Cleveland Municipal Court
Housing Division
Judge Raymond L. Pianka

City of Cleveland, Plaintiff(s)	Date: June 18, 2010
-v-	Case Nos: 08-CRB-42924 09-CRB-02474 09-CRB-04252 09-CRB-23359 09-CRB-24969 09-CRB-29344 09-CRB-30178 09-CRB-30563 09-CRB-37904 09-CRB-44442
Interstate Investment Group, Defendant(s)	

SENTENCING ORDER

Defendant Interstate Investment Group, LLC ("Interstate") entered a plea of no contest in each of the ten above-captioned cases. Seven of the cases involved multi-count complaints based on notices of violations; the remaining three were single count minor misdemeanors issued as tickets. In entering the pleas, Defendant admitted the truth of the facts alleged in each complaint. The Court found the Defendant guilty as charged, and now sentences Defendant as follows.

Violation Notices

In seven of the cases, the City cited Defendant for multiple violations, including first-degree misdemeanors, unclassified misdemeanors and minor misdemeanors. The maximum enhanced fines per offense for each classification are, respectively, $5000, $2000, and $1000. For these cases, each count represents a separate charge. For each charge, a separate offense is deemed committed each day during or on which an offense occurs or continues.[1]

Case No. 08-CRB-42924: 1029-31 East 141st Street

In January 2008, the city inspector issued a 30-day condemnation notice for the garage, indicating that it was out of plumb, the walls and roof were deteriorated, and the structure posed an "emminent [sic] danger and peril to human life and public safety." The inspector gave Defendant until February 29, 2008 to correct the violations. The

[1] C.C.O. §367.99(a), §3103.99(a); *City of Cleveland v. Szabo* (Jan. 18, 1996), Cuyahoga App. No. 69205, 1996 WL 18310, citing *Cleveland v. Makris*, (1993) 90 Ohio App.3d 742, 630 N.E.2d 739.

City subsequently filed its complaint against Defendant, citing Defendant for failing to correct the three violations listed in the notice by October 20, 2008, as well as for failing to comply with the order of the Director of Building and Housing. The complaint alleges four counts, each existing for 215 days, totaling 860 offenses and supporting a maximum fine of $2,580,000.

The house and garage subsequently were demolished at an expense to the City of $10,900. Defendant has not reimbursed the City for the demolition. Defendant owes approximately $6068 in unpaid property taxes

The City recommends a fine of $50,000, with 90% of the fine—$45,000—suspended upon full compliance. The Specialist recommends a fine at least sufficient to cover demolition costs, as well as the unpaid taxes.

Case No. 09-CRB-02474: 9349 Pratt

In November 2008, the city inspector issued to Defendant a violation notice citing defective conditions, including hanging gutters, missing downspouts, broken and missing windows, and exterior trim in need of paint. The inspector noted that the property was boarded. The inspector gave Defendant until December 14, 2008 to correct the violations. The City subsequently filed the complaint, charging Defendant with failing to correct the six violations listed in the notice by January 12, 2009, as well as failing to comply with the order of the Director of Building and Housing. The complaint alleges seven counts, each existing for 28 days, totaling 196 offenses and supporting a maximum fine of $532,000.

The house remains vacant and boarded; a car with expired plates is on the property. Defendant owes approximately $3530.74 in unpaid property taxes.

The City recommends a fine of $25,000, with 90% of the fine suspended upon full compliance. The Specialist recommends a fine sufficient to cover possible demolition costs, as well as the unpaid taxes.

Case No. 09-CRB-23359: 3522 East 80th Street

In May 2009, the city inspector issued a violation notice for 14 violations of City codes on the exterior of the house and garage, including a deteriorated post system, missing windows and damaged frames, missing gutters, and a deteriorated garage roof. The inspector noted that neither the house nor the garage was maintained in a weathertight condition, that both the house and garage had missing material and peeling paint, and that the house currently was boarded. The inspector gave Defendant until June 19, 2009 to correct the violations. The City subsequently filed its complaint against Defendant, citing Defendant for failing to correct the fourteen violations in the notice by June 25, 2009, as well as for failing to comply with the order of the Director of Building and Housing. The complaint alleges 15 counts, each for six days, totaling 90 offenses, and supporting a maximum fine of $114,000.

The property is vacant and has been vandalized. It is open to casual entry. The Specialist has noted that this property is in worse shape than any other property on the same street. Defendant sold the property to REO Solutions USA, Inc. in September 2009 for $10. There are approximately $3,716.20 in unpaid property taxes on the property.

The City recommends a fine of $25,000. The Specialist recommends a fine sufficient to cover possible demolition costs, as well as the unpaid taxes.

Case No. 09-CRB-29344: 3396 East 139th Street

In March 2009, the city inspector issued a condemnation notice for the main structure on the property. The inspector noted 21 violations of City code, including missing sanitary, heating and electrical facilities; no provision for running water; failure to maintain the interior in a sanitary condition; weak, damaged, or cracked interior floors; failure to maintain the exterior in a weathertight condition; and a damaged or missing entrance door. The inspector noted that the building "constitutes an immediate hazard to human life and health," and ordered it vacated. The inspector gave Defendant until April 29, 2009 to correct the violations. The City subsequently filed its complaint against Defendant, citing Defendant for failing to correct the twenty-one violations in the notice by July 23, 2009, as well as for failing to comply with the order of the Director of Building and Housing. The complaint alleges 22 counts, each for 85 days, totaling 1870 offenses, and supporting a maximum fine of $5,249,000.

The house was demolished in late 2009 at the City's expense, at a cost of $6165, which Defendant has not repaid. Defendant also owes approximately $3815.85 in unpaid property taxes.

The City recommends a fine of $10,000, with 90% suspended upon repayment of the demolition costs. The Specialist recommends that the sentence include repayment of the demolition costs and unpaid taxes.

Case No. 09-CRB-30563: 4082 East 79th Street

The city inspector issued a condemnation notice in July 2009 for the main structure on the property. The inspector noted 21 violations of City code, including missing sanitary, heating and electrical facilities; no provision for running water; failure to maintain the interior in a sanitary condition; weak, damaged, or cracked interior floors, failure to maintain the exterior in a weathertight condition; a damaged or missing entrance door; and a failing foundation. The inspector warned that the failure to comply with the notice and correct the conditions cited could result in the City's demolition of the structure, as the structure "constitutes an immediate hazard to human life and health." The inspector gave Defendant until August 9, 2009, to correct the violations. The City subsequently filed its complaint against Defendant, citing Defendant for failure to correct the twenty-one violations in the notice by August 12, 2009, as well as for failing to comply with the order of the Director of Building and Housing. The complaint alleges 22 counts, each for three days, totaling 66 offenses, and supporting a maximum fine of $156,000.

The house was subsequently demolished at the City's expense of approximately $6000, which Defendant has not repaid. Defendant also owes unpaid taxes on this property of approximately $2314.91.

The City recommends a fine of $10,000, with 90% suspended upon reimbursement to the City of the demolition costs. The Specialist recommends that the sentence be sufficient to cover repayment of the demolition costs and the unpaid taxes.

Case No. 09-CRB-37904: 3747 East 95th Street

In July 2009, the city inspector issued a condemnation notice for the main structure on the property. The inspector noted 24 violations of City code, including missing sanitary, heating and electrical facilities; no provision for running water; failure to maintain the interior in a sanitary condition; weak, damaged, or cracked interior floors; failure to maintain the exterior in a weathertight condition; a damaged or missing entrance door; and a failing foundation. The inspector warned that the failure to comply with the notice and correct the conditions cited could result in the City's demolition of the structure, as the structure "constitutes an immediate hazard to human life and health." The inspector gave Defendant until August 26, 2009, to correct the violations. The City subsequently filed its complaint against Defendant, citing Defendant for failure to correct the twenty-four violations in the notice by October 21, 2009, as well as for failing to comply with the order of the Director of Building and Housing. The complaint alleges 25 counts, each for 35 days, totaling 875 offenses, and supporting a maximum fine of $2,117,000.

The house subsequently was demolished at the City's expense of approximately $4489, which Defendant has not repaid. Defendant also owes unpaid taxes on this property of approximately $2919.49.

The City recommends a fine of $10,000, with 90% suspended upon reimbursement to the City of the demolition costs. The Specialist recommends that the sentence encompass repayment of the demolition costs and the unpaid taxes.

Case No. 09-CRB-44442: 9321 Benham

In September 2009, the city inspector issued a condemnation notice for the main structure at the property. The inspector noted ten violations of City code, including fire damage to the walls, roof, window units, door jambs, and building equipment. The inspector also cited Defendant for failing to maintain the treelawn, sidewalk and premises free of trash and debris, and for failing to secure a permit before making repairs. The inspector noted that the structure was 50% fire damaged. The inspector gave the Defendant until October 14, 2009 to correct the violations. The City subsequently filed its complaint against Defendant, citing Defendant for failure to correct the ten violations in the notice by November 5, 2009, as well as for failing to comply with the order of the Director of Building and Housing.

The complaint alleges 11 counts, each for 22 days, totaling 242 offenses, and supporting a maximum fine of $1,197,000.

The house was subsequently demolished at the City's expense of approximately $6700, which Defendant has not repaid. Defendant also owes unpaid taxes of approximately $4373.54.

The City recommends a fine of $10,000, with 90% suspended upon reimbursement to the City of the demolition costs. The Specialist recommends that the sentence encompass repayment of the demolition costs and the unpaid taxes.

Minor Misdemeanor Tickets

In the remaining three cases, the City issued minor misdemeanor tickets to Defendant. These minor misdemeanor cases carry a potential fine of $1000 each.

Case No. 09-CRB-04252: 11701 Farringdon

The City Health Department cited Defendant for failing to abate the nuisance of refuse, junk, garbage, or other debris in the garage and yard, in violation of CCO §209.01. The violation occurred on February 10, 2009.

Case No. 09-CRB-30178: 11701 Farringdon

The City Health Department also cited Defendant for violation of CCO §209.01, for the failure to abate the nuisance of refuse, junk, garbage, or other debris in the garage. This violation occurred on August 10, 2009.

Case No. 09-CRB-24969: 9117 Easton, Cleveland, Ohio

The City Health Department cited Defendant for placement of solid waste out for collection prior to 12:00 noon on the day preceding regular waste collection, in violation of CCO §551.04. The violation occurred on May 5, 2009.

Sentencing

Penalty:

The total maximum penalty in the ten cases presently before the Court is $11,948,000.[2]

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[2] The maximum penalty is calculated as follows: $**2,580,000** for the code violations in 08-CRB-42924; $532,000 for the code violations in 09-CRB-2474; $114,000 for the code violations in 09-CRB-23359; $5,249,000 for the code violations in 09-CRB-29344; $156,000 for the code violations in 09-CRB-30563; $2,117,000 for the code violations in 09-CRB-37904; $1,197,000 for the code violations in 09-CRB-44442; and $1000 each for the three minor misdemeanors in Case Nos. 09-CRB-04252, 09-CRB-24969, and 09-CRB-30178.

As offenses under the City's Housing Codes, all of the charges are strict liability offenses. Defendant entered a plea of no contest, thereby admitting the truth of the facts alleged in each complaint, and was found guilty on all charges.

Defendant is subject to organizational criminal liability pursuant to C.C.O. §601.10.[3] The Court is bound to impose enhanced organizational penalties on Defendant under C.C.O. §601.99(c) and R.C. §2929.31(A)(8)-(12), which provide maximum fines of $5000 for first-degree misdemeanors, $2000 for unclassified misdemeanors, and $1000 for minor misdemeanors.

In sentencing the Defendant, the Court is "guided by the overriding purposes of misdemeanor sentencing, [which]***are to protect the public from future crime by the offender and others and to punish the offender." R.C. §2929.21(A) Accordingly, this Court "consider[s] the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public." Id. Furthermore, the Court seeks to impose a sentence that is "commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar offenses committed by similar offenders." R.C. §2929.21(B). In sentencing a defendant for building or housing code violations, this Court considers these factors, along with other mitigating and aggravating factors.

Mitigating factors the Court considers include, but are not limited to: the abatement of the code violations through repair or demolition, either by the Defendant, or by a beneficial owner to whom the Defendant has transferred the property; the donation of the property to a consenting land bank or willing non-profit community group; and the defendant's rapid response to the violation notice.

Aggravating factors the Court considers include, but are not limited to: the seriousness and extent of the violations; the length of time the conditions were permitted to exist; the abatement of the conditions at the taxpayers' expense; the defendant's lack of a comprehensive property management plan; and the defendant's prior record in Housing Court.

Analysis:

Interstate is a private, for-profit corporation based in Gilbert, South Carolina that buys and sells real estate. Defendant's principals also own Paramount Land Holdings, LLC ("Paramount").[4]

Despite being cited and properly served, Defendant failed to appear in court in three of these cases, resulting in a finding of contempt in each and per diem fines of $450,000. Defendant has accrued $150,000 in per diem contempt fines in each of three cases (Case Nos. 08-CRB-42924, 09-CRB-02474, 09-CRB-04252); in each of those cases $112,000 has been ordered into civil judgment for collection. Defendant has not paid these outstanding penalties.

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[3] C.C.O. §601.10 mirrors R.C. §2901.23. See also C.C.O. §3103.99(c).

[4] Paramount is also before this court on sentencing for similar violations.

Defendant eventually did appear through counsel and pled no contest to the charges in all ten cases. At the sentencing hearing, no officer or other representative of Defendant appeared; Defendant appeared through counsel, and, in concert with its sister company, Paramount, informed the Court that it can contribute no more than $100,000 towards the resolution of *both* companies' property violations in Cleveland. Defendant urged the Court to determine whether that money should be spent on repayment of demolition costs, back taxes, or fines.

Without even considering the issue of fines, Defendant's existing obligations are significant. So far, the demolition costs in these cases total nearly $35,000, and the unpaid taxes are in excess of $26,500. Paramount owes the City $9,201 for demolition and $5,014.73 in back property taxes, board-up fees and grass-cutting on the 9222 Miles Park property alone.[5] Defendant also owes contempt fines of $450,000 with regard to these cases, while Paramount owes $579,000 for its contempt. Altogether, this amounts to approximately $1,104,108—far in excess of the $100,000 that Defendant and Paramount have together offered to resolve both sets of cases. Rehabilitation—whether it has or might occur—is an important part of any sentencing decision. And while Defendant's offer to pay $100,000 towards its obligations might at first glance seem to be evidence that it has changed or is willing to change its ways, a weighing of this offer against the sum of Defendant's total obligations reveals the extent of its insufficiency.

The Court presented Defendant with an opportunity to present mitigating factors to counter the aggravating factors discussed herein. Defendant's response was to inform the Court (without any substantiation or documentation) that it, together with Paramount, is in a difficult financial situation and can offer $100,000 towards resolving the conditions with its (and Paramount's) properties. Defendant then asked the Court determine how that money should be applied. This Court is neither in a position, nor, for that matter, inclined, to assist Defendant in choosing the legal obligations with which it should comply—the payment of taxes, restitution to the City, or payment of criminal fines. As noted above, Defendant's legal obligations (independent of the sentences imposed by this order) far exceed its "offer."

Defendant has provided no mitigating factors for the Court to weigh in determining its sentence. Defendant has not attempted to abate or resolve the nuisance conditions at any of its properties.[6] Nor has Defendant offered any sort of property management plan. Defendant has not donated any of these properties to a party willing to abate the violation through demolition, nor has it conveyed any of these properties to a beneficial owner willing and able to fix them up. Defendant's response to the conditions and violations on its properties has been the polar opposite of prompt: it has been non-existent. And Defendant's allegation of its financial straits—without any

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[5] The Court references Paramount and its outstanding obligations in this context because Defendant has chosen to treat its cases and those of Paramount as one for the purpose of its global offer of $100,000.

[6] In the few cases where the nuisance has been abated, it was on the City's initiative and at the taxpayers' expense.

supporting documentation—is insufficient to lead this Court to conclude that Defendant is failing financially. In sum, there are no mitigating factors for the Court to consider.

Aggravating factors, however, abound. Defendant's conduct in owning properties and failing to maintain them is a significant aggravating factor. This conduct has negatively impacted both the neighborhoods in which Defendant's properties are located and the City as a whole. There is little question that deteriorated properties decrease property values and invite crime. "If a window in a building is broken and is left unrepaired, all the rest of the windows will soon be broken. This is as true in nice neighborhoods as in rundown ones. Window-breaking does not necessarily occur on a large scale because some areas are inhabited by determined window-breakers whereas others are populated by window-lovers; rather, one unrepaired broken window is a signal that no one cares, and so breaking more windows costs nothing."[7] Neglected properties—like Defendant's—send the same signal as the broken window.

The ten cases at issue involve nine pieces of real property, distributed throughout the City of Cleveland. The seven extended violation cases all involve serious deterioration of the property. The Court heard from the Housing Specialist assigned to these cases that Defendant's properties remain in substandard condition. One property in particular, 3522 East 80th Street (the subject of 09-CRB-23359), was described not just as being open, vacant and vandalized, but as the "worst house on the street." Neighbors have had to contend with these nuisance conditions for an extended period of time. In some instances, the City has demolished the properties, thereby relieving the affected neighborhoods of the immediate danger and nuisance created by these properties. In others, the properties were still standing as of April 2010, with violations unresolved and conditions unabated.

In addition to sending a negative message about the neighborhood, such properties pose an immediate threat to the health and well-being of the community. Cleveland's City Council has found that vacant and open properties are a hazard in that they "[a]ttract children to enter; [b]ecome harborage for vermin; [s]erve as temporary abode for derelicts, vagrants and criminals; and [a]re likely to be damaged by vandals or set ablaze by arsonists." C.C.O. §3103.09(a). Additionally, Council has found that "[s]tructures that are vacant and open to entry, [and properties featuring] high grass, weeds, junk, debris, and junk motor vehicles depress the market value of surrounding properties." Id. But boarding properties is not a permanent solution, either, as Council has found that "[s]tructures that remain boarded for an extended period of time contribute to blight, cause a decrease in neighboring property values, create targets for arson, and lead to the cancellation of homeowners' insurance for neighboring property owners." Id. Boarding properties moreover, is a temporary measure: once the required permit is issued for boarding, the owner must apply for a rehabilitation permit with 30 days and begin rehabilitation within 30 days of receiving the rehabilitation permit. C.C.O. §3103.09(c)(1), (4).

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[7] George L. Kelling and James Q. Wilson, *Atlantic Monthly,* March, 1982, available at http://www.theatlantic.com/doc/198203/broken-windows.

Defendant's conduct, not only in failing to maintain its properties, but in failing to appear in Court and in shifting the costs of its behavior to the citizens of Cleveland, is a clear indication to the Court that Defendant's conduct must change if it is to continue in this line of business. As a business entity, Defendant's purpose and primary motivation is to generate profit. So long as it is profitable to Defendant to neglect its properties, there can be no reasonable expectation that Defendant's behavior will change. The fine imposed on Defendant must be a sufficient deterrent; it must shift the cost equation to incentivize Defendant—and others—to maintain, rather than neglect, properties located within the City of Cleveland.

The Defendant, through counsel, offered no evidence of any plan for managing its Cleveland properties, responding to violation notices, or achieving compliance with City code. It appears that Defendant purchased properties in Cleveland with no thought of how those properties would be brought up to code, and managed until such time as they are. Defendant's difficulties in management are exacerbated by the distance from which Defendant performs these tasks; Defendant has not identified any local property management agent who monitors the properties, ensures that debris is removed, or makes certain the properties are secured.

These factors speak loudly to the Court of the need to change Defendant's behavior as a property owner and manager. The Court considers it irresponsible for an investor-owner, such as Defendant, to purchase property if the investor-owner is not able to make necessary repairs. In particular, an investor-owner has the duty to inspect his or her property to determine if the property needs to be repaired. By taking ownership, the investor-owner *accepts the risk* that the property may need repairs which the owner did not directly foresee. It is the essence of responsible ownership to plan for contingencies, including the need to make substantial repairs that an owner may not immediately expect to have to make.

The Court considers the timeliness of repairs to be a mitigating or aggravating factor when imposing a penalty. The Court is mindful that an owner directly profits from deferring repairs. A responsible owner pays for repairs when they are needed, accepting the cost of funds. An irresponsible owner defers repairs so that he or she can save on the cost of funds. Where appropriate, the Court will consider executing on a sentence in proportion to the benefit the owner realized from deferring repairs. The Court refuses to accept that owners may consider its criminal penalties to be merely the cost of doing business. Instead, the Court's penalties must be sufficient to serve as a deterrent to delay. The Court's hope is that every attorney, contractor or lender will strongly advise owners with code violations to repair them immediately rather than risk the penalties that will come after delay. Here, however, Defendant has not just delayed its efforts, it has failed to make any effort at all. If Defendant's practices do not change, it is clear that Defendant's victimization of Cleveland neighborhoods will continue.

Defendant's failure to provide any documentation of its alleged financial straits makes it impossible to determine the amount of a fine that will serve as a deterrent. It is also no excuse for Defendant's conduct. Planning for repairs is primarily a financial question. A responsible owner may accumulate cash reserves to cover repairs, may open

a line of credit or may borrow against the equity in the subject property. The Court will not consider as a mitigating factor the owner's cost of funds or trouble obtaining credit. An investor knows that the he or she may need to pay for repairs. If an investor cannot obtain credit or cannot afford to borrow, the investor should not be in the business of owning property.

Defendant's sentencing "offer" leads the Court to believe that the proposed $100,000 sum—spread across multiple violations, cases and defendants—provides an insufficient deterrent both to this and to other defendants who would choose to ignore their responsibilities as property owners in the City of Cleveland.

Not only has Defendant's conduct posed a threat to neighbors and negatively impacted nearby property values, it has also caused the City to incur significant demolition expenses, which to this point have been borne by the taxpayers. The children in the Cleveland public schools have suffered from Defendant's conduct as well: Defendant's failure to pay its property taxes impacts school budgets. Neighbors too have borne a burden—not just from the dangers posed by vacant and neglected property on their street, but also in the form of decreased property values. The Court is mindful, then, that Defendant's sentence must encompass these impacts in addition to providing for punishment and deterrence.

Defendant's response to the actions in this Court is a further source of concern. Several of the cases against Defendant involve extended periods of non-compliance—21 days, 28 days, 35 days, 85 days, 215 days. Even where Defendant was charged with relatively few days out of compliance, the evidence indicates that Defendant ignored the violation notices and the charges against it for an extended period of time. After failing to appear in Court, receiving extensive additional notices, and being found in contempt, Defendant still failed to appear, accruing in the process substantial per diem contempt fines—which it has failed to pay. Defendant's only effort to make the situation right is its offer to spend $100,000, but not more. Defendant would, it seems, like to buy its way out of complying with its legal obligations.

Recommendation

The City has recommended that the Court impose a total fine of $140,000, but provide Defendant with an opportunity to seek suspension of a significant percentage of the fines upon showing that it repaid the City's demolition costs or otherwise addressed the code violations at each property. Though the City has not stated the basis for this recommendation, the Court understands that the City's general policy is to recommend fines sufficient to motivate defendants to address code violations to avoid having the full fine imposed. The fine thus coerces compliance. The unsuspended portion of the fine serves as a punishment imposed on the defendant for failing to comply with code requirements in a timely manner. Using this principle, the City's prosecutors make a specific recommendation in each case. This specific recommendation may be based on factors such as the number of rental units at a property, or the counts brought against a restaurant by a public health inspector or the cost of demolishing a condemned property.

This Court has embraced, and continues to embrace, the structure of such sentences. The Court's overarching objective is compliance. The Court is dismayed, however, that the City appears to use the same formula in all cases, rather than tailoring recommendations to fit particular defendants and particular scenarios. Sentencing guidelines have their place. But while uniform approaches work well for standard scenarios, they often fail when applied to outliers. These outliers require a customized approach to make the punishment fit the crime.

In these cases, the City's recommendation of $140,000 is less than one tenth of one percent of the maximum fine. It represents an average of $14,000 per case—which might be sufficient to motivate a typical defendant to repair or demolish a given property. If 10% of the fine were ultimately imposed, this $14,000 would represent $1400 per case. Defendant's neglect has lasted years, however, not months or weeks or days. A fine of $1400 per case represents a monthly cost of $117, which, for this Defendant is but a minor cost of doing business. The Court is left to wonder, if Defendant's conduct merits just *one tenth of one percent* of the potential penalty, what might the City consider worthy of the maximum fine?

The City's sentencing standards do not fit this Defendant or other defendants who are in the for-profit business of buying and selling distressed property without any intention of repairing it. The City's prosecutors must recalibrate their sentencing standards to match the crisis that the City is facing. Thankfully, the City's ordinances, as well as the state sentencing statutes, provide for fines sufficient to address these particular situations.

There should be no neglected property in Cleveland's neighborhoods. Children should not walk to school past vacant boarded houses. Working families should not struggle to pay their mortgages only to have the value of their homes decline because companies like Defendant neglect adjoining or nearby properties. Property neglect is always a serious matter with far reaching consequences. It is all the more serious when engaged in as part of a business model apparently designed to extract every ounce of value from a property while dumping the costs on the neighbors and on the citizens as a whole. If Defendant's penalty is little more than the cost of compliance, what incentive is there to comply? A fine of $140,000 with the majority suspended—while perhaps appropriate for a typical defendant—is demeaning to the seriousness of the Defendant's conduct, and therefore at odds with the purposes of misdemeanor sentencing. R.C. §2929.21(B).

Sentence

Defendant has not provided any evidence suggesting that its failure to maintain its properties in compliance with City ordinances was anything other than its usual business practice. Defendant's (and the City's) proposed sentences would allow Defendant to treat its neglect of its properties and the laws of the City as a mere cost of doing business and send the message to others that they too may benefit from wholesale disregard for the laws of the City. The Court's sentence of the maximum potential penalty is imposed to make disregard of the City's laws more than just a cost of doing business.

Consideration of the overriding purposes of misdemeanor sentencing, along with the specific additional mitigating and aggravating factors set forth above, leads the Court to conclude that the imposition of the maximum potential fine is appropriate in each of these cases. The Court therefore imposes total fines of $11,948,000, assessed as follows:

- $**2,580,000** in Case No. 08-CRB-42924;
- $532,000 in Case No. 09-CRB-2474;
- $114,000 in Case No. 09-CRB-23359;
- $5,249,000 in Case No. 09-CRB-29344;
- $156,000 in Case No. 09-CRB-30563;
- $2,117,000 in Case No. 09-CRB-37904;
- $1,197,000 in Case No. 09-CRB-44442;
- $1,000 in Case No. 09-CRB-04252;
- $1,000 in Case No. 09-CRB-24969; and
- $1,000 in Case No. 09-CRB-30178.

The Court orders each fine into execution and grants Defendant **time to pay until July 19, 2010**. On that date, any unpaid fines will be ordered converted to civil judgment, and sent to collection.

The Court understands that this fine is substantial. The Court has imposed large fines before, but admittedly not in this amount. The Court is also aware that imposing the maximum fine on Defendant might be viewed as a departure from its regular approach, and that misdemeanor sentencing principles call for "consisten[cy] with sentences imposed for similar offenses committed by similar offenders." R.C. §2929.21(B). While Defendant's properties might look similar to those of other offenders, however, Defendant's behavior and circumstances are unique aggravating.

Keeping in line with its overarching goal of achieving compliance with City codes, the Court has always been willing to impose reduced fines where defendants have shown even the slightest inclination to remedy conditions or to develop a plan for future management of their properties. But Defendant has not made any effort to address the problem it has caused and allowed to continue. Defendant's callous "offer" to the Court, along with its failure to send a representative (other than local counsel, hired over the internet) to engage in the problem-solving process, shows a complete lack of contrition. Defendant refused to acknowledge any wrongdoing, and has provided no indication to the Court that it plans on conducting its business differently in the future. Defendant has not even attempted to justify its conduct. It ignored its obligations, ignored the City's violation notices, and ignored the criminal cases filed against it. When it did finally respond, it merely sent counsel and told the Court what it would pay to make the cases go away. The Court fears that absent the maximum penalty, Defendant will continue its practices, writing any lesser penalty off as a cost of doing business. The Court reminds Defendant that the fines imposed here conform with misdemeanor

sentencing requirements and are within the scope of what the legislative body has determined to be an appropriate penalty.

Despite Defendant's complete and total disregard for the laws—and the citizens—of the City of Cleveland, the Court remains committed to its problem-solving mission. Should Defendant change its behavior and resolve the aforementioned violations, the Court may consider mitigation. Using the mitigating factors discussed in this entry as a guide, Defendant may formulate a plan and execute it. Should Defendant make real and demonstrable progress toward abating the nuisance posed by its properties, Defendant may file a motion to mitigate its sentence. Defendant is advised not to waste its own and the Court's time, however, and so should be prepared to show real progress and significant changes in its behavior if it wishes the Court to seriously consider such a motion.

Raymond L. Pianka
Judge

This document incorporates two corrections to the original Sentencing Order made in the Nunc Pro Tunc Judgment Entry of June 21, 2010. The corrections, on pages 5 and 12, are noted in bold and underlined text. The original order incorporated typographical errors as to the amount of the sentence on 08-CRB-42924, listing it in these two places as $1,580,000. The proper amount, $2,580,000, was listed in the description of the counts on page 2 and is reflected in the total fine of $11,948,000.