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United States District Court,
N.D. Texas, Dallas Division.

Irma Jean JAMES and Terri Lary, Individually and as Members of a Class, Plaintiffs,
v.
CITY OF DALLAS, Texas, Defendant.

No. Civ.A. 3:98-CV-436-R.
|
Aug. 28, 2003.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BUCHMEYER, J.

***1** Plaintiffs, a class of owners of single-family residences in Dallas, Texas, bring suit against the City of Dallas (the "City") alleging Constitutional violations arising from inadequate notice prior to the demolition of such residences. On December 9, 2002, a bench trial was held on Plaintiffs' injunctive relief claims. Pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, the following findings of fact and conclusions of law are now made after the conclusion of the bench trial on the Class claims for injunctive relief.

I. BACKGROUND

On February 18, 1998, Plaintiffs filed suit against the City alleging violation of the due process clause of the Fourteenth Amendment and the unreasonable search and seizure provision of the Fourth Amendment (made applicable to the States through the Fourteenth Amendment). In November of that year, Plaintiffs moved for class certification. After this Court certified two classes, a 'race discrimination class' and a 'process class,' the Fifth Circuit, on interlocutory appeal, narrowed the scope of available injunctive relief and eliminated the race discrimination class. *James v. City of Dallas,* 254 F.3d 551 (5th Cir.2001) (the *"Opinion"*), *cert. denied,* 534 U.S. 1113 (Jan. 22, 2002). Pursuant to the *Opinion,* 254 F.3d at 561 n. 8, on remand, this Court modified the definition of the due process class (the "Class") to take into account the Fifth Circuit's decision in *Freeman v. City of Dallas,* 242 F.3d 642 (5th Cir.2001) (en banc). *James v. City of Dallas,* 2001 WL 31689715 (N.D.Tex. Nov. 22, 2002)*James v. City of Dallas,* 2001 WL 31689715 (N.D.Tex. Nov. 22, 2002) (remand opinion) (the *"Remand"); James v. City of Dallas,* No. 3:98-CV-0436, Order Amending Remand Opinion (N.D.Tex. Dec. 4, 2002).

After this Court's remand opinion, the Class is defined as:
Process Class [the "Class"]: a Rule 23(b)(2) class composed of all property owners who had a repairable single family structure demolished by the City of Dallas' Urban Rehabilitation Standards Board ("URSB") and the City demolished the structure without providing the property owner notice of the opportunity to contest the proposed demolition at a hearing prior to the issuance of the order causing the demolition. This class includes those owners who[se] structures were demolished pursuant to a default demolition order.

Remand, 2003 WL 31689715, at *7*Remand,* 2003 WL 31689715, at *7.

After consulting with the parties, this Court bifurcated the trial of this case, with the bench trial on the Class claims preceding the jury trial on named Plaintiffs' individual race discrimination claims.

II. FINDINGS OF FACT

NAMED PLAINTIFF (IRMA JEAN JAMES)

1. Irma Jean James ("James"), [1] an African-American female, owns the single-family residence at 2404 Alabama in Dallas, Texas. James purchased the home in 1969 and lived there with her four children until 1981. After she moved, two of her children continued living there until 1989 or 1990. The home was then used as a rental property until approximately 1991 or 1992.

***2** 2. After the property became vacant, James sought to repair it. She contacted a contractor and obtained a repair estimate of $15,000. As she did not have sufficient funds, she attempted to obtain a government grant to finance the proposed repairs. However, she did not succeed in obtaining the grant.

3. In late 1993 or early 1994, James received a phone call from a Mrs. Martinez expressing interest in purchasing the 2404

Alabama property. Mrs. Martinez stated that she had seen the property on the City's demolition list in the newspaper. The notice of default of repair order and demolition list, including 2404 Alabama had been published in the *Dallas Commercial Record* on September 27, 1993. James told Mrs. Martinez that she was planning to carry out some repairs to the property, and was not interested in its sale.

4. This phone call from a private party interested in purchasing the 2404 Alabama residence was the first notice James received that the City sought to demolish the property. Within several days of this call, James went to the offices of the URSB and spoke with the director of the URSB, Aquilla Allen ("Allen"). Allen responded by stating that it was too close to the demolition date for the URSB to do anything.

5. As she was unable to afford all of the repairs to the property, James attempted to beautify 2404 Alabama, by hiring someone to mow and maintain the grounds.

6. In early 1994, James learned that 2404 Alabama had been demolished. Her son had driven by the residence in order to show his daughter where he had grown up, and saw that it had been demolished. According to City records, the home at 2404 Alabama was demolished on February 16, 1994.

7. James *never* received notice, either written or oral, from the URSB or any other City entity of a URSB hearing regarding 2404 Alabama, and, consequently, did not appear at that hearing. James also neither received notice of the order issued by the URSB after the hearing, nor of her right to request a rehearing. Furthermore, James did not receive notice that she was in default of the URSB's repair order and that 2404 Alabama would be demolished.

8. The URSB's case file for 2404 Alabama contains unclaimed mail returned from an address of "926 Zeb Street" in Dallas. Neither James nor any of her relatives have ever resided on Zeb street. During the period at issue, James resided in Duncanville, Texas (a suburb of Dallas), and her name and address were listed in the phone book.

9. James did not appeal the URSB's demolition order "because [she] never received any orders that they was [sic] going to demolish it." [2] However, James did hire an attorney because, in her words "I owed-was paying a monthly payment, and the house was torn down, and I needed advice." [3] James continued making her monthly mortgage payments on the property after the property had been demolished. [4]

10. James has also been sued by the City for a demolition lien on another property, located on Metropolitan Street in Dallas. Neither James nor any of her relatives have ever owned a home on Metropolitan Street.

***3** 11. During the trial, James testified to the facts relating to the condition of 2404 Alabama, including the lack of notice given to her regarding the property's impending demolition. This Court finds James' testimony highly credible, and credits it in its entirety.

NAMED PLAINTIFF (TERRI LARY)

12. Terri Lary ("Lary") is a forty-one year old African-American female who lived for many years in a single-family residence located at 3902 Coolidge in Dallas. She lived in this home with other relatives, including her mother, grandmother, sister and son. After her mother passed away, Lary, with her brother and sister inherited the property. In addition to her shared interest as co-owner, Lary also had a life estate in the property.

13. On June 16, 1992 Lary attended a hearing of the City of Dallas' Urban Rehabilitation Standards Board (the "URSB" or "Board"). At the hearing, Lary provided the Board with her updated contact information, specifically her then current home address, home phone number, and work phone number. The Board informed Lary of areas in which the property at 3902 Coolidge was in violation of City housing standards, and ordered that the property be repaired or it would be subject to demolition.

14. In order to bring 3902 Coolidge into compliance, Lary hired a contractor and began making repairs. The property was painted, and various other repairs were carried out, including the installation of new carpet, kitchen flooring, a toilet, sink, hot water heater, doors, and windows. In addition to the repairs mandated by the URSB, Lary sought to make other repairs to the inside of the property, because she "wanted the house to be more livable." [5]

15. During periodic visits to the property, City inspectors noted that repairs were progressing on 3902 Coolidge. Specifically, between December 31, 1992 and July 13, 1993, the City inspectors made the following notations in the URSB case file for 3902 Coolidge:

12-31-92 Appears that work is in progress. Pickup in the driveway....

4-22-92	House appears to be repaired. Left message for owner to call me....
5-03-93	House painted inside and out except small area in back, windows repaired, plumbing and elect[ricity] repaired, floor in bedroom needs to be repaired, replace some screens, porch cracked
6-16-93	... repairs in progress.
7-13-93	Occupied progres[s] on repairs / premise clean ... [6]

16. While making the repairs, Lary received her mail at P.O. Box 150656, Dallas, TX 75315-0656. [7] Lary picked up and signed for any certified mail she received at this post office box. Lary also left her home number and work number with Allen to inform the URSB that she was in the process of having the property repaired.

***4** 17. Subsequently, in late 1993 or 1994, vandals damaged 3902 Coolidge, breaking its windows, and taking its doors and hot water heater.

18. Sometime in August 1995, one day while Lary was at the grocery store, she learned from a friend that 3902 Coolidge had been demolished. Lary's friend asked her, "why did [she] spend the money and have the house repaired just to have the City tear it down." [8]

19. Between June 16, 1992, the date of the URSB hearing, and July 1995, when the residence at 3902 was demolished, Lary never received any written notice from URSB or any other City entity informing her that she was in default of the URSB's order to repair and that the building was to be demolished. Lary, likewise, never received a phone call from the URSB or any other City entity informing her that 3902 was in default of the repair order and would be demolished.

20. Instead of mailing notice to her correct post office box or the mailing address she had given at the URSB hearing, the City repeatedly mailed documents to an erroneous zip + 5 address: "P.O. Box 150656, Dallas, TX 75315-50565," despite the fact that proper zip codes are zip + 4. The City's certified mailings to this address all returned unclaimed.

21. Lary testified, that had she received notice of the impending demolition of her property, she likely would have sought a hearing or other relief in order to request additional time to make the repairs.

22. After 3902 Coolidge was demolished, Lary did receive the bill from the City for the demolition expenses. *This bill was mailed to her correct post office box address.* The City also placed a lien on 3902 Coolidge for the cost of the demolition.

23. Lary filed an administrative claim with the City; the claim was denied.

24. During the trial, Lary testified to the facts relating to the condition of 3902 Coolidge, including the URSB hearing, her attempts to repair the property, and the lack of notice given to her of the property's impending demolition. This Court find Lary's testimony highly credible, and credits it in its entirety.

OTHER CLASS MEMBERS

25. The Class consists of the owners of approximately 500 single-family residences which were demolished (the "Class properties") between 1992 and 1996 (the "Period"). [9]

26. Don Warren ("Warren"), a statistician testifying as an expert for the City, examined the tables summarizing the Class member demolition and notice data which were prepared and offered into evidence by Plaintiffs. Reviewing the data in its electronic spreadsheet form, Warren located several instances of "plugged values," *i.e.,* cells in the spreadsheet in which the data appears to have been manually inserted rather than resulting from a calculation pursuant to a mathematical formula. Plaintiffs' stipulated that the summary tables do contain several such plugged values; Warren located

approximately one dozen such instances. The Court finds Warren's testimony credible. However, given the thousands of cells in the spreadsheets, and the likelihood of gaps in any data set of such size and complexity, the one dozen instances of demonstrated plugged values does not materially lessen the credibility or reliability of the summaries prepared by Plaintiffs. Moreover, the original source for Plaintiffs' data was the files of the City.

***5** 27. The Class contains numerous examples of single-family residences which were demolished without providing notice to the owners during the period between 1992 and 1996 (the "Period"), even though the City had additional contact information, other than the vacant residence, in the URSB files. These include, by way of example:

28. The URSB file for the residence at 638 Ella contains a note from a phone message stating, "mail correspondence to Refugio Gutierrez, 4844 Eastside, Dallas, TX 75214." Nevertheless, the City did not use this address and continued to send notices only to the vacant residence. [10]

29. The URSB file for the residence at 2010 Fernwood contains information that the owner was deceased, the property had passed on to his heirs, all of whom had acknowledged receipt of certified mail from the URSB in 1989. However, the Notice of Hearing, Order of Repair or Correction, and Notice of Demolition were sent only to the deceased's vacant home. [11]

30. The URSB file for 2330 Britton contains the address 1214 Forrestbrook, in DeSoto, Texas. This address is located on the deed to the property. Nevertheless, the City mailed its notices only to the vacant address. [12]

31. The URSB file for 1427 Fairview Lane contains the owner's updated address, 4512 Santa Barbara, on a signed return receipt for certified mail. Nevertheless the City continued to mail notices to a prior address of the owner. As the owner stated in his administrative complaint, he:

> had no knowledge of planned demolition and became aware of the demolition on or about August 12, 1994 when a workman sent to the property to make repairs informed claimant that the structure was gone. City's notices were sent to an address that City knew, or should have known, was incorrect. City had claimant's valid address in its files, yet sen[t] notices to the wrong address. [13]

32. The URSB file for the property at 1249 Exeter Avenue shows that the City repeatedly mailed the notices to the correct street address, but the wrong zip code (75216 rather than the correct 75232). The correct zip code is contained in the file. [14]

URSB NOTICE PRACTICE AND THE DALLAS CITY CODE

33. The URSB's nonchalant attitude towards providing effective notice was rooted in a practice of relying on notice by publication.

34. The general notice provision of the Dallas City Code, valid during the Period, states that:

> The director [of the URSB] *shall give notice* of a hearing to consider repair, demolition or receivership of a structure, or the assessment of a civil penalty against the owner, to the owner or owners, lessor, and occupant of the structure, and any mortgagee or lienholder of record of the real property concerned. [15]

35. The Code also provides that if the notice is received by an owner (or other party to whom notice is due) less than 5 days prior to the hearing, "the person shall, upon request at the hearing, receive a resetting of the hearing." [16]

***6** 36. The key provision, however, is § 27-13(j) which provides the method of notice. It states:

> Except for written notice of a rescheduled hearing served to a person attending the original setting of a hearing, the director

> [of the URSB] shall serve notice required by this section by certified United States mail, return receipt requested, sent to the last known address of the person being notified. If the certified mail is returned undelivered, the director may serve notice personally if the person to be notified can be found within Dallas County. *If notice sent to an owner is returned undeliverable, and after a diligent search, the director is unable to discover a correct address for the owner or is unable to serve the owner personally, then the director shall give notice by publication of the order once in the official newspaper of the city at least five days before the hearing.* [17]

In other words, if an initial attempt at notice by certified mail is returned undelivered, the director of the URSB is required to conduct a "diligent search" prior to resorting to notice by publication.

37. This case contains a great deal of evidence of certified mail sent to vacant addresses and other addresses which was returned as undeliverable. However, this Court has not seen *any* evidence of anything approaching a *"diligent search"* on the part of the URSB. Instead of a diligent search for accurate or updated address information, the URSB manifested a cavalier attitude towards notice. The City has routinely ignored information contained in its files and sought to remedy any defects in notice through an over reliance on the presumed panacea of notice by publication.

38. This URSB practice of over reliance on notice by publication was detailed during the deposition of Allen, the director of the URSB during the Period.

39. Allen first explained the URSB's general practice of providing notice to the owner of a residence:
Q: Once ... the Board decides to take an action that requires notice ... how is that notice given to the owner?

A: Certified mail and publication.

Q: What do you mean by "certified mail"?

A: We send it out certified mail, requesting a green card, return receipt.

Q: And what do you mean by "publication"?

A: It's publicized in the City's official newspaper.

...

Q: Okay. What is that newspaper?

A: Now it's the *Daily Commercial Record.* [18]

40. Allen then outlined the URSB's practice of essentially ignoring any information which is contained on the certified mail return receipts. Although there was an occasional attempt to check the tax rolls, the prevalent practice was to simply "file" any response which came back, rather than diligently seeking to update or locate a valid address based on the mail responses or other available sources.
Q: Okay. When the green card [the certified mail return receipt] comes back, what does the Board do with it?

***7** A: Well, the staff just places it in the file.

Q: Do you have any policy or practice that you follow depending on what's on that green card?

A: I don't follow your question.

Q: Assume the green card comes back and there's a signature on it by a person other than the owner.

A: Uh-huh.

Q: Do you have any policy or practice about what you do in that circumstance?

A: No. If it's-if we have an address and a name and it's signed by being sent to that address, we don't do anything.

Q: Okay. What do you do if the entire envelope comes back marked "unclaimed" or something -

A: We again place it in the file.

Q: *Do you take any other action to find another address for the owner?*

A: *No. If it comes back unclaimed, that signals to us that it is a good address, they just chose not to pick up their mail.*

Q: Okay. What if it comes back and it's a forwarding notice expired, what do you do?

A: We will look to see if there's anything different on the tax rolls. If not, we just place it in the file.

Q: And if you place it in the file, that means the hearing proceeds?

A: That's correct.

Q: What's is the Board's and staff's procedure for notice when it is clear from the file that the actual property is vacant at the time you're considering the case and that is the only address you have for the owner?

A: We follow the same procedures whether it's vacant or occupied ... [19]

41. Allen also addressed the question of notice by publication, describing an unquestioned reliance on publication to cure any defects in prior notice. This reliance on notice by publication was despite the fact that Allen, herself the director of the URSB, was of the opinion that the owners of homes facing demolition were unlikely to read the *Dallas Commercial Record.* Allen stated:
Q: On the notice issue, are all cases that are sent to the Board the subject of publication?

A: Yes. Once it gets to the Board?

Q: Yes.

A: Yes.

Q: Is it your theory that that should cure any problems with actual notice to the person?

A: It's just a practice that was in place when I got there, and we continued it.

Q: Do you have any reason for continuing it?

A: No, other than, you know it-some of our mail comes back at different points in the process, so to assure that, you know-I never-well, we send the mail out an extended period of time before, but the Postal Service at different points returns the mail. So I always just make sure we advertise as well.

Q: Do you know what the readership is of the *Daily Commercial Record?*

A: I have no idea.

Q: Okay. Do you think that there are many people who are-have home properties that are subject to proceedings before th Board who actually subscribe to the *Daily Commercial Record?*

A: My personal opinion?

Q: Yes, ma'am.

A: No. [20]

42. Allen also testified, in a prior case before this Court, that the URSB never attempted to use the option of personal service which was also allowed under the notice provisions of the Code. *See* § 27-13(j) quoted *infra.* She stated:
***8** Q: Ms. Allen, when you were the URSB administrator, were you responsible for providing notice of the hearings and URSB orders to the homeowners?

A: Yes, I have a staff that had that function.

Q: What efforts did you make to get personal service when a notice of a hearing was returned undelivered?

A: We did not attempt personal service. We only publicized in a local newspaper.

Q: Did you ever attempt personal service if a notice of an order-or notice of a default order came back undelivered?

A: No, we did not. [21]

REMEDIAL EFFORTS BY THE CITY
43. Since the inception of this litigation in 1998, the City has substantially amended the provisions in the Code governing

the notice procedures to be used by the URSB relating to residences which are subject to possible repair or demolition orders. [22] The current provisions of the code mandate:

44. At least 10 days prior to a hearing, notice is to be provided to the owner(s) of a property by certified mail return receipt requested, publication, and posting (to unknown owners near the front door of the property). [23]

45. After a hearing, the URSB is to provide notice of its order by certified mail return receipt requested, publication and filing of the order in the county deed records. [24]

46. If the director of the URSB determines than an owner has not complied with a URSB repair or demolition order, notice is to be provided by certified mail return receipt requested, publication, and posting (to unknown owners near the front door of the property). [25]

47. The Code now includes a best efforts notice provision which states that, in providing notice, "the director [of the URSB]'s best efforts must be used to determine the identity and address of any owner, lienholder, or mortgagee of the affected structure." The provision also states that the best efforts requirement is satisfied if the director searches (1) the county real property records, (2) appraisal district records, (3) records of the secretary of state, (4) assumed name records, (5) tax records of the city, and (6) utility records of the city. [26] Best efforts, apparently, does not require the URSB to examine the contents of its own case file.

48. Lastly, the Code includes a provision, no doubt convenient from the perspective of the City, which states that, if a URSB notice is returned as 'refused' or 'unclaimed,' "the validity of the notice is not affected, and the notice will be deemed as delivered." [27]

49. The City has also appointed new leadership of the URSB. Terri Wayne Kinsworthy ("Kinsworthy"), acting administrator of the URSB since July 2001, testified during the trial that current URSB practice is to provide notice as stated in the Code. [28]

50. Kinsworthy was not the director of the URSB, or even an employee of the City, during the Period. Nor has Kinsworthy done research on or had discussions with prior URSB Board members regarding the practices of the URSB during the Period, or the extent to which those practices may have been inconsistent with the Code. [29]

***9** 51. The Court finds Kinsworthy's testimony credible as it relates to current URSB practice and to his lack of knowledge regarding prior URSB practice.

52. The Dallas City Council (the "City Council") has also endeavored to remove many of the demolition liens and demolition debts contained in public records relating to the Class properties. The City Council has passed three resolutions, specifically referencing this case, which order the release of demolition liens on many of the Class properties. [30] The most recent of these resolutions was passed two days *after* the trial in this case, and has been admitted into evidence by subsequent Order of this Court. These resolutions direct the City Manager "to file lien releases in the public deed records," and "to cease any effort to enforce ... the demolition liens or to collect the debts resulting from those liens, or to use the lien or debt to prejudice the personal or property rights of the property owners involved in the lawsuit styled, *James v. City of Dallas,* Cause No. 3:98-CV-0436-R." [31]

53. Jerry Blake ("Blake"), the Supervisor of the City's Special Collections Duty, the department which collects payments due for demolition liens (as well as other types of liens and fees), testified at the trial and introduced records from his department which purport to show that the City is no longer seeking payment of, and maintains a zero balance due for, the liens the City had imposed with respect to many of the Class properties. [32]

54. The Court finds Blake's testimony credible with respect to his knowledge of records maintained by the City's Special Collections Duty.

55. In addition, Cindy Kissner ("Kissner"), a title researcher employed by the URSB, testified regarding title searches which she carried out on some of the Class properties in order to determine the existence and status of any demolition liens, orders or related matters on file with the County Clerk of Dallas County.

56. Although this case has been litigated for over 5 years, Kissner did not begin the title searches until the week before trial.

57. Kissner carried out title searches on only a small percentage (approximately 10%) of the Class properties. She testified that she completed searches on approximately 50 properties (38 in one group and 12 in another group), and found that the demolition liens had been released on some, but not all, of the properties she examined. [33] In her limited search of these properties, she "found nine good properties ... meaning that [the] owner name matched the actual lien name filed, and there was a lien that need to be released." [34]

58. When asked to estimate, based on her title research, the number of properties for which the demolition liens had not yet been released, Kissner stated:
Q: Of the five hundred eighty some odd [demolition] liens potentially that were in your universe so to speak, how many might the City have not released at most?

***10** A: Could you repeat that one more time?

Q: How many liens does the City have as far as trying to release them?

A: *I have not looked at all five hundred eighty yet. Based on the ones that I have looked at, my report, I show half of them were released. The other report, I show maybe a third had been released.* [35]

In other words, according to the City's title researcher, approximately 170 to 250 of the demolition liens have yet to be released.

59. In the small sample she examined, Kissner appears to have terminated her title search on a particular property if she discovered a change in ownership of that property. Demolition liens, however, as Kissner admitted on cross-examination, run with the land and are thus unaffected by changes in ownership.

60. The Court finds Kissner's testimony with respect to the title searches she conducted, and her estimate of the percentage of cases which have not yet had their liens released, highly credible.

61. In light of the testimony adduced at trial, and after reviewing the copious documentary evidence submitted by the parties, this Court concludes that there are liens as well as indicia of debt which have not been released from the public records of the Class properties.

62. If any of the foregoing Findings of Fact may be more properly deemed Conclusions of Law, they are hereby incorporated by reference into the Conclusions of Law.

III. CONCLUSIONS OF LAW

1. In the instant action, the Class seeks injunctive relief from the City. Specifically, the Class seeks a permanent injunction requiring the City to:

> (1) cancel the debt assessed for demolition costs and associated fees/ interest and file notice in the public deed record that the debt was cancelled; (2) file a release of the lien in the public records, (3) ensure that title is clear on the property; (4) ensure that all City records concerning the property show the debt cancelled, (5) refrain from taking any steps to enforce the lien or collect the debt, (6) refrain from foreclosures based on demolition liens, and (7) refrain from retaliatory action such as refusing to issue building permits.

Opinion, 254 F.3d at 564 n. 10; *see also plaintiff's Fourth Amended Complaint, ¶ 26.* Other forms of injunctive relief originally sought by the Class were eliminated by the Fifth Circuit in the *Opinion.* *Id.,* 254 F.3d at 564-565, 568 n. 20.

2. This Court will not now entertain the City's assertions that the Class in this case should not have been certified. After being litigated, the Class and the race discrimination class were both certified by this Court. *James v. City of Dallas,* 2000 WL 370670 (N.D.Tex. Apr. 11, 2000). Certification of the Class was subsequently upheld by the Fifth Circuit. *Opinion,* 254 F.3d at 569-73. On remand, pursuant to the instructions of the Fifth Circuit, the Class definition was slightly modified. Now, after remand and trial of the Class claims, is certainly not the time to revisit the class certification decision, even were this Court inclined to do so.

STANDING

***11** 3. As an preliminary matter, this Court rejects the City's assertions that the Class lacks standing. "Standing is a jurisdictional requirement that focuses on the party seeking to get his or her complaint before a federal court and not on the issues he or she wishes to have adjudicated." *Opinion,* 254 F.3d at 562; *see also* *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.,* 528 U.S. 167, 191 (2001) ("Standing doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake."); *Lujan v. Defenders of Wildlife,* 504 U.S., 555, 560-561 (1990). In the *Opinion,* the Fifth Circuit addressed the issue of standing in this case, and held that each of the remaining seven forms of injunctive relief satisfied the four part test for standing for a class, namely, (1) "injury in fact," (2) "causal connection between the injury and the conduct complained of," (3) redressability, and (4) likelihood of "future injury ... and that the sought-after relief will prevent that future injury." *Id.* The slight modification made in the class definition in the *Remand* does not alter this analysis.

MOOTNESS

4. This Court rejects the City's assertions that the Class claims are now moot. As the Supreme Court stated in *Friends of the Earth:*

> It is well settled that a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice. If it did, the courts would be compelled to leave the defendant ... free to return to his old ways. In accordance with this principle the standard we have announced for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: *A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.* The heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness.

528 U.S. at 189 (emphasis added) (citations and internal quotation marks omitted); *see also* *Buckhannon Bd. and Care Home, Inc. v. W. Va. Dept. of Health and Human Resources,* 532 U.S. 598, at 609 (2001). In *Friends of the Earth,* the Supreme Court held that a case against a corporation which had unlawfully discharged pollutants into a river was not necessarily mooted by the fact that the corporation had come into compliance with permit requirements and subsequently closed, dismantled and sold the factory which had been the source of the pollutants. Mootness, the Court held would be proper "only if one or the other of these events made it absolutely clear that Laidlaw's permit violations could not reasonably be expected to recur." *Friends of the Earth,* 528 U.S. at 193. A district court must consider the facts in light of the stringent standard and heavy burden placed upon the party asserting mootness.

***12** 5. In this case, the City, presumably motivated at least in part by a desire to resolve this long-running litigation, has indeed taken significant steps to end the URSB practices which had led to the charges of inadequate notice brought by the Class. The City, *inter alia,* has amended the Code, passed multiple resolutions attempting to release liens related to the wrongful demolitions, and changed the leadership of the URSB. However, the City's actions, while certainly steps in the right direction, fail to establish mootness. A few examples culled from the evidence serve to demonstrate the City's failure to meet the 'absolutely clear that there is no reasonable expectation of recurrence' standard. The City's own title researcher testified that she had not yet completed her title searches, and from her incomplete sample it appeared that many of the demolition liens on Class properties have yet to be released. Furthermore, while there is evidence that many of the debts assessed for demolitions have been cancelled, there is little evidence suggesting that notice of such cancellation has been filed in the public records. Indeed, even the City's closing brief states that "in *nearly* every instance raised by the plaintiffs the demolition liens have been released."[36] Even were this statement true, which the Court doubts, mootness is not akin to a game of horseshoes where one gets points for being close to the target; the City must meet the stringent standard of making it 'absolutely clear that there

is no reasonable expectation of recurrence' of the wrongful behavior.

6. Failure to remedy with proper dispatch the consequences of prior unlawful action impacts an assessment of a party's likelihood of such action recurring in the future. Considering all of the evidence, this Court does not view it to be "absolutely clear" that the City's prior wrongful conduct relating to inadequate notice of URSB hearings and demolitions cannot be reasonably expected to recur. Accordingly, this Court holds that the Class claims are not moot.

SECTION 1983

7. As a final threshold matter, this Court concludes that liability under § 1983 may be imposed on the City for the actions of the URSB. Liability may not be imposed on a municipality on a theory of *respondeat superior.* *Piotrowski v. City of Houston,* 237 F.3d 567, 578 (5th Cir.2001). Instead, municipal liability requires proof of three elements: (1) a policymaker, (2) an official policy, and (3) a violation of constitutional rights whose 'moving force' is the policy or custom. *Piotrowski,* 237 F.3d at 578; *Criswell v. City of Dallas,* 2001 WL 609480, at *2 (N.D.Tex. May 29, 2001) (applying *Piotrowski* to the URSB); *see also* *Roach v. Schutze,* 2003 WL 21210445, at *2 (N.D.Tex. Mar. 21, 2003). The URSB meets all three requirements, each of which will be examined in turn.

8. First, the URSB's status as a policymaker is not a novel question in this District. Pursuant to delegations of authority set out in the Code, the URSB "sets and carries out the policy for the City of Dallas with regard to establishing minimum standards applicable to residential and nonresidential structures." *Swann v.. City of Dallas,* 922 F.Supp. 1184, 1205 (N.D.Tex.1996). Within its purview, the URSB exerts the "kind of binding policy making authority ... for which the City may be held liable." *Id.* In short, with regards to matters pertaining to regulation of municipal housing standards and procedures - a subset of which are the notice procedures at issue in this case, "the URSB is a policy maker whose policies may subject the city to municipal liability." *Criswell,* 2001 WL 680480, at *2. *See also Burns v. City of Dallas,* 1997 WL 118424, at *2 (N.D.Tex. Mar. 12, 1997); *Thomas v. City of Dallas,* 1997 WL 560615, at *3 (N.D. Tex. Aug 29, 1997), *reversed in part on other grounds,* 175 F.3d 358, 362 n. 2 (5th Cir.1999). Second, this Court concludes that the URSB's practice of relying on notice by publication for notice of URSB hearings, defaults of URSB repair orders, and impending demolitions was an "official policy" for purposes of § 1983 as defined in *Bennett v.. Slidell,* 735 F.2d 861, 862 (5th Cir.1984) (en banc). *Bennet* provides that an official policy can be:

> ***13** A persistent, widespread practice of city officials or employees, which, although not authorized by officially adopted an promulgated policy, is so common and well-settled as to constitute a custom that fairly represents municipal policy. Actual or constructive knowledge of such custom must be attributable to the governing body of the municipality or to an official to whom that body had delegated policy-making authority.

Bennett, 735 F.2d at 862.

9. In this case, the Class seeks relief from the URSB's notice policy, and claims that the policy adversely impacted the owners of more than 500 single-family residences over the course of a four year period stretching from 1992 to 1996. This policy, although customary as opposed to officially promulgated, qualifies, by virtue of the numerosity of similar circumstances and the testimony of the director of the URSB, as "a persistent, common, or widespread custom or practice." *Criswell,* 2001 WL 609480, at *4. Moreover, as the policy was implemented by the URSB, there is no issue of lack of knowledge on the part of the policymaking authority.

10. With respect to the third requirement of *Piotrowski,* namely that there be a violation of constitutional rights whose 'moving force' is the policy or custom, this Court must address the question of the constitutionality of the URSB's notice policy. The Class alleges that the URSB's notice practice violates the (1) the Due Process Clause of the Fourteenth Amendment, and the (2) Fourth Amendment prohibition on unreasonable search and seizures (made applicable to the states through the Fourteenth Amendment).

FREEMAN V. CITY OF DALLAS

11. Constitutional analysis of the Class claims begins with the observation that *Freeman v. City of Dallas,* 242 F.3d 642 (5th Cir.2001) (en banc), does not dictate the outcome of this case. In *Freeman,* owners of two vacant apartment buildings sued the City alleging violation of the Due Process Clause and the Fourth Amendment in relation to demolition of their properties - thus at this broadest level of generality the cases are similar. However, a closer examination reveals that *Freeman* is distinguishable from the instant case both in its facts and in the particular constitutional questions raised. Although this Court has previously discussed distinctions between the two cases, *Remand,* 2001 WL 31689715, at *3-7,*Remand,* 2001 WL 31689715, at *3-7, additional discussion is appropriate here.

12. In Freeman, plaintiffs Brown and Freeman were a brother and sister who owned two vacant, dilapidated multi-unit apartment buildings, which together had been purchased for the exorbitant sum of $11.00. After conducting a title search, the URSB mailed a notice of hearing to the owners of record of each of the two buildings. Brown signed the return receipt for the notice of hearing for one of the properties, although she apparently did not receive notice for the other as she was not yet the record owner (not yet having filed a warranty deed). Freeman then attended the hearing, which was on both properties, discussed his concerns and plans with the URSB panel, and, after the panel had arrived at its decision, at the conclusion of the hearing, signed the notices of demolition for each building. After the hearing, the City sent a notice of demolition order for each of the two properties. Freeman signed the return receipts for both properties. Freeeman than requested and was granted a rehearing. Freeman attended the rehearing, at which the URSB panel again voted to demolish both buildings, and Freeman again signed notices of demolition for both buildings. The notices of demolition were sent to the same addresses as the prior mailings, but were returned unclaimed. No additional notice was provided, the buildings were demolished, and the demolition costs assessed against Freeman and Brown. *Freeman v. City of Dallas,* 186 F.3d 601, 603-604 (5th Cir.1999) (factual summary); *Freeman v. City of Dallas,* 242 F.3d 642, 644-47 (5th Cir.2001) (en banc) (same).

***14** 13. The *Freeman* plaintiffs contended that their Due Process rights were violated because they:

> were not told that the Department of Housing and Neighborhood Services had briefed [URSB] panel members on their properties, they were not provided with the Department's information on their property, they were not given notices of the tours of their properties by URSB panel members, and the Department officials who reported the code violations were not present at either the hearings or the rehearings.

Freeman, 186 F.3d at 607. Applying the test outlined in *Matthews v. Eldridge,* 424 U.S. 319, 333 (1976), the Fifth Circuit rejected the Due Process challenge to these secondary aspects of the administrative remedies provided under the Code. Noting that the *Freeman* plaintiffs had "ample notice and a full panoply of administrative remedies," the Fifth Circuit found no violation of Due Process. *Freeman,* 242 F.3d at 653. The *Freeman* plaintiffs had "fought the [demolition] order according to City procedures but lost." *Id.,* 242 F.3d at 644

14. Given the *Freeman* factual record of (1) repeated receipt of notice and (2) active participation in the hearing and rehearing process, the two *Freeman* plaintiffs were in a far weaker position to allege a violation of Due Process than Class plaintiffs in this case. *Remand,* 2001 WL 31689715, at *3-5*Remand,* 2001 WL 31689715, at *3-5. Put simply, *Freeman was not about a fundamental insufficiency of notice.* The *Freeman* plaintiffs did not allege failure to provide with constitutionally sufficient notice of either the initial hearing or the subsequent default order as in this case. Nor did *Freeman* address the legality of the URSB's practice of notice by publication. Without constitutionally sufficient notice, even "a full panoply" of administrative remedies is but a mirage.

15. The Fourth Amendment question in *Freeman* also differed from that currently before this Court. The *Freeman* plaintiffs alleged that it was unconstitutional *per se* under the Fourth Amendment for a city to demolish a building which had been declared a nuisance without the issuance of a judicial warrant. The en banc majority of the Fifth Circuit, reversing an earlier panel decision, rejected this argument. Instead, the Court held that the two clauses in the Fourth Amendment are "separate and independent," and, therefore, "[n]othing in the text suggests that warrants are required for every search or

seizure, nor is the existence of a warrant a *sine qua non* for a reasonable search or seizure." *Freeman,* 242 F.3d at 648. "[T]he fundamental inquiry ... is the reasonableness of the City's seizure." *Id.* The Court concluded that a warrant is not required by the Fourth Amendment prior to the demolition of a vacant commercial property pursuant to the Code. *Id.* at 654.

16. The Fourth Amendment question presented in this case is whether the demolition of the Class properties without constitutionally sufficient notice is an unreasonable seizure of property and thus violates the Fourth Amendment. Unlike *Freeman,* this case is a challenge to the constitutionality of the Code as applied, rather than *per se.* Indeed, the Fifth Circuit may have implicitly left the door open for such challenges when, in a footnote in *Freeman,* it stated that "we believe a showing of unreasonableness in the face of the City's *adherence to its ordinance* is a 'laborious task indeed." ' *Id.* at 654 n. 18 (emphasis added). The Class, in this case, alleges just such a failure to adhere to the provisions of the Code.

DUE PROCESS AND URSB NOTICE

***15** 17. The Due Process issue presented by the facts of this case is whether the URSB's customary policy during the Period of relying on a two part notice procedure whereby notice of URSB hearings, default orders, and demolition orders was (1) mailed to the vacant Class property, and (2) published one time in the *Daily Commercial Record* newspaper is constitutionally sufficient. As noted *supra,* this Practice of the URSB ignored the clear mandate of § 27-13(j) of the Code that a "diligent search" for "a correct address" be conducted by the director the URSB prior to resort to publication. Thus, it is not a question of constitutionality *per se* of the Code provisions, bur rather as applied pursuant to the notice policy of the URSB.

18. "[W]hen notice is a person's due, process which is a mere gesture is not due process." *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 315 (1950). Fifty years ago, Justice Jackson made this comment in the case which provides the standard to be used in evaluating Due Process challenges alleging insufficiency of notice. Under *Mullane,* Due Process requires "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Id.,* 339 U.S. at 314. "The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.,* 339 U.S. at 315. Subsequently, in *Matthews v. Eldridge,* 424 U.S. 319, 333 (1976), the Supreme Court outlined another Due Process test, which the Fifth Circuit applied in *Freeman.* *Freeman,* 186 F.3d at 606. However, in a Due Process notice case decided after *Freeman,* the Supreme Court chose to apply the *Mullane* standard, stating that: "We think *Mullane* supplies the appropriate analytical framework ... Since *Mullane* was decided, we have regularly turned to it when confronted with questions regarding the adequacy of the method used to give notice." *Dusenbery v. U.S.,* 534 U.S. 161, 167-68 (2002). Accordingly, this Court applies the *Mullane* test to this case. However, the result of the Due Process challenge would be unchanged under *Matthews,* hence the choice of test does not affect the outcome of the analysis.

19. As the Supreme Court recently stated, Due Process does not necessitate "heroic efforts by the Government," nor does it require proof of "actual notice." *Dusenbery,* 534 U.S. at 170-71 & 170 n. 5 (defining "actual notice" as "receipt of notice"). It is not an ever-rising floor whereby "improvements in the reliability of new procedures necessarily demonstrate the infirmity of those that were replaced." *Id.,* at 170. However, at the same time, Due Process should not be understood to be an entirely toothless standard. It is "a flexible concept whose contours are shaped by the nature of the individual's and the state interests in a particular deprivation." *Caine v. Hardy,* 943 F.2d 1406, 1412 (5th Cir.1991) (en banc). The question at all times is whether the notice policy at issue "was 'reasonably calculated, under all the circumstances, to apprise [plaintiffs] of the pendency of the action." ' *Id.,* 534 U.S. at 172 (quoting *Mullane,* 339 U.S. at 314).

***16** 20. Pursuant to the reasoning of *Mullane* and its progeny, it is well-settled that an administrative agency's reliance *solely* on notice by publication is insufficient to pass constitutional muster *if* the agency is in possession of or can readily obtain accurate address information for the party for whom notice is due. *Schroeder v. City of New York,* 371 U.S. 208, 212-13 (1962) ("notice by publication is not enough with respect to a person whose name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question"); *see also* *Walker v. City of Hutchinson,* 352 U.S. 112, 116

(1956) ("It is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property ... Appellant's name was known to the city and was on the official records"); *Barrera-Montenegro v. U.S.,* 74 F.3d 657, 660 (5th Cir.1996) ("Although DEA is under no obligation to employ extraordinary means to notify an interested party ... when the government has in its possession information which would enable it to effect actual notice on an interested party, it is unacceptable for DEA to ignore that information and rely on notification by publication").

21. The challenge brought by Plaintiffs adds an additional wrinkle to the analysis because the City did not rely *solely* on notice by publication. Rather, the City relied on a combination of notice by publication and multiple mailings to the vacant Class properties. This additional factor, while relevant to a consideration of the totality of circumstances in this case, does not alter the outcome of the Due Process analysis. When a government agency has, or with little difficulty could obtain, accurate address information in its files, repeated mailings to vacant properties provide little in the way of meaningful due process. Such mailing is "little more than a feint" and certainly is not "a serious effort to inform" the property owners. *Mullane,* 339 U.S. at 315. It is highly unlikely that someone who actually desired to achieve notice would select a system of mailings to known vacant addresses, coupled with publication in a newspaper of limited circulation, to accomplish his end. *Id.,* at 320 ("Certainly it is instructive, in determining the reasonableness of the [notice] here used, to ask whether it would satisfy a prudent man of business, counting his pennies but finding it in his interest to convey information to many person whose names and addresses are in his files").

22. The City's assertion that the Code's postdeprivation procedures remedy any shortcomings in predemolition notice is unpersuasive. While "postdeprivation procedures provided by the state can, in some instances, satisfy the requirements of due process," *D.A. Delahoussaye v. Seale,* 788 F.2d 1091, 1095 (5th Cir.1986), this is not such a case. Postdeprivation remedies have been found sufficient where the government took temporary or emergency action, and provided "meaningful postdeprivation procedures." *Id.* (discussing cases); *P.V. Patel v. Midland Mem. Hosp. and Medical Ctr.,* 298 F.3d 333, 339 (5th Cir.2002). In this case, the City's actions were neither temporary nor an emergency. Moreover, this is not a case of "random and unauthorized" deprivation such that the *Parratt/Hudson* doctrine might apply. *Alexander v. Ieyoub,* 62 F.3d 709, 712-13 (5th Cir.1995). Most importantly, the insufficient notice provided to the Class *includes the notice of the postdeprivation remedies.* It is rather dubious to argue that lack of notice can be cured by postdeprivation remedies when the lack of notice complained of includes lack of notice of the postdeprivation remedies. Postdeprivation and predeprivation procedure share one important characteristic-both are meaningless if the interested party is not notified of their existence.

***17** 23. It is also insufficient to argue that the Class plaintiffs should have done more to protect their rights, and hence were not entitled to even a marginally higher quantum of notice. "[A] party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation." *Mennonite Board of Missions v. Adams,* 462 U.S. 791, 799 (1983).

24. After considering the trial testimony, copious documentary evidence, and briefs of counsel, this Court holds that the City, through its inadequate notice policy, violated the Due Process Clause of the Fourteenth Amendment.

FOURTH AMENDMENT

25. As discussed *supra, Freeman* teaches that "the fundamental inquiry ... is the reasonableness of the City's seizure." *Freeman,* 242 F.3d at 648. Holding that the Fourth Amendment does not require a warrant prior to demolition of nuisance properties under the procedures of the Code, the Fifth Circuit held that seizures (i.e.demolitions) of vacant commercial properties pursuant to the City's Code provisions were not unreasonable simply because they were not preceded by issuance of warrants. Explaining its rationale, the Court stated that:

> Although the City did not have to obtain a warrant to effectuate a valid seizure and demolition of the nuisance structures, the fundamental Fourth Amendment question of reasonableness remains, a question decided by balancing the public and private interests at stake .... [t]he ultimate test of reasonableness is fulfilled in this case by the City's adherence to its ordinances and procedures as a prelude to ordering

> the landowners to abate their nuisance structures....Whatever else the City's enforcement of its municipal habitation code might be, it is sufficiently hedged about by published standards, quasi-judicial administrative proceedings, and flexible remedies that it is not *arbitrary.* In the context of reviewing civil administrative and regulatory enforcement of laws enacted pursuant to the traditional police power, Fourth Amendment reasonableness means non-arbitrariness. The Fourth Amendment was not violated here.

Id., 242 F.3d at 653-54 (emphasis in original). Similarly, in a footnote to the above quoted text, the Court added that "we believe a showing of unreasonableness in the face of the City's adherence to its ordinance is a 'laborious task indeed.' " *Id.* at 654 n. 18.

26. As discussed *supra,* this case raises a Fourth Amendment issue unaddressed by *Freeman.* The question is whether the URSB's seizures of the Class properties during the Period violates the Fourth Amendment's prohibition on unreasonable searches and seizures *when such seizures were not done in accordance with the Code.* The URSB's practice during the Period of (1) sending mailings to the vacant Class property, and (2) publishing once in the *Daily Commercial Record* newspaper ignored the clear mandate of § 27-13(j) of the Code that a "diligent search" for "a correct address" be conducted prior to resort to notice by publication.

***18** 27. Turning to a consideration of the public and private interests at stake, this Court first notes that "it is eminently reasonably for a city to prescribe minimum property maintenance standards to protect the public and to maintain adjacent land values." *Id.,* at 652. The Code provisions which set such minimum standards "are well within the City's police power." *Id.,* at 653. The City and its residents have a significant interest in such laws. However, the Class also has a significant interest in its single-family residences, even though such residences may be vacant. The interests of the City would not be harmed by providing adequate notice, as the number of mailings would not necessarily increase, although there may be a marginal increase in time devoted per mailing in order to diligently locate a proper address. Indeed, the City's interests may very well be aided by effective notice, as the owners of the properties, upon receipt of such notice, might make repairs, thus improving the neighborhoods in which those homes are located and lessening the City's demolition costs. At the same time, proper notice would serve the interests of the Class by affording them the opportunity to be apprised of the possible impending destruction of their property, and the administrative recourse available to prevent it. While the homes which are demolished are uninhabited, they are nevertheless single-family residences and, as such, their owners do maintain a significant property interest in them; the owners should not be deprived of this interest without adequate notice.

28. This case, is in some sense, the converse of *G.M. Leasing.* In *GM Leasing* the Supreme Court, in upholding warrantless seizure of automobiles, stated that in Due Process and Fourth Amendment cases "the constitutional analysis is similar and yields a like result." *G.M. Leasing Corp. v. U.S.,* 429 U.S. 338, 351-2 n. 18. Commenting on *GM Leasing,* the Fifth Circuit has stated that: "*GM Leasing,* thus forecasts, even if it does not compel, that a balancing of the public and private interests at stake will favor the public interest in nuisance abatement *after the conclusion of adequate administrative proceedings."* *Freeman,* 242 F.3d at 652 (emphasis added). As noted in *Freeman,* the Eighth and Sixth Circuits have also rejected Fourth Amendment challenges to warrantless demolitions "where satisfactory administrative procedures preceded them." *Id.* In other words, although the proposition is not affirmatively stated, nuisance abatement which is devoid of "adequate administrative proceedings," may result in unreasonable seizures. Because, many of the Class properties were demolished without notice of the URSB hearing or subsequent default order being provided to the owners, "adequate" administrative proceedings did not precede the demolitions. The demolitions were unreasonable seizures.

29. This Court holds that, under the facts of this case, the demolitions of the Class properties without constitutionally sufficient notice in violation of the Due Process Clause also violates the Fourth Amendment's prohibition against unreasonable searches and seizures (made applicable to the States by the Fourteenth Amendment).

INJUNCTIVE RELIEF

***19** 30. The Constitutional rights of the Class have been violated. Having so found, the Court now must determine the appropriate remedy. That the Class has standing to seek injunctive relief, as noted *supra,* has already been upheld by the Fifth Circuit, *Opinion,* 254 F.3d at 563-565, and is thus the law of this case. However, "a federal judge ... is not mechanically obligated to grant an injunction for every violation of law." *Friends of the Earth,* 528 U.S. at 192 (quoting *Weinberge v. Romero-Barcelo,* 456 U.S. 305 (1982)). Rather the court "should aim to ensure 'the framing of relief no broader than required by the precise facts." ' *Friends of the Earth,* 528 U.S. at 193 (quoting *Schlesinger v. Reservists Comm. to Stop the War,* 418 U.S. 208, 222 (1974)). If an injunction is entered, "the scope of injunctive relief is dictated by the extent of the violation established." *Califano v. Yamasaki,* 442 U.S. 682, 702 (1979).

31. Considering the balance of equities of this case, this Court concludes that carefully delineated injunctive relief is warranted. Plaintiffs have suffered harm through the City's policy of demolition without constitutionally sufficient notice of their single-family residences; Plaintiffs continue to suffer harm from the demolition liens placed on the parcels of land where their single-family residences once stood, as well as from other related documents added to the public records; and, Plaintiffs have a threat of future harm from efforts the City may take to collect on the demolition liens, as well as possible retaliatory steps the City might take.

32. As noted above, the Fifth Circuit has found standing to lie for seven forms of injunctive relief for the Class. *See Conclusions of Law* ¶ 1; *Opinion,* 254 F.3d at 564 n 10. Each of these seven forms of injunctive relief is appropriate here; together they conform to the contours of the facts and Constitutional violations in this case.

33. This Court rejects the City's contention that such an injunction is overbroad, and takes particular issue with the view that it would be too costly and time-consuming for the City to carry out title searches on each of the Class properties. Ultimately, clear title is not ensured without proof. Desire to remedy is insufficient without proof of remedy. Moreover, the Court notes that, on the one hand, the City alleges that the case is moot because it has already remedied any harm to the Class from prior violations, and, on the other, suggests that an injunction would be unreasonably burdensome. Both cannot be true; in fact, neither is. To the extent that the City has taken action to remedy the violations addressed in these Findings of Fact and Conclusions of Law, it will have a correspondingly smaller burden to fulfill to satisfy the terms of the permanent injunction. Indeed, this Court is optimistic that within 6 months, if not sooner, the City will be able to demonstrate that it has fully complied with the terms of this injunction, which are:

***20** For each Class property, the City of Dallas is hereby ENJOINED TO:

(1) Cancel the debt assessed for demolition costs and associated fees and interest, and file notice in the public deed record that the debt was cancelled;

(2) File a release of the lien in the public records;

(3) Ensure that title is clear on the property, in order to ensure that title is clear, the City shall conduct a title search on each Class property;

(4) Ensure that all City records concerning the property show the debt cancelled;

(5) Refrain from taking any steps to enforce the lien or collect the debt;

(6) Refrain from foreclosures based on demolition liens; and,

(7) Refrain from retaliatory action such as refusing to issue building permits.

When the City has complied with the above-listed requirements of the Injunction, it shall provide written notice to the Class in the form of a letter (the "Letter"), to be sent to each Class member after the City has engaged in a *thorough* search of its files, records, and other reasonably obtainable sources of information to locate accurate address information for each Class member. A form of the Letter, as well as a statement detailing the search efforts undertaken to locate accurate addresses for the Class, shall be filed with the Court, and served on Plaintiffs' counsel, no later than 30 days prior to the proposed date of mailing. Plaintiffs' counsel shall have 10 days to file any response or objections thereto. The mailing may proceed if the Court does not issue an Order to the contrary prior to the proposed date of mailing. Upon application to this Court after completion of the mailing, the City may move for dissolution of this Injunction.

34. If any of the foregoing Conclusions of Law may be more properly deemed Findings of Fact, they are hereby incorporated by reference into the Findings of Fact.

IV. CONCLUSION

For the reasons stated above, the City of Dallas is hereby found to have engaged in an UNCONSTITUTIONAL policy of notice with respect to procedures relating to hearings, default orders, and demolitions of single-family residences during the Period. Specifically, the City is held to have violated the Due Process Clause of the Fourteenth Amendment, as well as the provision against unreasonable searches and seizures of the Fourth Amendment (made applicable to the States through the Fourteenth Amendment).

A PERMANENT INJUNCTION is hereby ENTERED, the terms of which are stated above in ¶ 33 of the Conclusions of Law.

It is so ORDERED.

All Citations

Not Reported in F.Supp.2d, 2003 WL 22342799

Footnotes

1 By the time of the trial, Ms. James had remarried and is now named Irma Jean Jones.
2 Transcript at 53.
3 Transcript at 54.
4 Plaintiffs' Ex. 8.
5 Transcript at 24.
6 Plaintiff's Ex. 15. (Original text in all caps. Hyphens added to the date segments (*i.e.* day-month-year). Initials of inspectors at the end of each entry omitted.)
7 The Transcript appears to contain an error with respect to the zip codes.
8 Transcript at 26.
9 Plaintiffs' Ex. 92, 93 (summary charts). Exhibit 93 includes 580 addresses, Exhibit 92 contains 546 addresses, and Plaintiffs' Closing Brief states that there were 597 demolitions. Of course, one owner may own more than one demolished property, or, conversely, one property may have more than one owner.
10 Plaintiffs' Ex. 131.
11 Plaintiffs' Ex. 136.
12 Plaintiffs' Ex. 119.
13 Plaintiffs' Ex. 134.
14 Plaintiffs' Ex. 133.
15 Code, § 27-13(a) (emphasis added).
16 Code, § 27-13(b) (emphasis added).
17 Code, § 27-13(j) (emphasis and underscore added).
18 Plaintiffs' Ex. 60 (Deposition of Aquilla Allen) at 16-17 (emphasis added).
19 Plaintiffs' Ex. 60 (Deposition of Aquilla Allen) at 16-19 (emphasis added).
20 *Id.,* at 102-03.
21 Plaintiffs' Ex. 61, at 2-3 (Transcript of Class Hearing in *Smith v. Dallas,* 3:95-CV-0306-R, and *Bell v. Dallas,* 3:95-CV-0383-R).
22 *See* Defendant's Ex. 49-53 (Dallas City Ordinances amending the Code). In particular, City Ordinances No. 24086 (enacted October 27, 1999) and 24481 (enacted December 13, 2000) made significant amendments to the Code's notice provisions. Defendant's Ex. 54 is the current (as of the date of the trial) text of the Code; *see also* Defendant's Ex. 55 (pre-1995 revisions to the Code).

23 Code § 27-13(c). The term “owner” includes occupants, lienholders, and mortgagees.
24 Code §§ 27-13(i), (k).
25 Code §§ 27-13(m), (n).
26 Code § 27-16.2(b).
27 Code § 27-16.2(c).
28 Transcript at 138, 146.
29 Transcript at 146-147.
30 Defendant's Ex. 1283 (Resolution 01-3145, enacted Oct. 24, 2001); Ex. 1284 (Resolution 02-0865, passed Feb. 27, 2002); Ex. 1289 (Resolution 02-3602, passed Dec. 11, 2002).
31 Defendant's Ex. 1289 (§§ 2-3).
32 Defendant's Ex. 1271 and 1272.
33 Of the 50 properties, 38 were listed in Plaintiffs' Ex. 211, and 12 were listed in Plaintiffs' Ex. 199.
34 Transcript at 105-06.
35 Transcript at 116 (emphasis added).
36 City of Dallas' Brief at the Close of Evidence (filed January 9, 2003) at 17 (emphasis added).