

CITY OF ORMOND BEACH
SPECIAL MAGISTRATE HEARING

CASE NUMBERS:
22-112237
22-112246
22-112247

IN RE: MICHAEL HENRY AND KATHERINE HENRY

LOCATION OF VIOLATION:
33 CYPRESS CIRCLE, ORMOND BEACH, FLORIDA, 32176

DATE OF SPECIAL MAGISTRATE HEARING:

FEBRUARY 27, 2023

SPECIAL MAGISTRATE: H. POPE HAMRICK, JR.

P R O C E E D I N G S

THE COURT: We have three cases with the same respondent. And do you desire to take these individually?

ANN-MARGARET EMERY: I would like to do all three before the respondent gives her --

THE COURT: Okay.

ANN-MARGARET EMERY: Like, up to recommendation --

THE COURT: Okay.

ANN-MARGARET EMERY: -- for each --

THE COURT: Are you the respondent?

KATHERINE HENRY: Yes, I am, Your Honor.

ANN-MARGARET EMERY: Is that okay with Your Honor?

THE COURT: Yeah, it's okay. Is -- is your -- is that to make a record, what he's doing there, for appeal purposes?

KATHERINE HENRY: Yes, Your Honor.

THE COURT: Yeah. Okay. All right.

KATHERINE HENRY: Your Honor?

THE COURT: Um-hum.

KATHERINE HENRY: I realize you haven't formally called the case just yet. Once you've done that, but before we go on to any

1 factual presentation, I have a matter of law
2 to bring up with you that would precede that.

3 THE COURT: Well, that's fine for you to
4 have a matter of law, but I would prefer to
5 do it this way: I will call on the city for
6 their testimony as why the violation
7 occurred. Then you may respond to that, and
8 then you can give me any case law you want to
9 at that time. That's the way I'd like to
10 conduct it.

11 KATHERINE HENRY: I understand that,
12 Your Honor. I guess my -- my concern is,
13 first of all, that I was handed all of the
14 evidence at about 9:58 this morning.

15 THE COURT: Um-hum.

16 KATHERINE HENRY: And the statute
17 clearly requires fundamental due process. I
18 also have received no confirmation from them
19 that they have submitted to you the materials
20 that I submitted ahead of time. And besides
21 all of that, in my materials I mention that
22 this case was actually brought illegally
23 because Florida Statute 70.45 required them
24 to issue a written response to me as to why
25 they feel that I have caused a harm by these

1 supposed violations, and how their proposed
2 regulation is proportionate to the supposed
3 harm that I have caused. Before they can
4 continue with that, they are legally required
5 to submit an answer in writing to me unless
6 they submit in writing to me something saying
7 that they're no longer going to be pursuing
8 that. Instead, they've totally ignored that.
9 So this proceeding was actually commenced
10 illegally, that's why I wanted to bring that
11 up before they have a chance to continue with
12 this.

13 THE COURT: Okay. I will allow you to
14 do that. We're at a limit for time. There
15 are other matters that I will do this
16 afternoon, and so I have to conduct the
17 hearing the way that I think it should be
18 conducted. As far as the material, which you
19 had -- it was delivered to me Saturday
20 about -- about 2:30, and I have reviewed all
21 of that.

22 KATHERINE HENRY: Okay. Thank you,
23 Your Honor.

24 THE COURT: Now, so specifically you
25 feel the hearing is not appropriate to be

1 brought; is that what it is?

2 KATHERINE HENRY: That's one of my
3 concerns, yes, Your Honor. That would be the
4 concern that I feel would need to be
5 addressed at the -- at the onset of the
6 hearing rather than bringing that up in the
7 middle.

8 THE COURT: Yeah. Okay. We will
9 proceed with you.

10 KATHERINE HENRY: Do you want me to -- I
11 don't know if you officially called it yet,
12 so I was just waiting --

13 THE COURT: Yeah, I'll call it. I -- I
14 think I already spoke, but I'll call it.
15 Case number 22-11223, parcel 4223-02-06-0130.
16 Michael Henry and Katherine Henry. PO Box
17 333, Ormond Beach, Florida. Location of
18 violation, 33 Cypress Circle, Ormond Beach,
19 Florida. The alleged violation is no
20 building permit issued as stated in the land
21 development code chapter two, article three,
22 section 2-50(n)(1)(a), fence installed
23 without permit.

24 The second case is case 22-112246, parcel
25 4223-03-06-0130 {sic}. Michael Henry and

1 Katherine Henry, PO box 333, Ormond Beach.
2 Location of violation, 33 Cypress Circle,
3 Ormond Beach. No building permit issued as
4 stated in the land development code, chapter
5 two, article three, section 2-50, storage
6 containers placed on the property without a
7 permit.

8 Third case is case number 22-112247,
9 parcel 4223-02-06-0130, Michael Henry and
10 Katherine Henry, PO Box 333, Ormond Beach,
11 location 33 Cypress Circle, Ormond Beach,
12 Florida. Violation, no building permit
13 issued in the Land Development Code, section
14 1146(a)(1), pavers installed without
15 obtaining a permit.

16 The respondent, Katherine Henry is
17 requesting the special Magistrate to hear
18 arguments that the city does not have the
19 authority to proceed with this hearing. So I
20 will allow you to do that now. What will you
21 be doing, submitting cases to me?

22 KATHERINE HENRY: No, the statute I
23 already submitted to you, Your Honor.

24 THE COURT: Okay. All right. I've read
25 that. And then the city can respond to you

1 pertaining to what happens there, then we'll
2 proceed. Okay.

3 KATHERINE HENRY: Yes, Your Honor.
4 Aside from the other legal issues that would
5 be more relevant to talk about in the regular
6 context of probably after the city has
7 presented any evidence or arguments that they
8 would like to present, the issue of this
9 hearing starting and being set for a hearing
10 is in violation of Florida Statute 70.45. It
11 looks like I have a typo. It's supposed to
12 be 45, not 445.

13 THE COURT: Say that again.

14 KATHERINE HENRY: I just realized
15 there's a typo at the beginning of my
16 documentation I submitted to you. It's
17 Florida statute 70.45, not 70.4 --

18 THE COURT: Yeah.

19 KATHERINE HENRY: -- 45. Okay.

20 THE COURT: Yeah, I -- I see that in
21 your documents.

22 KATHERINE HENRY: So I apologize for
23 that. So the -- the issue here is that with
24 that statute -- I mean, there is tons of
25 Florida statutes that talk about why the

proceedings in this matter shouldn't be going forward and why our protections as homeowners are of the utmost concern with the legislature and how they have set out the Land Development Code and all of the other related statutes. 70.45 specifically created a situation where if a homeowner such as myself, or the two of us, my husband and myself, think that the city is violating our rights as property owners, then we can file a written notice of proposed litigation or proposed action to the city where they are legally required by the statute, they must respond in writing with one of two things. They either have to respond in writing saying we have decided that it's in the interest of justice that we're not going to pursue the case and so we will take no further action in this matter, or they have to respond in writing saying exactly what harm it is that our proposed use of our property has caused, and how their proposed regulation of our property is proportionate to the harm that we're causing.

There is no harm that our property is

1 causing or our proposed use is causing, nor
2 has it ever been alleged because it's simply
3 not the case. But instead of responding in
4 writing, as they are legally required to do,
5 they, instead, instituted these proceedings
6 and acted as though that statute didn't
7 exist. They're cherry-picking which laws
8 that they're going to follow. And that is --
9 this is literally, the statute 70.45, this
10 type of hearing is precisely the municipal
11 regulation that the state legislature says
12 you have to put pause on what you're doing
13 and provide this written response before you
14 do anything else. And that way if they
15 respond in writing to me saying, oh, we think
16 we have reason to do this because your three
17 proposed uses caused harm in some way and
18 here is how they caused harm, et cetera, then
19 I have the opportunity to, among other
20 things, file a lawsuit against the city to
21 stop them from pursuing this. But they did
22 not afford me that opportunity to -- and
23 because there is not a specific deadline, I
24 have been patiently waiting for the city to
25 file their statutorily required response to

1 me. So it would be premature for me to have
2 filed a civil lawsuit against the city at
3 this point so this is really the only thing
4 that can happen at this hearing is that they
5 be ordered to follow the Florida statute and
6 file that written response to me, which,
7 depending on what the response comes out to
8 be, then I have the opportunity to follow the
9 statute and file a civil case in the county
10 Circuit Court. Otherwise, this hearing would
11 be premature and it would literally subvert
12 the entire purpose of Florida Statute 70.45.

13 THE COURT: Can you refer me to sections
14 in 70.45 that you think are pertinent to?

15 KATHERINE HENRY: Sure. Sorry, give me
16 a second, Your Honor.

17 THE COURT: That's okay.

18 KATHERINE HENRY: At 70.45 -- I mean,
19 really the whole statute -- it's not very
20 long. The whole statute is relevant so I'm
21 not sure exactly how to best answer your
22 question.

23 THE COURT: Okay.

24 KATHERINE HENRY: But it starts with the
25 definitions section and this kind of thing

1 would be a prohibited exaction which is any
2 condition imposed by a government entity on a
3 property owner's proposed use of real
4 property that lacks an essential nexus to a
5 legitimate public purpose and is not roughly
6 proportionate to the impacts of the proposed
7 use that the government entity seeks to
8 avoid, minimize or mitigate. Obviously
9 attorneys wrote that because it's horribly
10 complex, but that is what we're talking about
11 is prohibited exaction and -- sorry, that was
12 subdivision (1)(d).

13 Subdivision two, in addition to other
14 remedies available in law or equity, a
15 property owner may bring an action in a court
16 of competent jurisdiction under the section
17 to declare a prohibited exaction invalid and
18 recover damages by a prohibited exaction.
19 And it says that at least, this is
20 subdivision three, Your Honor, at least 90
21 days before filing under the -- an action
22 under this section, but no later than 180
23 days after the imposition of the prohibited
24 exaction, the property owner shall provide to
25 the relevant government entity written notice

1 of the proposed action, which is what I did
2 on November 8th, 2022.

3 This written notice shall identify the
4 exaction of the property owner believes is
5 prohibited, which I did, it's the three
6 regulations we're talking about here today.
7 Explain why the property owner believes the
8 exaction is prohibited, which I did. And
9 provide an estimate of the damages, which was
10 attached. The government entity shall review
11 the notice of claim. Shall obviously is a
12 requirement. And respond in writing to the
13 property owner by identifying the basis for
14 the exaction and explaining why the
15 government entity maintains that the exaction
16 is proportionate to the harm caused by my
17 proposed use of my real property, or by
18 proposing to removal or a portion of the
19 exaction, or in other words dismissing the
20 action against me. And even if -- in the
21 event that they wrote back and said oh, well,
22 sure, this is the harm that you've caused and
23 this is how our exaction or regulation of
24 your property is, we believe it is
25 proportionate to your loss of use of your own

1 property, even then, if it I decided to then
2 file that civil lawsuit against the city, the
3 government, the city entity, has the burden
4 of proving even in that action that the
5 challenged exaction, or the regulations that
6 they've brought up here, has an essential
7 nexus to a legitimate public purpose and is
8 roughly proportionate to the impacts that our
9 supposed -- our proposed use of our property
10 that they're trying to -- the harms that our
11 property is supposedly going to cause. And
12 that's, I guess --

13 Something that's telling is that it's the
14 government entity that bears the burden of
15 proof in that sense. And the whole thing
16 is -- that goes to the point of 70.45 is
17 written for a reason. We can't cherry-pick
18 which laws we're going to follow, which has
19 been a problem in this case all along. But
20 this one stops this proceeding from even
21 taking place. So they have to respond in
22 writing either way, and the statute is
23 written so that if they respond saying, oh,
24 we think we're legitimate in our -- you know,
25 we're going to continue with this, then they

1 have to lay out what harm I'm causing and why
2 they think their regulation is proportionate
3 to my loss of use of my property. And then I
4 get to be able to file a civil lawsuit
5 against them where they have the burden of
6 proving that those conditions exist. So
7 it's -- are all of our statutes complex and
8 complicated and found in way too many
9 portions of Florida statute chapters?
10 Absolutely. But that doesn't mean that we
11 get to cherry-pick which ones we're going to
12 follow. And I followed this statute to the
13 letter, and I would expect that the city has
14 to do the same, Your Honor.

15 THE COURT: Okay. That's interesting
16 and I appreciate that. You're an attorney --

17 KATHERINE HENRY: Not a Florida
18 attorney.

19 THE COURT: You're not a Florida
20 attorney. Anyway, do -- you know what a
21 judge would ask you. Do you know of any
22 district court cases in Florida or Supreme
23 Court cases that I could look at pertaining
24 to this -- this argument that you're making?

25 KATHERINE HENRY: Of this specific

1 statute or --

2 THE COURT: Uh-huh.

3 KATHERINE HENRY: This was -- no,
4 because I think that's not our job. When it
5 comes to implementing the statutes, we have
6 to implement them on their face. We can't
7 simply ignore them. And that's the thing is
8 that when this has been brought up to the
9 city for three -- almost four months now. I
10 can't -- yeah, four months. Never once have
11 I received a response either that they
12 thought the statute was not appropriate or --
13 I have received literally zero response on
14 this at all. The only response I ever got
15 was when they were serving me with notice to
16 be here.

17 THE COURT: Okay. All right. Thank
18 you. Is there a response from the city?

19 ANN-MARGARET EMERY: Yes, Your Honor. I
20 haven't had an opportunity to review the full
21 statute that she's mentioning, but it appears
22 that she's -- this is the wrong forum to be
23 arguing the application of this statute.
24 That would be before the circuit court. This
25 is not new legislation for the local

1 government. This is not something that was
2 created and now is affecting her rights. I
3 believe she has lived in Ormond Beach no more
4 than two years in this -- at this property.
5 These ordinances have been in effect long
6 before this. All these codes have been long
7 before. So she moved here with full
8 knowledge and she has not gone to circuit
9 court to challenge these ordinances or code
10 in the city so I don't think she's in the
11 right forum. There's no standing for this.

12 THE COURT: Do you want to respond to
13 that?

14 KATHERINE HENRY: Yes, absolutely,
15 Your Honor. The problem is I wouldn't have
16 standing to have filed a lawsuit against the
17 city before this because there wasn't a
18 proposed -- there wasn't a government
19 exaction under this very statute where they
20 were attempting to do what they're doing
21 right here. It would have been kicked out
22 because it would have been premature. The
23 only way that -- I mean, it's pretty clear.
24 And not having time to read the statute. It
25 literally takes up one page and they've had

1 notice of this for four months. But this
2 statute is pretty clear. It's not
3 challenging necessarily a particular statute
4 that it's, you know, unconstitutional on its
5 face, maybe it's unconstitutional as applied.
6 I mean, there could be all kinds of reasons
7 why the proposed exaction is not appropriate
8 under the statute, but that's not what the
9 purpose of that statute is.

10 And the statute doesn't mean that I have
11 to then go and bear the burden of proving
12 that a particular code is unconstitutional
13 either as applied or on its face. That's not
14 the purpose of that statute. In fact, the
15 statute is pretty clear that this, when
16 they're trying to do this very thing, when
17 they're trying to stop -- I mean, look at
18 what the proposed -- I was just served this
19 morning their proposal for if you should find
20 in their favor what they're asking you to do,
21 and just like the case right before us
22 they're asking that you -- that you issue
23 the, you know, per day fines and that you
24 allow them, you know, as of April 10th to go
25 in -- onto my property, removing my property.

1 That's the epitome of -- it makes no sense to
2 say we have to go through all of this before
3 I would then go and file a lawsuit. In fact,
4 I have to file the written notice to them of
5 the proposed litigation prior to going and
6 filing the actual documentation in circuit
7 court, otherwise they'd kick me out. They'd
8 say, well, you didn't comply with the
9 requirements. I did exactly what I was
10 supposed to do, and the city, because they
11 have absolutely no experience or know-how in
12 dealing with 70.45 decided that they're just
13 not going to touch it, they're just not going
14 to deal with it. But that's not how this
15 works. We have to uphold all of the
16 statutes.

17 THE COURT: Okay. So your argument is
18 in the nature of a Motion to Dismiss this
19 action; is that correct?

20 KATHERINE HENRY: Yes, Your Honor.

21 THE COURT: All right. Anything else
22 from the city or from you arguing in this
23 case? And a lot of the things which you have
24 talked about are in your response, which I
25 thoroughly looked through.

1 KATHERINE HENRY: I guess, just to
2 clarify, Your Honor, the only thing I would
3 say that I would be asking then in terms of
4 looking at it as a Motion to Dismiss is that
5 it be coupled with the city has -- still has
6 to respond one way or another in writing to
7 this notice that I have served them. So I
8 would ask not only that this action be --
9 three of these actions be dismissed today,
10 but that they actually be required to submit
11 the legally statutorily required written
12 response.

13 THE COURT: Okay. Thank you. All
14 right. After reviewing your written
15 response, and after hearing arguments, after
16 hearing from the City of Ormond Beach, I find
17 that your arguments are without merit and I
18 deny your motion.

19 And I'll proceed now with the testimony of
20 the City of Ormond Beach. So who is going to
21 testify?

22 KATHERINE HENRY: Your Honor, I'm going
23 to object to the pictures that are already up
24 there already, though, because those were
25 obtained illegally when the city went on my

1 property without a warrant and took pictures
2 so --

3 THE COURT: Okay.

4 KATHERINE HENRY: -- they shouldn't be
5 used in this proceeding.

6 THE COURT: It's denied.

7 You may proceed.

8 JANET BRUCE: Good morning. My name is
9 Janet Bruce, neighborhood improvement officer
10 for the City of Ormond Beach. The case
11 before you --

12 THE COURT: Do you know what? You're
13 going to have to speak -- I'm not -- move
14 close.

15 JANET BRUCE: Okay. Can you hear me
16 now?

17 THE COURT: Sometimes when I move seats
18 over here.

19 JANET BRUCE: No worries.

20 My name is Janet Bruce, neighborhood
21 improvement officer for the
22 City of Ormond Beach. The case before you is
23 case number 22-112237. The respondent is
24 Michael Henry and Katherine Henry. The
25 violation address is 33 Cypress Circle. The

1 violation of Land Development Code chapter
2 two, article three, section 2 through 50,
3 (n)(1)(a), fence installed without a permit.
4 I would like to submit into evidence a copy
5 of the Notice of Hearing and a hundred dollar
6 citation with proof of good service; copy of
7 the Notice of Violation with proof of good
8 service; affidavits for regular mail and
9 posting; copy of property appraiser's
10 property; a copy of the Land Development Code
11 that is at issue in this case.

12 THE COURT: Any objection to it being
13 admitted?

14 KATHERINE HENRY: Yes, Your Honor. I --
15 what I was actually going to do is figure out
16 which -- I would have been a little bit
17 better prepared if I had been handed this
18 before --

19 THE COURT: I believe we're talking in
20 the case number one, the 22-112237, correct?

21 JANET BRUCE: Yes, sir.

22 KATHERINE HENRY: And there's two -- I
23 was handed two different packets that were
24 stapled. My question is: Are both of those
25 being presented right now, or just the first

1 one?

2 JANET BRUCE: Just the first one.

3 THE COURT: I wanted just the first one
4 to be --

5 JANET BRUCE: Just the first.

6 THE COURT: Just the first.

7 KATHERINE HENRY: Okay.

8 JANET BRUCE: The photos have not been
9 submitted yet.

10 KATHERINE HENRY: Okay. Yes, I --
11 sorry, give me just one second, Your Honor.
12 I don't think I have -- was the sheet with
13 the costs, that's not in that one? Okay.

14 THE COURT: She is presenting her case
15 as to number one, why she feels, as a city
16 representative, that the building permit
17 fence installed without obtaining a permit,
18 and so that's the only one she's dealing with
19 right now as far as I know.

20 KATHERINE HENRY: Yeah, that one case
21 has two packets that have been handed before
22 the hearing. But I realize that the issues
23 that I had -- that I'm objecting to are
24 mostly in the second packet so what you've
25 been handed so far I do not object to.

1 THE COURT: Okay. Admitted into
2 evidence as a composite, City's Exhibit
3 Number 1.

4 JANET BRUCE: Okay. I would also like
5 to submit photos which led to the issuance of
6 the notice of violation and citation. Photos
7 of the last status of the property, which
8 reflect the current state of the property, as
9 well as the case cost sheet and the
10 recommendation page.

11 THE COURT: So you are asking the
12 Magistrate to admit into evidence the
13 beginning of the construction of the fence
14 that's there, and then a date showing the
15 fence has been constructed?

16 JANET BRUCE: Yes, sir.

17 THE COURT: And that fence is still
18 there, correct?

19 JANET BRUCE: Yes.

20 THE COURT: Okay. I want to take a look
21 at these and see -- any objection to them
22 being admitted?

23 KATHERINE HENRY: Yes, Your Honor. I
24 have a few different objections. My first --

25 THE COURT: No, I'm asking the objection

1 for this particular composite right now.

2 KATHERINE HENRY: Yes, and I have three
3 different objection to this composite.

4 THE COURT: What are the objections to
5 this being admitted?

6 KATHERINE HENRY: The first objection I
7 have is that these photos, at least in part,
8 were taken when she went onto my property
9 illegally without a warrant and took photos.
10 Some of them were taken from across the
11 street, but some of them were taken from
12 being on private property, both mine and a
13 neighbor's, without a warrant, and even
14 squeezing in between vehicles that we had to
15 go further back into our property and to take
16 photos that would otherwise, essentially, I
17 guess, be fruit of a poisonous tree that she
18 could not have done. Even law enforcement
19 wouldn't have had a right to take those
20 photos because there was no warrant.

21 THE COURT: City want to respond to
22 that?

23 ANN-MARGARET EMERY: Yeah, Janet, were
24 any of those pictures taken -- were they all
25 off property?

1 JANET BRUCE: Yes, ma'am. I was
2 standing on the sidewalk.

3 KATHERINE HENRY: Your Honor, I --

4 THE COURT: Wait until I --

5 KATHERINE HENRY: Sorry.

6 ANN-MARGARET EMERY: Yes, Your Honor, I
7 just want to clarify that none of those were
8 taken while she was on the property.

9 JANET BRUCE: I was standing on the
10 sidewalk.

11 THE COURT: Okay. You could respond.

12 KATHERINE HENRY: See, this is why it
13 would have been nice if I had due process and
14 was given this ahead of time because I have
15 video footage, which I alluded to in the
16 documents in the notice of proposed
17 litigation, they received this four months
18 ago knowing that I have video footage of her
19 being on our property. In fact, you can see,
20 just to give you an example -- I have --
21 yeah, the -- the one photo that shows from
22 the -- that the photo itself shows that she
23 was on our property isn't part of this
24 packet, but I have video evidence -- I have
25 video evidence that shows that she was on our

1 property and on the neighbor's property to
2 collect these. I don't believe that, and I'm
3 not sure if it was the gentleman next to her
4 or whoever was with her that day, I don't
5 believe he was, but the video footage
6 certainly shows that she was on our property,
7 and even walking between our vehicles to take
8 pictures that day. And I did put them on
9 notice. They've had four whole months. And
10 I didn't have the photos to know what it is
11 they are going to try to claim as evidence
12 later as fruit of that poisonous tree.

13 THE COURT: Well, of course your
14 argument is still going back to the Motion to
15 Dismiss this action that you made, which I
16 have already denied.

17 KATHERINE HENRY: No, that's a separate
18 motion, Your Honor. I mean, that's a
19 distinct --

20 THE COURT: Okay. So the -- it is
21 submitted as City Exhibit 2 as a composite.

22 KATHERINE HENRY: Your Honor, I had two
23 more issues with what was in there.

24 THE COURT: Okay. What are they?

25 KATHERINE HENRY: Also --

1 THE COURT: You can have them back.

2 KATHERINE HENRY: -- as part of this,
3 Florida statute -- Florida Statute 162.07 (3)
4 says although the formal rules of evidence
5 shall not apply, fundamental due process
6 shall be observed and shall govern the
7 proceedings. Again, I wasn't given an
8 opportunity to know that they were going to
9 try to use these photos so that I could have
10 brought to you my video footage to show you
11 how she was physically on the property
12 violating my rights and taking these photos.

13 But also when it comes to the
14 recommendation here and the fact that they're
15 going to be, you know, they're asking you to,
16 in the end if we don't remove our own
17 property for them to be able to come onto our
18 property and remove that, that -- there's no
19 reason why that information wasn't submitted
20 to me earlier either.

21 And, again, the statute clearly requires
22 fundamental due process. There's no reason
23 why I was denied due process in knowing what
24 they were asking for. And in addition to
25 that, although she hasn't talked about the

1 costs yet, the costs included in the sheet
2 that she has that you would later have more
3 discussions and rely on, I would object to
4 because it's -- it's the same for all three
5 so they're tripling up. So let's say you
6 decide you're going to award costs on this
7 one file, the costs would not be -- they
8 can't be then awarded on the next two cases
9 because there were not nine certified letters
10 sent to me. I don't know if that makes
11 sense.

12 THE COURT: Okay. City want to respond?

13 ANN-MARGARET EMERY: I -- I think we can
14 just get to the costs matter later when we do
15 the costs, and Janet can explain that those
16 are --

17 THE COURT: Right.

18 ANN-MARGARET EMERY: -- treated as
19 individual cases and so they aren't just an
20 overlap.

21 THE COURT: The Magistrate's going to
22 enter it as the City's exhibit as a
23 composite. All right. You may proceed.

24 JANET BRUCE: Continue? I'd like to
25 present the photos that are an issue in this

1 case. This is the initial photo that I took
2 on 9/1/22. They were in the process of
3 building the fence. This was taken on
4 September 2nd, 2022. I did issue a stop-work
5 order for all three cases that are at issue
6 here on September 2nd, 2022. This is
7 September 13th, 2022, after the stop-work
8 order was issued. They continued to attempt
9 to finish the fence without a permit. And
10 that's September 13th, 2022. And this is the
11 most recent photo taken on February 21st,
12 2023. The fence has been completed without a
13 permit from the City of Ormond Beach.

14 THE COURT: Other than the fact that
15 they did not obtain a permit, what's wrong
16 with the fence, anything?

17 JANET BRUCE: The orientation is
18 incorrect.

19 THE COURT: I can't hear you.

20 JANET BRUCE: The orientation of the
21 fence is incorrect. The fence is built
22 backwards.

23 THE COURT: The what? Tell me again.

24 JANET BRUCE: The fence has been
25 constructed backwards. The -- the good side

1 is on the inside rather than the outside.

2 THE COURT: Okay. Do you have any other
3 documents to be present into evidence in this
4 case?

5 JANET BRUCE: Not for this case,
6 Your Honor.

7 ANN-MARGARET EMERY: Your Honor, if I
8 may just also clarify. Because no permit was
9 applied for, there's no way that the city
10 really knows without going onto the property
11 if it's also the proper height and if it
12 meets setback requirements.

13 THE COURT: Okay. What is your
14 recommendation in this one case?

15 JANET BRUCE: I recommend finding that a
16 violation of the Land Development Code,
17 chapter two, article three, section
18 2-50(y)(1)(a) exists, and that the
19 respondents be ordered to pay the hundred
20 dollar citation as well as the associated
21 case costs and shall comply with the code by
22 March 27, 2023. Compliance shall be achieved
23 by obtaining an approved fence permit and
24 pass a final inspection, or to remove the
25 fence from the property. Absent compliance,

1 I recommend a \$25 per day fine be imposed
2 beginning on March 28, 2023, and shall
3 continue to accrue until compliance has been
4 achieved. Further, the respondents shall be
5 obligated to contact the City of Ormond Beach
6 neighborhood improvement division to schedule
7 a reinspection of the property to confirm
8 compliance and date thereof. Absent
9 compliance, I request that the city be
10 granted the authority to enter onto the
11 property on or after ' 10th, 2023, and have
12 the right to remove the unpermitted fence
13 from the property with all costs thereof to
14 be assessed against the respondent.

15 In addition, should the city remove and
16 dispose of the aforementioned fence, the city
17 shall not be responsible for any damage or
18 loss associated with said removal. Do you
19 want me to go to case costs or --

20 THE COURT: Case costs?

21 JANET BRUCE: Yes. The current case
22 costs on this case is \$23.56. This is the
23 breakdown. Each case is issued its own
24 individual certified letters. They are not
25 sent together in one packet. They are all

1 sent individually as their own case, so --

2 THE COURT: Okay. Now, that's the
3 City's recommendation. Do you want to make
4 arguments to that?

5 KATHERINE HENRY: I do. I also have --
6 yes, Your Honor. The -- with regard to the
7 stop-work order, there was no stop-work order
8 legally issued. When she spoke with me on
9 the phone that very day that she's claiming
10 that she put those out there, she mentioned
11 nothing about a stop-work order being issued.
12 She ended up emailing me some information
13 later that day. Again, she mentioned
14 nothing, gave me no copies of any kind of
15 stop-work order via that email. And it
16 wasn't until later that I found out that,
17 although she knew I was home, my car has my
18 name on it, it's right by the front door, and
19 she had just spoken with me on the phone and
20 she knew I was home, she decided to come out
21 and put the signage in the boulevard of the
22 property, not on our property and not even
23 facing our property so only the neighbors had
24 notice, not us. And she put it up in a way
25 where I want to say there was only, like, one

1 staple on the thing and it -- we had a really
2 bad rainstorm later that day so before I even
3 saw that there was a post in the yard, the
4 sheet had fallen off and we didn't find it
5 until much later. And then that made sense
6 as to why we had a random stake in the yard.
7 So that would not constitute any kind of
8 providing us notice or any kind of fair play,
9 if you will, in any of -- any of this at all.
10 There's no reason to have not simply knocked
11 on the door and handed it to me or taped it
12 to my front door or anything anywhere on the
13 front porch. None of that happened. Let
14 alone, like I said, in the phone call or the
15 email was there anything mentioned about that
16 at all.

17 But there's a bigger issue and that is the
18 cherry-picking that's happening. It's a
19 definite equal protection violation. We did
20 move here fairly recently, still getting to
21 know our neighborhood and the City of Ormond
22 Beach in general. So as we've been walking
23 through the neighborhood just being able to
24 see with our own eyes in an area that's just,
25 I would say, our immediate neighborhood, just

1 barely over a quarter of a mile square, there
2 are numerous examples of fence violations.

3 In fact, there are --

4 THE COURT: Is that what this part is?

5 KATHERINE HENRY: Part of that is, yes.
6 The color coded spreadsheet. My printer
7 doesn't print color so I don't remember what
8 the color was, mine is gray. But there was
9 at the beginning the first column separates
10 out just general permits not having been
11 issued for extensive remodels, which I think
12 is maybe in blue, and then there is a section
13 on pavers and a section on fence. It's
14 specifically about the fence that I'd be
15 talking about.

16 THE COURT: How did you determine your
17 cherry-picking chart? Did you go through the
18 neighborhoods and look to see where you
19 thought there might be violations but nothing
20 had happened there? I'm just curious about
21 that.

22 KATHERINE HENRY: Yeah, it's just
23 something that as -- I regularly walk my
24 neighborhood, and it's as this situation
25 arose and I read the entire code, I looked

1 around and I'm, like, this doesn't seem right
2 because we've seen all of this and so I
3 decided to give them just a few examples in
4 the notice that I sent them in November. But
5 since then, it's just -- it's kind of one of
6 those things, you know, when you first buy
7 your -- your first white Toyota Camry or
8 whatever, and then you -- all of a sudden
9 everywhere you go you see white Toyota Camrys
10 you never really noticed before. It's that
11 kind of situation, Your Honor.

12 So as we walked our neighborhood -- this
13 isn't me, you know, hanging out in the
14 backyards of my neighbors or anything like
15 that. This is what you can visibly see of
16 violations happening. Sorry. These are ones
17 that you can visibly see. But there are,
18 just within that quarter square mile, which
19 we're talking about is less than one percent.
20 It's .7 percent of the City of Ormond Beach.
21 We're talking about 63 other documented
22 examples that I'm able to just see of issues
23 where the fence -- Land Development Code as
24 it pertains to the fence are being ignored.

25 THE COURT: You did a very good job

1 here, but how would you specifically know
2 that there was not a permit or there wasn't a
3 variance in a particular property where you
4 thought there might be a violation?

5 KATHERINE HENRY: Because those records
6 are online.

7 THE COURT: Uh-huh.

8 KATHERINE HENRY: And some of the
9 issues --

10 THE COURT: That's the way you looked at
11 them?

12 KATHERINE HENRY: The records are
13 online, yes. But when it comes to we're
14 talking about the wrong height or opacity,
15 those are things that you can see. I mean,
16 as far as variance, none of those appeared.
17 But dilapidated fences, I couldn't imagine
18 that there would be a variance for a
19 dilapidated fence.

20 But at any rate -- and obviously when I
21 put my initial document together, we hadn't
22 had the second hurricane yet, and we live
23 beachside, so the amount of violations would
24 actually be staggering, but it was too
25 impossible to keep up with all of that

1 because my neighbors literally -- every
2 single neighbor around me, even Pizza Hut on
3 A1A, everybody had at least a portion of
4 their fence that had come off, if not had a
5 total decimation of their fence. And while a
6 few of those neighbors have already been
7 putting them together which totaled more than
8 50 percent of the lineal footage of that
9 fence which triggers the permit needing to be
10 required.

11 And this isn't just neighbors. This is --
12 and, like I said, these 63 examples, that's
13 in less than one percent of the entire square
14 footage of our city. But these very types of
15 fence violations are also found at 39 Byron
16 Ellinor where a city work van, it must be a
17 city employee works there and parks the work
18 van there every day. There is -- and that's
19 already been in your packet. Ormond Beach
20 P.D. regularly parks at 52 Byron Ellinor,
21 which has had -- since the hurricanes, their
22 fence was totally torn down, which I have
23 pictures of that and submitted that in there
24 to you. And they have a whole new fence and
25 there's no permit for that. And the city

1 knew about a lot of those violations because
2 there were four other permits that were
3 pulled in 2022 for various other things on
4 that property. Not to mention that there is
5 a Ormond Beach deputy -- or excuse me an
6 Ormond Beach officer that regularly parks at
7 that property, but also several of these
8 other instances. So it's -- it's absurd to
9 me that we can cherry-pick and go, well,
10 Ormond Beach P.D. is going to get a pass.
11 Ormond Beach city employees can get a pass.
12 Ormond Beach, you know, whatever government
13 officials that I have in the example for you
14 can get a pass, or 63 other examples just
15 that I've documented of fence violations
16 alone, they all get a pass. And not to
17 mention when you multiply that by the .7
18 percent. I mean, the numbers are staggering.
19 And how that doesn't demonstrate an equal
20 protection violation when I am a hundred
21 percent, unequivocally guaranteed equal
22 protection under the law --

23 THE COURT: Okay. Let me stop you one
24 minute about -- your argument on the
25 cherry-picking, you've done a lot of work on

1 it. I can tell. I've been the Magistrate
2 here for 18 years. Before that, I was a
3 judge for another 20 years in Volusia County.
4 And almost every other time I come here,
5 someone will say, you're treating me like
6 you're not treating this person. There are
7 other violations that go on and you should
8 not be doing things to me because you're not
9 doing things to these other people. So I say
10 to them, can you refer me to a case that went
11 up to the district court or the circuit
12 court, something to say that this argument of
13 cherry-picking is substantiated, and I
14 haven't gotten very much, to tell you the
15 truth. I have to call my -- mine into this
16 particular one.

17 Now, if you don't win in this case and you
18 appeal it to the circuit court and they
19 substantiate that argument of cherry-picking,
20 I would be most interested to know about it.

21 Is your argument for this particular one
22 going to be the same in the other two?

23 KATHERINE HENRY: Some.

24 THE COURT: Yeah.

25 KATHERINE HENRY: As far as it will -- I

1 don't know if I'm cutting you off,
2 Your Honor. I had other things to say about
3 the fence issue besides a protection issue.

4 THE COURT: Okay. Well, you understand
5 that I'm not -- I'm not buying the
6 cherry-picking argument.

7 KATHERINE HENRY: I still have a right
8 to place it on the record because --

9 THE COURT: You do have a right, but I
10 have a right to continue with my hearing, and
11 when I think I've heard all that I want to
12 hear on a particular item, I can tell you
13 that -- to go on to something else. So let's
14 go on to another argument that you have.

15 KATHERINE HENRY: Yes, Your Honor.
16 That's what I was just about to do. When it
17 comes to the costs, I don't know why mine
18 looked different, but mine looks like that
19 that you now are seeing in front of you. I
20 do acknowledge that they send the certified
21 letters in a separate envelope for each of
22 the three, but we were -- first of all, I
23 shouldn't have to -- there was three --
24 there's a hearing today, right? We have a
25 hearing, there are three cases --

1 THE COURT: Um-hum.

2 KATHERINE HENRY: -- that would be three
3 certified letters. But you see there's three
4 listed just for that one alone, plus another
5 copy sent by regular mail, which I don't know
6 why that would be a cost to me. But the
7 other cases as well, there's an exact same
8 sheet. So in the end they want to charge me
9 for receiving nine certified letters. There
10 were not nine certified letters sent. There
11 was one for each case.

12 THE COURT: Okay. Well, they -- they
13 have a procedure which they have to put costs
14 on each case.

15 KATHERINE HENRY: Well, I get that.

16 THE COURT: When it comes to me, I can
17 decide what I want to do as far as whether I
18 want to order the costs or not.

19 KATHERINE HENRY: I'm just saying as far
20 as certified mail goes --

21 THE COURT: Yeah.

22 KATHERINE HENRY: -- it shouldn't be
23 three on the screen we're looking at. It
24 would be one, and the regular mail, I don't
25 know why you would send regular mail when

1 it's already sent by certified mail.

2 THE COURT: Okay. I understand your
3 argument.

4 KATHERINE HENRY: That's all I have,
5 Your Honor.

6 THE COURT: Okay. So I'm going to wait
7 until we do all three before I make my
8 findings and determinations, so let's go to
9 the next one. Anybody want a break?

10 ANN-MARGARET EMERY: I was going to ask
11 the respondent just a couple questions.

12 THE COURT: I'm sorry. I forgot.

13 ANN-MARGARET EMERY: That's okay.
14 That's all right.

15 KATHERINE HENRY: Can I take just a
16 second? My husband was asking me a question.

17 THE COURT: Sure.

18 KATHERINE HENRY: And I'm deaf in one
19 ear so I can't -- I can't listen to both --

20 THE COURT: You're what?

21 KATHERINE HENRY: I'm deaf in one ear.

22 THE COURT: Okay. Sure. Sure.

23 KATHERINE HENRY: Oh, yes, Your Honor,
24 I'm sorry. There is something that's
25 extremely important that I forgot to mention.

1 It is in there, and that would apply across
2 the board. This particular thing I'll say
3 once, but it applies to all three.

4 THE COURT: Um-hum.

5 KATHERINE HENRY: And that is the fact
6 that I -- I cannot -- I made a note and still
7 didn't cover it. I can't even apply for the
8 permit in this situation for a fence because
9 according to the actual Land Development Code
10 here in Ormond Beach, no permit can be issued
11 without a full variance being approved for
12 not having a garage. Our house was built
13 without having a garage. Obviously that was
14 long before we got there. But the Land
15 Development Code requires each house in
16 Ormond Beach to have a garage and to meet a
17 bunch of other specifications. That is just
18 one example.

19 But I can't go and apply for a permit to
20 have a garage sale or a permit to have a
21 fence without fully meeting all of the other
22 land developments codes including that. So
23 there's been no variance issued at any point
24 along the way. I would have to go and do
25 that. The Land Development Code also

1 requires, or states, that no permit can be
2 issued without a full development order being
3 issued in addition to that, and so the
4 procedures to get one of those apply. No
5 permit can be issued without a engineer or
6 architect final site plan being approved. No
7 permit can be issued without a recent survey
8 of the lot specifically certified to the
9 city. We're not even talking about the one
10 that we just got a year and a half ago when
11 we purchased our property and it was
12 certified to the mortgage company or whoever
13 it had to be certified to.

14 We're saying that we would have to bear
15 additional costs of roughly, these days it's
16 at least \$750 is what it was costing us to
17 get a certified to the city survey. And no
18 permit can be issued without an application
19 from us that identifies the actual shape and
20 dimensions of the loss, the existing use of
21 the building on the lot, the number of
22 families the building is designed to
23 accommodate, the location and number of
24 required off-street parking and off-street
25 loading spaces, landscaped buffer areas,

1 accessory uses of the property, driveway and
2 access standards, impact fees, utility
3 installation fees, sign regulations. That is
4 quite overly burdensome, and in some
5 instances literally impossible for us to do
6 just to be able to give them the piece of
7 paper applying for the permit.

8 THE COURT: Okay. Does the city have a
9 response?

10 ANN-MARGARET EMERY: Yes, Your Honor,
11 that's a misread of the LDC. The fact
12 there's no garage, that applies to new
13 construction, you would have to have a garage
14 on a single family residence. That applies
15 to new construction. And using her example,
16 she would not have to get a variance to get,
17 for example, a garage sale permit. That
18 doesn't make any sense and I'll just leave it
19 there. But I would ask for a couple
20 questions.

21 When did you move to -- when did you
22 purchase this property, approximately?

23 KATHERINE HENRY: Fall of 2021.

24 ANN-MARGARET EMERY: Okay. Did you know
25 you needed to get a permit to install a fence

1 on your property?

2 KATHERINE HENRY: I knew that we didn't
3 need to have permits because of the
4 interaction we specifically had with the city
5 in July and August and September and October
6 about 924 Rollins Avenue.

7 ANN-MARGARET EMERY: No, I'm asking you
8 about this particular property. Did you know
9 you needed a permit --

10 KATHERINE HENRY: I'm answering about
11 this property because if it's not required
12 for 924 Rollins Avenue, then it's not
13 required for 33 Cypress Circle either.

14 ANN-MARGARET EMERY: Was there a new
15 fence installation on Rollins?

16 KATHERINE HENRY: There was an entire
17 gut job done on that property. Dumpsters
18 kept being pulled up and the sellers were
19 supposed to have pulled the permits, and we
20 were told days before closing that they never
21 did. They actually then went and prohibited
22 us from getting whatever permits that they
23 should have gotten, and they canceled the
24 permits that we had been able to obtain to
25 that point, and then when they temporarily

1 got possession of the property as we were
2 litigating this issue and trying to sue them
3 for specific performance, they brought up one
4 dumpster after another to completely tear out
5 and gut the house and the city refused to do
6 anything about it whatsoever.

7 ANN-MARGARET EMERY: Well, you're a
8 lawyer. You didn't think to call the city to
9 find out --

10 KATHERINE HENRY: We did.

11 ANN-MARGARET EMERY: Did you call the
12 city to find out if you needed a pens permit
13 for the property we're here talking about
14 today?

15 KATHERINE HENRY: I would not call
16 somebody when a answer was already provided
17 to me in the same year.

18 ANN-MARGARET EMERY: On a different
19 property?

20 KATHERINE HENRY: Like I said, equal
21 protection applies, so I wouldn't assume
22 we're going to cherry-pick and say we're not
23 going to enforce the statutes or the Land
24 Development Code when it would benefit us at
25 924 Rollins, but we are going to try to

1 enforce some sort of regulations on a
2 different property when it would not benefit
3 us or harm us. So, no, I wouldn't think that
4 there would have been something in the books
5 saying that you could do that.

6 ANN-MARGARET EMERY: Okay. At some
7 point you did realize there was a stop-work
8 order on the property in regards to the
9 fence?

10 KATHERINE HENRY: When our fence was
11 done, yes.

12 ANN-MARGARET EMERY: You didn't have any
13 idea that there was a stop-work order --

14 KATHERINE HENRY: On this, no, because
15 it was never communicated to me by email that
16 day, it was never communicated to me on the
17 phone when we had, I don't know, an hour long
18 conversation that morning. And they didn't
19 bother knocking on the door and posting it or
20 trying to personally serve me. They didn't
21 send it in the mail, US mail, certified mail,
22 nothing. It was put in the boulevard facing
23 away from, which we later found out when we
24 saw it on video footage.

25 ANN-MARGARET EMERY: Okay. You saw it

1 facing away from you, but you didn't go
2 around the front of it to take a look to see
3 what it said?

4 KATHERINE HENRY: Like I said, it
5 actually wasn't on the sign when we saw the
6 post. We saw some random stake. It had
7 started storming that day. And by the time
8 that I saw that there was a -- a stake in the
9 yard, there was no sign attached to it. We
10 didn't find it until later. I'm not sure
11 exactly when at this point, but we didn't
12 find it until much later.

13 ANN-MARGARET EMERY: Okay. Thank you.

14 THE COURT: All right. Thank you.
15 We'll proceed with case number 22-11246. And
16 the alleged violation is no building permit
17 issued under the code, storage container
18 placed on the property without a permit.
19 Take a seat.

20 JANET BRUCE: My name is Janet Bruce,
21 neighborhood improvement officer for the
22 City of Ormond Beach. The case before you is
23 case number 22-112246. The respondent is
24 Michael Henry and Katherine Henry. Violation
25 address is 33 Cypress Circle, Ormond Beach.

1 The violation is of the Land Development
2 Code, chapter two, article three, section two
3 through 50(a)(9). A -- metal storage
4 containers being used as sheds installed on
5 the property without obtaining a permit. I
6 would like to submit into evidence a copy of
7 the Notice of Hearing and the hundred dollar
8 citation with proof of its service; a copy of
9 the Notice of Violation with proof of good
10 service; affidavits of regular mail and
11 postings; copy of property appraiser's
12 record; a copy of the Land Development Code
13 that is at issue in this case.

14 THE COURT: Any objection to them being
15 admitted into evidence? Is it your standing
16 objection from the last one?

17 KATHERINE HENRY: I'm just making sure
18 that I know exactly what's in it first,
19 Your Honor.

20 THE COURT: All right. You want to take
21 a look at the -- have you got it?

22 KATHERINE HENRY: Let me just make sure
23 that --

24 THE COURT: Yeah. Any objection?

25 KATHERINE HENRY: I would just have the

1 same objections that --

2 THE COURT: A standing objection? Okay.

3 KATHERINE HENRY: -- photo in this
4 packet that wasn't in -- I'm sorry. That's
5 the next -- not -- I don't have an objection
6 to that. Other than my previously raised
7 objections, I don't have any further
8 objections to that particular packet because
9 you still have the photo packet that's
10 separate, right?

11 THE COURT: Okay. Well, it's admitted
12 as a composite, City's Exhibit 1.

13 JANET BRUCE: I'd also like to submit
14 photos which led to the issuance of the
15 Notice of Violation and the citation; photos
16 of the last status of the property which
17 reflects the current state of the property;
18 the recommendation page as well as the case
19 cost sheet.

20 THE COURT: Any objection to this being
21 admitted?

22 KATHERINE HENRY: Yes, Your Honor. I
23 realize that you already heard me as far as
24 the fruit of the poisonous tree argument. If
25 I may approach just to point out a specific

1 picture.

2 THE COURT: These are the ones she's
3 asking to be admitted. Here, is this -- is
4 that the same thing?

5 KATHERINE HENRY: That is not the exact
6 same angle but, yes, it shows --

7 THE COURT: Okay.

8 KATHERINE HENRY: -- shows --

9 THE COURT: Let me see your picture.
10 Okay. Yeah. This pretty much --

11 KATHERINE HENRY: So there's my car. I
12 think you could tell that that's my car right
13 there and my van right there.

14 THE COURT: Yeah. Okay.

15 KATHERINE HENRY: It's a slightly
16 different angle, but it's --

17 THE COURT: Okay. Okay. Admitted.

18 KATHERINE HENRY: Actually, do you mind
19 if I see which other ones they have?

20 THE COURT: Sure. Just go ahead and
21 look.

22 KATHERINE HENRY: And we're talking
23 about the shipping containers, right?

24 THE COURT: Over your objections, it's
25 admitted as a composite.

1 KATHERINE HENRY: Your Honor, may I
2 state what my objection is about that?

3 THE COURT: Oh, I thought it was the
4 standard objection that -- you have a --
5 yeah, sure.

6 KATHERINE HENRY: In addition to the
7 ones that I have raised before, the -- what
8 is on page two of this, it's the bottom --
9 I'm just, out of curiosity, on the screen you
10 have all of the pictures that are in this?

11 JANET BRUCE: Yes.

12 KATHERINE HENRY: Can you go to the
13 fourth picture? Okay. So in that picture,
14 you have my van that's on the far right. And
15 what appears to be a glass reflection with
16 some water on it. I guess it had already
17 started raining by the time they put the
18 signs up that day. But that is the
19 windshield. I can't tell the angle, which
20 direction my car was parked. But at any
21 rate, she had gone -- what I had mentioned
22 earlier that I didn't have a chance to bring
23 the video evidence, this photo shows -- I
24 think the one in the pavers shows it a little
25 bit differently. But this particular photo

1 shows that she had gone in between or
2 essentially around where my car was and my
3 car -- oh, which -- this is the pavers one?
4 Just for demonstration, I guess to explain
5 the context, could I show you one they
6 haven't introduced yet?

7 THE COURT: Um-hum.

8 KATHERINE HENRY: This top one shows
9 where my car is parked.

10 THE COURT: Um-hum.

11 KATHERINE HENRY: So I'm just trying to
12 say how she was in -- she was on my property
13 going in between the vehicles in order to
14 take these pictures.

15 THE COURT: Okay.

16 KATHERINE HENRY: And so that was --

17 THE COURT: Okay.

18 JANET BRUCE: Your Honor, may I respond?
19 Yes. That picture is taken still from the
20 sidewalk. I used the zoom on my camera, so I
21 did not walk onto her property. However, in
22 this case, at the beginning of my case,
23 through our trainings we are permitted to
24 walk up to the front door to take photos of
25 any said violations. However, in this case I

1 never walked to her front door. I always
2 maintain myself on the sidewalk. This photo
3 was taken using my zoom feature on my camera.

4 THE COURT: City want to respond to
5 any --

6 ANN-MARGARET EMERY: No. That's good.
7 Thank you.

8 THE COURT: Okay. This is admitted as
9 exhibit for the city, 2. Anything further in
10 this --

11 JANET BRUCE: I can go back from the
12 beginning, Your Honor. The storage
13 containers that were placed on the property
14 are not only not permitted, however, I did
15 use the building permit case on this case due
16 to the fact that she did indicate to me she's
17 using them as a shed so I used it as the not
18 obtaining a shed permit case. The
19 shed/storage containers are currently on the
20 property line, not meeting setbacks as well.
21 This is September 2nd. This is September
22 2nd. October 25th and February 21st is the
23 most recent photo that shows the property in
24 its current status.

25 THE COURT: What's your recommendation

1 in this case?

2 JANET BRUCE: I don't know. What
3 happened? I recommend finding that a
4 violation of the Land Development Code,
5 chapter two, article three, section
6 2-50(s)(9) exists and that the respondents be
7 ordered to pay the hundred dollar citation as
8 well as the associated case costs and shall
9 comply by removing the shipping containers
10 from the property by March 27, 2023. The
11 shipping containers are not an approvable
12 accessory structure on the property pursuant
13 to the requirements associated with the Land
14 Development Code chapter two, article three,
15 section 2-50(a)(9). Absent compliance, I
16 recommend a \$25 per day fine be imposed
17 beginning on March 28, 2023 and shall
18 continue to accrue until compliance has been
19 achieved. Further, the respondents shall be
20 obligated to contact the City of Ormond Beach
21 neighborhood improvement division to schedule
22 a reinspection of the property to confirm
23 compliance and the date thereof. Absent
24 compliance, I request that the city be
25 granted the authority to enter onto the

1 property on or after April 10th, 2023, and
2 have the right to remove the two storage
3 containers from the property with all costs
4 thereof to be assessed against the
5 respondents.

6 In addition, should the city remove and
7 dispose of the aforementioned containers, the
8 city shall not be responsible for any damage
9 or loss associated with said removal. And
10 the case cost is \$23.56 and this is the
11 breakdown.

12 THE COURT: Okay. Now, Ms. Henry, do
13 you have any other responses on this
14 particular case before we go to the third
15 one?

16 KATHERINE HENRY: I do, Your Honor. I
17 was trying to find a particular document.
18 The initial document that the city had sent
19 to me, and I'm not sure at this point, it
20 must have been the original thing they sent
21 by certified mail. At any rate, I referred
22 to it in my notice back to them in my
23 response on November 8th. But the -- with
24 the fence and the pavers, it was mentioned
25 that I needed to get a permit or remove the

1 items. With the shipping containers, it says
2 I needed to get a permit, not to remove the
3 items, which I found peculiar that they were
4 different amongst them. And then as I was
5 finishing up my response to the city, I got
6 an email from Janet Bruce saying -- I think
7 it was a day before election day so the 6th
8 maybe, November 6th, saying that my shipping
9 containers just simply needed to be removed.
10 She and I talked on the phone, that that's --
11 shipping containers are not prohibited in the
12 ordinance, they're -- or the Land Development
13 Code. They're not even mentioned anywhere in
14 there. And when I asked for clarification as
15 to where she thinks that is, all I was given
16 was the generic one that she cited today, and
17 I responded to that in my response to them on
18 November 8th. There is quite a bit of
19 argument in there about how just reading the
20 language -- the language of the code itself,
21 it's -- it -- there's so many ways. I mean,
22 I would take up way too much of your time and
23 you said you've already reviewed it. But the
24 definition of development code and the
25 definition of structures and utility

1 structures and accessory uses and all of
2 that, I laid out --

3 THE COURT: Which page did you have that
4 on?

5 KATHERINE HENRY: It starts -- the
6 general discussion of that starts on page 19
7 of the one that I sent in November.

8 THE COURT: Um-hum. Yeah. I'm looking
9 at it now.

10 KATHERINE HENRY: I'm trying to find the
11 specific paragraph. Okay. So -- so the
12 notice that they sent me says that it's in
13 violation, and what they're saying today.
14 2 -- 2-50(a)(9). But Land Development Code
15 section 2-50(dd)(1), which is entitled sheds,
16 utility structures, playhouses and gazebo
17 states that a building permit shall be issued
18 prior to the erection of any accessory
19 structure.

20 However, the Land Development Code defines
21 erected the same as it defines construction
22 or start of. So then you have to look at
23 1-22. Again, I apologize, but I didn't make
24 these convoluted, they just are. So looking
25 at 1-22, construction or start of is defined

1 where the actual start of construction means
2 the first placement of permanent construction
3 of a building, including a manufactured home,
4 on a cite where, and this is a direct quote,
5 permanent construction does not include the
6 installation of accessory buildings such as
7 garages or sheds not occupied as dwelling
8 units or not part of the main buildings. And
9 I don't think there's any denying that we're
10 not occupying these shipping containers as
11 dwelling units, and they're not attached to
12 or a part of our main buildings.

13 And if you look at the community planning
14 act, which governs, that is the state law
15 governing these proceedings and all of the
16 Land Development Code, the term structure
17 is -- the Land Development Code refers it to
18 section -- excuse me, Florida statute 380.031
19 subdivision 19 for looking for what the
20 meaning of structure is in these contexts.
21 It only includes movable structures which can
22 be used for housing, business, commercial,
23 agricultural or office purposes which are --
24 the shipping containers are not -- they don't
25 fit those qualifications. There's no AC,

1 heat, plumbing. They were purchased as
2 storage containers. They're being used as,
3 and they remain, storage containers, so they
4 don't meet the definitions of the state
5 statutes. So they're excluded from what the
6 state law talks about there. We don't have a
7 system where we have to just come and, you
8 know, obtain permission -- we have to assume
9 that we have to have permission to do
10 everything on our property and we have to
11 look for where in the law it says we have
12 permission. That's not the system of
13 government we have here.

14 If the government is trying to prohibit us
15 from doing something, whether it's installing
16 shipping containers or something else, then
17 the government has to have a legitimate
18 purpose for that, and they have to spell that
19 out very clearly. And that I can give you an
20 actual Florida Supreme Court case. It's been
21 precedent for quite a while, and actually
22 cited in other cases that have been on the
23 books for even longer. But the Florida --

24 THE COURT: That's on page 19?

25 KATHERINE HENRY: Yes, Your Honor. The

1 Florida Supreme Court and City of
2 Miami Beach, the Fleetwood Hotel, was citing
3 the *Liberis v. Harper* case from 1925 that
4 talks about in these situations whether the
5 municipality possesses a specific power to do
6 something such in these situations. Any
7 doubt will be resolved against the city
8 because we have inherent rights as people
9 here to possess property and protect
10 property, acquired property, all of that is,
11 you know, a given in our -- in our society
12 and I cited that as well. But the Supreme
13 Court explained that because of that, any
14 time you have any kind of doubt whether a
15 certain term is covered or not, then the
16 doubt has to be resolved against the city.
17 And certainly here for how pervasive the use
18 of shipping containers --

19 I don't know if you're from anywhere else,
20 Your Honor, if you've visited up north, but
21 we're from Michigan originally. I have also
22 lived in Minnesota. And I can tell you that
23 you really don't see shipping containers
24 except for at, like, freight yards. Here
25 it's like a shipping container, you know,

1 every three properties it seems, especially
2 when it comes to beachside. There are a ton
3 of shipping containers being used and I'm
4 assuming after I have now survived two
5 hurricanes as a Florida resident that it's
6 because they hold up well, they don't fall
7 over like sheds. All my neighbors' sheds
8 that were, like, flying around and being
9 ripped into pieces and being essentially
10 shrapnel throughout the neighborhood during
11 hurricanes, our shipping containers didn't do
12 that.

13 But at any rate, when it comes to the part
14 of the code that they're citing, it's not --
15 you can't just look at that one to issue a
16 permit. If they're going to issue a permit
17 for something, they have to look at the code
18 that they're citing and then they have to
19 look at, okay, well, does it meet the
20 definitions and what are all of the other
21 requirements and what are all of the other
22 code pieces that relate to that. Well,
23 that's what I did, and I laid it out for
24 them, and they have not at all even alleged
25 where it says in there that a shipping

1 container is not allowable other than
2 generalities. So to just throw out there
3 that it's just not allowed is -- is not okay.

4 So I guess as far as things go, I'm not
5 sure when to ask this. I was actually
6 waiting for the opportunity of when I would
7 be able to ask the city a question or whether
8 that would be you, perhaps, for
9 clarification, but nowhere -- in terms of the
10 pictures that have been demonstrated, nowhere
11 in the law does it say that city personnel is
12 permitted to walk right up to the front door
13 and take pictures as they see fit. They
14 can't go on the property without a warrant,
15 period.

16 THE COURT: Okay. Now, when we started
17 out, I think I asked if you wanted to ask any
18 questions. We may have stopped it along the
19 way. So of her testimony now, do you want to
20 ask her any questions pertaining to that, or
21 would you defer to the city attorney's
22 office? What -- what do you want to ask
23 them?

24 KATHERINE HENRY: Quite honestly, I'm
25 flexible. I don't care who answers it.

1 THE COURT: Yeah.

2 KATHERINE HENRY: But I would like to
3 know, since everything that I have seen says
4 that even a law enforcement officer cannot go
5 on a property for purposes of taking pictures
6 in these situations. Certainly one who is
7 not deputized in that manner cannot do that.

8 THE COURT: So is that a question?

9 KATHERINE HENRY: I would like to know
10 where --

11 THE COURT: I'm going to -- I'm going to
12 let the city --

13 KATHERINE HENRY: -- it says they can do
14 that.

15 THE COURT: -- attorney answer.

16 ANN-MARGARET EMERY: Okay. I think we
17 already had a code enforcement officer state
18 that that wasn't the case so I'm not really
19 sure the relevancy of the question. But,
20 anyhow, I will answer it. In Florida you
21 are -- I'm -- you didn't mention that you had
22 a no trespassing sign on your property. You
23 are allowed to go up to someone's front door,
24 just as the Amazon driver goes to drop off a
25 package. That might be different if you have

1 a no trespassing sign on your property, but I
2 don't believe you have and I don't believe
3 you've instructed code enforcement not to do
4 that, or if you have, they -- I'm sure they
5 have not come after that. So I disagree
6 with -- with what you are saying and I --
7 it's not particularly relevant, but I would
8 answer the legal question anyhow.

9 KATHERINE HENRY: But where is -- does
10 it say? Because the trespassing statute said
11 that -- you don't have to put a sign up when
12 it's your permanent residence.

13 THE COURT: You know, I'm getting past
14 what I want to hear pertaining to this.

15 KATHERINE HENRY: Okay. If I'm not
16 going to get the answer -- question answered,
17 that's fine, but that didn't tell me where in
18 the law because the trespassing statute does
19 not --

20 THE COURT: You may have to deal with
21 what you got as far as an answer.

22 KATHERINE HENRY: Okay, Your Honor. So
23 I guess my -- my concern with that, and I
24 apologize right now. I don't even remember.
25 Am I only supposed to be asking questions, or

1 can I bring up the last point that I have on
2 the --

3 THE COURT: You can bring up the last
4 point.

5 KATHERINE HENRY: Okay. The -- when it
6 comes to the shipping containers and having
7 the permits, et cetera, there -- there are
8 two things, and I don't know if the second
9 one is really going to be relevant or not
10 because I'm not sure what your findings would
11 end up being. But the two things that were
12 brought up, at least on the phone by Janet
13 Bruce, were not being able to have a shipping
14 container at all and even if we could have
15 one, then it would be -- it has to be at
16 least seven and a half feet back from the
17 property line.

18 So, again, depending on what your findings
19 might be, that other portion might be
20 relevant, it might not. And so to that
21 point, I just wanted to specifically point
22 out to you. I know we talked about it in
23 general. But as far as shipping containers,
24 sheds, structures, first of all, again, the
25 City's own park on beachside has a storage

1 container, it's actually one of the PODS
2 containers which would be one of the more
3 transient in nature types that is covered by
4 the Land Development Code, and those are only
5 supposed to stay on the property for 30 days.
6 That has stayed there since -- at least since
7 we've lived here, and it continues to be
8 there as of this date and there's a picture
9 of that. The city shouldn't be able to,
10 again, cherry-pick which ordinances apply to
11 which properties.

12 But also in talking about the -- you know,
13 the issue of shipping containers being a
14 thing at all, I gave, even in my very first
15 response to them in November, I said we have
16 just a few streets down when I went for a
17 walk, I was able to take a picture of two
18 more that those are actually in the front
19 yard, they're not even in the back yard of
20 the property. They are the same size, shape
21 and color as the shipping containers that we
22 have had, and they have been there for quite
23 some time. So, again, to say -- and there's
24 no permits. There's nothing even applied for
25 in the public record for those shipping

1 containers. But when you talk about whether
2 it's actual shipping containers, which I have
3 sent you information on or the 263 other
4 violations where it comes to a structure,
5 shed, you name it, that is right up to -- on
6 the property line or within seven and a half
7 feet of the property line, I think 263 other
8 examples within a quarter mile radius of my
9 home shows being singled out and an equal
10 protection violation pretty darn clear, more
11 so than just saying, well, how can you only
12 get me, I wasn't the only one speeding that
13 day. This shows something that's being
14 singled out.

15 THE COURT: Okay. All right. Now, I
16 have finished with this second case. Now,
17 you've been sitting there talking quite a
18 bit. Let's take a break. You probably need
19 one, and everyone else does.

20 KATHERINE HENRY: Sure, Your Honor.

21 THE COURT: So we'll take a 10-minute
22 break, and then we'll go to the third case,
23 okay?

24 ANN-MARGARET EMERY: I do have, when we
25 come back, some questions of her in regards

1 to this. Just a few.

2 THE COURT: Let's go ahead and do that.

3 KATHERINE HENRY: Okay. Okay.

4 ANN-MARGARET EMERY: You have two
5 shipping containers on your property right
6 now?

7 KATHERINE HENRY: Yes, I do.

8 ANN-MARGARET EMERY: And how long have
9 they been on your property?

10 KATHERINE HENRY: Since last year.

11 ANN-MARGARET EMERY: Approximately?
12 Just in the fall, the fall of last year or
13 summer last year?

14 KATHERINE HENRY: I believe it was March
15 or April.

16 ANN-MARGARET EMERY: Okay. So almost a
17 year. Okay. And what are the size of the
18 containers?

19 KATHERINE HENRY: If you guys had asked
20 me to bring this information ahead of time, I
21 certainly could have complied a lot easier.
22 Off the top of my head, I'm going to wild
23 guess and say 8 by 20, but I have no idea.

24 ANN-MARGARET EMERY: Okay. And do you
25 know what they're made of, what the materials

1 are?

2 KATHERINE HENRY: They are made of what
3 all other shipping containers are made of,
4 but these are --

5 ANN-MARGARET EMERY: Steel?

6 KATHERINE HENRY: -- (unintelligible)
7 containers so they are not the ones that have
8 all been beaten up and battered by being on
9 the seas for years and years.

10 ANN-MARGARET EMERY: Okay. And what are
11 you using them for, or what's your intent of
12 how you intend to use these containers?

13 KATHERINE HENRY: Well, as we're
14 required to have a garage, but after we got
15 into the property the code was clarified
16 further with us that we weren't actually able
17 to put a garage anywhere that makes common
18 sense to use the property. Those essentially
19 are helping to keep inside things that my
20 neighbors don't want out and about during a
21 hurricane that can be used as projectiles.
22 Things that, frankly, a lot of my other
23 neighbors have on their front porches and
24 have sitting out on a regular basis, or in
25 their sheds that all got decimated and torn

1 to shreds.

2 ANN-MARGARET EMERY: So basically
3 storage?

4 KATHERINE HENRY: We're certainly not
5 living in them. Yes. I'm doing no business
6 in them. I mean, I don't know what else --

7 ANN-MARGARET EMERY: Okay. That's all.

8 THE COURT: Okay. Thank you. We'll
9 take a 10-minute break now.

10 (Recess.)

11 THE COURT: Okay. All right. The next
12 case is case number 22-11247, parcel
13 4223-02-06-0130. Michael Henry and Katherine
14 Henry. The alleged violation at 33 Cypress
15 Circle is no building permit issued in the
16 Land Development Code, chapter one, article
17 three, pavers installed without obtaining a
18 permit. And we'll proceed with the city.

19 JANET BRUCE: Yes, sir. My name is
20 Janet Bruce, neighborhood --

21 ANN-MARGARET EMERY: Yeah, I'm sorry,
22 Your Honor. The city would -- going back to
23 the previous case. We had one of our city
24 planners who was also going to testify, and
25 we also have some neighbors.

1 THE COURT: With the other case?

2 ANN-MARGARET EMERY: Yes.

3 THE COURT: Did we have anyone to
4 testify in the first case that I missed or
5 just the second case?

6 ANN-MARGARET EMERY: The second case.

7 THE COURT: Okay. And that --

8 UNIDENTIFIED SPEAKER: We're still on
9 the second case.

10 ANN-MARGARET EMERY: Oh, okay.

11 THE COURT: The second case, as to
12 storage containers?

13 ANN-MARGARET EMERY: Yes, Your Honor.
14 Yeah.

15 THE COURT: Okay. We're going to get
16 someone who wanted to testify? Are we ready?

17 ANN-MARGARET EMERY: Yes, we are.

18 THE COURT: We're still on case number
19 two, which is 22-112246. The city has
20 presented its case, and I've heard arguments
21 from the respondent, and the city has some
22 individuals that they want to testify. Who
23 is that?

24 ANN-MARGARET EMERY: Yes, we have one of
25 our city planners. And if I may, Your Honor,

1 just briefly just kind of following the
2 respondent has testified to -- we have a
3 fence case and a paver case, and in those
4 cases we have asked the respondents to obtain
5 a permit, you know, for those because fences
6 and pavers are something that can be
7 approved, maybe modification of height or
8 setback or you can't, you know, have too much
9 impervious area, those sort of things, but
10 they are subject to approval. Storage
11 containers such as this, cargo containers,
12 are not going to be subject to approval in a
13 residential neighborhood and that's why we're
14 going to call the city planner on that.

15 THE COURT: Okay. If you'll come
16 forward here. And you are -- would you be
17 sworn?

18 SARAH CUSHING: Of course. Good
19 morning. My name is Sarah Cushing.

20 (Witness was sworn.)

21 SARAH CUSHING: Again, good morning. My
22 name is Sarah Cushing. I'm with the planning
23 department with the City of Ormond Beach.
24 I'm here and available for any questions that
25 you may have.

1 ANN-MARGARET EMERY: Sarah, if you could
2 explain -- you've looked at the photos of the
3 cargo containers and could you explain why or
4 why not these would be permitted in the
5 City of Ormond Beach?

6 SARAH CUSHING: Of course. Yes,
7 definitely. So all of these types of
8 shipping containers, whether they are a Conex
9 container or a temporary POD container, all
10 of those accessory structures are outlined in
11 section 2-50 of the Land Development Code.
12 Specifically item number X with outdoor
13 storage. Item number three specifically
14 states that personal on-site storage
15 structures shall be limited to situations
16 where a person or business is moving to a new
17 location. The storage unit shall not be
18 placed on a period for over 30 days. So this
19 particular structure that we see in the
20 images above are for temporary purposes only
21 and subject to only be used for moving
22 purposes.

23 If somebody, by chance, needs longer than
24 that, they would have to need -- there would
25 need to be cause to show that it's actually

1 for moving purposes. As we have heard
2 earlier, it sounds as though this is more of
3 a long-term storage, and this would be more
4 of the accessory structure for a shed or a
5 detached garage. Sheds are accessory
6 structures that are outlined in section
7 2-50(n). I'm sorry. That's fences. Section
8 2-50(dd), that outlines sheds, as you
9 mentioned, sheds, utility structures,
10 playhouses and gazebos, more specifically.
11 Sheds are anything that are built according
12 to Florida Building Code standards, and if
13 it's under 150 square feet, it can be seven
14 and a half feet from the rear inside property
15 lines, assuming that there is no platted
16 easements. If, by chance, the structure is
17 over 150 square feet, then it has to meet the
18 principal setbacks of that particular zoning
19 district.

20 The subject property is located within the
21 R4 zoning district. It is identified as a
22 duplex in this zoning district, and the rear
23 yard set back for an accessory structure over
24 150 square feet would be 20 feet in the rear
25 and 20 feet on the side. So had anybody come

1 in to talk about options for sheds, detached
2 garages, the whole purpose of the planning
3 department is to go over these regulations,
4 to answer any questions in depth, look at
5 some type of surveyor aerial and go over what
6 reasonable locations could be on this
7 property. We understand that this particular
8 neighborhood, along with other historical
9 neighborhoods in the community, may not have
10 garages so having that detached garage for
11 an -- like accessory storage purposes is
12 something that would be encouraged rather
13 than a Conex trailer. Thank you.

14 ANN-MARGARET EMERY: Thank you very
15 much.

16 THE COURT: Any questions?

17 KATHERINE HENRY: I certainly do. You
18 mentioned that with -- I believe you
19 mentioned accessory structures that the set
20 back would be 20 feet on a side.

21 SARAH CUSHING: Yes, ma'am. For the
22 particular zoning district that your subject
23 property is located in, it's the R4 zoning
24 district. This information can also be found
25 on the website, but I'd be happy to send it

1 to you. R4 zoning district is a single
2 family cluster and townhouse zoning district,
3 and there is a number of different types of
4 single family options in here. This
5 particular one in Byron Ellinor is a duplex
6 and subject to the setbacks outlined in the
7 duplex column.

8 KATHERINE HENRY: So do you know where
9 it would say the 20 feet?

10 SARAH CUSHING: In that zoning district,
11 it's section 2-17 of the R4 zoning district
12 outlined in the City's Land Development Code.
13 Under item nine is where you have your
14 setbacks, and item 9A all the way through 9E
15 outlines setbacks of that zoning district.
16 And, again, you would be looking at the
17 column for duplex.

18 KATHERINE HENRY: So it wouldn't be 20
19 feet in total so it could be eight feet on
20 one side and 12 feet on another side? You're
21 saying it's 20 feet per side setback?

22 SARAH CUSHING: Correct. If it was a
23 single family home in this particular zoning
24 district, the eight foot on one side a
25 cumulative total of 20 would be applicable.

1 But because this is a duplex, the duplex,
2 again, is 20 on the side and 20 in the rear.

3 KATHERINE HENRY: Are you familiar with
4 the -- you obviously testified that you have
5 seen the pictures. Have you also then looked
6 at the aerial view that was submitted or just
7 familiar with the government's property
8 records, the property records that show the
9 aerial view of the property?

10 SARAH CUSHING: I have not specifically
11 looked at the aerials of this particular
12 property, but I am familiar with the
13 neighborhood. And if you had a survey, I
14 could be able to help provide better guidance
15 and direction.

16 KATHERINE HENRY: So does it sound about
17 right to say that these parcels are no bigger
18 than one quarter of an acre?

19 SARAH CUSHING: Until I see a survey
20 with the measurements, I wouldn't be able to
21 give you that answer.

22 KATHERINE HENRY: Okay. So if you did
23 have a property that was no bigger than a
24 quarter of an acre where you have, say, 88
25 feet total frontage, are you saying it would

1 still be physical -- physically possible to
2 end up placing any kind of other accessory
3 structure other than dead in the center of
4 the home?

5 SARAH CUSHING: It would be dependent,
6 one, on the size of the accessory structure.
7 So if the accessory structure is over 150
8 square feet, then it has to meet the
9 principal setback requirements. If it's
10 under 150 square feet, it has to meet the
11 setbacks of a shed accessory structure, which
12 can be seven and a half feet to the side and
13 seven and a half feet to the rear. Assuming
14 that there is no drainage or utility
15 easements within that, no accessory structure
16 outside of a fence can be placed within these
17 particular type of easements. But until I
18 know exactly the size and the location and
19 have a survey, I wouldn't really be able to
20 tell you reasonably what would be permissible
21 or what would be the most accurate or
22 anything of that standard.

23 KATHERINE HENRY: So what would you say
24 is supposed to be the procedure if you have
25 people that call on a property -- I don't

1 know if you're familiar with how hot the
2 market was at least in 2021, the property
3 came out that day, we had to put an offer in
4 that day, so --

5 SARAH CUSHING: Um-hum.

6 KATHERINE HENRY: So if you have a
7 realtor or a prospective buyer on a property,
8 a specific property, reaching out and saying,
9 hey, 33 Cypress Circle, can you put a garage
10 here, what -- if -- if it's -- I'm -- quite
11 frankly, I don't even know who it would be
12 directed to at that point.

13 SARAH CUSHING: Um-hum.

14 KATHERINE HENRY: But if you have
15 somebody from the city reply go back saying
16 certainly you could do that, it just has to
17 be 25, whatever -- 25 feet back from the
18 property lines, et cetera, and there is no
19 offer of looking at the survey, there is no
20 offer of -- of going into any further detail.
21 In fact, it takes several emails back and
22 forth just to get a copy of what section of
23 the code would even apply. Does that -- you
24 mentioned earlier that it's an offer -- the
25 purpose -- one of the purposes of your

1 office, or maybe your position, is to be able
2 to sit down with residents and explain --

3 SARAH CUSHING: Um-hum.

4 KATHERINE HENRY: -- some of those
5 things. So how is it that that's available,
6 but yet the city doesn't communicate that?
7 How -- how would a resident know that other
8 than reaching out and saying, hey, this is
9 specifically what we would like to do at this
10 specific property, how can we make it happen?

11 SARAH CUSHING: Of course. So those are
12 very good questions I'm happy to help give
13 guidance on. So everybody has its own zoning
14 district, every home does. And it's really
15 up to the due diligence of the property owner
16 to reach out. I can't come up to you and
17 say, hey, you have to do X, Y or Z. But
18 if -- we get emails all the time, we get
19 phone calls all the time, and we have people
20 come in personal the time. That's what our
21 office deals with is handling these inquiries
22 and providing them with the necessary tools
23 that they need to make the decision that's
24 best for them and their property so that they
25 can move forward with the appropriate permits

1 if necessary.

2 So if somebody were to call and say, hey,
3 33 Cypress Circle, I have, you know, the
4 interest in wanting to put this particular
5 shed here, I would do exactly what you just
6 stated. I would get their email contact
7 information so that way I can send them an
8 email with the regulations that reference the
9 particular question in play such as sheds.
10 Oftentimes I attach the detached garage
11 standards because once you go over an
12 accessory structure over 150 feet, that
13 automatically goes into the definition of
14 detached garage so I kind of explain that in
15 that written email. When they provide the
16 address, then that can help me provide the
17 zoning district regulation, and I usually
18 typically give them guidance of how to
19 navigate the City's website as well so that
20 way if you're looking at this property
21 temporarily, or you're looking at another
22 property, you have the tools necessary to do
23 that research on your own if it's after hours
24 and you're looking for an immediate response.

25 KATHERINE HENRY: That sounds great. So

1 are you -- so if -- if a realtor, such as
2 ours when we purchased this property, were to
3 reach out and email the city, quite frankly I
4 don't remember who it would have been. Let's
5 say it went to somebody else just, like, in
6 the general city office --

7 SARAH CUSHING: Um-hum.

8 KATHERINE HENRY: -- right, are they
9 supposed to funnel those types of questions
10 to you or your department in order to give
11 the correct information?

12 SARAH CUSHING: Yes, ma'am. It depends
13 on what email that you're sending it to. If
14 you're sending it to just, like, a general
15 city email, whether that's upstairs in our
16 city clerk's office, then they would
17 definitely forward it to the appropriate
18 department.

19 For instance, our permit office, our
20 permit technician, have their own individual
21 emails. But we also have our general email
22 inbox with BP Online. And all of the general
23 permit questions go there, and then the
24 permit technicians will review those and
25 forward them to the appropriate departments.

1 Because, for instance, somebody could be
2 sending a general email asking about setbacks
3 for a property to BP Online, that would send
4 that to the planning department rather than
5 the building department. But if somebody is
6 asking questions about Florida Building Code
7 and safety requirements, wind load speeds and
8 the like, they wouldn't forward that to me,
9 they would forward that to our building
10 department for clarification for that
11 particular inquiry.

12 KATHERINE HENRY: So is there some sort
13 of procedure in place, then, when you are
14 not -- when your department is not given -- I
15 can't imagine the -- I was not given the
16 information that you mentioned. I was not
17 given an offer with our survey to go over
18 anything --

19 SARAH CUSHING: Um-hum.

20 KATHERINE HENRY: I was actually given
21 information that was incorrect. One of the
22 things was they specifically said has to be
23 the 8 and 12, if you have eight feet from the
24 property line that's fine as long as you have
25 12 specifically for the property that you

1 have.

2 SARAH CUSHING: Um-hum.

3 KATHERINE HENRY: The zoning that exists
4 today. And so if you're telling me now that
5 the information you were given in email, of
6 course I don't have ready access to it.

7 SARAH CUSHING: Um-hum.

8 KATHERINE HENRY: But if you're telling
9 me that is incorrect and it has to be 20 on
10 each side on a property that's only 80 feet
11 wide, that's basically putting it in the
12 middle --

13 SARAH CUSHING: Um-hum.

14 KATHERINE HENRY: -- of the property, is
15 there some sort of catchall procedure that
16 would help people be able to know that
17 they're getting the right information or be
18 able to have somebody give it a more
19 thorough -- how would somebody in my position
20 who went through a realtor --

21 SARAH CUSHING: Um-hum.

22 KATHERINE HENRY: -- who contacted the
23 city and got an answer, but apparently got
24 the wrong one, how -- how is -- what would
25 there be for remedy to make sure they get the

1 right information?

2 SARAH CUSHING: I understand your
3 question. I would encourage you as the
4 property owner to do your due diligence above
5 and beyond what the realtor's due diligence
6 is because while they're going to be reaching
7 out and asking these questions for you, how
8 they interpret the information that's given
9 to them is one thing, you know --

10 KATHERINE HENRY: And I appreciate that.
11 There was no interpretation.

12 SARAH CUSHING: Um-hum.

13 KATHERINE HENRY: She forwarded it on to
14 me. In fact, I think I was just copied so I
15 think I got directly the response from the
16 city.

17 SARAH CUSHING: Um-hum.

18 KATHERINE HENRY: So there's no
19 interpretation from the realtor whatsoever.
20 I'm specifically talking about information
21 that came directly from it the city.

22 SARAH CUSHING: Um-hum.

23 KATHERINE HENRY: So is there really not
24 any kind of mechanism or procedure to make
25 sure that either the correct people or the

1 correct information is being provided then
2 when residents do do due diligence and reach
3 out before even putting an offer in on a
4 property to make sure that they can do some
5 of those things?

6 SARAH CUSHING: I -- again, it's the
7 same thing, reaching out to staff and
8 providing for that clarification if you feel
9 that the direction and clarification that you
10 got from one staff member is -- may or may
11 not be accurate, then you can --

12 KATHERINE HENRY: (Unintelligible).

13 SARAH CUSHING: -- reach out to others.
14 But that is -- it's the same information that
15 you're going to get from one staff member to
16 the next as we are a very small group of
17 staff members that works closely with our
18 Land Development Code and the zoning
19 districts and understanding those difference
20 of setbacks, depending on the type of
21 structure within that zoning district itself
22 really helps give that particular direction
23 to the inquirer.

24 KATHERINE HENRY: So --

25 THE COURT: Okay. This is getting to

1 the point where it's not assisting me in
2 trying to make my decision, so if you'll wind
3 up your questions of this witness.

4 KATHERINE HENRY: Yep. So you testified
5 about -- that 2-50 -- section 2-50 of the LDC
6 is -- categorizes what I have as temporary
7 only and that it can only be used for moving.
8 What in there -- where -- where in the code
9 does it say anything about that, that those
10 can only be viewed as or defined as temporary
11 and then used only for moving?

12 SARAH CUSHING: So 2-50 is for accessory
13 structures as a whole. All of the different
14 types of accessory structures. 2-50(x) is
15 for outdoor storages. Specifically item
16 number three. So 2-50(x)(3) talks about
17 on-site storage structures, which this would
18 fall under that category.

19 KATHERINE HENRY: Is that defined
20 anywhere in the code?

21 SARAH CUSHING: So you can go under
22 temporary structures, you can go under our
23 definitions. I believe it's 1-22, which has
24 those different definitions in there. But
25 those are the -- that's -- that's typically

1 the standard protocol of using these Conex
2 trailers or PODS as moving purposes only. If
3 you're talking about long-term storage, then
4 we would be going into an accessory structure
5 like a shed if it's 150 square feet or under,
6 it's defined as a shed.

7 KATHERINE HENRY: (Unintelligible)
8 definition was because --

9 SARAH CUSHING: Um-hum.

10 KATHERINE HENRY: -- I guess my
11 confusion is that -- hopefully you can
12 clarify this. 2-50(d)(d)(3) that you have
13 mentioned that talks about sheds and utility
14 structures --

15 SARAH CUSHING: I was quoting
16 2-50(x)(3).

17 KATHERINE HENRY: Just now. But earlier
18 you talked about 250(dd) that is specifically
19 about sheds.

20 SARAH CUSHING: Yes, ma'am.

21 KATHERINE HENRY: You -- it requires
22 that any structure or shed over 150 square
23 feet shall be considered a garage and must
24 meet the principal building setbacks, which
25 you mentioned earlier.

1 SARAH CUSHING: Yes, ma'am.

2 KATHERINE HENRY: However, you also just
3 recently mentioned LDC 1-22 to look at the
4 definitions, and 1-22 doesn't actually talk
5 about the temporary or Conex or any of the
6 things that you said are in this there. They
7 are nowhere in there, but what is in there is
8 it talks about utility structures but that
9 they are only defined as accessory structures
10 that do not exceed 150 square feet. So this
11 being larger than 150 square feet, it's not
12 covered as the utility structure under that
13 part of the code, so --

14 SARAH CUSHING: So if that's the case
15 and it's exceeding 150 square feet, it
16 automatically gets defined as a detached
17 garage and has to abide by the detached
18 garage accessory structure standards.

19 KATHERINE HENRY: And where does it say
20 that in there?

21 SARAH CUSHING: So specifically
22 2-50(dd)(3)(a) for the purposes of this
23 section and utility structure or shed over
24 150 square feet shall be considered a garage.

25 THE COURT: Okay. Where are you reading

1 from on that specific --

2 SARAH CUSHING: 2-50(dd).

3 THE COURT: Okay.

4 SARAH CUSHING: And it's for the area
5 requirements. And then you go into a
6 definition of a garage.

7 THE COURT: Okay.

8 SARAH CUSHING: And specifically a
9 detached garage, and there's certain
10 standards required for detached garages. One
11 of which are meeting the principal structure
12 setbacks.

13 THE COURT: Okay. Thank you for your
14 testimony. We're going to move on.

15 SARAH CUSHING: Okay. Thank you, sir.

16 ANN-MARGARET EMERY: May I ask just --

17 THE COURT: Yes.

18 ANN-MARGARET EMERY: I'll be quick.

19 Does the Florida Building Code address the
20 use of cargo shipping containers for
21 residential purpose?

22 SARAH CUSHING: So that's a good
23 question. So our office deals with the
24 planning and the Land Development Code side
25 of the regulations. Florida Building Code

standards are above and beyond. It's what the state requires all of the structures to meet certain requirements for safety. The building department can answer those specific questions, but it's my understanding from previous conversations with some of their staff that these particular structures aren't regulated under Florida Building Code standards, and therefore wouldn't be able to pass a permit with their department.

ANN-MARGARET EMERY: And one last question. The respondent mentioned whether or not there was a mechanism for a homeowner to know whether or not a structure would be permitted on the property. Wouldn't the mechanism be the application -- wouldn't it be the application of the permit to review that before they spend the time and money to put something on their property?

SARAH CUSHING: That's correct. Yeah. So there's a number of different submittal requirements when a permit comes in. One of which is a site plan that shows the proposed location of the structure, the size of the structure and the setbacks to the applicable

1 yards. And then the -- and that's what I
2 would review in the planning department for
3 LDC review. And then the building department
4 would review it for Florida Building Code
5 safety requirements, and typically like shed
6 manufacturing specs that you -- if you buy a
7 prefabricated shed, it will have those, like,
8 specifications that show how it meets the
9 Florida Building Code requirements.

10 KATHERINE HENRY: Your Honor, I do have
11 a follow-up question because she specifically
12 mentioned garage. So earlier, I'm not sure
13 if you were (unintelligible). But earlier
14 the city attorney argued that my
15 interpretation of the Land Development Code
16 regarding meeting properties -- residential
17 properties in Ormond Beach needing a
18 garage --

19 SARAH CUSHING: Um-hum.

20 KATHERINE HENRY: -- that that somehow
21 does not apply to me. Do you happen to
22 know -- well, first of all, would you agree
23 with the fact that the Land Development Code
24 requires properties to have a garage?

25 SARAH CUSHING: Yeah. So as our

1 attorney mentioned, new builds that are
2 required to have a garage, whether it's an
3 attached garage, a detached garage or a
4 carport, some form of a garage with new
5 builds. This particular neighborhood was
6 built prior to the current Land Development
7 Code standards so it could be exempt from
8 that. We're not going to cite you for not
9 having a garage. But if you were trying to
10 build one going forward or do any form of
11 expansion, we would talk about those
12 processes and procedures at that point in
13 time. If you're talking about -- just one
14 moment. And so if you're talking about a
15 shed that's over 150 square feet, even if
16 you're not using it as a garage, it's still
17 defined as a detached garage because it's
18 over 150 square feet. So you can have a 200
19 square foot shed in your back yard and that
20 is okay subject to meeting the specific
21 setbacks.

22 KATHERINE HENRY: Okay. So you're
23 saying that you guys -- it's not so much that
24 the Land Development Code, I'm asking what I
25 understand and asking you to clarify, you're

1 saying that the -- it's not that the Land
2 Development Code doesn't require my property
3 or my neighboring properties to have a
4 garage, what you're saying is perhaps in a
5 matter of fairness or something that you guys
6 aren't going to walk around, you know, and
7 knock on each door and say, hey, your house
8 was built in 1949, it doesn't have a garage,
9 and even though you're not trying to do
10 anything to your property, we're going to
11 enforce this on you and make you build a
12 garage? Is that what I'm hearing you say is
13 that it is applicable, but you're choosing
14 not to unless the homeowner does something
15 else to their property?

16 SARAH CUSHING: Well, not necessarily
17 something that you do to your property. If
18 you're trying to expand the, like, footprint
19 of your house or something like that, then
20 sometimes that will trigger certain things.
21 Or say you had a garage already existing and
22 you're trying to enclose it for living
23 spaces, we wouldn't be able to permit that
24 enclosure of that garage as living space
25 until an alternative is provided. So I think

1 that's -- maybe we're flipping the script a
2 little bit where you don't have a detached
3 garage, you don't have an attached garage.
4 We're not going to hold you accountable for
5 that. But if you had one and you're trying
6 to enclose it, then you would need to provide
7 an alternative going forward.

8 KATHERINE HENRY: But my question is as
9 to what's actually in the code. So are you
10 saying it's in the code that I have to have a
11 garage and you guys are just not enforcing
12 that part unless certain things are done on
13 my side, or are you saying the code does not
14 require my property to have a garage? That's
15 what I'm trying to figure out. What are you
16 saying the code says?

17 SARAH CUSHING: I may defer to legal for
18 clarification and direction on that.

19 ANN-MARGARET EMERY: The code does not
20 require you to put a garage.

21 KATHERINE HENRY: Do you know where it
22 says that? No, not put a garage. The code
23 requires my property to have a garage and
24 that sets off the trigger for all these other
25 things before I can even apply for a permit.

1 So can you please clarify perhaps where in
2 the -- in the --

3 ANN-MARGARET EMERY: I can do that at
4 another time. It's really a separate issue.

5 KATHERINE HENRY: It's not. If I can't
6 apply for a permit, then that's exactly
7 the --

8 ANN-MARGARET EMERY: You can apply for a
9 permit. I don't think anyone has denied
10 you --

11 THE COURT: Okay. This is getting where
12 it's not helping me very much. Thank you for
13 your testimony.

14 SARAH CUSHING: Of course. Thank you.

15 THE COURT: Did you say there are
16 other --

17 ANN-MARGARET EMERY: There is one
18 neighbor witness.

19 THE COURT: Okay. Who is that? Come
20 forward, please. Your name, please?

21 MS. CONWAY: Joan Conway.

22 THE COURT: Were you sworn at the
23 beginning --

24 MS. CONWAY: Yes.

25 THE COURT: -- when everyone else was?

1 MS. CONWAY: Yes.

2 THE COURT: Okay. Where do you live?

3 MS. CONWAY: I live at 9A Bayberry
4 Court. It's directly behind their property.

5 THE COURT: Okay. Did you want to ask
6 her questions?

7 ANN-MARGARET EMERY: No. I'll just let
8 her speak to whatever she wants --

9 THE COURT: Okay.

10 MS. CONWAY: I brought plenty of
11 pictures that I didn't have to go onto their
12 property to obtain. And, first and foremost,
13 when I made the complaint, I understand that
14 they needed my name and number to make the
15 complaint.

16 THE COURT: Well, let me just back up.

17 MS. CONWAY: Sure.

18 THE COURT: You made the complaint.
19 See, I don't know.

20 MS. CONWAY: I'm the one that made the
21 complaint --

22 THE COURT: Oh, okay.

23 MS. CONWAY: -- against them, correct.

24 THE COURT: Okay.

25 MS. CONWAY: From a neighbor I heard a

1 few days later she was over taking pictures
2 of our property, which is fine. I had a
3 couple of run-ins with both of them, and the
4 last run-in I was told by Mrs. Henry that she
5 knew it was me that made the complaint and
6 wait until I wait -- wait and see what's in
7 store for me. I don't appreciate threats.

8 THE COURT: Just talk to me. Don't --

9 MS. CONWAY: Okay. I don't appreciate
10 threats because I went the legal way of
11 reporting them and was threatened by her. My
12 daughter was there during this, but she's
13 working today. This has been going on for --
14 since they bought the house. There are --
15 the fence is atrocious. Ellinor Village is a
16 small neighborhood with cottages, which they
17 were built for, and the fence is -- it's an
18 eyesore. It brings down the five properties
19 around it, their value. We now have a --
20 light pollution, because they have lights on
21 all over the house that go directly into our
22 bedrooms in the back, sometimes working until
23 after midnight.

24 KATHERINE HENRY: Your Honor, I would
25 object to the line of testimony. It has

1 nothing to do with the case that's --

2 THE COURT: In a way I'm going to
3 sustain the objection. For you to come and
4 say that you were the one who made -- made
5 the initial complaint, that's fine for me to
6 know. Usually these -- I know that now. But
7 other things probably doesn't help me in any
8 way. Sustained.

9 MS. CONWAY: She knows that these things
10 aren't permitted. They just -- they're
11 putting up a pergola now. That's not
12 permitted, I'm sure. It's one thing after
13 another.

14 KATHERINE HENRY: Your Honor, I'm going
15 to object because the only thing she's
16 offering is a bunch of baseless facts,
17 fact-less hearsay. That has nothing to do
18 with the shipping containers at this point.

19 THE COURT: I'm probably not going to go
20 forward with that testimony, so I will
21 sustain that objection.

22 MS. CONWAY: So all of the complaints I
23 have are relevant or irrelevant?

24 THE COURT: Your complaints are
25 relevant, but I know what neighbors say when

1 they come. But I don't need to -- to go into
2 details about it. It doesn't really help me
3 in making my -- my decision.

4 MS. CONWAY: No, and I understand that.
5 This is a neighborhood of renters. If this
6 was happening on John Anderson, those would
7 have already been removed. There's no --
8 there's just no doubt in my mind because
9 they're all homeowners. This is a
10 neighborhood of rent -- rental -- renters --

11 THE COURT: Um-hum.

12 MS. CONWAY: -- that are not going to
13 stand up. They have no -- they're not going
14 to gain or --

15 KATHERINE HENRY: Your Honor, this is --
16 I object because if -- I have the right to be
17 able to respond. She is talking now about a
18 litany of other things that are baseless --

19 THE COURT: I don't want to get into
20 that. Thank you for your time.

21 MS. CONWAY: Thank you.

22 THE COURT: Okay. No, I'm not going to
23 let you even cross-examine.

24 ANN-MARGARET EMERY: She has some
25 photos. I haven't seen the photos.

1 MS. CONWAY: Yes, I have a bunch of
2 photos from the lights peering into our
3 bedrooms --

4 THE COURT: If you want to admit the
5 photos into evidence --

6 KATHERINE HENRY: Your Honor --

7 THE COURT: -- and then you object to
8 them.

9 KATHERINE HENRY: I do because she --

10 THE COURT: Well, actually, I don't know
11 that I'm even going to admit the photos into
12 evidence.

13 KATHERINE HENRY: I agree that that's my
14 shipping container right there so I don't see
15 what else would be relevant.

16 THE COURT: All right. Thanks. Yeah.

17 Do you have another neighbor or someone
18 who wants --

19 ANN-MARGARET EMERY: I don't think so.

20 THE COURT: Okay. All right. I am
21 ready to go to the third case. As the tryer
22 of fact, I can make a determination that I
23 have heard all that I need to hear on the
24 particular case, so that's what's going to
25 happen now. And I'm ready to go with the

1 third one.

2 KATHERINE HENRY: Your Honor, just for
3 clarification purposes, I -- for what was put
4 out there, I just want to clarify that that
5 testimony didn't -- I didn't have a chance to
6 question her myself, but what I do want to
7 say --

8 THE COURT: Well, it's because I stopped
9 the testimony.

10 KATHERINE HENRY: I understand that.
11 But in continuing to say things, I just want
12 to say that the things she was putting out
13 there as facts, supposedly us threatening her
14 and all these other things that's ruining the
15 esthetic value of the neighborhood and
16 everything else like that, it's not accurate
17 and it shouldn't have been something to be
18 brought up. It's something that we certainly
19 could have refuted with evidence and
20 testimony ourselves.

21 THE COURT: Okay.

22 KATHERINE HENRY: I just wanted to put
23 that on the record.

24 THE COURT: Well, I've made my decision
25 then.

1 KATHERINE HENRY: . Yes. Thank you,
2 Your Honor.

3 THE COURT: The third one is -- and it
4 is case number 22-112247. The alleged
5 violation is no building permit issues as
6 stated in the Land Development Code for
7 pavers. Pavers installed without obtaining a
8 permit. You may proceed.

9 JANET BRUCE: My name is Janet Bruce,
10 neighborhood improvement officer for the
11 City of Ormond Beach. The case before you is
12 case number 22 --

13 THE COURT: Speak in the microphone.

14 JANET BRUCE: 22-112247. The respondent
15 is Michael Henry and Katherine Henry. The
16 violation address is 33 Cypress Circle. This
17 is a violation of the Land Development Code,
18 chapter one, article 2, section 1 through
19 14(6)(a)(1), pavers installed without
20 obtaining a permit. I would like to submit
21 into evidence a copy of the Notice of Hearing
22 and a hundred dollar citation with proof of
23 good service, copy of the Notice of Violation
24 with proof of good service, affidavits for
25 regular mail and posting, copy of property

1 appraiser's record, and a copy of the Land
2 Development Code that is at issue in this
3 case.

4 THE COURT: Any objection? Your
5 standard objection that you made earlier?

6 KATHERINE HENRY: Yes, there is one
7 other thing, Your Honor, that I didn't catch
8 if it was in the other ones, but it's in this
9 packet. And just when it comes to as far as
10 posting the notice. The -- the way that it
11 was said is that it was posting of -- lawful
12 posting of notice, there's proof of that, and
13 I would just specifically ask Your Honor to
14 refer to my detailed summary that indicates
15 how this was not a lawful posting of how they
16 did that. I don't know if I raised that
17 before.

18 THE COURT: You did before and I recall
19 it. It's admitted as a city's exhibit, as a
20 composite.

21 KATHERINE HENRY: Your Honor, I'm sorry,
22 are you numbering these? Did you say this is
23 5?

24 THE COURT: That's 1 -- that's 1 as an
25 exhibit.

1 KATHERINE HENRY: Oh, because they're
2 separate. I'm sorry.

3 JANET BRUCE: I'd also like to submit
4 into evidence copies of photos which led to
5 the issuance of the notice of violation and
6 the citation, photo of the last status of the
7 property which reflects the current state of
8 the property, the recommendation as well as
9 the case cost sheet.

10 THE COURT: Okay. I'll take a look.
11 Admitted into evidence as city's exhibit 2 as
12 a composite. You may proceed.

13 KATHERINE HENRY: Your Honor, I just
14 want to make sure that we're continuing my
15 objection --

16 THE COURT: I do.

17 KATHERINE HENRY: -- based on what's --

18 THE COURT: The record should be noted
19 of that.

20 KATHERINE HENRY: Thank you, Your Honor.

21 JANET BRUCE: These are photos that did
22 begin on September 1st, 2022. It shows the
23 pavers that are piled up as well as in the
24 process of being laid down. I did speak with
25 the property owner on September 2nd, 2022,

1 and advised her that all of the work would
2 need to cease, to get a permit. I did also
3 put on the stop-work order the issue with the
4 pavers that need a permit to proceed further
5 with their construction.

6 THE COURT: Do you have a
7 recommendation?

8 JANET BRUCE: Yes, sir. This is October
9 25th, 2022.

10 THE COURT: The pavers are all down now?

11 JANET BRUCE: They're all down, yes,
12 sir.

13 THE COURT: They're all down?

14 JANET BRUCE: Yes, this is February
15 21st, 2023. The pavers are completely done.
16 They installed two driveways and whatever
17 they did in the back yard.

18 THE COURT: If a permit had been
19 obtained, for these pavers are obtained, do
20 you have any comment on whether they would
21 have been allowed?

22 JANET BRUCE: If they had received a
23 permit, I am not sure what planning and
24 zoning would have stated. However, the
25 setbacks are probably not being met right

1 now. The pavers are going to the property
2 line so they most likely could get a permit,
3 however, they would have to do everything
4 that the inspectors tells them needs to be
5 done, whether some of it needs to be removed
6 to meet setbacks, whether they need to see
7 what's underneath the pavers to determine if
8 it it's been built correctly.

9 THE COURT: All right. Do you have a
10 recommendation?

11 JANET BRUCE: Yes. I recommend finding
12 that a violation of the Land Development
13 Code, chapter one, article two, section
14 one-146(a(1) exists, and that the respondents
15 be ordered to pay the hundred dollar citation
16 as well as the associated case cost and shall
17 comply with the code by March 27, 2023.
18 Compliance shall be achieved by obtaining an
19 approved permit for the pavers and meet all
20 setbacks required for the pavers. Absent
21 compliance, I recommend a \$25 per day fine be
22 imposed beginning on March 28, 2023, and
23 shall continue to accrue until compliance has
24 been achieved. Further, the respondents
25 shall be obligated to contact the

1 City of Ormond Beach neighborhood improvement
2 division to schedule a reinspection of the
3 property to confirm compliance and date
4 thereof. Case costs is 23.56.

5 THE COURT: Okay. Your turn to argue on
6 this particular case about the pavers.

7 KATHERINE HENRY: Yes, Your Honor. I
8 actually have -- I'd like to start in the
9 form of a question to Janet Bruce about this.

10 THE COURT: To the inspector?

11 KATHERINE HENRY: Whatever your title --
12 what was your title?

13 JANET BRUCE: Inspector.

14 KATHERINE HENRY: Oh, okay. Then, yes.
15 I apologize. I didn't know the title.

16 I am going to reference, I believe it's on
17 page two of the -- Exhibit 2 specifically for
18 this case. Easiest to note by the picture
19 and talking about specifically has the
20 hurricane debris from palm trees and things
21 like that sitting in the front, so that's the
22 picture I'm talking about. It's at the
23 bottom of page two. And I'm not sure --

24 THE COURT: This one?

25 KATHERINE HENRY: Yes.

1 THE COURT: All right.

2 KATHERINE HENRY: So I'm not sure if you
3 could tell on your screen any better. My
4 black and white copy that I was handed
5 doesn't really show, but -- so my question is
6 about -- and you've been there so you
7 obviously know better than what the picture
8 would show. But the driveway that was
9 originally paved is essentially the pavers
10 have, like, an L shape around that driveway,
11 would you agree?

12 JANET BRUCE: Yes.

13 KATHERINE HENRY: Okay. And so the --
14 what you're saying is -- I wish that was a
15 little bit shorter to the ground so I could
16 point, but the -- okay. So.

17 UNIDENTIFIED SPEAKER: It's the red
18 button. Turn it around.

19 KATHERINE HENRY: Okay. So can you guys
20 see where I'm pointing? I just want to make
21 sure. There's a line right here and so right
22 here an outline in the side, Your Honor,
23 that's the portion I'm talking about or do
24 you need me to further explain that?

25 THE COURT: I see it.

1 KATHERINE HENRY: Okay. So my
2 understanding from what you just said, when
3 he asked you about the setbacks is that you
4 were saying from this line over to the
5 property line that there has to be seven and
6 a half feet where there's nothing, I guess,
7 is that what you -- is that a correct
8 statement?

9 ANN-MARGARET EMERY: You might want to
10 refer to Sarah.

11 JANET BRUCE: Yes, that's a question for
12 Sarah.

13 SARAH CUSHING: Good afternoon, Sarah
14 Cushing with the planning department.

15 THE COURT: Make your answers
16 (unintelligible).

17 SARAH CUSHING: Okay. So with
18 driveways, those are a different accessory
19 structure that are subject to different
20 setbacks at the property line. The driveway
21 has to be three feet back from that side
22 property line. So if the leading edge of
23 that right now is on the property line, it
24 would have to come in three feet in order to
25 comply with the Land Development Code.

1 KATHERINE HENRY: And where does it say
2 three feet? I've always been told by them it
3 was seven and a half.

4 SARAH CUSHING: Well, this section is
5 section 3-25 in our driveway and access
6 standards. Specifically item C, driveway
7 standards, number one. Thank you.

8 KATHERINE HENRY: Your Honor, I just
9 need a moment. For -- I don't know if this
10 would be a question for either one of them,
11 it doesn't matter to me, but based on the
12 documentation I've already submitted showing
13 I would be held at least by somebody in the
14 city to seven and a half feet setback, my
15 question is about clarifying that when pavers
16 or any kind of concrete is poured or anything
17 that's to enlarge a driveway, whether that
18 has to be then -- my understanding is that
19 you cannot build it this way going towards
20 the center of the property, that you can only
21 place those going away from the house and
22 toward the side property line based on the
23 Land Development Code. So, again, I'm not
24 sure which one of them would be --

25 THE COURT: Okay. What's the question?

1 KATHERINE HENRY: If that's correct --

2 THE COURT: Okay.

3 KATHERINE HENRY: -- that you have to
4 build it --

5 THE COURT: Yeah, could you answer that
6 question?

7 SARAH CUSHING: Of course. So you can
8 definitely build to the left. You really
9 would be more encouraged to build towards the
10 left-hand side of the property, but you have
11 to stop at that three-foot setback.

12 KATHERINE HENRY: So is it correct,
13 though, in saying that if I tried to put
14 pavers to park right here, that that is
15 prohibited under the Land Development Code?

16 SARAH CUSHING: It really depends on the
17 scope of the work and if we were to look at
18 that together, I would be able to provide
19 some more guidance. Thank you.

20 KATHERINE HENRY: Your Honor, I'm just
21 going to tell you that it's actually
22 prohibited from building towards the center
23 of the property. You have to go out and it
24 actually does say in there seven and a half
25 feet, but then since it goes to the

1 impossibility. I have to lay pavers that go
2 towards the side property line, but then I
3 cannot lay pavers supposedly that are within
4 seven and a half feet of the property
5 line, and it creates an impossibility to have
6 any kind of extension of parking, and yet I
7 can't park on grass. There is a Land
8 Development Code in the same provisions about
9 parking that says you cannot park on grass or
10 dirt or stone, and so like the city
11 attorney's office that has dirt and grass and
12 stone and mulch as their parking area, that's
13 a violation of the Land Development Code. So
14 no matter how I do things, my point is that
15 it's an impossibility to meet all of these
16 and be able to reasonably use my property.
17 The pavers are not encroaching upon the other
18 property, it's not changing the drainage or
19 runoff other than we worked with the neighbor
20 over there where it shows right here that
21 there's a little bit of sand. That's because
22 his property had a little bit of a dip right
23 there before, and then certainly was
24 exacerbated by hurricanes, so when I talked
25 to him one day when he was out repairing some

1 hurricane damage on the soffit and the fascia
2 of the property he owns right there, I was
3 able to -- I asked him if he wanted me to
4 fill that in with a little bit of extra dirt
5 that we had to which he indicated yes. So at
6 any rate, other than that, making it
7 better --

8 THE COURT: I'm sorry. I was talking to
9 my clerk a minute.

10 KATHERINE HENRY: Sorry, I didn't catch
11 that if I interrupted you.

12 Other than making it better, this little
13 tiny patch where we asked him if he wanted us
14 to help him out with that, we did not --
15 there's no negative impact, they were not
16 changing, you know, putting more drainage
17 onto neighboring properties, we're not doing
18 anything other than making sure we have less
19 sand spurs since we can't grow grass here
20 without significant irrigation, which is
21 another thing that's protected by Florida
22 statutes.

23 And we reduced -- we have -- overall with
24 all of these we have wind mitigation and
25 flood mitigation methods being used, and

1 those are specifically protected by Florida
2 statutes, and I do -- I believe I might have
3 a case, I didn't know you'd be wanting cases
4 when I have statutes.

5 THE COURT: Sure.

6 KATHERINE HENRY: But I believe I might
7 have a case if you wanted me to doublecheck
8 if that case speaks to the point that I just
9 made about --

10 THE COURT: Okay.

11 KATHERINE HENRY: -- when you have a --
12 a Florida statute like that that's
13 specifically calling for those kinds of
14 measures to be made on private property.

15 THE COURT: Okay.

16 KATHERINE HENRY: Do you want me to look
17 to see if that is, Your Honor?

18 THE COURT: Sure.

19 KATHERINE HENRY: Okay. I just want to
20 make sure that I'm not misleading you,
21 Your Honor. Okay. This particular one I
22 brought with me, like I said, I wasn't
23 prepared knowing that you would want cases at
24 a informal hearing. But this particular one
25 is actually City of Ormond Beach versus

1 Del Marco. I think how it would be referred
2 to. Short citation. It was in the Fifth
3 District Court of appeals from 1983 and still
4 serves as good case precedent to date and
5 it's talking about a different statute. This
6 is in terms of constructing or maintaining
7 renewable energy sources, but it's saying
8 that the city cannot restrict or prohibit
9 construction or maintenance of a renewable
10 energy source.

11 And I can continue there, but my -- my
12 analogy would be, Your Honor, when the state
13 has made it perfectly clear that they want
14 certain things being done to essentially
15 benefit everyone, such as encouraging
16 sustainable energy use sources, encouraging
17 wind and flood mitigation when we obviously
18 live in an area where hurricanes happen and
19 things of that nature, the state, which I
20 have laid out very specifically, and can go
21 into more specifics verbally if you'd like,
22 but they've made it very clear that no one,
23 no municipality -- there is no statute I
24 cited specifically for that, no municipality
25 can regulate or get in the way of, stop

1 somebody, from employing flood mitigation
2 techniques, or wind mitigation techniques,
3 from stopping the use of installing things
4 like pavers or rocks instead of having to,
5 you know, turn to extensive irrigation in
6 order to simply grow grass, which is the
7 areas that we're talking about. You can see
8 from the rest of my front yard, it just
9 doesn't grow grass. All it is is weeds. The
10 only green you see there is actually just a
11 piece of turf that a neighbor had and I'm
12 using it to stop the weeds from growing right
13 now until we figure what else we could do.
14 But that would be my concern.

15 I can -- this is the only copy I brought
16 with me if you wanted me to present this to
17 you, I can.

18 THE COURT: Let me glance at it right
19 now then I'll give it back to you.

20 Okay. We're going to need to wind up
21 here. Do you have any response to her
22 arguments on this particular case?

23 ANN-MARGARET EMERY: On that particular
24 case citation, no, Your Honor. I just would
25 say that it has absolutely no --

1 THE COURT: Anything else?

2 KATHERINE HENRY: I -- yes, Your Honor.

3 I just wanted to circle back --

4 THE COURT: Do a summary for me.

5 KATHERINE HENRY: Yes, Your Honor.

6 THE COURT: You've already made the
7 recommendations. Yeah.

8 KATHERINE HENRY: Sorry. I do,
9 Your Honor, I was just going to -- I'm
10 assuming you wanted me to wait.

11 THE COURT: Okay. You have not made
12 your recommendations on this third case, so I
13 need you to do that at this time.

14 JANET BRUCE: Yes, sir. I recommend
15 finding that a violation in the Land
16 Development Code, chapter one, article 2,
17 section 1 through 146(a(1) exists and that
18 the respondents be ordered to pay the hundred
19 dollar citation as well as the associated
20 case costs and comply with the code by March
21 27, 2023. Compliance shall be achieved by
22 obtaining an approved permit for the pavers
23 and pass a final inspection or to remove the
24 pavers from the property. Absent compliance
25 I recommend a \$25 per day fine be imposed

1 beginning on March 28, 2023, and shall
2 continue to accrue until compliance has been
3 achieved.

4 Further, the respondents shall be
5 obligated to contact the
6 City of Ormond Beach, neighborhood
7 improvement division, to schedule a
8 reinspection of the property to confirm
9 compliance and date thereof. Absent
10 compliance, I request that the city be
11 granted the authority to enter onto the
12 property on or after April 10, 2023, and have
13 the right to remove the unpermitted pavers
14 from the property with all costs thereof to
15 be assessed against the respondent.

16 In addition, should the city remove and
17 dispose the aforementioned pavers, the city
18 shall not be responsible for any damage or
19 loss associated with said removal. It's not
20 on this one, but it is in your packet,
21 Your Honor.

22 THE COURT: It is in your -- my packet?

23 JANET BRUCE: Yes. We -- we had a
24 second.

25 THE COURT: Okay. All right. Thank

1 you. Miss Henry, we're going to sum up and
2 I'm going to let you have the last word. And
3 then I'll let the city respond to it, and
4 then we will finish with the -- the hearing
5 today. And I will be asking all of you to
6 leave and I will sit here with my clerk and
7 then I'll make my decisions on the case and
8 then call you back in after about 10 minutes.

9 So what else would you like to tell me?

10 KATHERINE HENRY: Yes, Your Honor. What
11 I want to point out, some things I alluded to
12 before, but you had asked me for some more
13 examples, so in looking at the totality of
14 all three of these, our state constitution to
15 which everyone here has sworn an oath to
16 uphold and defend, we have article one,
17 section 23, the right of privacy. That we
18 have a right to be free and let alone from
19 government intrusions into our personal
20 lives. Specifically you asked about a case.
21 The application of a general zoning law to a
22 particular property effects a taking. If the
23 ordinance does not substantially advance
24 legitimate state interests, and not once have
25 they talked about any legitimate state

1 interests that are being furthered, let alone
2 substantially, by trying to have my shipping
3 containers removed and moving or changing out
4 my fence and at least tearing up my pavers to
5 see if they were done correctly, any of those
6 situations.

7 State -- several state laws specifically
8 protect a homeowner's property rights against
9 this very kind of overregulation. Just some
10 examples would be Florida Statutes 187.101,
11 163.3149(4), Florida Statute 70.001. If you
12 look at 163.31776(i), it requires the local
13 governments to consider constitutionally
14 protected property rights in local
15 decision-making including this very
16 proceeding. This is the kind of proceeding
17 where we have to remember no matter the
18 specifics and not get lost in all of the
19 details of setbacks or things of that nature,
20 that beyond it all, or underlying it all, is
21 that we have constitutionally protected
22 property rights that are also statutorily
23 protected property rights. And statute --
24 Florida Statute 163.3161 requires that
25 ordinances and regulations be implemented and

1 applied with -- specifically with sensitivity
2 for private property rights and not be unduly
3 restrictive. And property owners must be
4 free from actions by others that would harm
5 their property or would otherwise constitute
6 an inordinate burden on property rights.

7 And, Your Honor, while I tried to make
8 exceedingly clear in my printed versions as
9 well as in questioning and statements today
10 to you was that it is an inordinate burden to
11 try to do these things where I am required to
12 have certain parking areas to be a certain --
13 a certain material, can't do grass, can't do
14 this, can't do that, but -- and it has to be
15 built out away from the center line of the
16 home, but it can't be within a certain amount
17 of feet from the property line, it's
18 physically impossible to do a lot of the
19 things that they're saying to do. Even to
20 have -- we're legally required -- under the
21 Land Development Code there is no exception
22 of grandfathering in for older properties.

23 As we heard in the clarifications, it's
24 just more of a in the interest of justice
25 they decide not to go after people who don't

1 have garages, but it's currently written that
2 you have to have a garage and in order to
3 have -- apply for a permit to have a garage
4 sale, to put up a fence, to do anything, you
5 have to have a full variance approval. You
6 have to meet all these other specifics in
7 order to even apply for a permit. So --

8 And in the end we had the main argument
9 that I heard from the city attorney today was
10 that, oh, these are great questions, these
11 would be things that would be good and fine
12 to do at some other proceeding, but
13 underlying all of this, we are -- I am
14 guaranteed a fundamental right of due
15 process, and any kind of confusion or
16 unclarity on any of these points, the Supreme
17 Court clearly stated for a hundred years now
18 has to be resolved against the city, not
19 against the private property owner who is
20 causing no harm to anyone around her. If
21 somebody doesn't like the look of something
22 on my property, that's not harm, that's their
23 own personal opinion.

24 So, Your Honor, I would ask that you also
25 keep in mind that if you look at the -- the

1 11 violations that I have prepared to you --
2 demonstrated to you of extensive remodeling
3 and repairs that were done just in the sample
4 neighborhood that I -- that I showed you, six
5 were specific fences -- to fences being
6 built. One was about parking -- pavers and
7 parking areas. Five were about sheds or
8 shipping container-type of situations. All
9 of those were specifically recently done, and
10 in my small little neighborhood, and they
11 were done all without permits and I also
12 submitted evidence to you that the city knew
13 at least about some of them, specifically a
14 fence and the stone being put where law
15 enforcement is currently parking on a regular
16 basis and permits for other things have been
17 issued, so the city has been out there. But
18 457 examples just in my tiny little area a
19 quarter mile from my house where there's
20 other paver violations and requirements not
21 being enforced, 266 other examples for
22 shipping containers, sheds, structure
23 requirements, there's three different areas
24 where there's actually shipping containers
25 that have left to be there for far more than

1 30 days and have no problem both in
2 residential and commercial areas. The fence
3 Land Development Code requirements are not
4 being enforced at at least 63 other
5 properties just within a quarter mile from my
6 house. And the fact that government
7 officials are getting a free pass, even just
8 within my small little sampling, Ormond Beach
9 Police Department officers, Volusia County
10 sheriff's deputies, Ormond Beach city
11 employees, the city attorney's office,
12 Volusia County council and former
13 Ormond Beach commercial residences, Florida
14 State law enforcement personnel. You name
15 it, there's examples of these very things
16 that are supposedly violations that are not
17 being enforced.

18 And it's -- it's one thing to say, oh,
19 well, you know, I was speeding and, you know,
20 I got pulled out and I was the only one that
21 was speeding versus to show you that there
22 are just these types of violations just from
23 what I can see, 810 within a quarter mile
24 radius. And if you extrapolate that out to
25 the square footage within the

1 City of Ormond Beach, that means there's over
2 115 thousand similar supposed violation that
3 the city is doing nothing about. You take a
4 look at that versus how they did not follow
5 the law even on simple things of how to serve
6 me for the hearing for today or not following
7 the law in 70.45 a host of other things that
8 I meticulously detailed in the submission to
9 you, it shows that this has been personal for
10 quite some time. I don't know why. I don't
11 know why they've made it personal, but they
12 have.

13 And that kind of selective enforcement
14 has, and always will be, unconstitutional,
15 and it's illegal. Not to mention the
16 impossibility of being able to even ask for a
17 permit in these situations because of the
18 things I mentioned earlier.

19 So, Your Honor, I'm just asking you to
20 follow the constitution, to follow state law.
21 And even the definitions of the very Land
22 Development Code that implicate clearly that
23 my fence is not covered and the statutes or
24 the land development persons are saying it
25 is. My shipping containers are not covered

1 in the codes that they were generally
2 referencing, and nor are my pavers supposed
3 to be removed given the actual language of
4 the code. So with that, Your Honor, that's
5 all I would ask you to do today.

6 THE COURT: Response from the city?

7 ANN-MARGARET EMERY: Yes, Your Honor,
8 all three of these cases are -- come down
9 simply to failure to obtain a permit. We've
10 spent several hours here this morning, all of
11 which could have been avoided, and a lot of
12 time and expense on behalf of the respondents
13 had they gone through the simple process of
14 sitting down with one of our planning -- with
15 our city planners to go through these things.
16 It would have saved a lot of time and money.
17 The respondents talk a lot about their rights
18 and their right to do what they want on the
19 property. But I think she said herself that
20 regardless of the other people's rights
21 around her and how they think it may look,
22 you know, that doesn't matter, that's not a
23 concern. But I suspect one of the reasons
24 why she probably moved to Ormond Beach is
25 because of the way it appears in the nice

1 community that we're trying to protect.

2 I do want to mention the recommendations,
3 the orders. Two of the orders ask her to go
4 ahead and get the -- get a permit for the
5 pavers and the fence. That doesn't mean that
6 she might not have to make some modifications
7 to those if they don't meet the setbacks or
8 height requirements or materials. We don't
9 know that because we -- we have not and we
10 don't have the information. And part of the
11 requirement is to do that. We have not asked
12 that -- and that's -- the typo on the
13 shipping containers -- we mentioned twice
14 chapter two, article three, section 2-5 and
15 really the second one should be deleted.
16 Just -- it's just --

17 THE COURT: Is that in the
18 recommendations?

19 ANN-MARGARET EMERY: It's in the --
20 yeah, it's in the recommendation.

21 THE COURT: Can we go back to it? Any
22 way I can look at that?

23 ANN-MARGARET EMERY: But the reason why,
24 Your Honor, we're not ordering her to get,
25 you know, to go through the permit process is

1 she's certainly welcome to do that. If she
2 wants to try to get a permit for those
3 shipping containers, she can make application
4 and she can pay the permit fee. But we don't
5 like to order that, Your Honor, because
6 shipping containers, cargo shipping
7 containers, are not going to be permitted in
8 this residential zone so therefore we didn't
9 want to order her to do that.

10 THE COURT: Okay. But where do you
11 say -- I'm looking at it now.

12 ANN-MARGARET EMERY: Right. Where we
13 say chapter two, article three, section
14 2-50(a)(9), that's failure to obtain a
15 permit. And we repeat that citation down
16 below, and we just should strike that second
17 citation reference. It's the same reference.

18 THE COURT: Yeah, I'm looking -- okay.
19 All right. Okay.

20 ANN-MARGARET EMERY: And that's all.
21 Thank you.

22 THE COURT: Okay. Thank you, folks.
23 I'm going to ask everyone to take a break and
24 if you'll go ahead and go on out, then I'll
25 work on my --

1 (Recess.)

2 THE COURT: Thank you, everyone, for all
3 of their arguments. This was a -- a long
4 hearing, but we heard a lot from everyone,
5 and I'm going to go ahead and present my
6 order. I'm going to make some findings of
7 fact.

8 I find that the respondent's argument that
9 Constitutional rights to her property have
10 been violated under the state of Florida and
11 US Constitution are without merit. I find
12 that the respondent's argument that the
13 City of Ormond Beach has not issued adjoining
14 properties, or properties in the area,
15 citations, therefore this should not be
16 issued a citation to her is without merit. I
17 find that the arguments that the application
18 of the general zoning law as to a particular
19 property does not substantially advance the
20 legitimate state is -- meritless -- is with
21 interest, state interest, is without merit.

22 Therefore, as to case number one, I find
23 that there is a violation of the Land
24 Development Code, chapter two, article three,
25 section 2-50(y)(1)(a), and that the

1 respondent is ordered to pay the hundred
2 dollar citation as well as any associated
3 costs, which are 23.50, and shall comply with
4 the code by March the -- comply with the
5 order by March the 27th, 2023. Compliance
6 can be approached by obtaining an approved
7 fence permit and pass final inspection or
8 remove the fence from the property. Absence
9 compliance, I'll order a \$25 a day fine be
10 imposed beginning on March the 28th, 2023,
11 and it shall continue until compliance has
12 been achieved.

13 Further, the respondent shall be obligated
14 to contact the City of Ormond Beach,
15 neighborhood improvement division, and
16 schedule a reinspection of the property to
17 confirm compliance and the date. I grant the
18 city to enter onto the property on or after
19 April the 10th, 2023, and have the right to
20 remove the unpermitted fence from the
21 property with all costs thereof to be
22 assessed against the respondent. In
23 addition, should city remove and dispose
24 aforementioned fence, the city shall not be
25 responsible for any damage or loss associated

1 with it.

2 As to case number two, storage, I find
3 there is a violation of the Land Development
4 Code, chapter two, article three, section
5 2-50(a)(9). And the respondent be ordered to
6 pay the hundred dollar citation as well as
7 the associated cost and shall comply by
8 removing the shipping containers from the
9 property by March the 27, 2023. I find that
10 shipping containers are not an approvable
11 accessory structure on the property pursuant
12 to the requirements associated with Land
13 Development Code chapter two, article three,
14 section 2-50(a)(9). If there is not
15 compliance, I will order a 25 day -- \$25 per
16 day fine be imposed beginning on March the
17 28th, 2023, and shall continue to approval
18 until compliance shall be achieved. I order
19 costs in the amount of 23.56.

20 As to case number three, pavers --

21 ANN-MARGARET EMERY: Your Honor, I'm
22 sorry, can I just make one correction --

23 THE COURT: Yes.

24 ANN-MARGARET EMERY: -- to the order?

25 The second rap (phonetic) can runs through

1 chapter two, article three, section
2 2-50(a)(9). I was just going to delete that
3 just because that is the section that
4 states --

5 THE COURT: That's right. I forgot to
6 delete that.

7 ANN-MARGARET EMERY: Okay. Thank you.
8 Thank you.

9 THE COURT: As to case number three, I
10 find there is a violation of the Land
11 Development Code chapter one, article two,
12 section 1-14(16)(a)(1). And that the
13 respondent is ordered to pay the hundred
14 dollar citation as well as the associated
15 cost and shall comply with the code by March
16 the 27th, 2023. Compliance shall be achieved
17 by obtaining an approved permit for the
18 pavers and pass final inspection or remove
19 the pavers -- pavers from the property.
20 Absent compliance, I will order a \$25 a day
21 fine be imposed beginning on March the 28th,
22 2023, and shall continue to accrue until
23 compliance has been achieved. Further, the
24 respondent shall be obligated to contact the
25 City of Ormond Beach neighborhood improvement

1 division to schedule a reinspection of the
2 property to confirm compliance and the date
3 thereof. Absence compliance, the city will
4 be granted the authority to enter on the
5 property on or about after April the 10th,
6 2023, and have the right to remove the
7 unpermitted pavers from the property with all
8 costs thereof and to be assessed against the
9 respondent. In addition, should the city
10 remove and dispose of the aforementioned
11 pavers, the city shall not be responsible for
12 any damage or loss associated, and the cost
13 is 23.56.

14 As to the hundred dollar fine on each
15 case, I will waive two of the hundred and
16 impose one hundred for all three.

17 ANN-MARGARET EMERY: Okay. Your Honor,
18 and just one more clarification. I just
19 wasn't sure if you said it. On the paver
20 recommendation, case number 22-112246, you
21 didn't mention whether or not the city -- or
22 I don't believe I heard it, that the city
23 could go onto the property.

24 THE COURT: Yes.

25 ANN-MARGARET EMERY: The second

1 paragraph.

2 THE COURT: I did. If I missed it, it
3 is appropriate in all three cases.

4 ANN-MARGARET EMERY: Okay. Thank you.

5 THE COURT: Anything else?

6 ANN-MARGARET EMERY: No. Thank you,
7 Your Honor.

8 THE COURT: And there is a 30 -- it's a
9 30 day to appeal to the Circuit Court of the
10 Seventh Judicial Circuit. That completes our
11 hearing. Thank you all very much. We stand
12 adjourned.

13 (THEREUPON, the foregoing proceedings
14 were concluded.)

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1 C E R T I F I C A T E O F R E P O R T E R

2 STATE OF FLORIDA)

3 COUNTY OF VOLUSIA)
4
5

6 I, Shannon Green, Registered Professional
7 Reporter, DO HEREBY CERTIFY that I was
8 authorized to and did stenographically report the
9 foregoing proceedings; and that the transcript is a
10 true record of my stenographic notes.

11 I further certify that I am not a
12 relative, employee, attorney, or counsel of any of
13 the parties, nor am I a relative or employee of
14 any of the parties' attorney or counsel connected
15 with the action, nor am I financially interested in
16 the action.

17 Dated this 16th day of April, 2022.
18

19 
20

21 _____
Shannon Green, RPR
Registered Professional Reporter
22
23
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