belief that traffic studies were neither necessary nor appropriate, Plaintiffs submitted evidence to the Council that the impact is negligible. However, the Council refused to read the materials provided to it that responded to that concern. (Docket #241-34 at 2-4, 12.) **Councilman Landry admitted that he never read Provident’s twelve-page appeal letter and that he never considered delaying the vote so that the Council could**

review the exhibits to the appeal letter. (Tr. at 250:2-9, 252.) President Taffaro, who attended the May 19 meeting, conceded during his testimony that the Council has the power to overturn the decision of the Planning Commission; that the party seeking to appeal the Commission decision has the right to a vote on its appeal; and that the Council did not do this with respect to Provident's appeal. (Tr. at 159-164.) He nonetheless admitted that he refused to put Provident's appeal on the Council agenda after being shown the DCD reports to the Council with his handwriting stating that Provident's applications were "NOT APPROVED" to be placed on the Council's agenda. (Tr. at 157-158; Docket #241-27.)

159. Kelly McHugh, Plaintiffs' expert, studied the potential traffic impact of Provident's projects through field observations of intersections near the proposed sites (Tr. at 75:3-11.) He submitted a declaration to the Parish Council. (Docket #242-4.) Mr. McHugh found that added vehicle trips caused by the developments will have only "minor impacts to the traffic in the area and intersection delays." (*Id.*) He also noted that the traffic added by the developments would not bring the traffic level in the Parish even close to pre-Katrina levels. (*Id.*)

160. Mr. McHugh testified that he used the Trip Generation Manual, recognized by the DOTD in Louisiana as the authoritative source on traffic volume, in order to estimate the effect on traffic brought by Provident's developments. (Tr. at 75-76.) He also testified that his staff performed field observations to observe intersections with signals near the sites and that the intersections were clearing during the signal at peak times of the day. (Tr. at 79.) Mr. McHugh explained that the developments would add approximately one car per light at one of the sites, and at most two to four cars at other

sites, during peak traffic periods. (Tr. at 80:23-81:2.) Mr. Graves conceded during his testimony that the information provided in the appeal to the Council satisfied the Parish's subdivision regulations regarding non-residential subdivisions. (Tr. at 342:16-343:7.)

161. Similarly, Mr. McHugh found that Provident's development will have no negative effect on drainage. According to the Hydrologic Studies performed by Mr. McHugh, Provident's "construction plans will result in stormwater runoff flows of less than or equal to that presently occurring on the undeveloped sites." (Docket #242-4 at ¶ 6.) Moreover, all four sites are designed to tie in to existing drainage systems. (*Id.*)

162. 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 and their assessment is determinative of the issue. (*Id.*)

163. After submitting information to respond to the Planning Commission's concerns that the Council refused to consider, Provident returned to the Commission on June 23 and re-submitted its applications. After several hours of a public hearing on Provident's applications, the Commission again failed to grant the re-subdivision applications. (Tr. at 39:9-16.) Just like the first Commission hearing, members of the public again voiced their opposition to Provident's developments using racially camouflaged language. (Tr. at 360:21-361.)

164. At the June 23 hearing, members of the public and Commissioners spoke about the crime that they feared the developments would bring and invoked Village Square in a manner that this Court has already held appeals to "racial as well as class prejudice." (Docket #233 at 13-14; Tr. at 360:21-361.) For example, one Commissioner asked a member of the

public whether Village Square was a high crime rate area and whether crime stays within an apartment complex or “bleed[s]” out into the surrounding areas. (Pls.’ Evid. Hr’g. Ex. 2 at 129-130.) The individual responded that Village Square was a high crime rate area. (*Id.* at 130.) He then stated that “lower income” people moved into Village Square and “the lower income you get the worse people you get.” (*Id.*) A member of the public also stated “Although I’m told from Orleans Parish doesn’t want them either.” (*Id.* at 67:23-25.)

165. Later in the June 23 hearing, when a member of the public who owns a funeral home near one of Provident’s proposed developments spoke in opposition to the developments, a Commissioner commented that the development would bring so much crime to the Parish that he should construct a “catwalk between the apartment complex and the funeral home.” (*Id.* at 170-171.) Several members of the public stated that affordable housing developments would bring drugs, rape, and murder to the Parish. (*Id.* at 63-65; Tr. at 361:14-21.) A member of the public referenced a time when “the Black Panthers” came into the Parish and “organized crime” in the Parish, stating that “we had [to] patrol the entire area around the projects.” (Pls.’ Evid. Hr’g. Ex. 2 at 130:6-15; Tr. at 360:21-361:12.)

166. In addition to the extensive discussion about crime, the Commissioners insisted that Provident submit traffic studies for its proposed developments, despite the fact that Provident had submitted a declaration from its engineer attesting to the minimal effect on traffic the population from the proposed developments would have. (Harris Decl., Docket #258-2 at ¶¶ 6, 12.) Counsel for Provident stated that at the main intersection near one of the developments, there are approximately 22,000 cars throughout the day and that Provident’s development would only add 200 to 300 cars. (Pls.’ Evid. Hr’g. Ex. 2 at 15-16; Tr. at 78-79.) The Commission

Chair, Earl Dauterive, simply responded that the Commission wanted a traffic study. (Pls.' Evid. Hr'g. Ex. 2 at 18-20.)

167. **During his testimony, Mr. Graves claimed Provident fell under Section 2.5 of the Parish's subdivision regulations for nonresidential subdivisions. Mr. Graves admitted that neither he nor his staff ever mentioned that regulation to Provident before, or had asked for information from Provident pursuant to that regulation. (Tr. at 342, 346.)**

168. **Mr. McHugh testified that there was no purpose in requiring a traffic study. (*Id.* at 84.)**

169. After the public hearing portion of the June 23 Commission meeting, the Commissioners read the staff recommendations. Significantly, for each application, the same staff that prior to the April 28 hearing had recommended approving the re-subdivision requests declined to make a recommendation. (Harris Decl., Docket #258-2 at ¶ 11; Tr. at 320:13-16.) Rather than voting to grant or deny Provident's applications, the Commission took the requests under advisement, purportedly to allow Provident time to complete a traffic study. (*Id.* at ¶ 12.) However, the Commissioners repeatedly stated that "other issues" which they refused to specify, may arise, and warned Provident that they were not only concerned about traffic. (Pls.' Evid. Hr'g Ex. 2 at 199. One Commissioner stated during the deliberations that "I hope we make a solid decision because when we get shooting, drive by shootings, juveniles [pointing] guns [in] teachers' face[s], ... this is something we will have to live with the rest of our life." (Pls.' Evid. Hr'g Ex. 2 at 191-92.)

170. Through the statements made that echoed the *St. Bernard Voice* editorial, the refusal to identify to Provident specific problems with its applications beyond a demand for a traffic study, and the reversal by the Commission staff from its previous support of Provident's

developments, the Commission reconfirmed its intent to continue blocking Provident's re-subdivision applications at the June 23 hearing. When viewed in combination, the Commissioners' use of and response to racially camouflaged language, departures from normal procedures, shifting positions, refusal to inform Provident of all of their purported concerns, and the lack of any factual basis for concern, clearly demonstrate that the Provident developments' impact on traffic, drainage, or wetlands is a pretextual justification.

Justification #2: Provident's Representative at the April 28 Hearing
Was Unprepared

171. Defendants allege that the representative sent by Provident to speak on behalf of its re-subdivision applications at the April 28 hearing was unprepared. They contend that his inability and/or unwillingness to respond to some of the Commissioners' questions was the sole reason for the denial of Provident's applications. However, the "lack of preparation" pointed to by the Parish is simply evidence of the Parish's ambush of Provident.

172. The Parish and the Council claim that the Parish's subdivision regulations set forth all of the legitimate questions and concerns that the Planning Commission may have regarding a re-subdivision application. The Plaintiffs counter that the current subdivision regulations do not provide any guidance with respect to the requirements for a minor re-subdivision application, which is the classification the Parish staff gave to Provident's applications. The regulations state only that "[t]he application shall be directed ... by the staff as to the proper procedure for subdivision based upon the plan's classification as a major or minor subdivision, or re-subdivision, as defined in these regulations." St. Bernard Parish, La., Code app. A, § 2.1 (2008). Provident thus relied on the Parish staff for guidance on the re-subdivision process. **Indeed, that is what is required of Provident. Mr. Graves testified that an applicant for re-subdivision is required to ask the DCD staff what is required to meet the**

re-subdivision requirements and that Provident had consulted with Parish staff to determine what it needed to provide to apply for re-subdivision. (Tr. at 304:1-7.) It is undisputed that the staff never told Provident that traffic, drainage, and wetlands studies were required as part of its applications. (Tr. at 307-308, 346.)

173. The Court also finds it significant that the Planning Commissioners repeatedly referenced Article VI of a document titled “Rules, Procedures & Policy for the St. Bernard Parish Planning Commission,” (Docket #241-20), but the staff never provided it to Provident during the application process, nor would the Parish provide it to Provident despite Provident’s repeated requests after the April 28 hearing, and it is not available on the Commission website. (Harris Decl., Docket #241-3 at ¶ 32; Tr. at 28:4-29:7, 303.) In addition, the Commission could have voted to table Provident’s applications and requested the specific information it needed to make its decision. Tellingly, the Commission voted down a proposal to do just that, and instead went on to vote unanimously to deny Provident’s applications. (Pls.’ Evid. Hr’g. Ex. 2.)

174. Similarly, the Council could have considered Provident’s appeal and reviewed its supporting documentation. The Council had the power to overturn the Commission’s decision, but instead, it refused to provide Provident with a hearing. (Tr. at 247-250.) The Council allowed counsel for Provident and GNOFHAC to speak for approximately eight minutes, but cut him off, and then refused to let James Perry, the Executive Director of GNOFHAC, and one of two African-American individuals in the Council chambers, or Matt Harris, Managing Director of Provident, address the Council. (Docket #241-34 at 35-37; Tr. at 359:25-360:6.) Multiple individuals were allowed to speak in opposition to Provident’s developments. (Docket #241-34 at 15-34.)

175. Councilman Wayne Landry, acting as Council Chair the day of the meeting, explained at the Council meeting that he would like to vote to uphold the Planning Commission's denial of Provident's re-subdivision requests. (*Id.* at 12:14-18; Tr. at 248:20-249:3.) After the meeting, he reassured constituents that the action the Council 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 that we acted unjust." (Docket #241-35; Tr. at 242-244, 254.)

176. Provident's representative at the hearing relied on the representations of the Parish staff that its concerns were addressed. Provident had no way of knowing that the Commission would ask such a broad range of questions that its own staff conceded were not normally part of the subdivision process. (Pls.' Evid. Hr'g Ex. 1 at 4-5). These facts, combined with the Council's refusal to hear the appeal and Councilman Landry's stated intent to avoid appearing "unjust" by effectively but not explicitly denying Provident's appeal, persuade the Court that this justification is pretextual.

Justification #3: Provident's Tax Credits

177. Defendants' assertion that the difficulties Provident may have in securing tax credit investors is the reason Provident has not been able to begin construction, rather than the Planning Commission's continued refusal to grant Provident's re-subdivision applications, misses the point. It is the Parish's continued blocking of the developments and the corresponding litigation that could threaten Provident's ability to obtain investors in the future, not the other way around. It is undisputed that Provident cannot begin construction of its developments until its re-subdivision applications are approved. The Court notes that Mr. Harris explained that had the Office of Community Development and the LHFA *not* suspended the

construction timetable for all tax credit recipients due to the difficulties in the tax credit market, the Parish's refusal to allow Provident to move forward with its developments would have caused Provident to miss required deadlines and lose its funding. (Docket #241-3 at ¶17.)

178. **Mr. Harris testified that he was able to find tax credit investors for another property in the Covington area and that financing closed in mid-July. (Tr. at 19.) He explained that he expected to be able to secure investors for the Provident developments in St. Bernard Parish, but that investors will not invest money in a project until the local governmental approvals are obtained. (Id. at 30:16-24.) Therefore, Provident cannot obtain investors until it obtains approvals for re-subdivision and building permits from St. Bernard Parish. (Id.) Mr. Harris further explained that even if he were not able to secure investors, the federal government has indicated its intent to allow developers like Provident to exchange the tax credits with the state in return for funds to build affordable housing. (Id. at 20.) It is St. Bernard's actions that are threatening Provident's ability to obtain tax credit investors.**

179. **Mr. Harris testified that Provident is facing federal deadlines that require it to place the developments in service by December 31, 2010 or lose the tax credits. (Id. at 21:14-24.) He explained that Provident needs 15 months to complete construction, which means beginning construction in October 2009. (Id. at 22.) Mr. Graves conceded that leading up to the April 28 Planning Commission hearing, Provident was on track to receive approval and to be able to move forward with construction. (Id. at 336-37.) Mr. Graves testified that if Provident's re-subdivision applications had been approved in April 2009, Provident would likely have been able to begin construction of its developments in May 2009. (Id. at 336:15-337:5.)**

180. Defendants' argument boils down to the erroneous assertion that if Provident had financial difficulties moving forward with its developments (and there is no evidence that is the case), Defendants' discriminatory refusal to grant Provident's applications is somehow rendered legitimate. This issue is irrelevant to the issue currently pending before the Court – whether the Parish and the Council are in violation of the Consent Order and the Court's March 25 Order. The Court finds this justification is without merit and does not provide a legitimate basis to explain the Parish's actions.

Justification #4: No Need for Affordable Housing in the Parish

181. The Defendants' fourth justification – that there is no need for affordable housing in St. Bernard Parish – similarly fails. Defendants asserted this justification to explain their continued efforts to strip Provident of its tax credits but provided no new evidence to support their contention. The issue of the need for affordable housing in St. Bernard Parish was a justification offered in defense of the 2008 multi-family moratorium. (Docket #233 at 18.) After hearing testimony from both Plaintiffs' and Defendants' experts on the affordable housing needs of St. Bernard Parish at the March hearing, the Court found that the methodology of Plaintiffs' expert, Kalima Rose, was more reliable and more persuasive. (*Id.*) Relying on the testimony and expert report of Ms. Rose, the Court made detailed findings regarding the need for affordable housing in St. Bernard Parish. (*Id.* at 18-20.)

182. The Court found that “even if St. Bernard Parish proceeded with all of the currently allocated federal resources and projects (including Provident), it would only replace twenty percent of its lost rental stock. In addition, 25% of workers in St. Bernard Parish cannot afford a two-bedroom apartment at current market prices.” (*Id.* at 18.) The Court also found that

“substantial public and private investment in rebuilding of infrastructure and business will spur job creation and draw large numbers of low-wage workers to the area.” (*Id.* at 19.)

183. Public statements by President Taffaro and various Council members about the current state of affordable housing in St. Bernard Parish are unsupported by expert testimony, contradicted by the prior findings of this Court, and irrelevant to what the Court has already found is the appropriate assessment of need. The Parish and the Council have offered no new evidence by way of expert testimony or expert reports to try to convince the Court to reconsider its prior finding. Indeed, the Parish and the Council did not argue this issue in their Opposition brief. **Councilman Landry simply characterizes Ms. Rose’s data, analysis, and conclusions as “mumbo jumbo” without offering any contrary data. (Tr. at 269-270.)** As noted above, the Court has already made specific findings that there is a need for affordable housing in St. Bernard Parish. The Court found that the appropriate methodology to assess that need was a “comprehensive and regional approach ... assessing not only the current but also the projected trends in employment and housing which correlated with when the new housing would actually come online.” (Docket #233 at 18.) The Court specifically rejected the methodology of the Defendants’ expert, which “focused ... primarily on St. Bernard Parish, with scant attention to future trends in the region.” (*Id.* at 19.) The Court also noted that several errors in his methodology “seriously undermine his conclusions that Provident’s developments would not be competitive.” (*Id.*) The Court previously specifically credited and relied on the testimony of Plaintiffs’ expert, Ms. Rose.

184. Ms. Rose testified at the August 3 hearing that after reviewing additional data available since March 11, 2009, she does not believe there is any empirical or factual basis for reaching conclusions about the need for housing that are different from those contained in her

expert report and provided in her testimony at the March 11, 2009 evidentiary hearing. (Tr. at 198.) In Ms. Rose's expert opinion, there is still a need for affordable housing in St. Bernard Parish. (*Id.*) **She testified that there are three major trends that inform her current thinking. First, the temporary disaster housing assistance program will end August 31, 2009 and there are currently 1,093 households in St. Bernard Parish on that temporary program. (*Id.* at 198:21-25.) Because approximately 650 households who are currently living in St. Bernard Parish will not qualify for transition to permanent Section 8 vouchers, those households, that with DHAP vouchers paid fair market rent, will need apartments with low market rate rents after August 31. (*Id.* at 199.)**

185. **Second, Ms. Rose explained that the American Community Survey has recently released data showing that rents have increased in the New Orleans metropolitan area by 40%, but at the same time incomes in St. Bernard Parish have decreased by 9.5%. (Tr. at 199:8-15.) This is a continuation of the trend noted during the March hearing. (Tr. at 200:4-19.)**

186. **Third, as Ms. Rose had testified before, there remains approximately \$1 billion in infrastructure projects coming online in St. Bernard Parish to create schools, post offices, firehouses, and other infrastructure. (Tr. at 199:16-22.) Those projects will require construction workers and office workers. In addition, since the last hearing, Wal-Mart and Lowe's have both announced they will re-open in the Parish and the entire commercial strip along the town center will open with new businesses. (Tr. at 199:23-200:3.) Those openings will create minimum wage positions for employees who need affordable housing. (Tr. at 199:23-200:3.)**

187. **Ms. Rose testified that a report issued by Wade Ragas after the March hearing – mentioned in passing by President Taffaro during his testimony – utilized the same methodology the Court has already held to be flawed. Defendants did not offer the report.**

188. The Court finds no reason to alter or reconsider its prior findings with respect to the need for affordable housing in St. Bernard Parish.

189. The Court concludes that the Parish's continued efforts to pull Provident's tax credits and its persistent opposition to Provident's developments through the refusal to approve its re-subdivision applications is a "substantive departure" from normal decision-making, particularly in light of the substantial financial benefit to St. Bernard Parish from the proposed developments. **Furthermore, the Parish's continued assertion of the same justification that the Court previously found to be pretextual leaves the Court with serious doubts about the fairness of the re-subdivision process applied to Provident.** The Court reiterates its earlier holding that "it is mystifying why 'anybody would be hampering resources that can move quickly, because there are so many resources that have not moved quickly through FEMA and other channels' and risk 'jeopardiz[ing] [a] project that's needed so greatly.'" (Docket #233 at 22 (quoting Tr. Mar. 11 Hr'g. 183-184).)

Legislative History

190. Defendants have made many public comments about the denial of Provident's re-subdivision petitions that are indicative of discriminatory intent. During the April 28 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. (Docket #241-36, 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." (*Id.* at Part C, 27-28; Tr. at 273:4-15.)

191. At the end of the meeting on April 28, 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." **Chairman Dauterive admitted during his testimony that public opinion was against the Provident developments and that opposition was based on concerns about crime, Section 8 and the creation of another Village Square. (Tr. at 352.) He further admitted that he voted on the basis of those very concerns. (Id. at 352-353.)**

192. There were also public statements explaining the Parish Council's decision to take no action on Provident's appeal of the Commission's denials. **Councilman Landry testified that he had polled the other Council members the day after the Commission meeting, and they all stated they would side with the Commission, even though the Council had not yet even been presented with an appeal. (Id. at 247-249.) Then, the day before the Council meeting, Councilman Landry signed a petition opposing Provident's developments. The petition referred to Provident's developments as "four, low mixed income apartment complexes", noted they will be placed in the Parish "most likely close to**

where you live,” and then stated “We have enough problems with Village Square. Do we need more?” (Pls.’ Evid. Hr’g Ex. 46.) Councilman Landry admitted signing the petition and stated that he did not regret signing it. (Tr. at 238, 245:23-24.)

193. 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. (Docket# 241-34 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 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.” (Docket # 241-35; Tr. at 33:19-34:2, 253:23-254:25.) 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.

194. Commissioner Dauterive informed the Council at the May 19 meeting that “there is no answer as to why” the Commission denied Provident’s applications. (Tr. at 351.)

195. The public statements made by key officials explaining – or refusing to explain – the reasons for their decisions reveals their discriminatory motives and their intent to defy this Court’s orders.

Additional Evidence of Defendants’ Intent to Defy This Court’s Orders

196. 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.” (Docket #241-23.)

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.*) **President Taffaro admitted that the royal flush is the people of St. Bernard Parish and the full house is the federal court ruling, and that a royal flush beats a full house.** (Tr. at 151:21-152:12.) In addition, 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.

197. Equally telling are the attempts by Parish officials to sabotage Provident’s tax credit funding. Immediately after the filing of the Motion for Contempt, President Taffaro and Councilmen Landry, Cavignac, and Everhardt, all traveled to Baton Rouge to address the LHFA in an effort to block Provident’s developments by sabotaging Provident’s financing. (Docket #258-3, Exh.1; Tr. at 166:4-169:29.) With the knowledge that Provident cannot build its developments without the tax credits, they went to the LHFA for the purpose of convincing the agency to pull Provident’s tax credits. (Tr. at 258:17-260:2.) **According to President Taffaro, they went to the meeting as an official delegation of the Parish.** (*Id.* at 166.) This is exactly the tactic employed by Councilmen Landry and Cavignac last November when they wrote to the

LHFA with their “OFFICIAL OBJECTION” to the award of tax credits and stated that the Parish did not need affordable housing and that the Parish lacked the necessary infrastructure – both justifications the Court found to be pretextual. (Docket #233 at 17-19.) **Both President Taffaro and Councilman Landry testified that this more recent effort made after the Court’s March 25 Order is consistent with the November letter sent to the LHFA. (Tr. at 169, 259:20-23.)**

198. The Parish officials spoke to the LHFA subcommittee on multi-family housing and made the same argument about the lack of need for affordable housing that this Court considered and rejected in its March 25 Order. Evincing the clear intent to disobey the Court’s Orders, President Taffaro stated to the LHFA that he was “not allowed to ask you guys to pull the tax credits,” but provided the LHFA with statistics purporting to show there is no need for affordable housing in the Parish. (Docket #258-3, Exh.1; Tr. at 167.) Then, after the LHFA declined to tour the Parish and attend a public meeting with Parish officials and residents, the Parish went ahead with the public meeting, at which racially-camouflaged language was used to express opposition to Provident’s developments. Significantly, at that meeting **and during his testimony**, President Taffaro admitted that he was trying to persuade the LHFA to revoke the tax credits issued to Provident. (Pls.’ Evid. Hr’g Ex. 4 at 7; **Tr. at 167 (“we would not have been displeased if the Housing Finance Agency reversed their decision.”)**) Then, despite the LHFA’s statement that it would not revoke Provident’s tax credits, Parish officials proceeded undeterred, and organized Parish residents to send letters to Governor Jindal to ask that he persuade the LHFA to pull the tax credits. Councilman Landry noted “certainly the Governor would want to be influential in correcting something that’s wrong.” (Pls.’ Evid. Hr’g Ex. 4 at 44.) **Councilman Landry’s message of defiance to the people was clear when he told his**

constituents **“This story doesn’t end this way for us.”** (Pls.’ Evid. Hr’g Ex. 4 at 42.) The Parish has made clear that they will continue to oppose Provident’s developments at any cost, despite this Court’s ruling and the February 2008 Consent Order. **The Court finds that these efforts raise serious doubts about whether the Parish dealt with Provident in good faith in the re-subdivision process. President Taffaro and Councilman Landry both testified that the efforts they have undertaken to attempt to pull Provident’s tax credits are consistent with their prior efforts to block the LHFA from awarding tax credits in the first place. (Tr. at 169, 259:20-23.) The fact that they continue to make those efforts despite the Court’s prior ruling lends support to Provident’s claims that they were treated unfairly by the Planning Commission and the Council.**

199. The Court also finds troubling the shifting justifications given by the Parish for the denial of Provident’s re-subdivision applications. The justifications for the denial of Provident’s re-subdivision applications in briefing before the Court were that Provident’s representative was unprepared at the April 28 Planning Commission meeting and that the tax credit investor market was causing the inability of Provident to proceed with its developments. And the Parish’s justification that information about traffic, drainage and wetlands was needed and not provided was only provided by the Planning Commission after Provident vigorously pursued an appeal with the Parish Council. In addition, it was not until Provident went back to the Planning Commission a second time that the Commission even mentioned the need for an archeological study. Yet publicly Parish officials claim they oppose Provident’s developments because there is no need for affordable housing in the Parish. The fact that the Parish’s justifications are inconsistent and keep changing over time is further evidence of discriminatory intent. *See Gee v. Principi*, 289 F.3d 342, 347-48 (5th Cir. 2002) (employer's inconsistent

explanations for its employment decisions permit the inference that the employer's proffered reasons are pretextual).

200. **Two key decision makers at those meetings clearly took action based on the public opposition to Provident's developments. First, Councilman Landry wrote in a blog entry after the Council's decision not to take any action on Provident's appeal, in an attempt to appease a constituent, that the decision the Council took had in fact denied Provident's appeal, but did so without, in his view, exposing the Council to contempt of this Court's orders. (Docket #241-35; Tr. at 254.) Councilman Landry ran for office on a campaign platform that included as one of his top three priorities opposing Provident's developments. (Tr. at 230, 232:4-7.) He testified that he developed that agenda after walking the Parish and hearing constituents' concerns. (Pls.' Evid. Hr'g Ex. 4 at 38-40; Tr. at 227.) Councilman Landry also made clear his continued dedication to the opposition of Provident's developments when he reassured the residents who had gathered and spoke in opposition of Provident's developments using racially camouflaged language that "This story doesn't end this way for us." (Pls.' Evid. Hr'g Ex. 4 at 42:11-18.) Second, the Chair of the Planning Commission, Mr. Dauterive, specifically testified that he voted to deny Provident's re-subdivision applications based on the public concerns expressed about crime, a return of Village Square, and Section 8 housing. (Tr. at 352-353.)**

201. **The Court also takes note of the context in which the key decisions to block Provident's re-subdivision applications were made. Mr. Perry testified that the environment at the May 19 Council meeting and the June 23 Commission hearing was racially charged. (Id. at 361-362.) At the May 19 Council meeting, a member of the public stated to Mr. Perry, who is African American, "Go back to your ghetto." (Id. at 360.)**

Racially camouflaged statements were made at the two Commission hearings and the Council meeting. Mr. Perry also testified that the e-mail received by his office from a St. Bernard Parish resident stating that “We don’t want black people in St. Bernard” reflected the sentiment in his view that was being expressed, albeit less explicitly, at the meetings he attended where the Council refused to hear Provident’s appeal and where the Planning Commission refused to grant Provident’s re-subdivision applications. (*Id.* at 366.)

202. 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 and this Court’s March 25 Order. Defendants are continuing to block Provident’s developments with the purpose of preventing African-American renters from moving into the Parish.

E. The Parish and the Council’s Continued Opposition to Provident’s Developments Has the Same Discriminatory Effect as the Multi-Family Moratorium

203. The evidence also supports a finding of discriminatory effect. The Fifth Circuit has repeatedly held that the Fair Housing Act is violated by actions that have a discriminatory effect. *Cox v. City of Dallas, Texas*, 430 F.3d 734, 746 (5th Cir. 2005) (“the FHA ... does not require proof of both discriminatory impact and intent.”) The Fifth Circuit has not specifically addressed the actual test for discriminatory impact in the fair housing context after a plaintiff establishes disparate effect. In *Metro. Hous. Dev. Corp. v. Vill. Of Arlington Heights*, 558 F.2d 1283 (7th Cir. 1977 (hereinafter *Arlington Heights II*), however, the Seventh Circuit articulated a four-factor test for disparate impact that has been widely used. *Arlington Heights II*, 558 F.2d at 1290. A Court should consider:

- (1) how strong is the plaintiff’s showing of discriminatory effect; (2) is there some evidence of discriminatory intent, though not enough to satisfy the

constitutional standard of *Washington v. Davis*; (3) what is the defendant's interest in taking the action complained of; and (4) does the plaintiff seek to compel the defendant to affirmatively provide housing for members of minority groups or merely to restrain the defendant from interfering with individual property owners who wish to provide such housing.

Id. at 1290. The Seventh Circuit test ensures that finding a disparate racial impact is not deemed a per se violation of the Fair Housing Act. Rather, the test provides guidance to district courts, in their discretion, to determine whether a violation has occurred. *Id.* at 1290.

204. The Second Circuit's test, as stated in *Huntington Branch NAACP v. Town of Huntington*, 844 F.2d 926, 938 (2d Cir. 1988) *aff'd*, 488 U.S. 15 (1988), does not include any assessment of intent and is therefore slightly less rigorous than the *Arlington II* test. Although a sister court in this Circuit has relied on the standard announced in *Huntington*, this Court, in an abundance of caution, applies the more onerous standard which retains an intent element announced by the Seventh Circuit in *Arlington II*. See *Dews v. Town of Sunnydale, Texas*, 109 F. Supp.2d 526 (N.D. Texas 2000) (applying the analysis of *Huntington*).

Strength of Showing of Disparate Racial Effect

205. The Parish's refusal to grant Provident's re-subdivision applications is simply an extension of the moratorium. Without approved re-subdivision applications, Provident cannot build its developments. Thus, the same disparate impact that was caused by the moratorium is caused by the Parish's refusal to let Provident build its developments through its refusal to re-subdivide the subject properties. The same exclusionary effect on African Americans exists because the obstruction of Provident's proposed developments prevents the construction of housing units in which African Americans would disproportionately qualify to live. And the same segregative effect caused by the moratorium is caused by the denial of re-subdivision

applications because both would maintain the existing racial segregation of the New Orleans area.

206. The Court finds that the denial of and/or refusal to approve Provident's re-subdivision applications would have a significant disparate racial effect. The findings of the Court in its March 25 Order with respect to the disparate effect of the moratorium have equal application here. (Docket #233 at 24.) For example, African Americans were at least 25%, and for some income groups, 86% more likely to be impacted by the moratorium than their Caucasian counterparts. (*Id.*) The significant racial disparities caused by the halting of Provident's developments combined with the rigor of Dr. Bradford's analysis lead the Court to the same conclusion as the March 25 Order, this time with respect to the Parish's refusal to re-subdivide the properties and begin construction.

Some Evidence of Discriminatory Intent

207. As previously discussed, several aspects of this case provide evidence of discriminatory intent, in particular the historical background of events, the sequence of events leading up to the decision, departures from normal resubdivision procedure, and continued efforts to strip Provident of its tax credits. Even if the Court had not found the strong evidence of discriminatory intent that is present in this case, such evidence would still be sufficient to support a finding of the Parish's overall discriminatory intent in refusing to approve Provident's re-subdivision applications. The preponderance of the evidence indicates at a minimum "some" evidence of discriminatory intent.

Defendants' Interest in Blocking Provident's Developments

208. The Court has considered each of the Parish's justifications for refusing to approve Provident's re-subdivision applications and concluded that each was a "substantive

departure.” For each, the Court assessed the factual support for the justification, based on the evidence produced by each party and the testimony at trial. The Court does not find any of the four proffered interests persuasive.

Relief Sought by the Plaintiffs

209. This element requires the Court to ask “does the plaintiff seek to compel the defendant to affirmatively provide housing for members of minority groups or merely to restrain the defendant from interfering with individual property owners who wish to provide such housing.” *Arlington Heights II*, 558 F.2d at 1290. As this Court previously found in its March 25 Order, this is a case of the latter. (Docket #233 at 25.) Provident and GNOFHAC do not ask the Parish to provide housing, but rather ask the Court to restrain the Parish and the Council from interfering with the right of Provident, a private developer, to proceed with construction of its affordable housing units.

II. Conclusion

210. The Court finds that the Parish’s refusal to grant Provident’s re-subdivision applications and its repeated efforts to convince LHFA to pull Provident’s tax credits is motivated by a racially discriminatory intent and as such Defendants have violated the Fair Housing Act, 42 U.S.C. § 3604(a), 42 U.S.C. §§ 1987, 1982, 1983, the terms of the February 2008 Consent Order, and the Court’s March 25 Order. The Court finds that the Parish’s refusal to grant Provident’s re-subdivision applications has a discriminatory effect on African Americans and therefore violates the Fair Housing Act, 42 U.S.C. § 3604(a), the terms of the 2008 Consent Order, and the Court’s March 25 Order.

211. 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 are found 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. The Court further orders that the Parish is **ordered to approve Provident's re-subdivision applications and to move expeditiously on its building permits. The Court further finds that coercive sanctions are appropriate and sets forth timelines and requirements for compliance in the attached Order. *Petroleos Mexicanos v. Crawford Enterprises, Inc.* 826 F.2d 392, 400 (5th Cir. 1987).**

Dated: August 12, 2009

Respectfully submitted,

/s/ Katherine A. Gillespie

John P. Relman
Katherine A. Gillespie
RELMAN & DANE PLLC
1225 19th Street NW, Suite 600
Washington, DC 20036
(202) 728-1888

*Counsel for GNOFHAC and Provident
Realty Advisors, Inc.*

Dennis L. Roossien, Jr.
Robert Voelker
Munsch Hardt Kopf & Harr P.C.
3800 Lincoln Plaza
500 North Akard
Dallas, TX 75201
(214) 855-7535

Counsel for Provident Realty Advisors, Inc.

Joseph D. Rich
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1401 New York Avenue, NW, Suite 400
Washington, DC 20005
(202) 662-8600

Counsel for GNOFHAC

/s/ Morgan Williams

Morgan Williams (LA Bar No. 31564)
GREATER NEW ORLEANS FAIR
HOUSING ACTION CENTER, INC.
228 St. Charles Avenue, Suite 1035
New Orleans, LA 70130
(504) 208-5070

**CERTIFICATE OF SERVICE
EASTERN DISTRICT OF LOUISIANA**

I hereby certify that a true and correct copy of the foregoing Post-Trial Proposed Findings of Fact and Conclusions of Law and accompanying documents were filed and served this 12th day of August, 2009, using the CM/ECF system, which will serve as notification of such filing on the following:

Francis Brian Mulhall
Mulhall Law Firm
3900 N. Causeway Blvd.
Suite 1470
Metairie, LA 70002
Work: (504) 836-7536
franmulhall@aol.com

James A. Holmes
J. Warren Gardner
601 Poydras St. Suite 2300
New Orleans, LA 70130
Work: (504) 593-4284
jaholmes@christovich.com
jwgardner@christovich.com

Michael Gorbaty
8201 W. Judge Perez Drive
Chalmette, LA 70043
Work: (504) 278-4348
mgorbaty@sbgp.net

/s/ Katherine A. Gillespie

Katherine A. Gillespie