

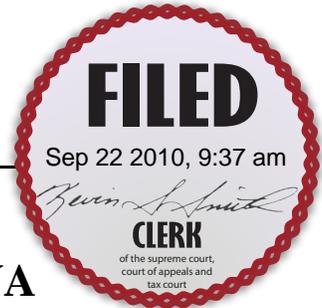
**Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.**

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**IN THE  
COURT OF APPEALS OF INDIANA**

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RONALD W. RITZ AND SANDRA J. RITZ, )  
 )  
Appellants-Defendants, )  
 )  
vs. )  
 )  
TOWN OF BROOKVILLE, )  
 )  
Appellee-Plaintiff. )

No. 24A01-0912-CV-576

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APPEAL FROM THE FRANKLIN CIRCUIT COURT  
The Honorable Clay M. Kellerman, Judge  
Cause No. 24C02-0808-PL-374

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**September 22, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

Ronald W. Ritz and Sandra J. Ritz appeal the trial court's order requiring the demolition of a structure on their property. The Ritzes raise seven issues, which we consolidate and restate as whether the trial court erred in ordering the demolition of the Ritzes' structure and enjoining the Ritzes from further violating the Brookville Property Maintenance Code (the "PMC").<sup>1</sup> On cross-appeal, the Town of Brookville (the "Town") raises one issue, which we revise and restate as whether the trial court erred in failing to order the Ritzes to pay one hundred dollars for each day they violated the PMC. We affirm in part, reverse in part, and remand.

The relevant facts follow. In 1981, the Ritzes acquired the property at 1154 Main Street in Brookville, Indiana. In 2007, the owners of the adjacent properties wrote a letter to the Brookville Town Board. The letter alleged that the house on the Ritzes' property was in disrepair, had not been lived in for at least twenty years, and did not have electricity. The letter also alleged that "[t]here are a number of coon, fox, snakes, possum, etc that have taken up residence there" and that "[t]he neighbors have set traps to catch them because they come into their property and they have small children to protect." Plaintiff's Exhibit 3.

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<sup>1</sup> The Ritzes also raise the issue of whether the court erred "in considering the zoning issues in the trial of this matter when, in fact, zoning would had to have been addressed in a different forum and venue" and under "a different set of rules, regulations and laws before the zoning board of the Town of Brookville." Appellant's Brief at iv, 6. The Ritzes fail to put forth a cogent argument or cite to authority. Consequently, this argument is waived. See, e.g., Loomis v. Ameritech Corp., 764 N.E.2d 658, 668 (Ind. Ct. App. 2002) (holding argument waived for failure to cite authority or provide cogent argument), reh'g denied, trans. denied.

Code Official James Adams Jr., who was also a Brookville Police Officer, drove by the Ritzes' property and observed that the front porch was falling down. On July 26, 2007, Adams personally served a letter on Ronald Ritz. The letter stated:

The five room one story structure located at 1154 Main Street Brookville, In. 47012 and owned by Ronald W. and Sandra J. Ritz (Mailing address P.O. Box 2, Brookville, In. 47012) has been vacant for many years. There are numerous wild mammals and snakes that live in the structure. There has been no visible maintenance done to the structure for years.

The above described structure has been found by the code official to be unsafe and unfit for human occupancy. The structure has also been found to be dangerous to the life, health and safety of the general public.

The code official therefore deems the above described structure condemned and by this written notice orders the owner to make repairs or remove the structure within 30 days of receiving this written notice.

If the owner does not comply with this written notice in the time period allotted the Brookville Town Board can and will take whatever action the Board deems necessary.

Any action taken by the Town of Brookville on the above mentioned structure shall be charged against the real estate upon which the structure is located and shall be certified to the Franklin County Assessor and included on the next real estate bill as a lien upon such real estate.

If the owner/owners of the above described structure feels this notice is in error he/she has a right to appeal to the board of appeals, provided that a written application for appeal is filed within thirty (30) days after the notice was served.

Plaintiff's Exhibit 4. Attached to the letter were various sections of the PMC.

At some point, the front porch of the structure was removed. In a letter dated August 22, 2007, Ronald wrote to the Town of Brookville and Officer Adams. Ronald claimed that it was unclear "precisely what 'repairs' were needed," and asked for

“specific repair requirements.” Plaintiff’s Exhibit 5. Ronald also requested that correspondence be sent to his work address of 6288 U.S. Highway 52, Cedar Grove, IN 47016. Officer Adams sent the Ritzes a letter dated September 4, 2007, via regular mail. The letter requested the Ritzes to provide a time when they could meet with certain officials at the Ritzes’ property.

In a letter dated March 10, 2008, the adjacent owners sent another letter to the Brookville Town Board complaining about the condition of the Ritzes’ property. In a letter addressed to the Ritzes and dated March 24, 2008, Michael Wilhelm, an attorney for the Town, stated:

As of this date, you have not responded to Officer Adams’ request for a convenient date and time, and so, the Town of Brookville is now setting a date and time to meet you at the property and is giving advance notice so that you can make arrangements to be there. On April 17, 2008, at 10:00 a.m., local officials from the Town of Brookville and Franklin County, including Larry Franzman, Executive Director of the Franklin Co. APC, Joe Meier, the Franklin County Sanitation Commissioner, Dan Bruns, the Brookville Fire Chief, and other Brookville representatives, will be at your property to meet with you.

Plaintiff’s Exhibit 8. This letter was addressed to the Ritzes at the address that Ronald requested to be contacted.

On April 17, 2008, local officials met at the Ritzes’ property. At some point after the meeting, Officer Adams received a report from Larry Franzman, the Executive Director of the Area Plan Commission, on the property. Based upon the recommendations in Franzman’s report, Officer Adams served another violation letter personally on Sandra Ritz on May 15, 2008. The letter addressed “Ronald W. And

Sandra J. Ritz,” referenced the Ritzes’ property, and stated that the property was in violation of “Town of Brookville Ordinance No. 2007-1 . . . and more specifically, Section 108.1.1 Unsafe structures, Section 108.1.2 Unsafe equipment, and Section 108.1.3 Structure unfit for human occupancy.” Plaintiff’s Exhibit 9. The letter included a list of repairs necessary to bring the property into compliance with the ordinance and informed the Ritzes that they had sixty days from the receipt of the notice to make the necessary repairs. The letter informed the Ritzes of their right to appeal and indicated that “[i]f this notice of violation is not complied with, the Town of Brookville can take such action as it deems necessary under the law to correct or abate the violation.” Id. Lastly, the letter stated that “[a]ny action taken by the Town of Brookville on such premises shall be charged against the real estate and shall be certified to the Franklin County Assessor and included on the next real estate tax bill as a lien upon the real estate.” Id. The Ritzes did not make the required improvements within sixty days of service of the notice.

On August 5, 2008, the Town filed a complaint against the Ritzes alleging that the structure on the Ritzes’ property was in violation of the PMC. In a letter dated April 7, 2009, Franzman set forth an updated report which stated:

Updated inspection report for 1154 Main Street belonging to Ron and Sandra Ritz.

First item: roof has not been repaired where a chimney had previously been located and it remains open to the elements.

Second item: the tree has not been removed and it is clearly growing into the overhang. That overhang is part of the rafters that supports the roof material, which in turn protects the contents and the structure itself.

Third item: the lean-to part has been removed to the point that the bearing wall has been removed that previously supported such. As seen in photos, posts are supporting the ceiling and roof. Are the floor joists in good condition[?] [T]he plate crumbled when I was feeling it. I believe this could be a[n] issue if rebuilt on.

Fourth item: now this is the biggest concern. Anyone day or night has access to the interior of the home. This could be a place where children could play or a vagrant could go[.] [T]his is a dangerous situation.

Fifth item: an off-premises sign for a business is still located on the property as an illegal sign, and must be removed to be in compliance for a residential-3 district.

Plaintiff's Exhibit 13.

On April 13, 2009, the court held a hearing on the Town's complaint. At the hearing, Ronald testified that he purchased the property for "business property" and that he was "using it as storage and I do a little agriculture but uh, you know, we have the sign<sup>[2]</sup> on the property right now. That's a business use." Transcript at 128. Ronald indicated that he did not perform agriculture on the property but that he "had some farms that I do agriculture so I maybe I, maybe I need to store some hay, maybe." Id. Ronald testified that he placed duct tape on cracks in windows or put plywood over the windows, removed the lean-to, removed the center chimney, but had not yet removed the tree. The Town presented evidence including Franzman's updated report dated about a week before trial listing the items that were still not repaired.

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<sup>2</sup> A sign for Whitewater Canoe Rental, a business owned by the Ritzes, was on the Ritzes' property.

On June 16, 2009, the court issued an order, which stated:

**Findings of Fact**

3. Town of Brookville Ordinance No. 2007-1, which was enacted in the summer of 2007 and is more commonly known as the Property Maintenance Code (hereinafter referred to as the “PMC”), regulates and governs the conditions and maintenance of all property, buildings and structures by providing standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for human occupation and use.
4. A structure, as defined by the PMC, is located on the Property and has been unoccupied since at least 1981, which is the year the [Ritzes] obtained ownership of the Property as husband and wife, tenants by the entirety.
5. The structure was built to be used as a residence. Some residential characteristics include two chimneys, a mail slot, a screen door, windows and the availability of electric, sewer and water services. On this point, the Court also finds persuasive testimony from Plaintiff’s witnesses that the Property is zoned R-3 Multi-Family Residence District, is surrounded by residences, and that there was a front porch on the structure until it was taken down within the past two years. And finally, storage is not a permissible primary use on an R-3 zoned property. While no one characteristic constitutes a residence, taken in combination, it is more likely than not that this structure was built to be used a [sic] residence.
6. Agricultural use is a permissible use of an R-3 zoned property, but there was no evidence that the structure was used for agricultural purposes.
7. Defendant Ron Ritz testified that the structure was used as a storage facility as long as he had an ownership interest in the Property. A storage facility is not a permissible primary use of an R-3 zoned property, and so it is unlikely that the structure was used for storage prior to Defendants’ ownership, but rather, as a residence.
8. The structure located on the Property is an Unsafe Structure, as defined by the PMC 108.1.1, because the structure is damaged,

decayed, and dilapidated to the point that partial collapse is possible. Their [sic] was evidence of deteriorating structural walls, load bearing sections being supported by metal jacks, evidence that the structure is open to the elements and that a tree is growing into the structure.

9. The lean-to on the back end of the structure was in danger of collapse, and Defendant removed the lean-to within a couple of weeks of trial. Defendant also removed a load-bearing wall during the lean-to removal and supported the back two rooms of the structure with metal posts and jacks. The wood plate below the floor of the back two rooms has decayed over time and crumbled when Franklin County Area Plan Commission Executive Director Larry Franzman tested its integrity. With the back two rooms open to the elements, the floor is subject to further decay and damage, increasing the possibility of partial collapse.
10. Before the lean-to was removed, there was a gap between the lean-to and the rest of the structure, which allowed the elements in and increased the decay and damage to the structure and increased the possibility of partial collapse.
11. A tree is growing into the overhang of the structure on the north side, and the overhang is part of the rafters that supports the roof. The tree has compromised the integrity of the roof and increased the possibility of partial collapse. The tree had not been removed as of the date of the trial.
12. The structure is also unfit for human occupancy, as defined by the PMC 108.1.3, because the structure lacks illumination, sanitary, and heating facilities as a result of the structure's disrepair and lack of maintenance. Electrical service ran to an electric meter base that used to be attached to the structure. Water and sewer service lines are also available for the structure. However, Defendant testified that no electrical service or sanitary sewer or plumbing service is connected to the structure. Defendant also testified that there is no operational heating equipment in the structure and that the structure has been used as storage only.
13. The structure is also unfit for human occupancy because it is an unsafe structure, as described above.

14. The Town of Brookville issued two notices of violation on the Property prior to filing a lawsuit. The first was served by Town of Brookville code official Officer James R. Adams, Jr. on Defendant Ron Ritz on July 26, 2007, and the second was served by the code official on Defendant Sandra Ritz on May 15, 2008. The notice sent May 15, 2008 met all requirements of PMC 107.2 and 107.3.
15. The Defendants did not comply with the correction order contained in the second notice of violation in that they did not make all of the improvements within 60 days of being served with the notice.
16. The structure should be demolished because it is unsafe and would be unreasonable to repair the structure. Plaintiff's witnesses, David Orschell and Larry Franzman, both of whom have experience and knowledge of residential construction and renovation, and both of whom have personal knowledge of the structure, testified that it would be unreasonable to spend the time, money, and effort necessary to make the structure safe and fit for human occupancy. The Court finds this testimony persuasive.

### **Conclusions of Law**

1. Defendant Sandra Ritz did not appear at the bench trial held April 13, 2009, and previously successfully challenged this Court's personal jurisdiction over her in this cause. The Court finds it now has personal jurisdiction over her by virtue of her appearing in the cause through counsel, Christopher M. Tebbe and Frank I. Hamilton, Jr., and the Defendants' Motion for Continuance of the bench trial, in which she joined.
2. The building located on the Property is a "structure" as defined in the PMC. A structure is that which is built or constructed or a portion thereof. PMC 202.
3. The PMC applies to all existing residential and nonresidential structures. PMC 101.2. The PMC does not define residential or nonresidential structure, and so this Court will give these terms their plain, ordinary, and usual meaning. See also, I.C. §1-1-4-1. A residential structure is a building in which people are meant to live, and a nonresidential structure is all other buildings.

4. The Court finds that the structure on the Property is a residential structure as evidenced by the many photographs depicting a structure that appearances [sic] to be a residence (as opposed to a storage unit or agricultural structure, as argued by the Defendants). Some residential characteristics include two chimneys, a mail slot, a screen door, windows, and the availability of electricity, sewer, and water services. On this point, the Court also finds persuasive testimony from Plaintiff's witnesses that the Property is zoned R-3 Multi-Family Residence District, is surrounded by residences, and that there was a front porch on the structure until it was taken down within the past two years. And finally, storage is not a permissible primary use on an R-3 zoned property. While no one characteristic constitutes a residence, taken in combination, it is more likely than not that this structure was built to be used a [sic] residence.
5. The structure is in violation of the PMC because it is an Unsafe Structure, as defined by PMC 108.1.1, due to the structure being damaged, decayed, and dilapidated to the point that partial collapse is possible. The structure is also unsafe as it has deteriorating walls, is open to the elements, has had load bearing walls removed, has trees growing into the structure, and has bearing walls supported by metal jacks.
6. The structure also is in violation of the PMC because the structure is unfit for human occupancy, as defined by PMC 108.1.3, because the structure lacks illumination, sanitary, and heating facilities as a result of the structure's disrepair and lack of maintenance. The structure is also unfit for human occupancy because it is an unsafe structure.
7. The Town of Brookville served all appropriate notices required by the PMC. PMC 106.2 states that the code official shall serve a notice of violation in accordance with Section 107. PMC 107.1 states that "whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given in the manner prescribed in Sections 107.2 and 107.3 to the person responsible for the violation as specified in this code."
8. Town of Brookville Police Officer James R. Adams, Jr. is the code official and served two notices of violation, one on Defendant Ron Ritz on July 26, 2007, and one on Defendant Sandra Ritz on May 15,

2008. Defendant Ron Ritz also received a copy of a list of required corrections which was attached to the complaint and marked exhibit "A". The code official issued the first notice with "grounds to believe" that a violation had occurred based on the complaint of Nathan and Eileen Orschell. The code official issued the second notice having determined that there had been a violation based on the report of Larry Franzman after an exterior viewing of the structure.

9. PMC 107.2 requires all notices to be 1) in writing, 2) include a description of the real estate sufficient for identification, 3) include a statement of the violation or violations and why the notice is being issued, 4) include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code, 5) inform the property owner of the right to appeal, and 6) include a statement of the right to file a lien in accordance with Section 106.3. The first notice of violation did not contain the required information. However, the second notice of violation, which was the letter dated April 23, 2008 and served by the code official on Defendant Sandra Ritz May 15, 2008 contained all of the information required by PMC 107.2. Plaintiff's Exhibit 9.
10. The code official personally served Defendants in compliance with PMC 107.3. Defendants were provided at least three notices as well as an actual copy of the PMC.
11. The Defendants failed to comply with the correction order contained in the second notice of violation. PMC 106.3 states, "if the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto." Defendants' 60-day deadline to make the improvement contained in the correction order of the second notice of violation expired July 14, 2008. Plaintiff then filed this action August 5, 2008, to restrain, correct or abate the violation.
12. The Town of Brookville did follow all procedural notice requirements prior to filing suit. Notice of condemnation was not posted on the structure, but PMC 108.2 only authorizes, but does not require, the

code official to post a placard of condemnation if the structure is vacant, unfit for human occupancy, and not in danger of structural collapse. The Town of Brookville was not required to take action under PMC 108.2 and 108.3, but rather was entitled to institute the appropriate proceeding at law pursuant to PMC 106.3.

13. The penalty for noncompliance with orders and notices are \$100 for the first day after the reasonable time set forth in the notice provided in accordance with 107.2 has passed, and \$100 for each subsequent day. PMC 107.4. Each day that a violation continues after a reasonable time for repairs is a separate offense also under PMC 106.4.
14. The Court finds that the appropriate remedy is demolition. PMC 110.1 states, “the code official shall order the owner of any premises upon which is located any structure, which in the code official’s judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure.” The evidence is clear, and the Court finds the structure is so out of repair as to be unsafe and unfit for human occupancy. The Court also finds that it would be unreasonable to repair the structure. The Court does not find persuasive Defendant Ron Ritz’s testimony that he would do whatever is required by law, including making the structure fit for human occupancy, considering that the structure has not been occupied by a human for the 28 years that Defendants have owned the Property and Defendant Ron Ritz testified that he has only used the structure for storage during this time period.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. Defendants shall demolish the unsafe structure located on 1154 Main St., Brookville, IN 47012 within 30 days of the date of this Findings of Fact, Conclusions of Law and Order, including the foundation, leaving a level grade where the structure once stood.
2. Should Defendants fail to do so by the time stated, Plaintiff shall be authorized to enter upon 1154 Main St., Brookville, IN 47012, and perform the demolition in accordance with the previous paragraph. No

notice is required for Plaintiff to demolition [sic] the structure provided the demolition takes place during daylight.

3. Should Plaintiffs demolish the structure pursuant to the previous paragraph, the cost of demolition, or \$10,000, whichever is less, shall be charged to the Defendants in accordance with 36-1-2. Plaintiffs shall issue a bill to Defendants and give them thirty days to pay. Should Defendants fail to pay, the costs of demolition, or \$10,000, whichever is less, shall be a lien on the property and shall be recorded with the Franklin County Recorder.
4. Plaintiff shall have the right to sell the salvage materials should Plaintiff demolition [sic] the structure, and the net proceeds, if any, shall be returned to the Defendants after the expense of demolition and removal has been deducted from the net proceeds.
5. Defendants are penalized \$2,500.00 for violating the Brookville Property Maintenance Code. The violation lasted for 273 days, but I.C. 36-1-38 (a)(10)(3)<sup>[3]</sup> limits the fine/penalty to \$2,500.00. This penalty shall be a judgment against the Defendants.
6. Plaintiff is awarded court costs in the amount of \$159.00, and this shall be a judgment against the Defendants.
7. The Defendants are enjoined from further violating the Brookville PMC.
8. The Defendants are ordered to pay an ordinance violation fee of \$70.00 pursuant to Ind. Code § 33-37-4-2, and this shall be a judgment against the Defendants.

Appellants' Appendix at 7-13.

On July 14, 2009, the Ritzes filed a motion to correct errors raising thirty-one arguments. The Town filed a cross-motion to correct errors.<sup>4</sup> The court held a hearing

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<sup>3</sup> It appears that the court was citing Ind. Code § 36-1-3-8, as Ind. Code § 36-1-38 does not exist.

<sup>4</sup> The record does not contain a copy of the Town's cross-motion to correct errors.

on the Ritzes' motion to correct errors on August 24, 2009, and their motion was deemed denied pursuant to Ind. Trial Rule 53.3.

## I.

The issue is whether the trial court erred in ordering the demolition of the Ritzes' structure and enjoining the Ritzes from further violating the PMC. The complaint filed by the Town was brought "pursuant to the authority of Ind. Code 36-1-6-1 through 10 and Brookville Ordinance No. 2007-1" and requested "appropriate action under Ind. Code 36-1-6-4 . . . ." Appellants' Appendix at 14. Ind. Code § 36-1-6-4 provides:

- (a) A municipal corporation may bring a civil action as provided in IC 34-28-5-1 if a person:
  - (1) violates an ordinance regulating or prohibiting a condition or use of property; or
  - (2) engages in conduct without a license or permit if an ordinance requires a license or permit to engage in the conduct.

"The municipal corporation need not prove that it or the ordinance is valid unless validity is controverted by affidavit." Ind. Code § 34-28-5-1(b).<sup>5</sup> "The plaintiff . . . must prove the . . . ordinance violation by a preponderance of the evidence." Ind. Code § 34-28-5-1(d).

When a court has made special findings of fact, as the trial court did here, we review sufficiency of the evidence using a two-step process. Yanoff v. Muncy, 688 N.E.2d 1259, 1262 (Ind. 1997). First, we must determine whether the evidence supports

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<sup>5</sup> Ind. Code § 34-28-5-1 was subsequently amended by Pub. L. No. 101-2009, § 17.

the trial court's findings of fact. Id. Second, we must determine whether those findings of fact support the trial court's conclusions of law. Id. We do not reweight the evidence, but consider only the evidence favorable to the trial court's judgment. Freese v. Burns, 771 N.E.2d 697, 700-701 (Ind. Ct. App. 2002), reh'g denied, trans. denied.

Findings will be set aside only if they are clearly erroneous. Yanoff, 688 N.E.2d at 1262. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Id. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. Id. In order to determine that a finding or conclusion is clearly erroneous, an appellate court's review of the evidence must leave it with the firm conviction that a mistake has been made. Id.

The Ritzes argue that the trial court erred in: (A) ruling against the Ritzes when they did not receive notice pursuant to the PMC; (B) ordering the demolition of the structure on their property; and (C) enjoining the Ritzes from further violating the PMC. We will address each issue separately.

A. Notice

The Ritzes argue that "PMC Sections 107.2 and 107.3 specifically state the requirements of notice to the Defendants and the Court erred in making a determination that the Town of Brookville had given the necessary notices as required by their own ordinance prior to the commencement of litigation." Appellants' Brief at 7. PMC Section 107.2 provides:

**107.2 Form.** Such notice prescribed in Section 107.1 shall be in accordance with all of the following:

1. Be in writing.
2. Include a description of the real estate sufficient for identification.
3. Include a statement of the violation or violations and why the notice is being issued.
4. Include a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.
5. Inform the property owner of the right to appeal.
6. Include a statement of the right to file a lien in accordance with Section 106.3.

Plaintiff's Exhibit 1. PMC Section 107.3 provides:

**107.3 Method of service.** Such notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally.
2. Sent by certified or first-class mail addressed to the last known address; or
3. If the notice is returned showing that the letter was not delivered, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

Id.

The trial court concluded that “[t]he first notice of violation did not contain the required information. However, the second notice of violation, which was the letter dated

April 23, 2008 and served by the code official on Defendant Sandra Ritz May 15, 2008 contained all of the information required by PMC 107.2.” Appellants’ Appendix at 11.<sup>6</sup>

The Ritzes argue that “the most detailed list of repairs was the letter admitted as Plaintiff’s Exhibit 9 from James R. Adams, Jr., dated April 23, 2008, but there was testimony by Ronald . . . that he never received Plaintiff’s Exhibit 9 until he saw a similar document attached to the Complaint, which was filed in September of 2008.” Appellants’ Brief at 8-9. The Ritzes also argue that none of the letters complied with the provisions of Sections 107.2 and 107.3. In the section of their brief addressing this issue, the Ritzes do not develop their argument to illustrate how the letter delivered to Sandra Ritz on May 15, 2008, failed to meet the requirements of Sections 107.2 or 107.3. In the section of their brief alleging that the trial court erred in ordering the demolition of the structure, the Ritzes argue that the Town failed to comply with Section 107.2(4), which provides that the notice shall “[i]nclude a correction order allowing a reasonable time to make the repairs and improvements required to bring the dwelling unit or structure into compliance with the provisions of this code.” Plaintiff’s Exhibit 1. The Ritzes argue that they “were never given a correction order complying with this section and, in fact, were not even given a ‘punch list’ until they saw such an instrument attached to the Complaint.” Appellants’ Brief at 12. The Ritzes also argue that “there was never a

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<sup>6</sup> On appeal, the Town concedes that the notice served on Ronald Ritz on July 26, 2007, “did not contain some of the information required by PMC 107.2, such as a correction order of repairs required to bring the structure into compliance, because Brookville did not have the opportunity to thoroughly inspect the property prior to issuing the notice.” Appellee’s Brief at 10.

Correction Order sent to the Defendants and the only specific repair list they received was attached to the Complaint.” Id.

To the extent that the Ritzes suggest that the letter delivered to Sandra Ritz on May 15, 2008, did not meet this requirement, we observe that the letter stated “[t]he following is a list of repairs necessary to bring the property into compliance with the ordinance,” and twelve items were listed. Plaintiff’s Exhibit 9. We conclude that the letter delivered to Sandra Ritz on May 15, 2008, satisfied the requirements of Section 107.2 challenged by the Ritzes.

B. Demolition

The Ritzes argue that the court erred in ordering the demolition of the structure by: (1) finding that demolition was an available remedy without the proper notices pursuant to PMC Section 108; (2) Indiana statutory law does not allow demolition of structures; (3) case law suggests that where a building can be reasonably repaired it may be improper to order demolition of the property; and (4) a demolition order pursuant to PMC Section 110 was never received by the Ritzes.<sup>7</sup>

1. Notice Pursuant to PMC Section 108

The Ritzes argue that the court erred in ordering the demolition of the building because the Town did not meet the requirements of PMC Section 108, which governs

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<sup>7</sup> The Ritzes argue that “there were no proceedings before a hearing officer or a town committee or any other procedure initiated by the Town of Brookville prior to the Complaint in which a determination was made for the structure to be demolished.” Appellants’ Brief at 11. The Ritzes do not cite to authority or develop this argument. Consequently, this argument is waived. See, e.g., Loomis, 764 N.E.2d at 668 (holding argument waived for failure to cite authority or provide cogent argument).

unsafe structures and equipment. Specifically, the Ritzes point to Section 108.3, which provides in part:

**108.3 Notice.** Whenever the code official has condemned a structure or equipment under the provisions of this section, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner of the person or persons responsible for the structure or equipment in accordance with Section 107.3.

Plaintiff's Exhibit 1.

The court concluded:

12. The Town of Brookville did follow all procedural notice requirements prior to filing suit. Notice of condemnation was not posted on the structure, but PMC 108.2<sup>[8]</sup> only authorizes, but does not require, the code official to post a placard of condemnation if the structure is vacant, unfit for human occupancy, and not in danger of structural collapse. The Town of Brookville was not required to take action under PMC 108.2 and 108.3, but rather was entitled to institute the appropriate proceeding at law pursuant to PMC 106.3.<sup>[9]</sup>

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<sup>8</sup> Section 108.2 provides in part:

**108.2 Closing of vacant structures.** If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance.

Plaintiff's Exhibit 1.

<sup>9</sup> Section 106.3 provides:

**106.3 Prosecution of violation.** Any person failing to comply with a notice of violation or order served in accordance with Section 107 shall be deemed guilty of a misdemeanor or civil infraction as determined by the local municipality, and the violation shall be deemed a strict liability offense. If the notice of violation is not complied with, the code official shall institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto. Any action taken by the Town of Brookville on such premises shall be charged against the real estate upon which the structure is located and shall be

Appellants' Appendix at 12.

Our review of the record reveals that the Ritzes received actual notice regarding the violations by way of multiple letters delivered by mail and in person and we cannot say that the Ritzes arguments on this issue are persuasive.

2. Statutory Authority to Demolish

The Ritzes appear to argue that a municipal corporation is not authorized to demolish a building or structure under Ind. Code §§ 36-1-6-2 or 36-1-6-4 or Ind. Code §§ 36-7-9, the Unsafe Building Law. The complaint filed by the Town was brought “pursuant to the authority of Ind. Code 36-1-6-1 through 10 and Brookville Ordinance No. 2007-1” and requested “appropriate action under Ind. Code 36-1-6-4, which includes injunction, judgment, inspection, vacation of the property, penalty, specific performance of the Defendants to bring the Property into compliance with the Code, and/or allowing Plaintiff to take appropriate action to bring the Property into compliance with the Code, and . . . for all other relief as may be just and proper in the premises.” Appellants' Appendix at 14.

At the time the Town filed its complaint, Ind. Code § 36-1-6-4(b) provided:<sup>10</sup>

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certified to the Franklin County Assessor and included on the next real estate tax bill as a lien upon such real estate.

Plaintiff's Exhibit 1.

<sup>10</sup> In 2009, Ind. Code § 36-1-6-4 was amended and allowed a court to take any appropriate action including “[o]rdering a structure demolished.” See Pub. L. No. 88-2009, § 6 (eff. July 1, 2009).

A court may take any appropriate action in a proceeding under this section, including any of the following actions:

- (1) Issuing an injunction.
- (2) Entering a judgment.
- (3) Ordering an inspection.
- (4) Ordering a property vacated.
- (5) Imposing a penalty not to exceed an amount set forth in IC 36-1-3- 8(a)(10).
- (6) Imposing court costs and fees in accordance with IC 33-37-4-2 and IC 33-37-5.
- (7) Ordering a defendant to take appropriate action to bring a property into compliance with an ordinance within a specified time.
- (8) Ordering a municipal corporation to take appropriate action to bring a property into compliance with an ordinance in accordance with IC 36-1-6-2.

We cannot say that demolition of the structure is excluded by Ind. Code § 36-1-6-4(b), which allows a court to issue an injunction and order a defendant or municipal corporation to take appropriate action to bring a property into compliance with an ordinance.

### 3. Case Law

The Ritzes cite to Kopinski v. Health and Hosp. Corp. of Marion County, Ind., 766 N.E.2d 454 (Ind. Ct. App. 2002), for the proposition that “where a building can be reasonably repaired it may be improper to order the demolition of the property.”

Appellants' Brief at 12. The Ritzes cite to Kollar v. Civil City of South Bend, 695 N.E.2d 616 (Ind. Ct. App. 1998), reh'g denied, trans. denied, for the proposition that “[t]he relevant question is whether the option of repair will effectively correct the conditions considered a danger to the public.” Id. Both of the cases cited by the Ritzes applied Ind. Code §§ 36-7-9, the Unsafe Building Law. The Town argues that Kollar “applies Indiana’s statutory Unsafe Building Law, Ind. Code § 36-7-9 *et seq.*, which has different standards for demolition than the PMC. . . . However, the principles of Kollar apply . . . .” Appellee’s Brief at 16.

Initially, we observe that the Town brought its complaint pursuant to Ind. Code § 36-1-6-4 which allows a municipal corporation to bring a civil action if a person violates an ordinance regulating or prohibiting a condition or use of property, and not under the Unsafe Building Law. To the extent that the Ritzes rely on Kopinski and Kollar and the Town argues that the principles of Kollar apply, we will address their arguments.

In Kollar, Philip and Emilie Kollar acquired ownership of a property around March 1979. 695 N.E.2d at 618. Beginning in 1984, the South Bend City Enforcement Division (the “City”) served the Kollars with several repair orders for various problems with the property. Id. In 1994, the City served the Kollars with an order requiring demolition of the property, which was ultimately affirmed by a trial court. Id. at 618-619.

On appeal, the court addressed whether the trial court’s decision to uphold the City’s demolition order was arbitrary, capricious, an abuse of discretion, unsupported by

the evidence or in excess of statutory authority. Id. at 621-622. The court observed that “[t]he statute providing for actions to be taken by an enforcement authority with respect to an unsafe premises provides, in part, that ‘[t]he ordered action must be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties.’” Id. at 622 (quoting Ind. Code § 36-7-9-5(a)).

The Kollars argued that the demolition order was unreasonable because there was evidence that the house could be made safe by repair. Id. The court agreed that “where a building can be reasonably repaired, it may be improper to order demolition of the property.” Id. The court held:

However, the facts before us require further consideration. The evidence here clearly demonstrates that the Kollars have been afforded ample opportunity to repair the property and have failed to do so on many occasions over several years. In light of these facts, we conclude that the fact that the property can be repaired is not the dispositive consideration in reviewing the City’s demolition order. An equally important consideration is whether the building will be repaired. Moreover, we agree with the City that, theoretically, any building can be repaired. The more relevant question in a case such as this is whether the option of repair will effectively correct the condition considered to be a danger to the public. When the City has little confidence that the repairs will be made, demolition may be a reasonable alternative. Given the extensive history of disrepair for this property, we conclude that demolition was a reasonable option even in light of the possibility of repair. See I.C. § 36-7-9-5(a).

Therefore, given the trial court’s findings that the property had been in violation of city building codes for approximately ten years; that despite multiple opportunities to repair the property, the property was still in disrepair; that the property would require “major reconstruction”; and that the building was unsafe, we conclude that the trial court’s order affirming the City’s demolition order was not arbitrary, capricious, an abuse of discretion, or in excess of statutory authority. Record, p. 179; See Uhlir[ v. Ritz, 255 Ind. 342, 345-346, 264 N.E.2d 312, 314 (1970)].

Id.

In Kopinski, Theresa Kopinski owned a piece of real estate and a house which was damaged by fire. 766 N.E.2d at 454. Following an administrative hearing, a demolition order was issued by Health and Hospital Corporation of Marion County, Indiana, the enforcement authority, for the house on Kopinski's property, and the demolition order was later upheld by a trial court. Id.

On appeal, Kopinski asserted that the trial court erred by upholding the demolition order because the decision to demolish was unsupported by the evidence. Id. The court reviewed the appeal under Ind. Code §§ 36-7-9, the Unsafe Building Law. Id. at 455. The statute providing for actions to be taken by an enforcement authority with respect to an unsafe premises states, in part, that "[t]he ordered action must be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties." Id. (quoting Ind. Code § 36-7-9-5(a)). Kopinski asserted that the trial court's order to demolish was erroneous due to the weight of the evidence. Id.

The court observed that Kopinski presented the testimony that indicated that the foundation and bulk of the structure was sound. Id. Kopinski testified that she had received mortgage approvals from four different mortgage companies for funds to reconstruct and repair the house and that she intended to obtain funds to improve the property. Id. The enforcement authority's evidence consisted merely of a statement by their attorney that Kopinski's property meets the criteria set out in Ind. Code § 36-7-9-4

for “unsafe premises.” Id. The court also observed that the fire occurred in May 2001 and an order to demolish was issued in June 2001. Id. at 456. The court held that Kopinski met her burden to reverse the order of the administrative hearing officer and that the trial court abused its discretion by failing to give Kopinski an opportunity to repair the premises prior to being ordered to demolish it. Id.

We cannot say that Kollar or Kopinski require reversal of the trial court’s demolition order in the present case. The Town presented evidence of multiple violations of the PMC. On July 26, 2007, Officer Adams personally served a letter on Ronald indicating that the structure was unsafe and unfit for human occupancy and dangerous to the life, health, and safety of the general public. After further letters and attempts at communication and as of the date of the trial on April 13, 2009, the Ritzes failed to make the repairs necessary to bring the property into compliance with the PMC.

At trial, Franzman, the Executive Director for Area Plan in Franklin County and the Building Inspector with years of experience in the construction field, testified that he had a concern regarding the structural integrity of the building and that “it would cost more to rehabilitate what’s there than a new structure because if you’ve got to take something out and put it back, you can ask anyone that does remodeling work it’s going to costs [sic] you twice of what your normal project would be.” Transcript at 92. David Orschell, the owner of a construction company, testified that he had been in the construction business for twenty years. Orschell indicated that the estimate to bring the property “back up to a livable condition” was \$72,241.32. Id. at 102. Orschell also

indicated that he would not “take upon the task of . . . remodeling this house if it was [his house].” Id.

During direct examination, Ronald Ritz was asked whether it was his intention to remodel the building to bring it up to residential standards, and Ronald answered “Definitely not.” Id. at 116. On cross examination, Ronald testified that the building did not have water, sanitary sewage, or electricity, and that he did not intend to install them “but if the law demands that I do it then I’ll have to consider that.” Id. at 129. Under the circumstances, we cannot say that the trial court erred in ordering the demolition of the structure on the Ritzes’ property.

#### 4. Demolition Order

The Ritzes argue that “Section 110 of the PMC specifically requires a demolition order and there was testimony that a ‘demolition order’ was never received by the Defendants.” Appellants’ Brief at 12. PMC Section 110, which governs demolition, states in part:

**110.1 General.** The code official shall order the owner of any premises upon which is located any structure, which in the code official’s judgment is so old, dilapidated or has become so out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary or to demolish and remove at the owner’s option; or where there has been a cessation of normal construction of any structure for a period of more than two years, to demolish and remove such structure.

**110.2 Notices and orders.** All notices and orders shall comply with Section 107.

**110.3 Failure to comply.** If the owner of a premises fails to comply with a demolition order within the time prescribed, the code official shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate.

Plaintiff's Exhibit 1.

We observe that the code official did not order the demolition of the structure as addressed in Section 110. Rather, the court ordered the demolition. Nonetheless, the letter that was personally served on Ronald on July 26, 2007, ordered the Ritzes "to make repairs or *remove the structure . . . .*" Plaintiff's Exhibit 4 (emphasis added). The letter also stated that if the Ritzes did not comply the Town Board "will take whatever action the Board deems necessary." Id. Attached to the letter were various sections of the PMC, including Section 110. Additionally, the letter that was delivered to Sandra on May 15, 2008, stated that "[i]f this notice of violation is not complied with, the Town of Brookville can take such action as it deems necessary under the law to correct or abate the violation." Plaintiff's Exhibit 9. Under the circumstances, we cannot say that the trial court erred in ordering demolition on this basis.

C. Injunction

The Ritzes challenge the portion of the trial court's order which stated: "The Defendants are enjoined from further violating the Brookville PMC." Appellants' Appendix at 13. The Ritzes state that "injunctive relief may not be used simply to eliminate a possibility of remote future injury, or a future invasion of rights." Appellants'

Brief at 13. The Ritzes argue that “the Judge enjoining the Defendants from further violating the PMC is overly broad in that it has the effect of eliminating any notice requirements and due process that would be required of the Town of Brookville in the event that the Town of Brookville alleges that the Defendants are in violation of the ordinance.” Id.

An injunction is an extraordinary remedy that should be granted only with caution. Boczar v. Meridian St. Found., 749 N.E.2d 87, 94 (Ind. Ct. App. 2001). Injunctions must be narrowly tailored, and never more extensive in scope than is reasonably necessary to protect the interests of aggrieved parties. Felsher v. Univ. of Evansville, 755 N.E.2d 589, 600 (Ind. 2001). Moreover, the injunction should not be so broad as to prevent the enjoined party from exercising his rights. Boczar, 749 N.E.2d at 94. If an injunction is more extensive than is reasonably necessary to protect a party’s interests or unduly prevents a party from exercising his rights, we may remand to the trial court for revision. Id. “An injunction will not be issued where the applicant cannot demonstrate ‘the present existence of an actual threat that the action sought to be enjoined will come about.’” Adams v. City of Fort Wayne, 423 N.E.2d 647, 651 (Ind. Ct. App. 1981) (quoting J.D. Pflaumer v. U.S. Dep’t of Justice, 450 F. Supp. 1125, 1131 (E.D. Pa. 1978)). In other words, “injunctive relief may not be used simply to eliminate a possibility of a remote future injury, or a future invasion of rights.” Id.

Initially, we observe that the Town sought an injunction pursuant to Ind. Code § 36-1-6-4, which provides in part that “[a] court may take any appropriate action in a

proceeding under this section, including any of the following actions . . . (1) Issuing an injunction.” We also observe that the Ritzes do not explain how the court’s order requiring them to comply with the ordinance affects the notice requirements in the PMC or the Ritzes’ due process rights.

We find Groff v. City of Butler, 794 N.E.2d 528 (Ind. Ct. App. 2003), instructive. In Groff, the trial court enjoined the Groffs from “maintaining substandard housing which violates the Unsafe Building Laws of the State of Indiana and/or the City of Butler and that they inspect all of their properties and bring them into compliance with said laws immediately.” 794 N.E.2d at 537. The trial court also determined that “any further violations of the Unsafe Building Laws shall be punishable by contempt of court.” Id. at 537-538.

On appeal, the Groffs argued that the Unsafe Building Law provided the means for the city to address any future violations that may occur; and that therefore they should not be subject to contempt proceedings for future violations. Id. at 538. The court held that the city presented evidence that the Groffs owned several properties that were nuisances and that were in violation of the Unsafe Building Law, that the city received numerous complaints, and that the Groffs took action to repair the properties only when forced to do so by the city. Id. The court concluded that it was reasonably foreseeable that the Groffs “will fail to maintain and/or repair not only those properties subject to this litigation, but also other properties that they own.” Id. The court also held that “in light of their past and continuing violations of the Unsafe Building Law, subjecting the Groffs to contempt

proceedings for future violations is not unreasonable.” Id. The court concluded that the injunction issued by the trial court was supported by sufficient evidence and was not overbroad. Id.

Here, the Town presented evidence of multiple violations of the PMC. On July 26, 2007, Officer Adams personally served a letter on Ronald Ritz indicating that the structure was unsafe and unfit for human occupancy and dangerous to the life, health, and safety of the general public. After further letters and attempts at communication and as of the date of the trial on April 13, 2009, the Ritzes failed to make the repairs necessary to bring the property into compliance with the PMC. Under the circumstances, we cannot say that the trial court erred in granting the injunction. See Groff, 794 N.E.2d at 538; see also Ritz v. Area Planning Comm’n of Franklin County, 698 N.E.2d 386, 388-389 (Ind. Ct. App. 1998) (addressing Ronald and Sandra Ritz’s appeal of the trial court’s order imposing a fine for their failure to follow an order to bring their real estate into compliance with the zoning code and holding that the trial court may enjoin a property owner from violating a zoning ordinance and that the injunction may then be enforced via contempt proceedings).

In summary, we conclude that the trial court did not err in ordering the demolition of the structure on the Ritzes’ property or enjoining them from further violating the PMC.

## II.

The issue raised on cross-appeal is whether the trial court erred in failing to order the Ritzes to pay one hundred dollars for each day they violated the PMC. Initially, we

observe that the Ritzes did not file a reply brief. Where an appellant fails to file a response to a cross-appeal, the cross-appellant may prevail if its brief presents a prima facie case of error. Carter-McMahon v. McMahon, 815 N.E.2d 170, 179 (Ind. Ct. App. 2004). Prima facie error is error at first sight, on first appearance, or on the face of it. Id.

This issue requires that we interpret statutory law as well as the PMC. When interpreting a statute, we independently review a statute's meaning and apply it to the facts of the case under review. Bolin v. Wingert, 764 N.E.2d 201, 204 (Ind. 2002). Thus, we need not defer to a trial court's interpretation of the statute's meaning. Elmer Buchta Trucking, Inc. v. Stanley, 744 N.E.2d 939, 942 (Ind. 2001). "The first step in interpreting any Indiana statute is to determine whether the legislature has spoken clearly and unambiguously on the point in question." St. Vincent Hosp. and Health Care Ctr., Inc. v. Steele, 766 N.E.2d 699, 703-704 (Ind. 2002). If a statute is unambiguous, we must give the statute its clear and plain meaning. Bolin, 764 N.E.2d at 204. A statute is unambiguous if it is not susceptible to more than one interpretation. Elmer Buchta Trucking, 744 N.E.2d at 942. However, if a statute is susceptible to multiple interpretations, we must try to ascertain the legislature's intent and interpret the statute so as to effectuate that intent. Bolin, 764 N.E.2d at 204. We presume the legislature intended logical application of the language used in the statute, so as to avoid unjust or absurd results. Id.

When asked to interpret an ordinance, this court will apply the same principles as those employed for the construction of statutes. 600 Land, Inc. v. Metropolitan Bd. of

Zoning Appeals of Marion County, 889 N.E.2d 305, 309 (Ind. 2008). Although it is true that in order to be valid, an ordinance must be precise, definite, and certain in expression, it is equally true that the courts of this state will not construe an ordinance so as to defeat its purposes if it is sufficiently definite to be understood with reasonable certainty. Fulton County Advisory Plan Comm'n v. Groninger, 810 N.E.2d 704, 708-709 (Ind. 2004), reh'g denied.

The trial court's order stated: "Defendants are penalized \$2,500.00 for violating the Brookville Property Maintenance Code. The violation lasted for 273 days, but I.C. 36-1-38 (a)(10)(3)<sup>[11]</sup> limits the fine/penalty to \$2,500.00. This penalty shall be a judgment against the Defendants." Appellants' Appendix at 13. Ind. Code § 36-1-3-8(a)(10)(B) provides in relevant part that a county, municipality, or township does not have the "power to prescribe a penalty of a fine" for a violation of such an ordinance of "more than two thousand five hundred dollars (\$2,500) for a first violation of the ordinance" and "more than seven thousand five hundred dollars (\$7,500) for a second or subsequent violation of the ordinance."

The Town points to PMC section 107.4 which provides:

Penalties for noncompliance with orders and notices shall be as set forth as follows:

1. \$100 fine for the first day after the reasonable time set forth in the notice provided with 107.2 has passed.
2. \$100 fine for each subsequent day.

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<sup>11</sup> As previously noted, it appears that the court was citing Ind. Code § 36-1-3-8, as Ind. Code § 36-1-38 does not exist.

Plaintiff's Exhibit 1. The Town also points to PMC Section 106.4, which states that "[e]ach day that a violation continues after due notice has been served in accordance with Section 107 and a reasonable amount of time for repairs or improvements has passed as stated in the Section 107 notice shall be deemed a separate offense." Id.

The Town argues that "[t]he number of days that the Ritzes were in violation of the PMC between July 14, 2008 and the date of trial on April 13, 2009, is 273. Therefore, [the Town] is entitled to penalties in the total amount of \$27,300." Appellee's Brief at 18. The Town argues that Ind. Code § 36-1-3-8(a)(10)(B) "limits a municipality's authority to prescribe a penalty of a fine to \$2,500 for the first violation of an ordinance and \$7,500 for a second or subsequent violation," and the "PMC stays well within this limit by prescribing a penalty for noncompliance with orders and notices of \$100 for the first day after the reasonable time set forth in the notice provided in accordance with 107.2 has passed and \$100 for each subsequent day." Id. at 19.

We find Dierckman v. Area Planning Comm'n of Franklin County, Ind., 752 N.E.2d 99 (Ind. Ct. App. 2001), trans. denied, instructive. In Dierckman, Gerald and Sandy Dierckman appealed from the trial court's judgment finding them in violation of the Franklin County Area Zoning Code and the trial court's order to pay \$150,000 in fines. 752 N.E.2d at 101. On appeal, the Dierckmans argued that Franklin County Area Zoning Code Section 80.99, which authorized fines in excess of \$2,500, conflicted with Ind. Code § 36-1-3-8(a)(10), which limited the fine for ordinance violations to \$2,500 per

violation. Id. at 105. The court observed that Zoning Code Section 80.99 stated in part that “[e]ach day that the violation continued shall constitute a separate offense.” Id. at 106. The court held that Ind. Code § 36-1-3-8(a)(10) did not make \$2,500 the maximum aggregate penalty or otherwise limit a county’s power to fine an offender for each of multiple offenses. Id. The court concluded that Zoning Code Section 80.99 did not conflict with the requirement in the Indiana Code that an offender be fined no more than \$2,500 per violation and affirmed the trial court’s fines of \$150,000. Id.

Similar to the zoning ordinance in Dierckman, PMC Section 106.4 states that “[e]ach day that a violation continues after due notice has been served in accordance with Section 107 and a reasonable amount of time for repairs or improvements has passed as stated in the Section 107 notice shall be deemed a separate offense.” Plaintiff’s Exhibit 1. Based upon the language of the PMC and Dierckman, we conclude that the trial court erred by limiting the aggregate penalty to \$2,500.

For the foregoing reasons, we affirm the trial court’s order requiring the demolition of the structure on the Ritzes’ property and enjoining the Ritzes from violating the PMC. We reverse the trial court’s award of \$2,500 and remand to the trial court to impose a penalty consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

NAJAM, J., and VAIDIK, J., concur.