DOCKET NO: CV12-5036404

LISA F. DZIS	:	SUPERIOR COURT
V	:	HARTFORD/NEW BRITAIN
CITY OF HARTFORD	:	SEPTEMBER 21, 2012

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Issue

Whether the anti-blight enforcement policies and procedures of the City of Hartford deprived the petitioner of equal protection of the laws in violation of Article 1 Section 1 of the constitution of this state and the Fourteenth Amendment to the Constitution of United States.

Evidence

The evidence consists solely of admissions contained in documents created by employees and agents of the City of Hartford (City), to wit:

Exhibit A Anti-Blight Ordinance

Exhibit B Notice of Violation

Exhibit C Notice of Violation

Exhibit D Notice of Violation

Exhibit E Graph

Exhibit F Notice of Decision

Exhibit G Neighborhood Condition Report - June 1, 2012

Exhibit H Citywide Stakeholder Meeting - June 21, 2012

Exhibit I LSNI 6 Month Assessment Report- September 10, 2012

Facts

The material facts are undisputed.

In July 2011, the City's mayor declared a blight emergency. In November 2011, the City's Court of Common council established a fund to implement the Livable and Sustainable Neighborhoods Initiative, a program of anti-blight enforcement (Exhibit H page 5).

Sometime in Autumn 2011 , the City surveyed more than 20,000 properties and found 771 potentially blighted properties. (Exhibit H page 9).

On or about February 21, 2012, the City caused an inspection to be made of 541-543 Maple Avenue (541 Maple Avenue). The inspector, Michael Landry issued notices of three violations of the anti-blight ordinance. The notices indicate the petitioner as resident owner of the property.

The notice of violation shown in Exhibit B charges the petitioner as follows:

> Exterior walls, roof, stairs, porches, floors or chimneys are damaged, collapsing or deteriorating or permit the interior of the building to be open to the weather;
>
> The deteriorated or rotten components of the second floor front porch on the Eastern side of the building need to be repaired and or replaced, The trim on the Eastern side of the building third floor left window needs to be repaired and or replaced. The deteriorating siding on the Northern side of the building needs to be repaired and or replaced.

The petitioner is aware of no written report of re-inspection of any of the exterior elements described in Exhibit B.

The notice of violation shown in Exhibit C charges the petitioner as follows:

> The property is a factor creating substantial and unreasonable interference with the reasonable and lawful use and enjoyment of other space within the building or premises or within the neighborhood as documented and reported to the Licenses and Inspections by neighborhood complaints;
>
> The Department of Licenses and Inspections has a history of complaints related to the above referenced property documented and recorded in their Munis computer software system. To correct this violation incoming new complaints must cease.

No documentation of any past complaint was offered or specified in the notice, nor is the date or substance of any complaint included in the notice. There is no record of further complaints. This violation is abated by the nonoccurrence of an event.

The notice of violation shown in Exhibit D charges the petitioner as follows:

> Other conditions exist that reflect a level of maintenance which is not in the (sic) keeping with community standards including, but not limited to, graffiti that is clearly visible from the street;
>
> The overall condition of the property (paint, lack of maintenance) is not in keeping with the community standards. Abating all other violations of the Hartford Municipal Code Anti-Blight Section will, in turn, abate this violation.

No specific deviation from community standards is mentioned other than problems with the exterior of the building "(paint, lack of maintenance)", which may be covered by the notice marked Exhibit B.

Exhibit E was circulated to the petitioner as a supplement to the three notices.

The petitioner's address appears on a list of "Citations Properties" on page 76 of Exhibit H, and the house is shown in a photograph on page 87 of Exhibit H. The list on page 76 erroneously directs the reader to page 83.

As of March 15, 2012, according to the table on page 11 of Exhibit H, 541 Maple Avenue was one of 63 properties citywide receiving notices of violations.

Beginning April 17, 2012, fines began accruing on 541 Maple Avenue at the rate of $100 per day per violation (Exhibit F). A notation in the table on page 32 of Exhibit I indicates that there was an inspection on that date. A notation on page 87 of Exhibit G indicates that on April 23, 2012 (five days later), the property was cited for two violations. The table indicates that the violations were for subsection 2 and 7, suggesting that the other violation, based on a history of complaints under subsection 10, was abated. On May 4, the petitioner appealed the assessment of fines, as indicated on Exhibit F.

As of June 1, 2012, 541 Maple Avenue was one of a selection of 41 properties cited and fined citywide, according to page 5 of Exhibit D.

The petitioner's appeal of the three notices of violation was denied per the Citation marked Exhibit F. Exhibit F states that two violations were the basis for fines, but it fails to specify the physical conditions requiring abatement nor is there any explanation of the process by which the abatement of one violation might automatically abate the other, as the notice of violation contained in Exhibit D appeared to do.

Exhibit F announces that the petitioner's objection was denied by the Citation Hearing Officer without adding further detail or findings. Exhibit F is not signed by the Citation Hearing Officer but by a Hearing Administrator. There are no instructions whatsoever on

the face of Exhibit F regarding what measures might be taken to stop the accumulation of fines, which had begun accruing anew on July 13, 2012, the day after the hearing.

On page 9 of Exhibit I the author points out that the "overwhelming majority of citation decisions resulted in a favorable decision for the city." The table on pages 31 and 32 of that exhibit indicates a win rate of 100 percent for the City. Under the anti-blight ordinance, Hearing Citation Officers are appointed by and serve at the pleasure of the Corporation Counsel (Sec 9-95 of the ordinance, page 4 of Exhibit A), who, at the time of this petitioner's hearing, was a key player on the LSNI team.

As of August 31, 2012, 541 Maple Avenue was one of 65 properties assessed fines, totaling in the aggregate over $2.5 million. Of this amount, approximately $30,000 had been collected as of August 31, 2012, according to statements on page 9 of Exhibit I. On page 10 of Exhibit I the author acknowledges that the collection of over $2 million in fines is "an unlikely event."

On September 10, 2012, the City made the following statement, as shown on page 10 of Exhibit I:

> LSNI also produced less measurable results that are nonetheless significant. LSNI's influence has reached property owners who, although not directly targeted for enforcement, have responded to the City 's renewed emphasis on property maintenance and have voluntarily initiated remediation of potential violations before being subject to enforcement.

On September 10, 2012, as shown on page 2 of Exhibit I, by way of introduction to the six-month assessment, the City's mayor reported as follows:

> Owners of blighted properties were warned and educated in the standards

> the community expected them to maintain. Owners repaired their properties or were cited and fined. The message went out that Harford was serious. LSNI staff followed through and the program expended (sic) to include health nuisance, emergency clean ups, and incentives to aid hardship cases fund repairs (sic).

On page 4 of Exhibit I, the author summarizes the LSNI process as follows:

> As part of the initiative, City managers established a "Blight Strike Force" to pursue aggressive code enforcement utilizing dedicated staff and partnering that staff with property owners and community leaders to identify blighted conditions. Once identified, the Blight Strike Force would pursue enforcement of the City's Anti-Blight ordinance (ABO) until each blighted property was remediated. Where enforcement was resisted or ineffective, properties would be acquired through foreclosure of tax and ABO liens, and thereafter sold to responsible owners and rehabilitated. Those properties that were unsalvageable would be demolished.

On August 16, 2012, the petitioner filed a petition appealing the fines imposed by the City.

On September 18, 2012, the petitioner made a formal request for discovery of reports, records, photos, and complaints relating to 541 Maple Avenue along with documents pertinent to the training of LSNI personnel and the interpretation of the anti-blight ordinance.

Argument

Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Miller v. United Technologies Corp*., 233 Conn. 732, 744-45, 660 A.2d 810 (1995). In deciding a motion for summary judgment, the trial court must view the evidence in the light most favorable to the nonmoving party. Id., 745. The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle her to a judgment as a matter of law; *D.H.R. Construction Co. v. Donnelly*, 180 Conn. 430, 434, 429 A.2d 908 (1980). To defeat the motion, the party opposing it must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. Practice Book § 17-46. *Suarez v. Dickmont Plastics Corp*., 229 Conn. 99, 105, 639 A.2d 507 (1994). *Rivera v. Double A Transportation, Inc.,* 248 Conn. 21, 24-25, 727 A.2d 204 (1999).

The facts adduced here are all admissions of the respondent and reveal a pattern of selective and seemingly arbitrary enforcement that singled the petitioner out for harshly punitive measures in a manner proscribed, as a matter of law, by the constitution of this state and the Constitution of the United States .

Judge DiPentima, writing for the Connecticut Appellate Court in 2008, states the law applicable to unequal treatment clearly and succinctly in Fillion v. Hannon, http://www.jud.ct.gov/external/supapp/Cases/AROap/AP106/106AP204.pdf

> "The [e]qual [p]rotection [c]lause requires that the government treat all similarly situated people alike. . . . Although the prototypical equal protection claim involves

discrimination against people based on their membership in a vulnerable class . . . the equal protection guarantee also extends to individuals who allege no specific class membership but are nonetheless subjected to invidious discrimination at the hands of government officials. . . . The [United States] Supreme Court [has] affirmed the validity of such class of one claims where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. Village of Willowbrook v. Olech, 528 U.S. 562, 564, 120 S. Ct. 1073, 145 L. Ed. 2d 1060 (2000) (per curiam).'' (Citations omitted; emphasis added; internal quotation marks omitted.) Harlen Associates v. Inc. Village of Mineola, 273 F.3d 494, 499 (2d Cir. 2001)."

LSNI is conceived to treat property owners unequally. The documents refer unambiguously to targeted enforcement. Of 771 potentially blighted properties identified in Autumn of 2011--one in 30 of the 20,000 properties surveyed--the City selected 541 Maple Avenue and five dozen others to serve as an example to other property-owners. The petitioner was among the first 103 owners to receive a preliminary notice of violation and among the first 41 properties receiving a citation imposing daily fines. A cursory comparison of the photo of 541 Maple Avenue in Exhibit G with photos of properties not burdened with fines--including 24 subject to non-punitive "Monitoring"-- gives no hint of the criteria that might have been applied to trigger fines of $200 per day in some cases and not in others. A detailed examination of that same exhibit clearly indicates that the imposition of two-hundred-dollar-a-day fines could not have been targeted to gain compliance from the most serious blight cases. The overwhelming majority were not fined.

There is no specification in any of the exhibits of what criteria were applied to trigger monitoring or other instances of forbearance. One would expect such standards to be published widely in a program ostensibly meant to involve cooperative effort on the part of city officials and property owners.

The reports do not specify how many of the properties subject to fines were vacant or abandoned, but it is clear that only a small fraction of the 710 vacant properties could have been among the first 41 to be cited for violations and fined. It is equally clear that the targeting tactic resulted in the imposition of fines on only a tiny minority of the 771 potentially blighted properties, vacant or occupied. It is not possible to conceive of rational criteria that could have imposed heavy fines on 541 Maple Avenue, an owner-occupied dwelling with peeling paint, when vacant, abandoned and hazardous properties were receiving no citations.

It is clear that the enforcement measures employed by the City were intended to be harshly punitive. The mayor's hostile rhetoric--"The message went out that Harford was serious"--coupled with the implication of armed force in the Chief Operating Officer's terminology, with references to "combat" and a "Blight Strike Force" and "aggressive" enforcement, make clear that an ordeal was in store for the selected property-owners.

In this regard, the publication of the fines in the 6-month report (Exhibit I) is particularly revealing. It shows on page 32 a debt exceeding $25,000 on 541 Maple Avenue (identified as Maple Street in the Exhibit). To come to the figure of $2.5 million in fines (the petitioner's property comprising 1 percent of that total citywide) the City seems to have allowed fines to accumulate. There is no record of re-inspection or further contact between the City and this petitioner or any of the property owners cited before

May 1, 2012. There is nothing in the record to indicate whether this petitioner, being a resident, did or did not ever come into compliance with the blight ordinance, almost as if the accumulation of fines were the point of the enforcement initiative There is nothing in the record to indicate whether this petitioner knew on August 31 that she was continuing to accumulate fines or what she would have to do to stop the accumulation.

The notices and citations themselves reflect an officious and arbitrary procedure. The violations are stated in the language of the ordinance and, only very superficially, as matters of fact. One allegation even makes a misstatement of fact, with an accusation that the property contained graffiti visible from the street. Except for defects to the exterior of the building, which may or may not have amounted to deterioration sufficient to trigger a blight citation, there is no reference to any specific set of facts describing the conditions requiring abatement. The notices contain no inspection report, no documentation of a single complaint, and no specification of how the property deviated from the community standard.

According to the citation, fines began to accrue on April 17, but Exhibit G refers to a citation date of April 23. The citation itself refers to two violations but it fails to state the factual basis for its finding nor is there any mention of the third violation, which seems to have been in abatement from some unspecified date preceding the violation. The citation calls for the imposition of additional fines at the rate of $200 per day without reference to any re-inspection or specific repair or improvement that might interrupt the imposition of additional fines.

The City's intent seems to have been to transform people like the petitioner into public enemies. The fines seem to serve purposes above and beyond the pressure they put

on the property owners receiving the citations. The makers of the policy celebrate having "reached property owners who, although not directly targeted for enforcement, have responded to the City 's renewed emphasis on property maintenance." This statement acknowledges that the purpose of aggressive enforcement targeting this petitioner and a few dozen others was to scare the owners of other blighted properties--hundreds of them--into compliance by openly confiscating the targeted owners' equity in their homes. .

Every driver has had the experience of passing a police officer in the process of citing a motorist on the shoulder of the Interstate. We are chastened briefly by the vicarious experience of getting a ticket, and this may slow traffic to the speed limit, but we notice that before we've traveled a half-mile, the traffic has resumed its usual limit-exceeding speed. Enforcement by example just doesn't take. This may be why executions and floggings are no longer conducted in public. The authorities in those days thought they could maintain order by letting people know what was in store for the non-compliant, reserving the harshest public punishments for the worst offenders. What they didn't do was pick people at random to be flogged, as the City seems to have done with this petitioner.

The City's own statements indicate that it dispensed with consistent and even-handed enforcement in an effort to gain widespread compliance. There remains some question whether that objective has been met. The City gives no indication of how many of the 770 potentially blighted properties were forced into compliance by the agony of the five dozen unfortunate targets of the Strike Force and its aggressive tactics, including in the petitioner's case, basing two violations on the same defective condition.

It is not clear that the targeted approach has been successful. Concentrating on 62 of 770 potentially blighted properties seems not to have solved the overall blight problem. The author of Exhibit I does not put a number on the extent of the abatement, and it may be fair to deduce from the absence of numbers that it has been modest at best. In fact, there may come a time when the enforcement team will have to implement some sort of consistent enforcement protocol to gain meaningful compliance.

The court might well ask why the City has no formal procedure during the accumulation of fines for follow-up inspections or why there is there no guideline on how or under what circumstances fines stop accruing. It may well be that the absence of such a guideline, like the graph circulated to the petitioner showing how fines mount up, was specifically intended to frighten targeted landlords.

Everyone is familiar with the consequences of failing to pay a parking ticket. The fines mount, and this is supposed to frighten us into prompt payment, and it often does. These are not parking fines. At the rate of $200 per day, secured by liens, these fines can wipe out an owner's equity in a matter of months. The fines imposed for the violations at issue here are comparable to fines that are imposed for such crimes as forgery and arson. The fine shown in the table for 541 Maple Avenue exceeds the maximum fine for murder.

The court might discern an ulterior motive behind the imposition of such exorbitant fines. The record discloses an objective on the part of the City to displace homeowners like the petitioner--resident landlords with exteriors that may need attention--using LSNI as a convenient tool. The City racks up fines at the rate of at least $200 per day until the homeowner no longer owns equity in the property and is easily dispossessed, likely in favor of an absentee owner, someone with sufficient resources to invest in the property.

This process may be what is intended by the phrase the City uses to tout special assessments against blighted property: “Incentivizing redevelopment by changing the economic calculation on letting property go unoccupied or deteriorated.”

The City concedes in Exhibit I that there were serious failures in the early days of the program (when the petitioner was cited), but it never describes what those failures were or how they might have affected homeowners like the petitioner. The report expresses reservations about the early administration of the program even as it compliments itself on its success in identifying blighted properties and “following through” with landlords.

The record belies its sunny characterization. Counsel struggles to interpret this regime in a way that does not paint it as extortion. Making an example of one violator to chill the others is generally recognized as a not-in-good-faith maneuver. The court may scour the Connecticut Reports for a case involving a policy this malicious, and it will not find one.

In a work of fiction, the initiators of this policy to displace Southenders from their residences would be depicted as villains, with the audience gaining insight into their nefarious ulterior purposes. And this effort invites mischief. The prospect of huge fines gives inspectors inordinate power over property owners. The potential for malfeasance--in the form of recommendations from the inspector to use a particular contractor, for example--is considerable. The enforcement initiative's emphasis on complaints could and probably did spur at least one prospective absentee landlord shopping for bargains to lodge a blight complaint and, expecting foreclosure of thousands of dollars in liens, as announced by the policy, pick up a property like this petitioner’s for much less than its value. The displacement of resident owners by absentee owners may well be an unstated

objective of this initiative. It will certainly be a consequence of it.

The blight in this case is on the souls of the predators that hatched this policy of public flogging of vulnerable people. It would be reckoned Dickensian if there were any memory of that term in this third millennium.

Respectfully submitted,

Stephen Fournier
74 Tremont Street
Hartford, Connecticut 06105
Juris No. 020655
Tel 860 794 6718
stepfour@stepfour.com

This memorandum was emailed to Attorney Jorge Colon, City of Hartford, Corporation Counsel, 550 Main Street, Hartford, Connecticut, on September 21, 2012.

_____
Stephen Fournier