

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CASE NO.:

_____)
29 GREENWOOD, LLC)
)
Plaintiff,)
v.)
)
MAYOR RUTHANNE FULLER, DOUG)
CORNELIUS, PETER DIMOND, KATY HAX)
HOLMES, JOHN LOJEK, ANTHONY)
CICCARIELLO,)
NEWTON HISTORICAL COMMISSION and)
CITY OF NEWTON,)
)
Defendants.)
_____)

RECEIVED NH
2/16/2023

COMPLAINT

The Plaintiff, 29 Greenwood, LLC (“Plaintiff” or “Applicant”) hereby complains against defendants Mayor Ruthanne Fuller, Doug Cornelius, Peter Dimond, Katy Hax Holmes, Anthony Ciccariello, John Lojek, the Newton Historical Commission, and the City of Newton (collectively the “Defendants”) based upon their illegal and un-Constitutional actions against Plaintiff that amount to a deliberate taking of Plaintiff’s property and destruction of its economic and other property rights.

INTRODUCTION

1. Through this action, Plaintiff brings suit against the Defendants based upon their illegal and concerted efforts to take Plaintiff’s property located at 29 Greenwood Street, Newton, Massachusetts (the “Property”). As alleged herein, Defendants have violated Plaintiff’s rights under the Fifth, Eighth and Fourteenth Amendments to the United States Constitution, under Article 10 of the Massachusetts Declaration of Rights and under Massachusetts law. Plaintiff

hereby seeks money damages against Defendants in their individual and official capacities, plus attorneys' fees and costs.

2. While cloaking their deliberate actions under the guise of objective public review, Defendants' actions amount to nothing more or less than gangster tactics, incited by City officials – including Mayor Fuller – and a roving angry mob of Newtonites that are hell bent on destroying Plaintiff's property rights using the full force of City officials.

3. Using the tool of punitive penalties, Defendants have engaged in a blatant “shake down” of Plaintiff that has deprived it of all use – economic or otherwise – of its property in the name of “preservation.”

4. With fines accruing exponentially in addition to annual property taxes and numerous other costs and expenses, Defendants knew that “time was on their side” as they could punish Plaintiff to the point of walking away from the Project, leaving the Defendants to take the Property. Indeed, this was Defendants' plan all along.

5. As further alleged herein, in January 2021, Plaintiff purchased the 29 Greenwood property, which was a vacant, dilapidated and structurally unsafe residential property. The vacant, dilapidated and unsafe condition of the Property had been well-known to City officials – including Defendants - for many years, if not decades.

6. At the time Plaintiff acquired the Property, it had already been approved by the Newton Historical Commission (the “Commission” or “NHC”) and the Inspectional Services Department (“ISD”) to be partially demolished and rebuilt in accordance with an approved set of construction plans.

7. In accordance with and in reliance on those approved plans, following its purchase of the Property, Plaintiff began to demolish and reconstruct the Property (the

“Project”). However, almost immediately, Hax Holmes and certain members of the ISD began to obstruct Plaintiff’s construction work alleging that Plaintiff’s work exceeded the scope of the work approved by ISD and the NHC.

8. Despite inspecting the progress of the Project on-site virtually every day, in February 2021, after a few weeks of work, ISD issued a stop work order (“SWO”) after Plaintiff removed a gable end intact in order to undertake the necessary structural construction of the main house. Plaintiff provided ISD and Hax Holmes with reports detailing the extensive structural deficiencies with the Property, including termite and moisture rot and the overall unsalvageable condition of the Property. This information was wholly consistent with the reports on file with the City since at least 2017 when the Project was approved by the NHC and ISD.

9. Following ISD and Hax Holmes’ directives, ISD then lifted its SWO, and work resumed on the Project. Again, ISD was on-site virtually every day from February to April 2021, monitoring the extensive work being undertaken by Plaintiff. ISD and Hax Holmes were well aware of the extensive structural and other problems with the main house and nonetheless permitted Plaintiff to continue working on the Property.

10. Then, on April 2021, ISD issued a second stop work order, effectively shutting down all work on the Project, allegedly prompted by neighbor’s complaints. In May 2021, the Commission, acceding to the demands of a vocal minority of the public, claimed that Plaintiff had violated the certificate of appropriateness issued by it in 2017 and began fining Plaintiff \$300.00 per day as a means of punishing Plaintiff.

11. Plaintiff attempted in good faith to address the Commission’s numerous new demands to restore the Property to its pre-construction “condition.” In fact, the Property had been uninhabited for at least 10 years and was uninhabitable as the Defendants well knew. But the

Commission and the other Defendants embarked on an illegal campaign and ginned up a citizen mob to coerce Plaintiff into building a pie in the sky replica of a home that never even existed under the ruse of “preservation.” In fact, the Property was so dilapidated, neglected and catastrophically unsafe and structurally unsound, that by 2021, there simply was very little left to “preserve.”

12. Nevertheless, over the following year and longer, Plaintiff, at great cost, submitted extensive rehabilitation plans, architectural drawings and historical data to the Commission in support of the newly proposed work to be done to the Property. Plaintiff’s counsel and architect also attended nearly half a dozen public meetings before the Commission to address concerns and questions that they repeatedly threw at Plaintiff. Plaintiff’s efforts that cost tens of thousands of dollars and months of efforts were futile, since Defendants had already made up their minds that they were not going to let Plaintiff resume any work on the Property.

13. Nevertheless, they strung Plaintiff and its representatives along for over a year, knowing full well that “time was on their side” and that the Commission was levelling daily fines against Plaintiff. Their goal was to make it economically impossible to continue the Project. In fact, behind closed doors, they insisted that Plaintiff never be allowed to make a profit on the Project.

14. Notwithstanding the detailed and time intensive submissions provided to Hax Holmes and the Commission and other City officials, the NHC stonewalled Plaintiff’s efforts to develop its property by demanding duplicative and/or irrelevant information from Plaintiff. Indeed, the Commission repeatedly sought to force Plaintiff to comply with clearly inapplicable guidelines for the reconstruction of Federally designated historical landmarks that were never even adopted by the City.

15. As a result of the Defendants’ “preservation” efforts, Plaintiff has been left with a barren and abandoned work site and millions of dollars of economic losses, including approximately two hundred thousand dollars of punitive fines that accrue daily at a rate of \$300 per day. Instead of accepting Plaintiff’s repeated efforts to satisfy the Defendants’ ever-changing demands, they simply moved the goal posts again. As NHC members emailed amongst themselves behind closed doors – the Defendants believed that time was on their side to accomplish their goal of Plaintiff walking away from the Property so that the City could take it.

16. And as Plaintiff now knows, Defendants long ago made up their minds that Plaintiff would never be allowed to build on the Property under any conditions whatsoever.

PARTIES

17. The plaintiff, 29 Greenwood, LLC is Massachusetts limited liability company with a principal place of business located at 267 Commonwealth Avenue, Boston, Massachusetts 02116.

18. The defendant City of Newton is a municipal body located in Middlesex County, with a principal place of business at Newton City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts.

19. The defendant Newton Historical Commission is a municipal body established by the City of Newton under Massachusetts General Laws chapter 40, section 8D. The Commission has a principal place of business located at Newton City Hall, 1000 Commonwealth Avenue, Newton, Massachusetts.

20. Defendant Ruthanne Fuller is an individual person and the duly elected Mayor of the City of Newton. She is sued in her individual and official capacity.

21. Defendant Doug Cornelius is an individual person and holds the position of Chair of the NHC. He is sued in his individual and official capacity.

22. Defendant Peter Dimond is an individual person and formerly held the position of member of the NHC. He is sued in his individual and official capacity.

23. Defendant Katie Hax Holmes is an individual person and formerly held the position of Chief of Planning for the City of Newton. She is sued in her individual and official capacity.

24. Defendant John Lojek is an individual person and holds the position of Commissioner of the Inspectional Services Department. He is sued in his individual and official capacity.

25. Defendant Anthony Ciccariello is an individual person and holds the position of Deputy Commissioner/Plans Examiner of the Inspectional Services Department. He is sued in his individual and official capacity.

26. As additional facts are discovered after the commencement of this action, including through discovery, Plaintiff may name other defendants based upon those facts.

ALLEGATIONS

The 29 Greenwood Property

27. The 29 Greenwood property, also known as the Gershom Hyde House, was constructed in or around 1744 in Newton, Massachusetts (the “Property” or “29 Greenwood”). At the time Plaintiff acquired the Property, it consisted of a residential parcel containing a main residential dwelling structure.

28. Since it was originally constructed, the main house underwent a considerable number of renovations, including during the mid-1800s and included the placement of a front enclosed porch. As a result of these modifications, the architecture of the Property was not consistent with any single period style by the time it was listed on the National Register of Historic Places in 1986 and designated a Newton Local Landmark in 2005.

29. The Property was previously part of a contiguous set of parcels, including 31 Greenwood, which formerly contained a now demolished barn, that were subdivided and sold in the years immediately preceding the Plaintiff's acquisition of the Property. Upon being sold in or around 2017, those parcels were redeveloped as residential single-family homes.

30. The Property faces a subdivision of mid-twentieth century single family homes with no singular architectural style.

**The Property Was Uninhabited and Decaying for Decades
and the City Knew of its Condition**

31. The Property was uninhabited and in substantial decay by at least as early as 2011 and likely for decades before that. i.e., long before Plaintiff acquired the property in January 2021. As a result of being uninhabited and after decades of neglect, both the main house structure and the adjacent barn were suffering catastrophic structural damage by at least 2013 and likely earlier. As described in reports prepared in 2013, the roof, rafters, chimney, floors, joists, sills, foundation walls, basement columns, sheathing, windows and walls, among many other elements of the 29 Greenwood house, were all suffering from rot, fire damage, moisture, sinking, decay and numerous other structural problems that rendered the house and barn uninhabitable and unsalvageable.

32. These reports detailing the condition of the property were submitted to the City and the Commission as part of the prior owner's July 2017 application to demolish the rear addition to the main house at 29 Greenwood and demolish the adjacent barn.

33. In the decade preceding Plaintiff's purchase of the Property, those problems were never remediated and indeed worsened as the structures were vacant and continually exposed to the elements, to moisture and to termite infestations. Thus, by 2021 the house was uninhabitable, unsalvageable and unsafe to work on.

34. The condition of the Property was hardly a secret to City Hall. Indeed, the City knew about the deteriorating conditions of the Property and the adjacent barn for many years and knew that it was uninhabited. By way of example only, on March 22, 2010, Brian Lever, Senior Preservation Planner with the NHC wrote to the then owner of the Property, a real estate trust, stating:

The Newton Historical Commission recently reviewed the condition of your barn and noticed several broken windows. The Commission is concerned about the preservation of the building as it is a historic building and designated as a City Landmark.

35. Then, on October 9, 2013, the then acting Commissioner of the Newton ISD issued a letter to the then owners of the Property advising that they were in violation of City ordinances for vacant properties. He wrote:

The City of Newton has enacted a new ordinance ... **to regulate inadequately maintained vacant properties**. Such properties cause many problems for municipalities, including blight and nuisance, and are at increased risk for fire, unlawful entry, and other public health and safety hazards.

You have received this notification because the City has identified the property you own at 29 Greenwood Street [] **as an inadequately maintained vacant property**. I have included a copy of the new ordinance so that you may review it and determine what you need to do to bring your property into compliance.

36. Plaintiff's predecessor in interest had previously submitted applications to the NHC and to the ISD to undertake construction on the Property in or around 2017. On July 27, 2017, the NHC unanimously approved the issuance of a certificate of appropriateness, based on the then owner's architectural plans submitted to and approved by the Commission (the "Certificate of Appropriateness" or "COA").

37. The COA approved a demolition of the rear portion of the house and a significant addition onto the rear of the Property. The COA further called for a complete renovation and reconstruction of the original residence. The work approved under the COA was based upon

plans and other materials and documents submitted by the prior owner. The approved plans called for all new framing and structural elements to comply with the current building code.

38. At the time of the issuance of the COA in 2017, the Commission and the ISD knew about the extensive problems, instability and uninhabitability of the house on the Property.

39. After the COA was issued, Plaintiff's predecessor applied for re-issuances of the COA. The Commission unanimously extended COA on February 28, 2019 and again on February 27, 2020 based on plans submitted by the applicants.

40. Those plans detailed new framing throughout the existing main house structure, a massive new addition to the rear of the main house, an underground garage and "repair and replace[ment]" of every element of the existing house as needed, including, sheathing, roofing, foundations, siding, windows, doors and trim. Moreover, the approved plans provided for all new interior finishes, electric and plumbing that were compliant with existing building code requirements.

41. Thus, it was patently obvious that renovation of the main house required extensive re-construction of the existing house structure, and the City was indeed approving those renovations.

**Plaintiff Acquires the Property and
Commences Work under the Approved Plans and COA**

42. On or around January 1, 2021, Plaintiff took title to the property by deed that was recorded in the Middlesex South Registry of Deeds at Book 76838, Page number 87.

43. Thus, by the time Plaintiff acquired the Property, it contained an almost three-hundred-year-old structure that had been uninhabited for approximately a decade, and likely longer, that was structurally unsafe, uninhabitable and suffering from catastrophic failure due to decades of neglect.

44. Upon acquiring the Property, Plaintiff ensured that all its permits were valid and, at the direction of the ISD, transferred the demolition and construction permits to its own contractors. Around the first week of February 2021, Plaintiff began the planned and approved demolition and construction activities on the Project.

45. Throughout the demolition and construction process, ISD was on site at the Property monitoring the progress with the Project, including meeting with Plaintiff's on-site general contractor and site personnel. During this time, all materials that Plaintiff removed from the house were set aside for preservation and future re-use. Defendants were aware that Plaintiff was undertaking these activities.

The First Stop Work Order Issues

46. On or about February 11, 2021, ISD issued a stop work order on the property based upon Plaintiff's planned and necessary removal of a gable end. Plaintiff removed the structurally unsound gable end intact and stored it on-site.

47. Upon receipt of the stop work order, Plaintiff was surprised to say the least since it had been proceeding with the approved COA and plans. Plaintiff immediately engaged a structural engineer to assess the structural integrity of the house and render a professional opinion.

48. By February 11, 2021, Plaintiff was already providing Hax Holmes with photographs of the deteriorated house and on or about February 13, 2021 provided ISD and Hax Holmes with a letter opinion from Plaintiff's retained engineer, Dov Kirsztajn, P.E., that stated:

... After a substantial examination and assessment of the interior and exterior exposed structural members, **we found the structure highly compromised due to long term neglect and moisture infiltration that in t[urn] has attracted termite infiltration. The termite and moisture damage will make the renovations of the existing building virtually impossible without replacing every single structural member of the building in order to meet certain building code and structural criteria.....**

It is our professional opinion that the preferable way of continuing with the renovation **is by demolition of the structure and constructing the new house in the same style.**

49. At this time, ISD and Hax Holmes were aware of the total lack of structural stability of the house due to rot and other conditions in the house and acknowledged same in email communications involving ISD, the NHC and other City officials.

50. On February 18, 2021, the ISD knew and acknowledged in internal email communications that day, after a site visit that same day, that the Property contained “**a lot of rot especially in the sills, but also in some studs and sheathing.**”

51. Responding to an email query from Katy Hax Homes, the ISD inspector assigned to the Project, Paul Gilbert wrote: “**Oh yeah, a LOT of rot.**” Notably, despite Plaintiff’s repeated requests, Hax Holmes refused to ever go on-site to meet with Plaintiff or its agents.

52. Forwarding inspector Gilbert’s answer to defendant Cornelius of the NHC, Ms. Holmes stated that “**I’m not sure what other options are available to the owner but let me know what you think.**” Thus, given the condition of the Property, the ISD on-site inspector and the City historical planner were acknowledging that the ability to leave the existing structure intact was impossible since it was rotten throughout.

53. On February 18, 2021, after meeting onsite with Plaintiff’s representative, inspector Gilbert emailed Plaintiff stating that “I had a **good meeting** with Gene today at 29 Greenwood. I have passed his questions/concerns on to Katy Holmes and she is checking with her committee....”

54. Shortly thereafter, Plaintiff provided the City with a report detailing the extensive structural damage and rot on the premises. According to Plaintiff’s experts, the Property was unsalvageable. In fact, inspector Gilbert reiterated to ISD and other City officials via email on

February 26, 2021, that **“[T]he GC had three structural engineers come in and they all said unsavable.”**

55. Notably, throughout the long history of Plaintiff’s interactions with Defendants since the Project began, they have never challenged the irrefutable fact that the house structure was rotten, unstable and unsalvageable.

56. That same day, acknowledging the diligent efforts of Plaintiff and its workers, inspector Gilbert wrote:

They put the gable back in. **Can’t believe they took it down in one piece but they did.** Based on that I have lifted the stop work order. I drive by every day and they are not working on the house at this time.

57. After the First Stop Work Order was lifted, Plaintiff resumed work on the Property with the knowledge and assent of the City. None of the Defendants ordered Plaintiff to stop work despite knowing about the unsalvageable condition of the Property, which they never refuted.

58. Plaintiff took painstaking, costly and time-consuming efforts to preserve the main house portions that could be saved. Its workers set aside all of the exterior and interior walls, sheathing, framing, windows, doors, floorboards and other components that could be saved and re-used. Despite the extensive rot and structural decay, Plaintiff suspended in air the salvageable internal framing in the house so it could be preserved, and a new foundation could be poured. During this painstaking process, Plaintiff’s workers were exposed to the hazard of a potential total building collapse. In fact, Plaintiff’s first framing company refused to work on the job due to safety concerns and quit.

59. After the First Stop Work Order was lifted, inspector Gilbert was visiting the site daily monitoring the work in the same manner as before. He confirmed on April 6, 2021, that “29 Greenwood **has been completely lifted up and the contractor is excavating under the house**

to set a new foundation.” He further acknowledged that **“on some sides there wasn’t an old foundation [and] the house basically sat on the ground ...”**

60. The condition of the house was so precarious that Hax Holmes emailed inspector Gilbert right back asking **“Good grief, does it look stable?”** Again, Hax Holmes refused to even visit the Property.

61. Despite Plaintiff working with ISD and Hax Holmes cooperatively to ensure the Property was rebuilt consistent with the actual site conditions of extensive rot and crumbling support, among other conditions, which the City knew about since long before February 2021, Hax Holmes had already decided to take a far different and far more confrontational position against Plaintiff.

62. On March 15, 2021, not long after the First Stop Work Order was lifted, Hax Holmes emailed Plaintiff inquiring as to whether the Property was being listed for re-sale. Then around the same time, Hax Holmes telephoned Plaintiff’s real estate broker under a pretext, pretending to be an interested buyer. When questioned by the broker, Hax Holmes soon blew up at the broker and started yelling, only then revealing her true identity. Thus, by this time, Hax Holmes, in conjunction with the other Defendants were working to affirmatively impede Plaintiff’s efforts with respect to the Property.

63. On April 29, 2021, Holmes emailed Doug Cornelius of the NHC and Lojek and Ciccirello of ISD (not copying inspector Gilbert), accusing Plaintiff of unilaterally taking the house down, claiming it was “torn down” despite the “best efforts” of inspector Gilbert and Hax Holmes.

64. Hax Holmes conveniently and conspicuously omitted the facts that Plaintiff had in fact apprised the City of the extensive rot in the Property through its engineers and

photographic documentation, had diligently brought down the gable intact and that the City had known these developments as they were happening all along without issuing a stop work order claiming that Plaintiff was exceeding its approved plans. Nor did Cornelius acknowledge the April 2013 reports of the deteriorated condition of the house that formed part of the original 2017 COA application.

65. On April 30, 2021, ISD issued another stop work order (the “Second Stop Work Order”).

66. The Second Stop Work Order alleged that the work being performed at the Property was not in compliance with the Certificate of Appropriateness.

67. Around May 3, 2019, inspector Gilbert, who had been on site almost daily since the project started, wrote Hax Holmes that he had been on site on April 26 and 29, 2021, observing the new foundation being poured and the sill being laid. At this time, he claimed to Hax Holmes that “[t]he new house they framed is not an exact replica of what was taken down.” Hax Holmes responded stating that “Councilor Lipof contacted me over the weekend to get help responding to his constituents about this property”

68. In fact, a day earlier, Sunday, May 2, 2021, Councilor Lipof acknowledged via email to his fellow council members that “[t]here are times whether **an historic home will be allowed to be completely taken down as the home is just not salvageable**”. Lipof advised the Board Members that “Hax Homes will be talking to the Mayor and the Law Department to formulate the City’s approach to the situation.”

69. That same day, after speaking with Plaintiff, Lipof updated the Council, stating that he had spoken with Plaintiff’s representative who had explained the circumstances of the

project. Lipof wrote that “[v]isually it was jarring to see the exterior gone but if this was their method, then what you are looking at would be built within the skin.”

70. Later that day, Lipof emailed Hax Holmes with a subject line of “I need to talk to you again.” In the email, which Hax Holmes forwarded to ISD and the NHC - without copying Lipof, Lipof wrote Hax Holmes to apprise her of a conversation that he just had with Plaintiff’s principal, Ty Gupta. Gupta had explained the circumstances of the site conditions and partial demolition of the Property.

71. Lipof wrote to Hax Holmes that:

we as a city need to hear him out, meet with him on site, and if he’s telling the truth about salvaging and saving the exteriors it will go back on, **this will be a good resolution for all angry people involved in on looking to this situation...** We owe it to the situation to meet with the owner of the company to hearing where they are right now. ...I just had a half an hour discussion with him and whether he’s truthful or full of it, he sounded like a very reasonable guy to work with so give it a shot. The best outcome is for us to get all the facts and find a path to resolution instead of lawsuit.

72. On or around May 9, 2021, online news articles were being posted to the City’s website expressing the public’s outrage and calling for the maximum penalties and fines against Plaintiff.

73. As the month of May 2021 progressed, an internal “blame game” erupted amongst ISD, the NHC and other City departments, triggered by complaints from citizens and surreptitiously stirred up by Hax Holmes and other Defendants and City officials.

74. On May 27, 2021, Jennifer Bentley emailed Hax Holmes stating that “[l]ast night at ZAP, John Lojek implied that NHC was to blame for what happened to 29 Greenwood because the plans we approved weren’t specific enough. Do you know what he meant?”

75. Hax Holmes responded via email moments later stating:

John Lojek is an ass, let's just get that out there. Nothing is ever ISD's fault. Don't worry about his comments.

76. Ms. Bentley responded stating, "Boy, am I going to miss you." Hax Holmes followed up moments later, writing:

Yeah, don't share that email, please. Forgot this was the city computer.

77. Bentley responding moments later, writing, of ISD Commissioner Lojek:

No worries (but I am sure everyone knows it anyway)

78. Thus, by this time, even ISD had acknowledged that the plans approved for the Project were at least ambiguous enough to permit the work undertaken by the Plaintiff. Furthermore, instead of listening to and considering the views of ISD (or Plaintiff) in that regard, Hax Holmes summarily rejected them as the views of an "ass" that should not be considered at all.

79. More significantly, internal communications of the City demonstrate that Hax Holmes was compartmentalizing information with the City's departments in order to paint Plaintiff in the worst possible light and drive the NHC towards imposing draconian penalties against Plaintiff, with the added benefit of deflecting "blame" from the NHC.

Members of the NHC Plot to Destroy Plaintiff's Rights

80. On or around May 27, 2021, the Commission conducted a public meeting wherein the Commission and its Board acceded to the requests of members of the public and incorrectly and unlawfully determined that the Plaintiff's partial demolition of the Property, which was pursuant to and in accordance with the plans previously submitted to and approved by the Commission, violated the COA.

81. The Commission and its Board further voted in favor of imposing a daily fine of \$300.00 against Plaintiff beginning on April 30, 2021, purportedly on account of the alleged violation of the COA.

82. On Saturday, May 29, 2021, Peter Dimond of the NHC emailed Doug Cornelius and Hax Holmes about the Property from his personal email account. Recommending that Plaintiff be ordered to undertake a complete reconstruction of a replica of the house, Dimond wrote:

...All of this is to take place with a \$300/day fine in place until the work is completed.

I'd think that after a replica is constructed, the replica would not fall under NHC jurisdiction, **and the developer would be free to construct additions to the site as allowed by zoning or a special permit. If this be so, then additional steps would have to be put in place to prevent this from happening.**

Another option would be to require that the historic house be partially restored to serve as an educational reminder of what had been there, but not completed to be a habitable structure. In that way, it continues to fall under NHC jurisdiction but is not able to be sold as a home or buildable land.

Finally, if the developer refuses to carry out our orders, the City can move the issue to Superior Court, Eventually, **the City could take the property using CPA funds for open space recreation.**

83. Shortly thereafter on the same day, Cornelius replied to Dimond, copying Hax Holmes, admitting that

... [m]any things be outside of the scope of what we can require. But the developer may offer things that we may not be able to force them to do. ...**Right now the developer is stuck with a property that he cant do anything with and its costing him \$300 per day.**"

84. Dimond responded shortly thereafter, again writing from his personal email:

We have to use this as an opportunity to create a disincentive for developers to destroy landmarks and preferably preserve [] houses. I can't see them proposing anything that will hurt their ability to turn a profit, even as your

friend Franklin says, it was done unintentionally. **If a profit is made, historic preservation loses.**

85. Cornelius, responding back only to Dimond wrote:

Agreed. I intend to make it hard. With Franklin and Don Lang, it may be a decent offer.

We don't have to do anything at this point. **Time is on our side.**

86. Thus, by May 30, 2021, at least two members of the NHC, Dimond and Cornelius, had made up their mind that a resolution of the present impasse was not appropriate through a “negotiated settlement” and instead required a “hard” response from the NHC.

87. Shortly thereafter on June 4, 2021, Hax Holmes, after consultations with the Planning Department, NHC and the Law Department, was inquiring of Commissioner Lojek as to whether the ISD had the authority to “**ban** the issuance of any building permits on this site for two years.”

88. Thus, unbeknownst to Plaintiff, Defendants had hatched a plan to take Plaintiff's Property.

89. On or around July 7, 2021, a letter was sent by members of the public to the Commission calling for a rejection of any and all proposals submitted regarding the Property. Soon afterwards, citizens of Newton began signing a petition calling for the Commission to deny any and all plans submitted regarding the Property.

**Plaintiff's August 2021 Proposed Remediation of the
Alleged Violation of the Certificate of Appropriateness**

90. On or around August 11, 2021, in advance of a public meeting to discuss and address the alleged violation of the COA, Plaintiff submitted an extensive proposal to repair and restore the Property's damaged 18th century post and beam structure and to construct a historically accurate exterior over the restored structure.

91. Plaintiff's submission included: (i) detailed photographic evidence of the then existing conditions at the Property; (ii) proposed architectural drawings detailing the work to be performed to remediate the alleged violation; (iii) photographs of other similar 18th-century properties; and (iv) information about the proposed windows to be used at the Property.

92. Through its August 11, 2021, submission, Plaintiff further provided the Commission with a detailed work plan, outlining: (i) the research and documentation conducted in connection with its proposed remediation; (ii) the Plaintiff's plan to stabilize the existing structure and the removal of newly constructed walls; (iii) the Plaintiff's plans to restore the historical structure of the Property; and (iv) details concerning the windows, doors and trim to be used at the Property.

93. Plaintiff's August 11, 2021, submission to the Commission also included information on its team of restoration professionals, including its architect, structural engineer and project manager, as well as their qualifications.

94. Unbeknownst to Plaintiff however, as all work on the project had stopped since April 30, 2021, and Plaintiff was attempting to resolve the situation in good faith, emails produced by the City show that Hax Holmes was deliberately trying to stir up citizen outrage against Plaintiff to torpedo the proposal that was coming before the Commission.

95. On August 23, 2021, in forwarding citizen emails regarding the Project to City staff member Heather Zaring, she wrote:

Hiya Heather, these letters of expressed outrage continue to come in. Thank you for posting the previous batch on the web. **If we're able to add more to the online batch over the course of the week that would be awesome.** I'll just keep sending them to you.

96. Responding back to Hax Holmes, Zaring immediately noticed the overt bias against Plaintiff contained in Hax Holmes' email and wrote:

Can you forward this one without your comment? I don't want your comment to be misconstrued and seem biased by the public.

The August 26, 2021 Public Hearing

97. On August 26, 2021, the Commission held a public hearing to review Plaintiff's request to remediate the alleged violation of the COA. During the August 26, 2021, hearing, Plaintiff's architect Donald Lang presented the Board with extensive information in support Plaintiff's proposal to remediate the alleged violation of the COA and resume work on the Project.

98. As explained to the Board by Mr. Lang, Plaintiff's proposal included the use of as many traditional building and design methods and materials as possible. Mr. Lang further explained to the Board that the aim of Plaintiff's proposal was to construct a historically accurate exterior to the Property and incorporate and repair existing elements of the property which had not been discarded as part of the planned and approved rehabilitation of the Property.

99. During the August 26, 2021, hearing, Mr. Lang explained to the Board that any original elements of the Property that could not be reused would be measured and replicated.

100. The Commission's staff members reported to the Board at the August 26, 2021, hearing that Plaintiff's submission appeared to preserve remaining material from the original house and rebuild the structure thereof.

101. They failed however to explain the utterly deteriorated condition of the vacant main house structure as it had existed for years, if not decades, and that the Commission and the ISD knew about these conditions for almost a decade. The Commission's omissions were deliberate and intended to paint the Plaintiff in the worst possible light.

102. No action was taken by the Commission at the August 26, 2021, hearing. Instead, Plaintiff was asked to provide another complete set of design plans for its proposed repair and rehabilitation of the Property, including for the previously approved rear addition.

**Plaintiff Provided the Commission with Yet More
Information and Supporting Documents.**

103. In response to the Commission's requests, Plaintiff undertook yet more costly and time-consuming work. On or around October 6, 2021, in response to the Board's request for further information on Plaintiff's remediation plans, Plaintiff submitted a full set of architectural drawings illustrating the rehabilitation work to be completed at the Property. Plaintiff also submitted complete building exterior drawings, a materials specification booklet, color renderings of the project exterior and a narrative summary of Plaintiff's plans.

104. Plaintiff's October 2021 submission included all of the information requested by the Board during the prior public meetings, including an explanation and summary of: (i) the proposed restoration of the second-floor deck's post and beam structure; (ii) plans for the revisions to the historic house's exterior; (iii) Plaintiff's revisions to the approved rear addition on the Property; (iv) proposed paint color schemes; and (v) a summary of materials to be used for the rehabilitation of the exterior of the Property.

105. On October 21, 2021, responding to further inquiry from the Commission, Plaintiff provided additional information concerning the elevation and height of various aspects of the project.

106. By this time, Mayor Ruthanne Fuller had become involved in the 29 Greenwood controversy initially ginned up by Hax Holmes, the NHC members and other City officials and staff members. In fact, she had already taken a stance of **punishing** Plaintiff, apparently to aid her political profile at the expense of Plaintiff.

107. Responding to one of a growing number of public comments that Hax Holmes was intent on fomenting against Plaintiff, Fuller immediately responded to an email posting that demanded that the City **deny any relief to Plaintiff**, whether to restore, rebuild or construct a replica of the Property.

108. On October 26, 2021, Mayor Fuller wrote:

Thank you for your advocacy regarding 29 Greenwood.

Please know that I am in complete support of the [NHC], and their authority to evaluate and rule on the developer's proposal, **including a denial. I am committed to pursuing legal measures against this developer.**

109. Thus, although Plaintiff by this time was endeavoring in good faith to resolve the controversy positively and proactively in good faith by engaging professionals and submitting plans and proposals to the NHC's endless requests and comments at great expense, behind the scenes Mayor Fuller, the NHC and Hax Holmes, among others, had already decided that they would not accept **any resolution** by Plaintiff but would instead punish Plaintiff.

The October 28, 2021 Public Hearing

110. On October 28, 2021, the Commission held yet another public meeting to review, Plaintiff's request to remediate the alleged violation of the COA.

111. At the October 28, 2021, meeting Peter Dimond, the then chairman of the Board, called for a vote to reject the remediation plans proposed by the Plaintiff because those plans were allegedly "virtually identical" to the work that was already undertaken by the Plaintiff, i.e., the work undertaken in accordance with the plans that were previously approved by and incorporated into the Certificate of Appropriateness.

112. Mr. Dimond further stated that notwithstanding that Plaintiff's remediation plans included adding historical features to the Property, that it would allegedly be, in his opinion, a replica of little historical value to the community.

113. Mr. Dimond did not provide any basis or justification for this statement. Nor did he address how Plaintiff's plans deviated from the design plans approved by the Commission in 2017. Instead, Mr. Dimond stated that the project was not realistic and there was no need to look into the details at this point.

114. Despite the fact that Plaintiff agreed to provide all requested additional information at the October 26, 2021, hearing, Mr. Dimond, referenced the Secretary of Interior Standards for the Treatment of Historic Properties for *reconstruction* projects, which the City of Newton never even adopted. He complained that the project was not "realistic" and that he did not need to see any additional information or plans before making his decision on Plaintiff's remediation application.

115. Further, during the October 28, 2021, public meeting the Commission unlawfully revoked its prior approval of the rear addition to the Property claiming that Plaintiff's partial demolition of the property, which complied with its building permit, somehow nullified the Board's prior approval of the rear extension. The Commission did not provide any justification or support for this revocation of its approval of the rear extension to the Property.

Defendants Deliberately String Plaintiff Along

116. Rather, by this time, Defendants' strategy of stringing Plaintiff along while punishing it with daily fines of \$300.00 was in full force. As they had written before, Defendants believed that **time was on their side**.

117. Beginning at least by November 2021, members of the NHC and City planning staff were having communications and discussions with an outside legal group called the Newton Friends of Historic Preservation, Inc, including its President, David D. Patterson. These conversations continued throughout 2022 as the NHC ramped up its efforts to deny Plaintiff any opportunity to continue work on the Project.

118. By January 2022, Plaintiff and its professionals were utterly astonished at the City's "move the goalposts" strategy of delaying any action to resolve the NHC's issues with the Project, a plan which the NHC knew was costing Plaintiff \$300.00 per day in fines and causing a complete shutdown of the Project.

119. Indeed, Plaintiff's architect, Mr. Donald Lang, emailed the City's Chief Preservation Planner, Valerie Birmingham, on January 14, 2022, writing:

In the decision references are made to missing information or material that should have been provided to the commission to remediate the violation. **I was confused by that, as I believe our two submissions included the very information that the Commission suggests was missing....**

Except for the front porch, our proposed reconstruction relied on accurate duplication of the historic elements based either on careful measurements of existing historic fabric (physical evidence) that had been dismantled and stored on the site or historic photographic analysis. Once the historic elements to be duplicated were measured we created and submitted detailed drawings to accurately replicate the features including the eaves, gable and cornice, porches, roof, chimney, siding and trim. We carefully documented and then proposed the restoration of the original historic window frames and sills which had been removed from the building and stored on the site....

... I am genuinely concerned that due to the high level of emotion surrounding the Gershom Hyde house there may have been a failure to communicate or a misunderstanding that is blocking the path for us to move the reconstruction process forward.

The April 2022 Public Meeting

120. On or before April 2022, Mayor Ruthanne Fuller began correspondence with citizens of Newton regarding their outrage about the Property stating that she shared this outrage and wanted to pursue to the fullest legal extent actions against Plaintiff.

121. On or around April 20, 2022, Plaintiff received a letter from the Commission requesting that it justify its research process with respect to its submitted rehabilitation plans for the Property, as-built documentation and proposed construction.

122. However, all this foregoing information was already provided by Plaintiff in its drawings submitted to the Commission along with presentations made during the prior public hearings at which the Property was discussed.

123. Nonetheless, Plaintiff and its architect responded to the Commission on April 22, 2022, with all of the requested information.

124. The Commission held a further meeting on April 28, 2022, during which the Plaintiff, in an effort to assuage the concerns of the Commission, submitted revised plans to address the alleged violations of the certificate of appropriateness, thereby eliminating the proposed, and previously approved, rear addition, restoring the original footprint of the Property and reincorporating preservation ideals and the historic fabric of the Property that was not even present at the Property prior to the approved partial demolition.

125. Plaintiff further noted that these proposed plans aimed at addressing the concerns of the Commission were extraordinarily expensive **and would eliminate any potential profit** that may have been obtained by the Plaintiff under the plans for the Property that the Commission had already approved at the time Plaintiff took title thereto in January 2021.

126. During the April 2022 meeting, the Plaintiff's architect Donald Lang provided the Commission's board with a detailed presentation of the revised submission and specifically set forth Plaintiff's two objectives for the proposal, which was to carefully rebuild the structure of the Property and the rear ells using careful documentation and measurements.

127. At the conclusion of the April 2022 meeting, the Board **requested additional information** from Plaintiff be presented at a future Board meeting.

128. Mr. Lang's incredulity at and misapprehension of the NHC's and the City's move the goal posts economic "quagmire" strategy was hardly unique to Plaintiff and its professionals.

Rather, even the NHC itself admitted that Plaintiff did not even understand what the NHC was asking it to provide. On May 3, 2022, Birmingham emailed City staff, stating:

Hi everyone,

I just spoke with Peter [Dimond] about 29 Greenwood at Thursday's hearing. **He is unsure of how to proceed and if the applicant understands what is still necessary of them,** and I think it would be helpful to have a quick internal meeting with all of us, plus Peter to discuss next steps....

129. Discussions amongst the NHC and other City staff continued behind closed doors. For example, on May 24, 2022, NHC member Dimond emailed members of the NHC stating that Mayor Fuller had decided to not re-appoint him to the NHC for a new term. In his email, Dimond discussed his position on the 29 Greenwood issues before the NHC and its decision to grant a second review following advice received from the City's law department. He insisted that as a condition of any further application from 29 Greenwood's developer, the application must **"[s]how a detailed budget sheet that shows no profit."**

130. Responding the next day, May 25, 2022, NHC member Cornelius pointed out that Dimond's email to the NHC discussing the 29 Greenwood Project violated the Massachusetts Open Meeting Law, which required published notice of a meeting and public access since the email was addressed to the NHC, thereby constituting a quorum. Cornelius reiterated that "[e]mails among a quorum of Commission members are generally considered subject to the Open Meeting Law." Conspicuously, Cornelius only sent his email to two persons, John Rice and Birmingham, thereby deliberately avoiding the reach of the Open Meeting Law.

131. Throughout the Summer and Fall of 2022, members of the NHC were directly communicating with Attorney Patterson and Steven Ferrell of the Newton Friends group.

**The Commission Denies Plaintiff's
Proposed Remediation Plans on Bogus Grounds in August 2022**

132. On May 27, 2022, the Plaintiff submitted yet another set of updated plans and specifications to the Commission for a new building on the Property, and on June 23, 2022 Plaintiff submitted a list of the resources used and the archives which were reviewed to develop its plans and determine the period of significance for the structure.

133. The Commission conducted a public meeting on August 2, 2022, at which the Board rejected the Plaintiff's revised plans, claiming that its submissions did not meet the Secretary of the Interior's Standards for the Reconstruction of Historic Properties, which the City had never adopted.

134. On August 12, 2022 – more than fifteen months after issuing the total Stop Work Order on April 30, 2021 and after numerous submissions and re-submissions - the NHC again rejected Plaintiff's remediation plan. The Commission filed its "Record of Action" again citing the Secretary of the Interior's Standards for the Reconstruction of Historic Properties as the basis for the rejection of Plaintiff's remediation plans.

135. In addition to the fact that the Commission applied the wrong "standard" to its review of Plaintiff's plans, practically every one of its proffered reasons for denying Plaintiff's remediation plans were legally untenable, inconsistent with the evidence submitted by the Plaintiff and/or are false.

136. In reality, the reasons proffered by the Commission were merely a **pretext** for Defendants' long-standing plan to take Plaintiff's property.

137. In paragraph 1 of the Record of Action, Commission stated that:

Under the Secretary of the Interior Standards for the Treatment of Historic Properties (the 'Standard'). 'Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than by

conjectural designs or the availability of different features from other historic properties.’ The applicant has not provided enough detailed evidence to substantiate its plans.

138. The “Standards” are not binding or controlling law with respect to the plans submitted to the Commission by Plaintiff.

139. Moreover, the plans for the Property that were approved by the Commission in 2017 combined demolition and new construction and were thus completely inconsistent with the Secretary’s “reconstruction” standards.

140. Through paragraph 2 of the Record of Action, Commission claimed that:

Under the Standard, ‘While the use of traditional materials and finishes is always preferred in some instances substitute materials may be used if they are able to convey the same appearance.’ The applicant has not adequately shown that they will be able to convey the same appearance with substitute materials.”

141. This statement in paragraph 2 of the Record of Action is false. To the contrary, the only so-called “substitute materials” that Plaintiff proposed to use were new windows on the rear ells of the Property and one French door on the East rear ell.

142. In fact, Plaintiff submitted specifications sheets and a side-by-side comparison drawing of the historic and proposed windows that clearly demonstrated that the architectural profiles of those windows were identical.

143. The specification sheet submitted by the Plaintiff to the Board concerning the French door on the East rear ell clearly demonstrated that it was a near identical match in width to the historic 1960s large single light picture window. The proposed French doors have a 5/8” mullion width while the historic windows had a 9/16” mullions width.

144. Through paragraph 3 of the Record of Action, the Commission contends that “[t]he applicant has not submitted any information about the contractor or craftsmen who would be engaged to do the reconstruction.”

145. This statement is also false. In fact, during the October 28, 2021, public hearing, Plaintiff's architect Donald Lang informed the Board of Plaintiff's research activities and the process it had undertaken to engage JML Engineering and Classic Construction, who are highly qualified restoration professionals to visit the site and review the proposed rehabilitation plan and comment on construction details.

146. Plaintiff also included JML Engineering and Classic Construction's initial comments in its October 6, 2021, drawing submitted to the Board.

147. In paragraph 4 of the Record of Action, the Commission asserts that:

The Standards do not recommend 'omitting a documented exterior feature or rebuilding a feature but altering its historic design.' The applicant has failed to provide documentation showing when the original front porch was added to the building. The applicant has failed to provide evidence of a historic basis for the front porch or door the applicant has presented.

148. However, the drawing accompanying the previously approved building for the Property illustrated an open front porch and included a note stating, "remove bay addition per Historic Commission request and replace with historically accurate entry."

149. Plaintiff's drawings submitted to the Commission also included a new front porch with details matching an existing side porch at the Property. Plaintiff and its architect provided the Board with testimony to support their position that the prior front porch and the existing side porch were constructed at the same time in the mid-nineteenth century.

150. In addition, the six-panel wood door included in Plaintiff's drawings is consistent with doors from the same period as the original structure. Indeed, during Plaintiff's first presentation to the Board in October 2021, Mr. Lang submitted photographs of a similar eighteenth century property located in Mattapan, Massachusetts which prominently featured a six-panel front door.

151. The Commission provided no justification or support for its alleged belief that the proposed front door is not period appropriate.

152. In paragraph 5 of the Record of Action, the Commission claimed that:

[t]he applicant has failed to provide documentation showing the condition of the east facade prior to the inclusion of the 1960s picture window. The applicant has failed to provide evidence of historic basis for the modern glass door unit that the applicant has presented. Its inclusion would also be incompatible with the standards for a rehabilitation of the property.

153. However, the Commission did not require archival as-built drawings to be prepared and submitted to it prior to approving the partial demolition of the Property. Nor did the Commission require photographic documentation of the Landmark structure on the Property. Thus, it is not possible at this time to determine what existed on the east façade of the rear ell prior to 1960.

154. In fact, the Property had been renovated and modified numerous times since it was originally constructed in 1744. Had the Commission requested this information prior to the demolition of the rear portion of the Property, as approved by its 2017 Certificate of Approval, Plaintiff would have provided same to it – without any knowledge that the feature actually existed in 1960.

155. Moreover, the statement that Plaintiff’s submitted plans for the east façade that are incompatible with the standards for *rehabilitation* of the Property is false. The “rehabilitation standards” actually allow for alterations and additions to the historic properties and Plaintiff’s submitted plans comply with those standards.

156. In paragraph 6 of the Record of Action, the Commission falsely claimed that “[t]he applicant has failed to provide evidence of historical basis for the doors on west and east façades.”

157. However, Plaintiff submitted preconstruction photographs of the east façade that depicted the door in the main house block as well as the door on the North ell garage barn extension.

158. Plaintiff also submitted a photograph to the Commission of the west façade depicting the original modern barn door which Plaintiff planned to replace with a design that is more historically appropriate.

159. Plaintiff further submitted photographs to the Commission depicting a new entrance door in the barn extension matching the opposite door on the east façade.

160. All of these doors were consistent with the “rehabilitation” standard.

161. In paragraph 7 of the Record of Action, the Commission falsely claims that “[t]he applicant has failed to provide a documented inventory of existing windows on site to show that the applicant will be able to use repaired historic windows on the front and side facades shown on the application's plans.”

162. However, during the August 26, 2021, public meeting held by the Commission, Plaintiff informed its Board that once the Project moved ahead, and the Stop Work Order was lifted, it would place a weather tight storage container on the Property to facilitate the storage and inventory of the existing windows that are being stored on site. Plaintiff further informed the Board that once that exercise was completed it would present its findings to the Board.

163. The Stop Work Order was never lifted and therefore Plaintiff was unable to clear sufficient room at the Property for a storage container to facilitate the taking of inventory and storage of the historic windows.

164. In paragraph 8 of the Record of Action, the Commission falsely asserted that “[t]he Standards state that the building exterior should use ‘signage to identify the building as a

contemporary recreation. The applicant has not presented any plans showing such identification in compliance with the Standards.”

165. However, and as the Commission is well aware, the Plaintiff submitted its plans as a “remediation” not as a “restoration”.

166. The Secretary of the Interior’s “Standards” for rehabilitations projects, unlike its standards for restoration projects contain no requirement that exterior signage be placed at the property.

167. In paragraph 10 of the Record of Action, the Commission falsely stated that “[t]he chimney size and placement in the application does not appear to match the historic record, nor does it extend to the basement.”

168. However, the Commission proffered no support for its statement that the chimney location “does not appear to match the historic record”. To the contrary, Plaintiff’s drawings submitted to the Commission depicted the chimney using standard architectural photographic analysis and Google Earth imagery, all of which was submitted to and reviewed by the Board.

169. In paragraph 11 of the Record of Action, the Commission vaguely claimed that “[w]indows on the extension on the left side is larger in the reconstruction than the historic records.”

170. However, there is absolutely no evidence, whatsoever, in any of the historical photographs reviewed and used by Plaintiff’s architect to create the drawings submitted to the Board that any of the windows are larger than the historic records.

171. In paragraph 12 of the Record of Action, the Commission falsely claimed that “[t]he proposed windows in the left elevation do not appear in the historic photographs.”

172. However, the proposed windows shown in Plaintiff's remediation plans were drawn by its architect from historic photographs of the Property. Moreover, Plaintiff incorporated measurements from historic windows that were located in the front of the historic main house on the Property, which windows are stored at the property.

173. In paragraph 13 of the Record of Action, the Commission falsely and arbitrarily stated that "[t]he ganged windows on the elevation do not seem appropriate and the applicant has failed to provide evidence of historical basis for them."

174. However, the Commission provided no support or basis for this statement, whatsoever.

175. In sum, all of the "reasons" given by the Commission were pretexts to deny the Plaintiff any relief. This was consistent with Defendants long-standing plan to string Plaintiff along and take its Property.

CLAIMS

Count I – Against all Defendants, Uncompensated Taking Under U.S. Const. Amend. V

176. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

177. At all times material, Defendants were acting under color of state law within the meaning of 42 U.S.C. 1983.

178. The Fifth Amendment to the United States Constitution provides in part that "private property [shall not] be taken for public use, without just compensation."

179. As alleged herein, when it purchased the Property, it possessed approved plans to develop the Property, which was structurally unsound, uninhabited and susceptible to collapse.

180. Defendants had for many years been aware of the condition of the Property and even notified the prior owners of violations of City ordinances.

181. As Plaintiff undertook to partially demolish and reconstruct the Property in accordance with the approved plans and COA, the Defendants were fully aware of the structural condition of the property.

182. Nonetheless, Defendants hatched a plan to revoke Plaintiff's authority to continue to work on the Project and make it economically and physically impossible to finish the Project, thereby taking the Property for the City.

183. By its actions alleged herein, since April 30, 2021, and continuing thereafter throughout 2022, Defendants have made a regulatory taking of Defendant's Property located at 29 Greenwood Street in Newton, Massachusetts.

184. As a result of Defendants' conduct, Plaintiff has suffered and continues to suffer substantial damages.

Count II – Against all Defendants, Violation of Art. 10 of the Massachusetts Civil Rights Act

185. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

186. Article 10 of the Massachusetts Declaration of Rights provides, in relevant part, that “no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. ...And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.”

187. Consideration of a taking claim is treated in like manner as a claim under the Fifth Amendment to the United States Constitution.

188. As alleged herein, when it purchased the Property, it possessed approved plans to develop the Property, which was structurally unsound, uninhabited and susceptible to collapse.

189. Defendants had for many years been aware of the condition of the Property and even notified the prior owners of violations of City ordinances.

190. As Plaintiff undertook to partially demolish and reconstruct the Property in accordance with the approved plans and COA, the Defendants were fully aware of the structural condition of the property.

191. Nonetheless, Defendants hatched a plan to revoke Plaintiff's authority to continue to work on the Project and make it economically and physically impossible to finish the Project, thereby taking the Property for the City.

192. By its actions alleged herein, since April 30, 2021, and continuing thereafter throughout 2022, Defendants have made a regulatory taking of Defendant's Property located at 29 Greenwood Street in Newton, Massachusetts.

193. As a result of Defendants' conduct, Plaintiff has suffered and continues to suffer substantial damages.

Count III – Against all Defendants, Tortious Interference with Prospective Advantage

194. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

195. At all times material, Defendants knew that Plaintiff was a developer intending to construct and sell the Property to a future homeowner.

196. Defendants know that Plaintiff intended to sell the re-constructed and improved Property at a profit if at all possible.

197. Defendants knew that the Project would require extensive time, efforts and costs to undertake and to complete and sell.

198. Defendant knew that "time was on its side."

199. Defendants hatched a strategy to deny the Plaintiff its advantageous business opportunity by making it impossible for it to obtain approvals on the Project through its move the goal post strategy and – by stringing him along – take the Property for the City without any fair compensation .

200. As a result of Defendants’ conduct, Plaintiff has suffered and continues to suffer substantial damages.

Count IV – Against all Defendants, Violation of Excessive Fines Clause of U.S. Const. Amend. VIII

201. Plaintiff repeats and re-alleges the preceding allegations as if fully set forth herein.

202. At all times material, Defendants were acting under color of state law within the meaning of 42 U.S.C. 1983.

203. The Eighth Amendment to the United States Constitution provides in part that no “excessive fines” shall be imposed.

204. The excessive fines clause of the Constitution which limits the government’s power to extract payments, whether in cash or in kind, as punishment for some offense.

205. As alleged herein, Defendants deliberately revoked all authority for Plaintiff to continue any work on the Project, deliberately denied each and every submission by Plaintiff to re-start work on the Property under any conditions whatsoever and imposed daily fees against Plaintiff that approximate or exceed two hundred thousand dollars.

206. Defendants’ conduct has left the Property un-usable and un-sellable as intended by Defendants in order to punish Plaintiff.

207. Defendants' actions were punitive and grossly disproportionate to any alleged violations committed by Plaintiff under the circumstances alleged herein.

208. As a result of Defendants' conduct, Plaintiff has suffered and continues to suffer substantial damages.

RELIEF REQUESTED

WHEREFORE, Plaintiff 29 Greenwood, LLC hereby requests that the Court:

- (i) enter Judgment against all Defendants on all Counts of the Complaint in favor of Plaintiff awarding damages in amounts to be determined at trial;
- (ii) award Plaintiff its attorneys' fees and costs incurred in prosecuting this action pursuant to 42 U.S.C. 1988(a) and/or any other applicable law;
- (iii) vacate all fines or other penalties imposed against Plaintiff as a result of Defendants' illegal conduct; and
- (iv) grant such other and further relief as the Court may deem just and appropriate.

JURY TRIAL DEMAND

Plaintiff hereby demands trial by jury on all counts of this Complaint.

Respectfully submitted,

By its attorneys,

/s/ Thomas H. Curran

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