



Chester V. Lorch  
(1900-1972)  
Frank E. Lorch, Jr.  
(1905-1951)  
Basil H. Lorch, Jr.  
(1925-1997)  
Herbert F. Naville  
(1919-2010)  
Michael G. Naville  
(1951-2014)

May 7, 2019

**VIA ELECTRONIC MAIL**

Fire Prevention and Building Safety Commission  
c/o Mr. Douglas Boyle, Executive Director  
Indiana Department of Homeland Security  
302 W. Washington St., Room 241  
Indianapolis, Indiana 46204  
Email: [doboyle@dhs.in.gov](mailto:doboyle@dhs.in.gov)

George W. Gesenhues, Jr.  
Linda B. Lorch  
Robert P. Hamilton  
Lisa Garcia Reger  
Gregory M. Reger\*  
Cary J. Hurst  
J. David Agnew\*  
Christopher L. King\*  
Stephen T. Naville  
Claire Lorch Hagedorn  
Pamela S. Perkinson  
Maxwell W. McCrite\*

**RE: Proposed Property Maintenance Code by City of Charlestown  
2019-OR-4**

Dear Commissioners of the Fire Prevention and Building Safety Commission:

This letter concerns the City of Charlestown's request to have the Commission approve its recently adopted property maintenance code, 2018-OR-23. I am an attorney with Lorch Naville Ward LLC, a law firm in New Albany. We represent a group of homeowners and landlords in Charlestown's Pleasant Ridge neighborhood who have sued the City and a local developer named John Neace for conspiracy to deprive our clients of their civil rights in violation of the United States Constitution. That case is pending in the United States District Court, Southern District of Indiana as Case No. 4:18-CV-00010.

As alleged in our Complaint, the City, in conspiracy with Mr. Neace, imposed thousands of dollars in fine, per day, against some of our clients – fines which the City offered to waive, but only if our clients agreed to sell their real estate to John Neace for \$10,000 per home. Evidence indicates the City intends to resume these abusive fines as soon as your Commission approves the City's proposed Ordinance No. 2019-OR-4.

We understand that you may be reluctant take our clients at their word that the City has engaged in this behavior – or that the City intends to do so in the future. Consequently, I am enclosing several documents for the record.

Of Counsel  
Michael F. Ward  
  
Retired  
William C. Moyer  
Timothy J. Naville  
Sally A. Thomas

First, find enclosed a copy of the sworn affidavit of someone who has nothing to gain from coming forward: a real estate attorney from Salem, Indiana named Lewis Maudlin. As shown by his affidavit, Mr. Maudlin had a client who owned a home in Pleasant Ridge, and the City very explicitly demanded that Mr. Maudlin's client sell the house for \$10,000 or face thousands of dollars in unwaivable fines. Neither Mr. Maudlin nor his client have any financial interest in our lawsuit or in the outcome of your decision to approve or deny Ordinance No. 2019-OR-4.

Second, I am enclosing a copy of an inspection notice that the City of Charlestown issued in March of 2019 to one of my clients who still owns a house in Pleasant Ridge. As you can see, the City scheduled my client's property for inspection on April 3, 2019 – exactly one day after your Commission was scheduled to vote to approve **Ordinance No. 2019-OR-4**.

Third, I am also enclosing a copy of a Motion for Default Judgment filed by the City against one of my clients, Maria Sanchez. Ms. Sanchez refused to sell her house to Neace for \$10,000. So, as this document shows, the City summarily filed a lawsuit against Ms. Sanchez for **\$330,000 in fines** on her single, duplex home.

Taken together, this evidence shows 2 things: (1) that the City has previously used its fining authority to benefit a private developer and (2) that the City intends to resume this conspiracy as soon as the Fire Prevention and Building Safety Commission approves Ordinance No. 2019-OR-4.

You may wonder what you, as members of the Fire Prevention and Building Safety Commission, can do about any of this. Stated another way: How does this impact your decision whether to approve or deny Ordinance No. 2019-OR-4?

Here's how:

An administrative agency cannot take any action that is "contrary to law." *John Malone Enterprises, Inc. v. Schaeffer*, 674 N.E.2d 599, 606 (Ind. Ct. App. 1996). "An administrative decision is contrary to law if any statute, constitutional provision, legal principle, or rule of substantive or procedural law has been violated." *Id.* In other words, **the Fire Prevention and Building Safety Commission cannot approve an ordinance that the Commission concludes violates Indiana law or the Indiana or United States Constitutions.**

Ordinance No. 2019-OR-4 is unconstitutional on its face under both the Due Process Clause of the 14<sup>th</sup> Amendment to the US Constitution and the "excessive fines" provision of the 8<sup>th</sup> Amendment to the US Constitution – and under corollary provisions of the Indiana Constitution.

Specifically, Section 106.5 of 2019-OR-4 provides that fines can be assessed in the amount of **\$1,500 per violation per day** and begin to accrue, "effective immediately upon discovery by the Code Official[.]" These fines take effect before the property owner receives notice. So, for example, if a property owner receives a mailed, written Notice of Violation a week after the City discovers 4 violations on her property, **she would already owe the City \$42,000 at the time she first learns of the violations.** This runs afoul of both the excessive fines provision of the 8<sup>th</sup> Amendment and the due process requirements of the US Constitution. Similarly, this provision violates the following, corresponding provisions of the Indiana Constitution: Art. 1, Sec. 16

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(“Excessive fines shall not be imposed. . . . All penalties shall be proportioned to the nature of the offense.”) and Art. 1, Sec. 12 (All persons entitled to remedy by “due course of law”).

Moreover, once fines have been imposed on a property, Section 107.5 of 2019-OR-4 gives the City veto power over any sale of the real estate. In other words, once the City imposes fines on a privately owned home, the City then is able to mandate to whom the property may be sold. This results in the City taking private property rights without compensation, in violation of the Indiana Constitution, Art. 1, § 21.

In conclusion, we would ask that you reject the City of Charlestown’s 2019-OR-4, as proposed, for violating Indiana law. Pursuant to Indiana Code 32-13-2-5.5(6), you must “specify the defects in the ordinance or other regulation that are the basis for the denial.” I would suggest you cite Sections 106.5 and 107.5 of the proposed ordinance for violating Art. 1, Sections. 12, Sec. 16, and 21 of the Indiana Constitution.

Very truly yours,

LORCH NAVILLE WARD LLC



J. David Agnew  
dagnew@lnwlegal.com

JDA/cls

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
NEW ALBANY DIVISION**

F & J APARTMENTS, LLC, et al., )  
 )  
 PLAINTIFFS )  
 )  
 v. )  
 )  
 G. ROBERT HALL, Individually and in his )  
 Official Capacity as Mayor of the City of )  
 Charlestown, Indiana, et al., )  
 )  
 DEFENDANTS )

Cause No. 4:18-CV-00010-SEB-DML

**AFFIDAVIT OF LEWIS E. MAUDLIN**

Lewis E. Maudlin, being first duly sworn upon his oath, states as follows:

1. I am an adult resident of the State of Indiana who is under no physical or mental disability as of the date of making this affidavit.
2. The representations made in this affidavit are based on my personal knowledge, and if called upon to testify as a witness in this proceeding, I would testify in the manner set forth in this affidavit.
3. I am attorney licensed to practice law in the state of Indiana since 1996, Attorney No. 19476-88, and my office is in Salem, Indiana in Clark County.
4. I have numerous real estate clients, one of which is a company called Indyre, LLC (“Indyre”).
5. On or about June 20, 2017, Indyre acquired Lot 16 of the Pleasant Ridge subdivision. My client took the Property free and clear of all liens at the time the property was acquired.

6. However, my client was contacted by the City and told that Indyre would be held responsible for fines on the property.

7. On October 6, 2017, the City filed a Complaint against Indyre, seeking to recover over \$79,000 in fines against Indyre for alleged Property Maintenance Code violations that occurred prior and subsequent to Indyre acquiring the property. This case was filed in the Circuit Court of Clark County, Indiana as Case No. 10C01-1710-1218.

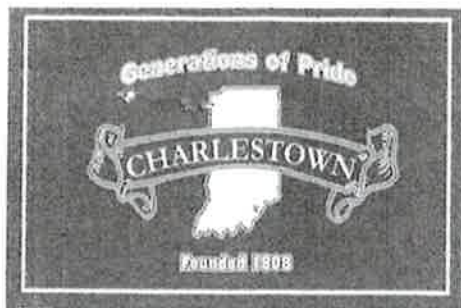
8. I spoke with the Charlestown City attorney, Michael Gillenwater, about resolving the case. Mr. Gillenwater explicitly told me that the only option to avoid the fines was for Indyre to sell the property to John Neace.

9. I was further told that demolishing the building was not an option, renting the home was not an option and that any attempts to comply with the Charlestown Property Maintenance Code would be met with further fines as the City would continue to find things wrong with the home. I was told that if the home was demolished, the City of Charlestown would continue to pursue the fines against my client. I was told that no matter how the home was repaired that the City of Charlestown would continue to assess fines.

10. I was further told that if Mr. Neace purchased the property, Mr. Neace could get the fines removed, Mr. Neace could rent the home, and Mr. Neace would be encouraged not to demolish the residence as the City of Charlestown did not want to create an immediate housing shortage.

11. Indyre acquiesced to the City's demand and agreed to sell the property to one of John Neace's companies. The City then voluntarily dismissed the case as settled on February 1, 2018. As the City promised, my client has not been held responsible for the fines.





# City of Charlestown

*"BUILDING & PROTECTING OUR COMMUNITY"*

FROM THE OFFICE OF BUILDING COMMISSIONER TONY JACKSON

304 Main Cross St., Charlestown, IN 47111

PHONE: 812-256-3422, ext. 305 FAX: 812)256-7140

[www.cityofcharlestown.com](http://www.cityofcharlestown.com)

Date: 4 March 2019

Mathew Schultz  
7517 Mallard Dr.  
Floyd Knobs, Indiana 40258

Certified Letter 70181830000209133934  
*70181830 00020913 3927*

Resident/Tenant/Occupant  
101 Riley Ave.  
Charlestown, Indiana 47111

Certified Letter: 70181830000209133828

Resident/Tenant/Occupant  
103 Riley Ave.  
Charlestown, Indiana 47111

Certified Letter: 70181830000209133835

RE: NOTICE OF RENTAL INSPECTION

Dear Owner, Occupant/Tenant

This letter serves as official notice that in accordance with the City of Charlestown Ordinance 2016-OR-02 a Rental Inspection will be held on the property located at 101/103 Riley Ave., Charlestown Indiana

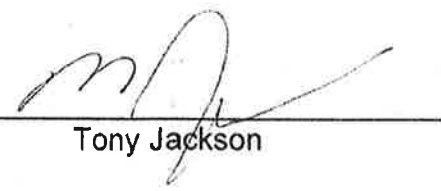
The date and time of the inspection will be at 10:00 am on the 3<sup>rd</sup> day of April 2019.

You may make arraignments for an earlier date and time for the inspection by contacting the Code Enforcement Officer at 502-643-3938.

If the structure is a multi-family property, then all attached units have been scheduled for the same date and time as a convenience for all concerned.

If there is a conflict with the scheduled date and time of the inspection, please contact me at 502-643-3938 to discuss an alternative date and time.

Signed: \_\_\_\_\_

  
Tony Jackson

IN THE CLARK CIRCUIT COURT NO 1  
STATE OF INDIANA

CITY OF CHARLESTOWN, INDIANA  
Plaintiff

VS.

CASE NO. 10C01-1711-CC-001326

MANUEL HERNANDEZ,  
MARIA ELENA SANCHEZ,  
and NOLA 17 LLC,  
Defendants.

**VERIFIED MOTION FOR DEFAULT JUDGMENT**

Comes now the Plaintiff, City of Charlestown, Indiana, by counsel, Michael A. Gillenwater, having affirmed, requests that a default judgment be entered against **Manuel Hernandez and Maria Elena Sanchez**, and in support of said Motion, states as follows, to wit:

1. That on or about November 7, 2017, the Plaintiff instituted this cause of action against Manuel Hernandez (hereinafter "Hernandez"), Maria Elena Sanchez (hereinafter "Sanchez"), and Nola 17 LLC;

2. That on or about November 7, 2017, the Plaintiff sent copies of the *Complaint to Reduce Fines Imposed as a Result of Violations of City's Ordinances to Judgment* (hereinafter the "*Complaint*") and *Summonses* via certified mail to the last known addresses of Hernandez and Sanchez;

3. That the United States Postal Service attempted delivery of the *Complaint* and *Summonses* to Hernandez and Sanchez on November 10, 2017, but there was no authorized recipient available to sign for the certified mail receipts;

4. That since Hernandez and Sanchez were individuals whose whereabouts could not be



found with reasonable certainty and after due diligence. Hernandez and Sanchez were provided notice of this lawsuit by publication;

5. That said notice was published in the local News and Tribune on or about December 6, 2017, December 13, 2017, and December 20, 2017;

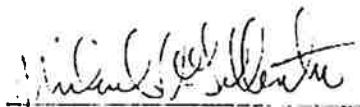
6. That proof of said publication was filed with the Court on or about January 5, 2018;

7. That Hernandez and Sanchez have failed to answer or otherwise plead as to the *Summons* and *Complaint* filed herein;

8. That the time that Hernandez and Sanchez may answer or otherwise plead to the *Summons* and *Complaint* is passed.

WHEREFORE, the Plaintiff respectfully requests that the Court enter a default judgment against **Manuel Hernandez and Maria Elena Sanchez** and in favor of the Plaintiff, City of Charlestown, Indiana, in the amount of **three hundred thirty-one thousand, one hundred fifty dollars (\$331,150)**; for the costs of this action; for interest at the legal rate until said judgment is paid in full; and that the Court grant any and all other relief which may be necessary and proper in the premises.

I AFFIRM, UNDER THE PENALTIES FOR PERJURY, THAT THE FOREGOING REPRESENTATIONS ARE TRUE, AS I VERILY BELIEVE.



Michael A. Gillenwater  
Ind. Sup. Ct. No. 8549-10  
Attorney for Plaintiff  
411 Watt Street  
Jeffersonville, IN 47130  
(812) 288-4442

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing pleading was served upon the following by United States Mail, sufficient first class postage pre-paid or hand delivered, on this 24 day of January, 2018 in accordance with the Indiana Rules of Trial Procedure.

  
Michael A. Gillenwater

Manuel Hernandez  
3202 Heritage Heights Way  
Jeffersonville, IN 47130

Maria Elena Sanchez  
4113 Lakeside Drive  
Sellersburg, IN 47172

Nola 17 LLC  
c/o Adam D. Decker  
10200 Broadway  
Crown Point, IN 46307

