

IN THE FIFTH DISTRICT COURT OF APPEAL,
IN AND FOR VOLUSIA COUNTY, FLORIDA

MICHAEL and KATHERINE HENRY, Petitioners,	5DCA CASE NO: 24-0915
vs	CIRCUIT CASE NO: 2023-30711 CICI
CITY OF ORMOND BEACH, FLORIDA Respondents.	Lower Court CASE NOS: 22-112237 22-112246 22-112247

Henrys' Appendix to Petition for Writ of Certiorari

COME NOW PETITIONERS MICHAEL HENRY and KATHERINE HENRY [hereinafter, "Henrys"], appearing on their own behalf, and file this Appendix pursuant to the Florida Rules of Appellate Procedure 9.200(b)(4) and 9.220.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to Abraham C McKinnon (lynn@mckinnonandmckinnonpa.com, amckinnon@mckinnonandmckinnonpa.com), Noah McKinnon (nmckinnon@mckinnonandmckinnonpa.com), H. Pope Hamrick, Jr. (phamrickjr@cfl.rr.com), via the electronic filing portal on April 9, 2024.

Respectfully Submitted: April 9, 2024	<u>/s/ Katherine Henry</u> Petitioners, Pro Se PO Box 333, Ormond Beach FL 32175 Katherine@RestoreFreedomKH.com 616-303-0033	<u>/s/ Michael Henry</u>
--	--	--------------------------

Appendix Index

Notice of Violation Oct 2022.....	3
Notice of Hearing Dec 2022.....	6
Code Enforcement Citation Dec 2022.....	7
Affidavit of Mailing Jan 2023.....	9
Affidavit of Posting Jan 2023.....	10
Feb 2023 Henry Response Filed	11
Hearing Summary	11
Intro	11
Illegal Cherry Picking by OB	11
Equal Protection Violations	13
OB Will Not Issue Permits.....	14
Oath of Office	15
Conclusion	15
Notice of Proposed Action sent 11/8/22.....	17
Notice to Cease & Desist sent 11/8/22	17
Map Showing Neighborhood Violations	38
List of 810 Neighborhood Violations	39
Photo Samples of Equal Protection Violations.....	56
Email from Janet Bruce (OB) 11/7/22	78
Email to Janet Bruce (OB) 11/8/22	79
Janet Bruce 11/8/22 Email Opens	80
Certified Mail by Janet Bruce 1/3/23	81
Email from City Atty 1/19/23	82
Email to City Atty 2/1/23.....	82
Email from Chris Mason 2/1/23.....	83
Email to Chris Mason & City Atty 2/1/23	84
Mar 2023 Orders Finding Violation.....	85
Magistrate Order re Fence.....	85
Magistrate Order re Containers	92
Magistrate Order re Pavers.....	100
Mar 2023 Henry Motion for Relief from Order & Motion for Stay	107
Mar 2023 Emails Filing & Serving Henry Motions	124
Henry Motion for Relief from Order & Motion for Stay 4/3/23.....	128
Motion for Relief from Order	130
Motion for Stay Pending Appeal	142
Circuit Court Order to Respond 040523	148
Circuit Court Order Granting Stay 040623	150
Henry Appeal Brief 6/2/23	152
OB Answer Brief 063023	198
Henry Reply Brief 7/27/23.....	234
Order on Appeal 3/7/24.....	254
Transcript of Special Magistrate Hearing 022723	265
Index of Transcript	403



**CITY OF ORMOND BEACH, FLORIDA
NEIGHBORHOOD IMPROVEMENT DIVISION
170 W. Granada Blvd.
Ormond Beach, FL 32174
(386) 676-3352**

NOTICE OF VIOLATION

October 18, 2022

Case #: 22-112246

**Michael Henry & Katherine Henry
PO Box 333
Ormond Beach FL 32175**

Location of Violation: 33 Cypress Cir

Parcel ID #: 4223-02-06-0130

Date Violation Observed: September 2, 2022

Violation(s) of the Land Development Code: Chapter 2, Article III, Section 2-50(a)(9)

Violation Description: Large metal storage containers being used as sheds installed without obtaining the required permit from the City of Ormond Beach Building Division.

The property must be brought into compliance in the following manner: Obtain a building permit for the large metal containers being used as sheds on the property.

Correct said violation within 20 day(s) after receiving this notice.

If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction as specified herein, this case may be presented to the Special Magistrate even if the violation has been corrected prior to the Special Magistrate hearing. (Per State Statutes 162.06(2) and Code of Ordinances Chapter 2, Section 2-255(C)).

Janet Bruce

Janet Bruce, Neighborhood Improvement Officer

Certified Mail #: 9214 8969 0099 9790 1645 0620 47

intentionally left blank

intentionally left blank



CITY OF ORMOND BEACH, FLORIDA
NEIGHBORHOOD IMPROVEMENT DIVISION
170 West Granada Boulevard
Ormond Beach, FL 32174
(386) 676-3352
NOTICE OF HEARING

December 29, 2022

Case Number: **22-00112246**

Case Type: **NO BUILDING PERMIT ISSUED**

Michael Henry & Katherine Henry
PO Box 333
Ormond Beach, FL 32175

Pursuant to Chapter 162, Florida Statutes, and Chapter 2, Article VII of the City of Ormond Beach Code of Ordinances, you are hereby called upon to take notice that a Public Hearing will be conducted in the below-styled cause by the Special Magistrate, on the 23rd day of January, 2023, at 10:00 a.m., in the City Commission Chambers, City Hall, 22 S. Beach Street, Ormond Beach.

VIOLATIONS: NO BUILDING PERMIT ISSUED as stated in the Land Development Code: Chapter 2, Article III, Section 2-50(a)(9) Storage Containers placed on the property without a permit

LOCATION OF VIOLATION: 33 Cypress Cir

The Special Magistrate shall receive testimony and evidence at said Public Hearing and shall make such findings of fact and conclusions of law as are supported by the testimony and evidence presented by all parties concerning this case. If the violation is corrected and then recurs or if the violation is not corrected and the citation paid within the specified period, this case may be presented to the Special Magistrate even if the violation has been corrected prior to the Hearing. Your failure to appear will not prevent further orders being issued against you.

If a person decides to appeal any decision made by the Special Magistrate with respect to any matter considered at this meeting or public hearing, such person will need a record of the proceedings, and may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Persons with disability, such as vision, hearing, or speech impairment or persons needing other types of assistance, and who wish to attend city commission meetings or any other board or committee meeting may contact the city clerk in writing, or may call (386) 676-3297 for information regarding available aids and services.

Janet Bruce

Janet Bruce, Neighborhood Improvement Officer

Certified Mail Number: 9214 8969 0099 9790 1645 8143 70



CITY OF ORMOND BEACH, FLORIDA
NEIGHBORHOOD IMPROVEMENT DIVISION
170 West Granada Boulevard
Ormond Beach, FL 32174
(386) 676-3352
CODE ENFORCEMENT CITATION

December 29, 2022

Case Number: **22-00112246**

Case Type: **NO BUILDING PERMIT ISSUED**

1. ☒ Original 2. ☐ Supplement

Michael Henry & Katherine Henry
PO Box 333
Ormond Beach, FL 32175

Parcel ID: **4223-02-06-0130**

Day & Date Observed: **Friday, September 02, 2022**

The undersigned certifies that upon personal investigation he/she has reasonable cause to believe and does believe that addressee did unlawfully commit the following offense: **NO BUILDING PERMIT ISSUED** as stated in the Land Development Code: Chapter 2, Article III, Section 2-50(a)(9) Storage Containers placed on the property without a permit.

Warning Given: October 18, 2022

Applicable Civil Fine: \$100.00

Location of Violation: 33 CYPRESS CIR

Hearing Date: January 23, 2023

NOTICE TO INDIVIDUAL

This citation is issued pursuant to Article VII, Code Enforcement, of Chapter 2, Administration, of the City of Ormond Beach Code of Ordinances. The violation for which you are charged is a civil infraction. Your signature below does not constitute an admission of guilt. Upon receipt of this citation you must within ten (10) days pay the applicable civil fine indicated above or attend the Special Magistrate hearing on the date provided above at which time you may contest this citation. If you elect to pay the applicable civil fine, it will be deemed an admission of the commission of the violation. If you fail to pay the applicable civil fine as indicated above AND fail to appear at the hearing on the date provided above you shall be deemed to have waived your right to contest the violation and the Special Magistrate may enter an Order imposing up to the maximum civil fine, two hundred and fifty dollars per day (\$250.00/day) for a first violation and five hundred dollars per day (\$500.00/day) for a repeat violation.

9214 8969 0099 9790 1645 8143 70

Certified Mail #

Janet Bruce

Janet Bruce, Neighborhood Improvement Officer

Thursday, December 29, 2022

Day and Date Issued

Certified Mail Number:
Document Number: document1

CODE ENFORCEMENT CITATION
(PLEASE RETURN THIS PORTION WITH YOUR PAYMENT)

Remit to:
CITY OF ORMOND BEACH
FINANCE DEPARTMENT
POST OFFICE BOX 277
ORMOND BEACH, FL 32175-0277

Case Number: **22-00112246**
Parcel ID: **4223-02-06-0130**
Location of Violation: **33 CYPRESS CIR**

Civil Fine Amount: \$100.00

Payment can be made by cash, cashier's check, personal check, or money orders payable to: **City of Ormond Beach**.
DO NOT MAIL CASH. ALL FEES MUST BE REMITTED IN U.S. FUNDS.

Document Number: citation.docx

This page intentionally left blank.

THE CITY OF ORMOND BEACH

THE CITY OF ORMOND BEACH
Petitioner,
v.

CASE # 22-112246

Michael Henry & Katherine Henry
Respondent

AFFIDAVIT OF REGULAR MAIL SERVICE

STATE OF FLORIDA
COUNTY OF VOLUSIA

Before me, for The City of Ormond Beach, the undersigned authority, Janet Bruce, personally appeared who after being duly sworn, deposes and says:

1. That he/she is an employee of the City of Ormond Beach, Volusia County, Florida, and that he/she is over twenty-one years of age;
2. That he/she sent a copy of the ☐ Notice of Violation ☒ Citation ☒ Notice of Hearing on the 10th day of January, 2023, to the aforementioned Respondent/s at: 33 Cypress Cir, Ormond Beach, FL 32176.

FURTHER AFFIANT SAYETH NOT

Dated this 10th day of January, 2023.

Janet Bruce
Signature

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 10th day of JANUARY, 2023 by JANET BRUCE, who is personally known to me as a Neighborhood Improvement Officer of the City of Ormond Beach.

Barbara Radcliffe
Signature of person taking acknowledgement

#66926035 Exp. 11/27/23
Notary Public

BARBARA RADCLIFFE
Printed name of person taking acknowledgement

Stamp/Seal:



BARBARA RADCLIFFE
Commission # GG 926035
Expires November 27, 2023
Bonded Thru Budget Notary Services

THE CITY OF ORMOND BEACH

THE CITY OF ORMOND BEACH
Petitioner,

CASE # 22-112246

v.

Michael Henry & Katherine Henry
Respondent

AFFIDAVIT OF POSTING

STATE OF FLORIDA
COUNTY OF VOLUSIA

Before me, for the City of Ormond Beach, the undersigned authority, Janet Bruce, personally appeared, who after being duly sworn, deposes and says:

1. That he/she is an employee of the City of Ormond Beach, Volusia County, Florida, and that he/she is over twenty-one years of age;
2. That he/she hand posted a copy of the ☐ Notice of Violation ☒ Citation ☒ Notice of Hearing ☐ _____ on the 10th day of January, 2023, to the aforementioned Respondent/s at 33 Cypress Cir, Ormond Beach FL 32176. & City Hall

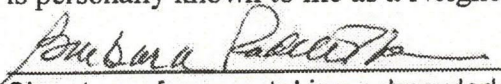
FURTHER AFFIANT SAYETH NOT

Dated this 10th day of January, 2023.


Signature

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 10th day of JANUARY, 2023 by JANET BRUCE, who is personally known to me as a Neighborhood Improvement Officer of the City of Ormond Beach.


Signature of person taking acknowledgement

#GG 926035 Exp. 11/27/23
Notary Public

BARBARA RADCLIFFE
Printed name of person taking acknowledgement

Stamp/Seal:



BARBARA RADCLIFFE
Commission # GG 926035
Expires November 27, 2023
Bonded Thru Budget Notary Services

Municipal Cherry-Picking Exemplified

This case exemplifies municipal cherry-picking in every sense. The City illegally commenced this action, violating FI St 70.445. The underlying restrictions against our pavers, fence and shipping containers do *not* substantially advance legitimate interests, *and* violate many constitutional and statutory protections of our right to use our own home freely. Our use of our own property harms *no* other properties, and the City is allowing 810 of these very “violations” in just our immediate neighborhood, totalling over 115,000 citywide. These 810 documented violations are resulting in a free pass for OBPD officers, VC Sheriff deputies, city employees, county council & city commission members, state law enforcement officers, official city properties and even the City Attorney’s own office! Procedural laws have been violated by OB, who *all* took an oath of office. But this is all a farce anyway, since these permits can’t even be issued according to the LDC.¹

OB Is Claiming We Violated The LDC Because No Permit Was Obtained For:

1. Pavers / Parking Area
2. Shipping Containers (2)
3. Backyard Fence

Illegal Cherry-Picking by OB

1. OB Illegally Commenced This Action

This proceeding was brought contrary to FI St 70.45, which requires OB to halt all action until providing us a written response identifying

- a. the harm caused by our use (pavers, fence, sheds) of our own property AND
- b. how this regulation (including the permitting)
 - i. has an essential nexus to a legitimate public purpose
 - ii. would mitigate the “harm” caused by our use AND
 - iii. how the severity of OB’s restriction on our use is proportionate to the “harm” caused by our use
- c. OB was provided the Notice of Proposed Action under FI St 70.45 on 11/8/22, 111 days ago, and instead of providing the *statutorily required* written response, has continued to harass and embarrass us, and interfere with our property use

Notice of Proposed Action from 11/8/22 and email receipt records attached hereto.

2. OB Ignoring Laws Prohibiting This Exaction

- a. FL Const Art 1 Sec 23 *Right of Privacy* declares that “[e]very natural person has the *right to be let alone and free from governmental intrusion* into the person’s private life.”
- b. The application of a general zoning law to particular property effects a taking if the **ordinance does not substantially advance legitimate state interests**. See *Nectow v. Cambridge*, 277 US 183, 188 (1928).
- c. Several state laws specifically protect a homeowner’s property rights against this kind of overregulation, like FI St 187.101, FI St 163.3194(4), FI St 70.001
- d. FI. St. 163.3177(6)(i) requires local governments to consider “constitutionally protected private property rights” in local decision-making, like this very proceeding.

¹ To avoid unduly cumulative documentation, we rely upon our prior written legal analysis as included in our 11/8/22 Notice of Proposed Action to OB. In addition to that document and this summary, we have included the list identifying the 810 similar violations in our immediate neighborhood, samples of photos of each kind of violation, and relevant email and certified mail records.

- e. Fl. St. 70.002 acknowledges our right to acquire, possess, and protect our property; use and enjoy our property; and exclude others from our property.
 - f. Fl St 163.3161 requires ordinances and regulations to be “implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property or which would constitute an inordinate burden on property rights.”
 - g. The Florida Legislature consistently supports homeowners in employing wind mitigation, flood mitigation, and water conservation on their homes and properties. One such example is Fl St 373.185, which clearly states a **“local government ordinance may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land.”**
 - h. OB claims in its LDC that Fl. St. 163.3202 provides the authority to take some of these actions, but FL. St. 163.3202 indicates nothing about such requirements for pavers, shipping containers or the fence. *See id* at subdivision (2).
 - i. Under LDC Section 2-50(dd)(1) and Sect 1-22, permits required under Sect 2-50(a)(9) “does not include . . . the installation of accessory buildings such as garages or sheds”
 - j. Under the Community Planning Act, which governs the relevant terms used here, shipping containers used only for storage, having no AC, heat or plumbing, are not considered “structures” requiring permitting. *See* Fl. St. 380.031(19) and 163.3164(45).
 - k. As securing private property, storage of personal property, and landscaping and parking are customary incidental uses to enjoyment of a dwelling, the fence, shipping containers and pavers here cannot be considered “development” for purposes of enforcing the land *development* code. Community Planning Act, Fl. St. 163.3164(14) and 380.04.
 - l. OB claims LDC Sect 2-50 “accessory uses and structures” requires a fence permit. Yet, fences are not a “use” per LDC Sect 1-22, and are expressly *excluded* as “structures” (“structure . . . shall not include fences or signs”) per LDC Sect 1-22.
3. 924 Rollins Equal Protection Violations
 4. 810 Violations in Immediate Neighborhood Ignored re Permits, Pavers, Sheds & Fences
 - a. 115,714 Violations Ignored re Permits, Pavers, Sheds & Fences Across OB
 5. 9/2/22 Illegal Search & Seizure Without a Warrant, violating
 - a. US Const 4th Am and FL Const Art 1 Sec 12 protections
 - b. FL Const Art 1 Sec 23 - right of privacy
 - c. Fl Stat 82.01, 82.03(1), 810.08, and 810.12 - unlawful entry
 - d. Fl Stat 810.015, 810.02, and 810.011, burglary in dwelling curtilage
 6. 1/10/23 Posting of Notices in Boulevard
 - a. Facing AWAY from Our Line of Sight, TOWARD the Street
 - b. Without Even Attempting Personal Delivery Despite Knowing I Was Home
 - c. or Following Statutory Timeframe for Certified Mail
 7. Failure to Follow Statutory Requirements of Service

Email and certified mail records attached hereto.

- a. Never Any Attempt of Personal Service
- b. Certified Mail ONLY to PO Box Only 7 Days Before Illegal Posting on 1/10/23
- c. NO Notice Sent for 2/27/23 Hearing Until MY Email to City Attorney & NID
- d. Then ONLY Electronic Copy & Reference to One Being Put in US Mail
- e. Finally Sent Certified Mail After My Email Referencing Fl St 162.12 (1) and (3)

8. Complete Failure to Abide by, or Even Respond to, 11/8/22 Notice to Cease and Desist
Copy of Notice to Cease and Desist attached hereto.

Equal Protection Violations

Under the Equal Protection Clause of the Fourteenth Amendment, government may not selectively enforce laws against one individual while ignoring similarly situated individuals. Even LDC Section 1-13(a)(2) recognizes the need for “equitable” enforcement of “the codes and ordinances.”

1. 115,714 Similar Violations in OB With a Population of Only 43,157
 - a. Paver/Parking, Structure/Storage, Fence Violations in Plain View
 - b. Sample of Cypress Neighborhood: Riverside Dr to S Atlantic Ave and Ormond Shores Drive to Ormond Pkwy = 0.28 mi² or 0.7% of OB
 - c. **810 paver/parking, structure/storage, fence violations in plain view** in just 0.7% of OB - **Henry’s Immediate Neighborhood**
2. No Permits Issued **24 Examples**
 - a. 924 Rollins Sellers

OB’s enforcement of the LDC *as against us* at the Rollins property, outright refusal to enforce the LDC *as against the sellers* for the Rollins property (especially throughout August and September 2021), current attempts to enforce the LDC *as against us*, and failure to enforce *as against the Rollins sellers* for their current violations establishes a **clear violation of our right to equal protection of the law.**

- b. Extensive Remodeling / Repairs **11 Violations**
 - c. Fences **6 Specific Violations, Many More After Hurricane Ian**
 - d. Pavers / Parking Areas **1 Violation OB Knew About**
 - e. Shipping Containers / Sheds **5 Specific Violations**
3. Pavers / Parking Area LDC “Requirements” Not Enforced Elsewhere **457 Examples**
 - a. On Property Line **162 Violations**
 - b. Within 7.5 Feet Of The Property Line **139 Violations**
 - c. Stone Driveway / Parking Area **60 Violations**
 - d. Grass Driveway / Parking Area **92 Violations**
 - e. Mulch Driveway / Parking Area **4 Violations**
 - f. Even When Permits Are Issued! (**1 Example**)
4. Shipping Containers / Shed / Structure “Requirements” Not Enforced Elsewhere **266 Examples**
 - a. Shipping Containers **3 Violations**
 - b. On Property Line **80 Violations**
 - c. Within 7.5 Feet Of Property Line **183 Violations**
5. Fence LDC “Requirements” Not Enforced Elsewhere **63 Examples**
 - a. Dilapidated Fences **49 Violations**
 - b. Inverted Fence Frames **2 Violations**
 - c. Wrong Height / Opacity **12 Violations**
6. Government Officials Get a Free Pass with LDC Violations
 - a. OBPD Officer Living at 5 Byron Ellinor
 - b. VC Sheriff Deputy Living at 5 Byron Ellinor
 - c. OBPD Officer Living at 28 Byron Ellinor
 - d. OB Employee with City Work Van Living at 39 Byron Ellinor
 - e. OBPD Officer Regularly Parking at 52 Byron Ellinor
 - f. City Attorney Office at 173 S Beach Street

- g. Volusia County Council & Former OB Commission Member Living at 130 Magnolia Dr
 - h. Old OBPD Property at 520 S Atlantic Ave
 - i. FL State Law Enforcement Living at 491 Magnolia Street
 - j. City Park Parking Lot with Pods Container Sitting for Over a Year at 54 Seton Trail
7. Enforcement Pattern Selective and Personal
- a. History Of Selectively Enforcing LDC *Only Against Henrys* At 924 Rollins
 - b. Name Calling Henrys Showing Obvious Bias Toward Sellers Of 924 Rollins
 - c. JB Specifically Recalled The Rollins Events During The 9/2/22 Call Re Cypress
 - d. 9/2/22 Posting Of Notices In Boulevard, to Embarrass, Not Serve Henrys
 - i. Facing AWAY from Our Line of Sight, TOWARD the Street
 - ii. Without Even Attempting Personal Delivery Despite Knowing I Was Home
 - e. 1/10/23 Posting of Notices in Boulevard, to Embarrass, Not Serve Henrys
 - i. Facing AWAY from Our Line of Sight, TOWARD the Street
 - ii. Without Even Attempting Personal Delivery Despite Knowing I Was Home
 - iii. or Following Statutory Timeframe for Certified Mail
 - f. 1/13/23 Phone Calls NEVER Returned by NID Staff re Questions about Date, ADA Accommodations, and Getting a Record of Proceedings per Their Letter

Phone recordings available.

- g. Only Answers Came from City Attorney Who Waited a Week to Call Me Back

Phone recordings available.

- h. NO Email Responses from City Attorney or NID re Need to Lawfully Serve Me Notice

Emails attached hereto.

OB Will Not and/or Cannot Issue A Permit Because

- 1. Pavers / Parking Area Permit Would Be Denied Because
 - a. Pavers / Concrete / etc cannot be within 7.5 feet of the property line
- 2. Shipping Containers Permit Would Be Denied Because
 - a. Sheds & Other Structures cannot be within 7.5 feet of the property line
 - b. Shipping Containers are "Completely Prohibited"
- 3. Fence Permit Would Be Denied For Failing "Aesthetic Requirements" Because
 - a. It is constructed with portions having lateral posts visible to neighboring properties
- 4. For Each of These 3
 - a. No permit can be issued without a full variance approved for not having a garage
 - b. No permit can be issued without a development order
 - c. No permit can be issued without engineer/architect final site plan being approved
 - d. No permit can be issued without a recent survey of the lot *specifically certified to the city*
 - e. No permit can be issued without an application that identifies:
 - i. actual shape and dimensions of the lot,
 - ii. existing use of buildings on the lot,
 - iii. number of families the building is designed to accommodate,
 - iv. location and number of required off-street parking and off-street loading spaces,
 - v. landscaped buffer areas,
 - vi. accessory uses of the property,
 - vii. driveway and access standards,
 - viii. impact fees,

- ix. utility installation fees,
- x. sign regulations
- f. A Permit Would Be Denied Because OB Denies Aesthetic Value of Each

Requirement for OB Officials, Attorney & Special Magistrate to Follow The Constitution

1. Indeed, OB's own Code of Ordinances Section 2-29 requires "[a]ll persons who now or hereafter are employed by, or who now or hereafter are on the payroll of, the city shall take an oath [to] support the Constitutions of the United States and of the State of Florida." See *also* Fl. St. 876.05.
2. Additionally, in Fl. St. 112.311(6), it was "declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution."
3. A "public office is a public trust. The people shall have the right to secure and sustain that trust against abuse,"² and bring action against such abuses via claims for abuse of process, malicious prosecution, and under 18 USC 241.

CONCLUSION

The purpose of government (and its laws) is to secure our individual, God-given liberties, so that in my exercise of my rights, I am not impeding upon your exercise of your rights. Hence, the Fourteenth Amendment guarantees no State shall deny anyone "equal **protection** of the laws."

Let's be clear. The privacy fence, shipping containers and pavers are all on our own property. They are all in fully functioning order, *all* having survived the sustained 70+mph winds of Hurricane Ian (and Nicole). Not a single part came off and flew around in the hurricanes, despite many of our neighbor's fences and sheds being decimated. Except the ONE nasty neighbor who complained to OB that we "have ruined the neighborhood since [we] got here," *most* neighbors genuinely appreciate the fence, shipping containers and pavers, while a few others are indifferent. Indeed, they impact neighboring properties in *no* negative ways, but do reduce the amount of sandspurs and water runoff transferring to neighboring properties, help contain sound within our own property, keep soccer balls out of neighbor's yards as neighborhood kids gather to play, significantly mitigate wind and flood damage, keep frequently loose neighbor dogs out, provide a more crisp and streamlined appearance, and provide a place for neighbors to gather for a leisurely game of basketball.

As applied to our pavers, backyard privacy fence, and two shipping containers, there is no "substantial advancement of a legitimate state interest" by requiring us to

- pay the city and obtain permission before using our homestead for normal residential purposes
- install our fence with certain decorative qualities
- keep our shipping containers or pavers at least 7.5 feet away from all side and rear property lines, or completely remove our shipping containers (which are in much better condition than many of the homes in this area)
- submit the existing use of buildings on the lot, the number of families the building is designed to accommodate, the location and number of required off-street parking and off-street loading

² FL Const Art II Sec 8.

spaces, landscaped buffer areas, a recent survey of the lot *specifically certified to the city* (a cost of \$750 or more), accessory uses of the property, driveway and access standards, impact fees, utility installation fees, sign regulations, etc.

Indeed, the Florida Supreme Court explained that the powers of a municipality are to be interpreted and construed in reference to the *purposes* of the municipality and if *reasonable doubt* should arise as to whether the municipality possesses a specific power, such ***doubt will be resolved against the City***. City of Miami Beach v. Fleetwood Hotel, Inc., 261 So. 2d 801 (Fla. 1972), citing Liberis v. Harper (Fla. 1925) 89 Fla. 477, 104 So. 853. With all the conflicting legal provisions, and blatant violations of the law by OB, that is *exactly* what must happen here.

Michael & Katherine Henry v City of Ormond Beach (OB)

NOTICE OF PROPOSED ACTION under

- Fl. St. 70.001
- **Fl. St. 70.45**
- Fl. St. 81.011
- Fl. St. 82.01 and 82.03(1)
- **Fl. St. 373.185**
- Fl. St. 810.02 and 810.011
- Fl. St. 810.08 and Fl. St. 810.09(3)
- Fl. St. 810.12
- Fl. St. 163.3177(6)
- Fl. St. 163.3194(4)
- FL Const Art I Sec 1
- FL Const Art I Sec 2
- FL Const Art I Sec 9
- FL Const Art I Sec 12
- FL Const Art I Sec 23
- FL Const Art X Sec 6
- 42 USC 1983
- 14th Amendment
- 4th Amendment
- 5th Amendment
- 9th Amendment

Please note that state law **requires** OB to respond in writing to this notice, with no less than: a statement that no further action will be taken by OB as against the Henrys, or a statement fully identifying the *specific harm created by the Henrys' proposed use of their property* and fully explaining *how each* government exaction is proportionate to said specific harm. Depending on the future actions of OB, if Henrys must file this action in court, it may be filed in State or Federal Court.

Notice to Cease and Desist

As OB has violated numerous laws, which are detailed below, this NOTICE serves to inform you (all OB employees and officials) that YOU MUST IMMEDIATELY CEASE AND DESIST all LDC actions being taken against Michael and/or Katherine Henry. Failure to do so will result in legal action being taken against you in your official *and* individual capacities (as continuation of these actions constitutes actions done under the *color of law*, without actual authority).



Constitutional Attorney, Admitted in the United States
Supreme Court and four Additional Jurisdictions
November 8, 2022

Table of Contents of Ormond Beach Legal Violations

I. OB Is Prohibited From Taking Further Action Because It Violated The Henrys' Rights	2
A. OB Violates Equal Protection By Enforcing Permitting Procedures As Against Henrys When OB Wouldn't Enforce Permitting Procedures To Protect Henrys' Interests At Rollins Property	2
B. Equal Protection (Versus Other Neighbors)	4
1. Full Remodels In The Last Year	4
2. Fences Not To Code / Without Permits	5
3. Sheds And Storage Not To Code / Without Permits	6
4. Pavers Not To Code / Without Permits	8
C. OB Violated Henry's Rights To Privacy Against Unreasonable Searches And Seizures	9
D. OB Is Attempting To Exercise Eminent Domain Over Henry's Property In Violation of the US Constitution, FL Constitution, Federal Law, and State Law	10
1. State Laws Protect Private Property Rights	12
2. Overregulation = Literal Impossibility to Follow All Land Use Ordinances	13
3. Intent Of The Legislature To Encourage Homeowners To Employ Wind Mitigation, Flood Mitigation & Water Conservation On Their Properties	15
II. OB Is Prohibited From Taking Further Action Because It Exceeded Its Authority	16
A. Cities Have No Authority To Regulate Like An HOA	16
1. The Purpose Of Government	16
i. Our Rights Come From God, Not The Government	17
2. The Source Of Authority In Government	17
3. Our Use Of Our Property Does Not Infringe Upon A Neighbor's Use Of Their Property	18
4. Even HOAs, Created by Private Covenants, Must Respect Homeowner's Rights	19
B. Henry's Pavers, Shipping Containers & Fence Don't Require a Permit Per the LDC & Community Planning Act	19
1. Shipping Container Not Against Ordinance, Not Even Mentioned In Ordinance	20
C. Land Use Regulations Must Be Consistent and Follow State Law	21
1. Plain Contradictions For Things Like Utility Structures, etc	21

I. OB Is Prohibited From Taking Further Action Because It Violated The Henrys' Rights

Even LDC Section 1-13(a)(2) recognizes the need for "equitable" enforcement of "the codes and ordinances."

A. OB Violates Equal Protection By Enforcing Permitting Procedures As Against Henrys When OB *Wouldn't* Enforce Permitting Procedures To Protect Henrys' Interests At Rollins Property

Under the Equal Protection Clause of the Fourteenth Amendment, government may not selectively enforce laws against one individual while ignoring identically situated individuals. However, that is exactly what OB has done here. Just last year, when the Henrys moved to Florida, a permit situation arose where OB denied the Henrys equal *protection* of the law.

In July 2021, the Henrys entered into a contract to purchase the home at 924 Rollins Avenue. The contract, which the sellers drafted, clearly stated that the *seller* was responsible for obtaining and finalizing all building permits. After being informed by the Henrys that they wanted to purchase the home, sellers began extensive demo / remodeling of the home, filling up two consecutive 20' dumpsters. The Henrys were told only about the kitchen being demoed as sellers drafted the purchase agreement, and it was included in the contract that the Henrys could have their property on site and receive their mail at 924 Rollins while the Henrys were completing the renovations before closing. Upon delivering the signed contract to the Henrys, sellers took the Henrys through the property, pointing out additional repairs and upgrades "the mortgage company was going to require" before issuing the loan (according to the sellers who have worked in the mortgage industry for 30+ years). Acting as a general contractor (and telling the Henrys they are, in fact, general contractors who regularly flip homes like this one), sellers appeared onsite several times before the closing date, as well as monitored the process via constant text and phone communication.

A few days before closing, a neighbor called and reported that work was being done to the property without a permit. As soon as the Henrys were informed of this by city officials (who posted a Stop Work Order at the property, and explained to the Henrys the work that must be stopped immediately), they went down to City Hall to obtain all necessary paperwork to prepare the applications for permits. However, later that day, as the Henrys were at Lowe's picking up another \$10,000 in windows and building supplies, sellers called to tell the Henrys that they were canceling the contract and changing the locks immediately - with *no* reason stated.

Seller, in fact, came first thing the next morning with a locksmith and attempted to change the locks to the property with Katherine and Emma Henry inside! Sellers then began a campaign of harassment and terror, threatening the lives of the Henrys and violating 26 different criminal statutes in Florida! The day *before* closing, sellers filed a lawsuit against the Henrys, claiming the Henrys failed to go to closing, while simultaneously telling the Henrys the sellers refused to close on the sale. The Henrys hired legal counsel and filed a counterclaim for specific performance of the contract, among other things. However, in the midst of this court battle, the Henrys' attorney died in a scuba diving accident, and a fill-in judge was assigned to hold the pending hearings (as the assigned judge was close with the Henrys' attorney and was too upset to continue hearings that week). While the case was pending, sellers continued stalking the Henrys, and illegally and literally threw all of their personal belongings and approximately \$60,000 in remodeling materials out of the

house, resulting in thousands of dollars in damage to the Henrys. This was also despite the Lis Pendens the Henrys filed with the county records office. (Exhibit A).

As this was all unfolding, the Henrys called several times to the OB PD to have them take legal action against the threats with firearms and other crimes being committed by the sellers toward the Henrys. Each time, the officers refused to take the report or make any arrests, saying that since a civil lawsuit was pending, they wouldn't get involved. Even as the sellers brought yet another dumpster to the property and had several handymen onsite to work on the home (while the lawsuit was actively continuing), OB building officials refused to take action against the sellers for continuing work on the home intentionally without a single permit! (The sellers had even canceled the 1 permit the Henrys had been able to secure!) OB neighborhood improvement officers, police officers and building officials were all asked by the Henrys to take action to stop the sellers from working on the home, as the Henrys still had a vested interest in the home and the contract did NOT allow the sellers to remodel or work on the property once the Henrys had taken possession in July.

Every single attorney (of dozens) the Henrys contacted agreed that everything sellers were doing was illegal, and that the Henrys would ultimately win in court, but most of the attorneys were unable to help on such a short notice (the Henrys were given no time to secure replacement counsel after their attorney died). One of these attorneys was particularly upset by the facts of the case, and even called OB to ascertain why OB was refusing the Henrys equal *protection* of the law by enforcing the LDC, and stop the sellers from working on the home while the case was being litigated. Not only did OB inform the attorney OB would *not* do anything to enforce the LDC *as against the sellers*, but OB also referred to the Henrys as "squatters"! This is despite OB receiving copies of the Henrys' CounterComplaint, exhibits, and court orders. (The Henrys ultimately decided to purchase the home at on Cypress, and subsequently reached a settlement with the sellers regarding the return of at least some of their funds for the Rollins property.)

OB's enforcement of the LDC *as against the Henrys* at the Rollins property, outright refusal to enforce the LDC *as against the sellers* for the Rollins property (especially throughout August and September 2021), and current attempts to enforce the LDC *as against the Henrys* for their current property establishes a **clear violation of the Henry's right to equal protection of the law**. Accordingly, OB's attempts to enforce permitting "requirements" upon the Henrys now is a blatantly unconstitutional act by OB.¹

B. Equal Protection (Versus Other Neighbors)

Again, under the Equal Protection Clause of the Fourteenth Amendment, government may not selectively enforce laws against one individual while ignoring identically situated individuals. However, OB had done just that, but in yet another context.

1. Full Remodels In The Last Year

If OB expects to enforce a portion of the LDC against the Henrys, they must be enforcing the entire LDC against all other similarly situated homeowners, yet they have not. In the documents attached in the Notice from OB, it says a building permit is required for demolition and extensive remodeling

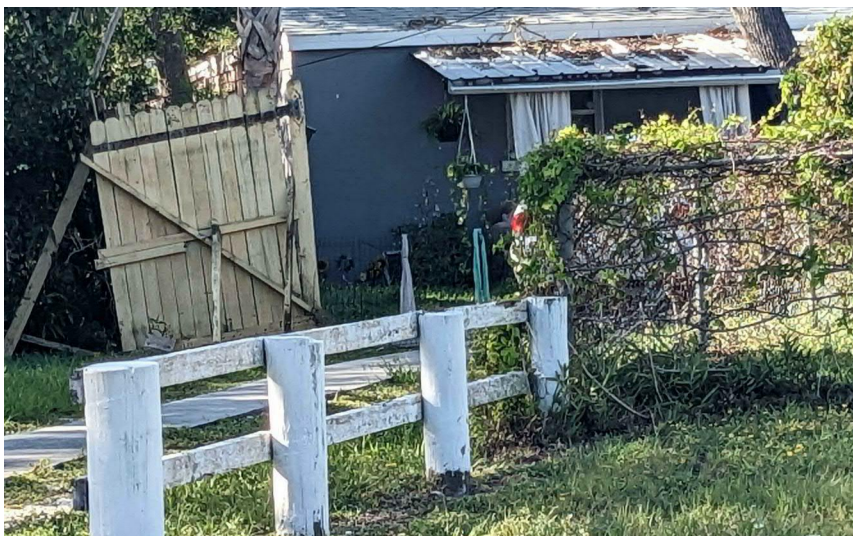
¹ Exhibit B, Henry Response to Kelly Emergency Motion for Temporary Injunction; Exhibit C, Henry Answer to Kelly Complaint & Henry CounterComplaint; Exhibit D, Henry's Response and Motion for Protective Order are attached hereto.

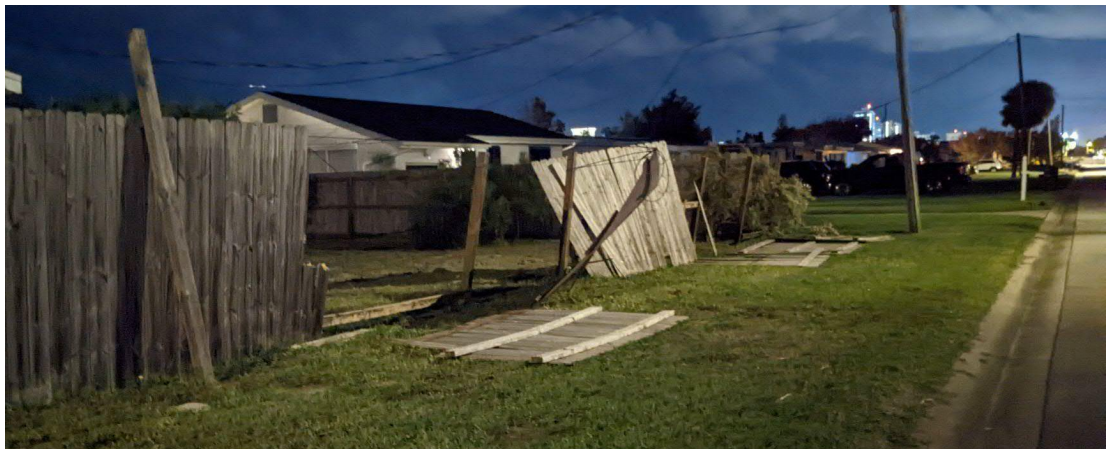
(see, eg., LDC Section 1-14(6)). Yet, when prominent building management companies, licensed realtors, and flippers made significant renovations to homes in the area, the city required no permits (even when on main roads, such as Rockefeller). Just for example, within the last year, 223 Rockefeller, 36 Cypress Circle, and 138 Rockefeller were all gutted and remodeled (tubs, toilets, kitchens, walls, etc.) without *any* permits being issued. In fact, even to this date (and having occurred for several weeks), extensive repairs and/or remodeling is happening to 14B Byron Ellinor and 48 Byron Ellinor, with absolutely *no* permits being listed for those properties.



2. Fences Not To Code / Without Permits

LDC Section 2-50(n)(16) states “a. All fences and walls shall be maintained in good repair and free of any graffiti. b. All fences and walls shall be maintained in their original upright condition. c. Missing boards, pickets or posts shall be replaced in a timely manner with material of the same type and quality.” However, even just within this very neighborhood, there are countless examples of fences clearly not up to code (wrong materials, wrong placement, or complete disrepair) - which OB does absolutely nothing about, while simultaneously attempting to enforce fence regulations against the Henrys. Furthermore, most of the fences on beachside were destroyed by Hurricane Ian, with many homeowners replacing those fences already - with no permit. The fences at 24 Cypress Circle, 196 Rockefeller, and 361 Atlantic are just a few of these. Clearly, whatever fence permitting that would apply to the Henrys would also apply to all other similarly situated homeowners...





3. Sheds And Storage Not To Code / Without Permits

OB also practices unequal enforcement of the LDC regarding sheds and storage. LDC Section 2-50(o) *Garages* states “All single-family residences are required to have a garage or carport structure,” but with our neighborhood being built in 1949 as a vacation village, most of the homes here do not have a garage. Yet, OB expressly attempts to prohibit general outdoor storage of items (clutter) that might otherwise be stored in a garage. See LDC Section 2-50(x)(1). But, with just a quick drive through our neighborhood, you can see that virtually every home has items stored in both back and front yards. So, the outdoor storage provisions of the LDC have not been enforced at least for years - but OB is attempting to prohibit (or at least regulate) the covered storage of the Henrys.

Likewise, large sheds which were installed at various homes in the area (including, for example, at 34 Cypress Circle and 36 Cypress Circle [in 2022]), which were subsequently destroyed by Hurricane Ian, were not required to have permits. Even the “setbacks” OB said applied to the Henrys’ shipping containers, are not applied to countless sheds and other storage buildings throughout OB, including, just for example, the sheds at 24, 29, 131, 143, 178 and 204 Rockefeller; 24 and 26 Cypress Circle; 485 and 491 Grandview; 475 and 481 Wild Olive; 178 and 199 River Beach; 37 Byron Ellinor; 15 Mulberry; 465 Cedar; 500 Hollywood; 473, 479, 486 and 506 Pinewood;

491 and 503 Magnolia; 402 and 421 Halifax; 1 Bayberry; 384, 391, 401, 425 and 431 Pine Rd. Moreover, OB has allowed two shipping containers of seemingly the same size to be sitting right on the property line just a few streets over at 180 Benjamin.





4. Pavers Not To Code / Without Permits

As it relates to the pavers, OB has many instances of unequal enforcement of the LDC. In several instances, like 135 Magnolia, permits were issued for pavers which did not comply with provisions of the LDC, such as how the pavers were installed with no setbacks from rear or side property lines. At 52 Byron Ellinor, as another example, OB was onsite at least 4 times in 2022 for various permitted projects, but no permit *nor* setback was required for the white stones which now cover the entirety of the front yard and driveway additions. But this example also shows that even materials provisions of the LDC are not being enforced upon other properties. LDC Section 2-50(x)(4) prohibits parking “in the front yard of any residential property,” except for on paved driveways or driveway extensions made of asphalt, concrete, asphalt brick, brick pavers, or turf block, which must extend from the existing driveway toward the side lot line away from the front of the house. See *also*, LDC Section 1-22 definition of “driveway means a paved area,” and “[p]aved area means an improved area consisting of asphaltic concrete, concrete, brick or similar material.” But, then again, the vast amount of homes in this area that have cars parking on grass, rocks, and other “unapproved” surfaces greatly outnumbers the homes where parking is done properly per the LDC. (A quick drive around the neighborhood will show you that, so no example addresses are even necessary here.) Again, OB cannot selectively enforce provisions of the LDC regarding pavers, as that clearly denies the Henrys equal protection of the law.



Literally EVERY SINGLE PERSON who has walked by, stopped to talk or comment in ANY way about the Henrys' home since they've been here (with the neighbor who complained to OB about the Henrys as the ONLY exception) has gone out of their way to tell them how they can see how hard the Henrys been working to make their home, and their neighborhood a better place. They've appreciated how the Henrys' reduced otherwise natural water runoff, significantly reduced the sandspurs and weeds (which spread from one property to another), reduced the otherwise natural sound level emitted from our home, cleaned up the overall appearance of the home, hosted a neighborhood library (until it was stolen - on camera!), assisted neighbors needing a helping hand to do similar things to their own properties, etc. So, it is void of all common sense for OB to come after the Henrys for working tirelessly to improve their home and their neighborhood, while allowing countless properties nearby, let alone throughout the entire city, to stay untended or in utter disrepair.

C. OB Violated Henry's Rights To Privacy Against Unreasonable Searches And Seizures

Not only does the Fourth Amendment protect us against unreasonable searches and seizures by the government, but our state constitution and state law does, too. However, on September 2, 2022, OB officials came, unannounced, to the Henrys' home. As later seen on security footage, OB officials not only came onto the Henrys' property, but they went past barriers the Henrys had put into place to keep a nosy neighbor out. Upon being in that intimate curtilage of the Henrys' home, OB officials then looked around and even took pictures. Although OB knew Katherine Henry (and her daughter) were home, as they had just gotten off a long phone conversation, they did not announce themselves, instead choosing to sneak around the Henrys' property, first past the 8-year old's bedroom window, then moving on.

FL Const Art 1 Sec 12 *Searches and Seizures* also declares "[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, *shall not be violated*. . . . [wherein] Articles or information obtained in violation of this right shall not be admissible in evidence." Thus, all pictures and other documentation OB took of the Henrys' property that day must be immediately forfeited to the Henrys, as OB is prohibited from keeping that which they illegally obtained. In other words, any potential "evidence" OB obtained that day is fruit of the poisonous tree, and OB is barred from keeping or benefiting from such.

Numerous US Supreme Court cases have explained that "except in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant," which OB clearly did *not* have.² And Justice Scalia explained that "With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no."³ "Further, FL Const Art 1 Sec 23 *Right of Privacy* further declares that "[e]very natural person has the *right to be let alone and free from governmental intrusion* into the person's private life." How much clearer could it be?

In addition to these constitutional protections, state law also prohibits this type of behavior by OB officials. Pursuant to Fl. St. 82.01 and 82.03(1), the Henrys intend to pursue their rights to a cause

² *Camara v Municipal Court of City and County of San Francisco*, 387 US 523, 528-529 (1967).

³ *Kyllo v United States*, 533 US 27 (2001).

of action against a person who obtained possession of their property by unlawful entry, as was done here. The legislative findings of Fl. St. 810.015 “that in order for a burglary to occur, it is not necessary for the licensed or invited person to remain in the dwelling, structure, or conveyance surreptitiously,” are also of importance here. Indeed, under Fl. St. 810.02 and 810.011, a burglary occurs upon a person “entering a dwelling [or] structure” including the curtilage thereof, as OB officials did here. Indeed, with Katherine and her daughter both in the home when OB officials came onto the property that day, the “burglary is a felony of the second degree” per Fl. St. 810.02(3).

Further, Fl. St. 810.08 indicates that when “whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure,” that person “commits the offense of trespass in a structure.” Indeed, as “there is a human being in the structure or conveyance at the time the offender trespassed,” this “trespass in a structure” “is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.” This portion of state law acknowledges that a person is not “authorized” merely by virtue of being a government official, but must fall within certain exceptions to be “authorized.” Fl. St. 810.09(3). As the OB officials at the Henry property were not “law enforcement officer[s] whose department has received written authorization from the owner,” nor where they “registered engineers and surveyors and mappers authorized to enter lands,” this action by OB also constituted an illegal entry upon land under Fl. St. 810.12. See *also* Fl. St. 810.12(5), 471.027, and 472.029. Moreover, even Fl. St. 166.0415(4) states that “[n]othing in this section shall be construed to authorize any person designated as a code inspector to perform any function or duties of a law enforcement officer.” Further, even a law enforcement officer would have to have a warrant in order to come into the dwelling (or curtilage thereof) of the Henrys.

D. OB Is Attempting To Exercise Eminent Domain Over Henry’s Property In Violation of the US Constitution, FL Constitution, Federal Law, and State Law

The three “Notices of Violation” involved herein demonstrate OB’s attempt to exercise eminent domain, or a taking, of Henrys’ property. LDC Section 1-12(a) claims that “No development, as defined herein, or change in land use shall be undertaken without prior authorization pursuant to this Land Development Code.” Indeed, LDC Section 1-22 defines “development” as “the use of any structure, land or water.” As if this definition isn’t overbroad enough on its own, the definition continues to sprawl over an additional 264 words! One such example of this “sprawl” includes “the making of any change in the appearance of any structure, land or water,” which necessarily includes mowing your lawn, pulling the weeds, planting a flower, etc.

LDC Section 1-04(a) declares that “all provisions [of the LDC] shall be [c]onsidered as minimum requirements,” and “[l]iberally construed in favor of the city.” LDC Section 1-13(a)(1) even goes so far to say that the entire LDC is written to not only provide punishments for all who “violate” it, but to also “discourage [even] *potential* violations.” Punishing *actual* violations of a legitimate local law (or even *encouraging* future compliance) is one thing, but creating a local *law* intended to discourage *potential* violations goes beyond the bounds of reasonable. With phrases like “Keep Florida Free” becoming the new unofficial tagline of our state, this blatant attempt to control even the *thought* of something contrary to the LDC is shocking, to say the least.

OB instructed the Henrys over the phone that their shipping containers had to be removed. Later in the conversation, OB claimed even if the shipping containers could remain *on the Henrys’ property*, they must be moved to at least 7.5 feet away from the side and rear property lines. In the Notice, OB claims the shipping containers are in violation because they don’t have a permit, but OB has not

identified which requirements it intends on utilizing in determining whether to grant the permit. Moreover, OB has now sent an email stating “I just wanted to follow up with you in regards to obtaining the building permits for your new fence, pavers and *getting the storage containers removed from the property.*”

OB also verbalized several alleged violations (such as the design) with how the Henrys’ privacy fence is constructed, although the notice only identifies the mere absence of a permit (and thus does not clarify if Henrys’ application for such permit would be denied anyway on the basis of the prior verbalized concerns, which were mainly unfactual claims by a nasty neighbor - the only in the neighborhood to have a problem with Henrys’ fence). Thus, the Henrys are left with the understanding that even if they were to file the gobs of paperwork and pay the fee to OB to simply keep their own privacy fence, OB would require them to tear it down anyway.

Further, OB claims in the notice that the pavers merely need a permit. However, OB verbalized in that same phone call that the pavers must be 7.5 feet away from the Henrys’ rear and side yard property lines. When Katherine Henry asked why OB would institute such an arbitrary setback, OB informed her it was to avoid potential water runoff issues with a neighboring property.

Let’s be clear. The privacy fence, shipping containers and pavers are all on the Henrys’ own property. They are all in fully functioning order, *all* having survived the sustained 70+mph winds of Hurricane Ian, despite virtually *all* neighbors having damage to their sheds, fences and landscaping. Not a single part of any of them came off and flew around in the hurricane, despite most of the neighbor’s fences and sheds literally being decimated. (Most neighbors suffered entire losses of their sheds and fences, if not more than 50% damage, including businesses like Pizza Hut.) The fence, shipping containers and pavers were placed onto the property with care to not only prevent new water runoff issues toward neighboring properties, but to stop any current runoff from the Henrys’ property to neighboring properties, which naturally occurred as Henrys’ property is around 1-2 feet higher in elevation compared to neighboring properties. Except the ONE nasty neighbor who complained to OB about the fence, shipping containers and pavers saying the Henrys “have ruined the neighborhood since they got here,” *most* neighbors are impressed by and genuinely appreciate the fence, shipping containers and pavers, while a few remaining others have complete indifference about them. Indeed, they impact neighboring properties in *no* negative ways, but do reduce the amount of sandspurs and water runoff transferring to neighboring properties, help to contain sound from the Henrys within the Henrys’ own property, keep soccer balls out of neighbor’s yards as neighborhood kids gather to play in the backyard, significantly help to reduce the amount of damaging winds ripping through, keep frequently loose neighbor dogs out, provide a more crisp and streamlined appearance, and provide a place for neighbors to gather for a leisurely game of basketball.

So, despite OB’s intentions and declarations, the application of a general zoning law to particular property effects a taking if the **ordinance does not substantially advance legitimate state interests**. See *Nectow v. Cambridge*, 277 US 183, 188 (1928). Further, FL Const Art I Sec 2 *Basic Rights* explains that “[a]ll natural persons, female and male alike, are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty [and] possess and protect property.” FL Const Art X Sec 6 *Eminent domain* explains “No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner,” which goes hand-in-hand with US Constitution Am V stating “nor shall private property be taken for public use,

without just compensation.” In addition to the overwhelming regulation of literally every use of our own property (i.e., the “taking” by OB), OB also deprives us of the use of our own property, in violation of the Fifth and Fourteenth Amendments to the US Constitution and FL Const Art I Sec 9, by requiring us to literally get their permission to use our own property in *any* way.

As applied to the Henrys and their pavers, backyard privacy fence, and two shipping containers, there is no “substantial advancement of a legitimate state interest” by requiring the Henrys to pay the city and obtain permission before using their own homestead for normal residential purposes. Likewise, there is no “substantial advancement of a legitimate state interest” by requiring the Henrys to install their fence with certain decorative qualities, to keep their shipping containers or pavers at least 7.5 feet away from all side and rear property lines, or to remove their shipping containers (which are in much better condition than many of the homes in this area).

1. State Laws Protect Private Property Rights

The Bert J. Harris, Jr., Private Property Rights Protection Act specifically protects private property rights in this very context. The legislature even mandated that “the State Comprehensive Plan shall be . . . consistent with the protection of private property rights.” Fl. St. 187.101. Likewise, in Fl. St. 163.3194(4), the legislature recognized that “private property shall not be taken without due process of law and the payment of just compensation.” So, too, in Fl. St. 70.001, the legislature recognized “that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without” a court declaring it “a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens.” If OB continues to violate the Henrys’ rights, they will certainly employ the “separate and distinct cause of action from the law of takings” that this statute created.

But the state legislature created additional similar protections for property owners. Fl. St. 163.3177(6)(i) requires local governments to consider “constitutionally protected private property rights” in local decision-making. Specifically, Fl. St. 70.002 acknowledges that, although not a comprehensive list, our “rights and protections include:

1. The right to acquire, possess, and protect your property.
2. The right to use and enjoy your property.
3. The right to exclude others from your property.
4. The right to dispose of your property.
5. The right to due process.
6. The right to just compensation for property taken for a public purpose.
7. The right to relief, or payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity unfairly affects your property.”

Further, as seen in Fl. St. 163.3161, it “is the intent of the Legislature that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations,

comprehensive plans and amendments thereto, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property or which would constitute an inordinate burden on property rights as those terms are defined in s. 70.001(3)(e) and (f). Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking.”

Likewise, Fl. St. 70.45 *Government Exactions* was also enacted. “In addition to other remedies available in law or equity, a property owner may bring an action in a court of competent jurisdiction under this section to declare a prohibited exaction invalid and recover damages caused by a prohibited exaction.” Further, “‘Prohibited exaction’ means any condition imposed by a governmental entity on a property owner’s proposed use of real property that lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.” Thus, this entire written response serves as the **WRITTEN NOTICE OF PROPOSED ACTION**. The actions by OB are so incredulous that each of the points discussed herein serve to explain why the exaction is prohibited, as required under Fl. St. 70.45(3). The estimate of damages is attached hereto.

Please keep in mind that not only must OB respond in writing explaining why OB maintains the exaction is proportionate, but OB must ***identify the specific harm created by our proposed use of our real property***. Of course, state law allows OB to remove the exaction, so no further action by either party would be needed. Please also keep in mind that OB “has the burden of proving that the challenged exaction has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate.”

This notice also serves to inform OB of the Henry’s intent to pursue a Petition for Prohibition under Fl. St. 81.011 against OB.

2. Overregulation = Literal Impossibility to Follow All Land Use Ordinances

OB’s overregulation of land use creates a literal impossibility to follow all land use ordinances. For example, according to LDC 1-14, prior to using any land whatsoever⁴, “the city shall have issued an approved development order *and* building permit.” Want to mow your lawn? You need an approved development order *and* building permit for that. Want to pull your weeds? You need an approved development order *and* building permit for that. Want to park your car in your own driveway? You need an approved development order *and* building permit for that. Want to plant flowers in your front yard? You need an approved development order *and* building permit for that. Want to put a kiddie pool in your fenced-in backyard for your dog to cool off in? You need an approved development order *and* building permit for that. Want to fix your clothes line before hanging your next load of laundry out to dry? You need an approved development order *and* building permit for that.

But, I forgot to mention that LDC 1-14 not only requires an approved development order and building permit, but also the “development order shall be issued only in conjunction with the approval of either a final site plan,” so have your pocketbook ready to pay for the engineering fees, and other expenses of site plans. Yes, that includes for mowing your lawn, pulling your weeds, parking in your driveway, planting flowers, your dog’s kiddie pool, fixing your clothes line, and all other uses of your property.

⁴ See aforementioned definition of “development” by the LDC in Section 1-22.

Additionally, LDC Section 2-50(o) *Garages* states “All single-family residences are required to have a garage or carport structure.” Further, no applicant may receive a building permit of any kind without “[a]ll requirements of this Land Development Code [being] met unless a variance is granted by the Board of Adjustment and Appeals.” LDC Section 1-14(6)(a)(4)(iv). However, the vast majority of homes in our neighborhood, let alone the general OB beachside community, do *not* have garages. So, no garage? You can’t get a building permit for anything purporting to require one, unless you first go through the process of applying for - and actually receiving - a variance under LDC Section 1-16.

The impracticality, unreasonableness, and often impossibility of complying with the “submittal requirements” for building permits per LDC Section 1-14(6)(b) is likewise astounding. Want to put up a small swing set for your 8 year old? Get a gazebo from Sam’s Club as an anniversary gift? Want to set up a bonfire area to make s’mores with your kids this holiday season? Not only are you required to meet the aforementioned absurd requirements, but your building permit application *must* also contain information including the actual shape and dimensions of the lot, the existing use of buildings on the lot, the number of families the building is designed to accommodate, the location and number of required off-street parking and off-street loading spaces, landscaped buffer areas, a recent survey of the lot *specifically certified to the city*, accessory uses of the property, driveway and access standards, impact fees, utility installation fees, sign regulations. While some items within LDC Section 1-14(6)(b) are marked as being required only “if applicable,” many of the items - including *all* of those listed here - do not contain that modifier of the otherwise required language.

The LDC also attempts to regulate the “aesthetic” value of a homeowner’s use of their property. Uses not deemed “aesthetically acceptable,” such as in LDC Section 1-15(e)(7), are withheld “approval” by OB. As for these beauty requirements, OB fails to even attempt to claim a legitimate state interest is involved, let alone these provisions of the LDC provide a “substantial advancement” of such.

As if the staggering amount and complexity of land use regulations in OB wasn’t enough, provisions of the LDC like sections 1-18(f)(1) claims the “city commission may include additional reasonable and appropriate conditions not specifically provided for in this Land Development Code.” Moreover, OB has onerous setbacks for pools, garages, sheds, play structures, gazebos, and all other typical Florida outdoor features, which means that even with a modest parcel over 10,000 square feet, it is literally impossible to meet all the setbacks, and still enjoy these features (some of which are required by the LDC!).

As applied to the Henrys and their pavers, backyard privacy fence, and two shipping containers, there is no “substantial advancement of a legitimate state interest” by requiring the Henrys to submit the existing use of buildings on the lot, the number of families the building is designed to accommodate, the location and number of required off-street parking and off-street loading spaces, landscaped buffer areas, a recent survey of the lot *specifically certified to the city* (a cost of \$750 or more), accessory uses of the property, driveway and access standards, impact fees, utility installation fees, sign regulations, etc.

3. Intent Of The Legislature To Encourage Homeowners To Employ Wind Mitigation, Flood Mitigation & Water Conservation On Their Properties

We must also recognize the consistent intent of the Florida Legislature to encourage homeowners to employ wind and flood mitigation on their homes. The state constitution already contains a provision in article VII section 4 (i)(1) to “prohibit an increase in the assessed value of real property used for residential purposes as the result of improving the property’s resistance to wind damage,” and the legislature has introduced Ballot Proposal 1 (2022) to apply that same language to flood mitigation measures taken by homeowners.

Indeed, there is not only a desire to “Protect human life against the effects of natural disasters,” but also to “improve resilience to coastal flooding resulting from high-tide events, storm surge, flash floods, stormwater runoff, and related impacts of sea-level rise.” Fl. St. 163.3177(6)(g). Moreover, OB is required to account for hazard mitigation and protecting human life against the effects of natural disaster, include development principles and engineering solutions that reduce the flood risk in coastal areas, and identify best practices that may reduce losses due to flooding. Fl. St. 163.3178.

More telling is Fl. St. 373.185, which clearly states a **“local government ordinance may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land.”** While areas of the Henrys’ property were prone to flooding, it was not capable of sustaining any vegetation other than sandspurs and weeds, certainly not without significant irrigation use. “‘Florida-friendly landscaping’ means quality landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant.” And since the pavers were installed in a way to reduce stormwater runoff to neighboring properties, allow for easier maintenance, and eliminate the need for irrigation thereby “result[ing] in water conservation,” they fulfill the goals of using such landscaping.

Prior to the fence, pavers, and shipping containers being placed onto the Henrys’ property, the yard was incapable of sustaining any vegetation other than sandspurs and weeds, and had significant issues in several areas with water drainage. The fence, pavers and shipping containers were carefully placed so as to significantly mitigate not only wind damage, but also flood damage from various types of flooding events. Indeed, while many people in our area had significant flooding with Hurricane Ian, the Henrys’ home was able to keep up with a normal, natural flow of water into the storm drains, and not onto any neighboring property. Likewise, while most neighbors had significant wind damage from Hurricane Ian, the fence and shipping containers kept the wind damage at the Henrys’ down to a minimum, thus reducing the risk to neighboring properties of airborne debris.

II. OB Is Prohibited From Taking Further Action Because It Exceeded Its Authority

OB claims in its LDC that Fl. St. 163.3202 provides the authority to take some of these actions, FL. St. 163.3202 indicates nothing about such requirements for pavers, shipping containers or the fence. See *id* at subdivision (2). But there are several other significant reasons why OB is prohibited from taking any further action in this matter, as it has clearly exceeded its constitutional and statutory authority.

A. Cities Have No Authority To Regulate Like An HOA (Overregulation Akin to HOA Rules)

Although OB has enacted ordinances claiming the “powers of the city shall be construed liberally in favor of the city” (Ordinance 2008-30), and that nothing in the OB Charter “shall affect or impair the rights or privileges of persons who are city officers or employees,” the fact remains that *all* OB

officers and employees work for the people of the city (i.e., residents like the Henrys), and the inalienable rights of *the people* cannot be impaired by the city.

Per Ordinance 2019-41, “in October of 2016 the city commission authorized Municipal Code Corporation to review” and amend the existing LDC. In so doing, the city commission relied upon MCC to determine whether the amendments “are consistent with the constitution and the applicable laws of the state of Florida, the city’s Charter, and the city’s Comprehensive Land Use Plan.” The city commission also claims that only a “court of competent jurisdiction” can recognize and declare any portions of the LDC “unconstitutional, invalid, or unenforceable.” However, city officials and employees don’t have the option of ignoring all things “constitutional,” leaving those matters for others to deal with. Indeed, OB’s own Code of Ordinances Section 2-29 requires “[a]ll persons who now or hereafter are employed by, or who now or hereafter are on the payroll of, the city shall take an oath [to] support the Constitutions of the United States and of the State of Florida.” See *also* Fl. St. 876.05.

But that would not be the first time OB employees and officials have been required to take that oath, as FL Const Art VI Sec 3 *Oath* requires each registered voter to take the oath to “protect and defend the Constitution of the United States and the Constitution of the State of Florida.” Additionally, in Fl. St. 112.311(6), it was “declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution.”

1. The Purpose Of Government

LDC Section 1-03 claims OB’s “comprehensive plan and this Land Development Code are tools that the leaders of the city shall use to protect and maintain a high quality of life for the citizenry of the city.” However, this is *not* the purpose of our government.⁵ Instead, we are “endowed by [our] Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. [And] to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.” Declaration of Independence.

i. Our Rights Come From God, Not The Government

With OB’s approach to land use regulations being one of “you can’t use your property for any purpose without prior written permission from OB, including payment of a fee,” it seems remiss not to remind you that we get our rights from God, not the government. The Florida Constitution Preamble clearly states “We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty,” established our constitution.⁶ FL Const Art I Sec 2 *Basic Rights* explains that “[a]ll natural persons, female and male alike, are equal before the law and have **inalienable rights**, among which are the right to enjoy and defend life and liberty . . .”⁷ In fact, although the entire first article of the state constitution is focused on explaining our individual liberties (and is hence called

⁵ As our state constitution preamble states, we “the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution.”

⁶ See *also* US Const Preamble, “We the People of the United States in Order to . . . secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

⁷ See *also* Declaration of Independence.

“Declaration of Rights”), FL Const Art I Sec 1 reminds government officials that the “enunciation herein of certain rights shall not be construed to deny or impair others *retained* by the people.”⁸

So, as explained above, the purpose of government is to secure our individual, God-given liberties, so that in my exercise of my rights, I am not impeding upon your exercise of your rights. Yes, you read that right - the purpose of government, and of its laws, is to *protect our rights*, not to regulate and punish us. Indeed, that is why the Fourteenth Amendment is worded to guarantee no State shall “deny to any person within its jurisdiction the equal *protection* of the laws.”

2. The Source Of Authority In Government

LDC Section 1-04(a) declares that “all provisions [of the LDC] shall be [c]onsidered as minimum requirements,” and “[l]iberally construed in favor of the city.” However, as stated, the state constitution Preamble explains that “We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty” were the ones to “ordain and establish this constitution.” The Florida Senate explains that the Florida Constitution is an “organized system of fundamental principles for the government of the state. It is of a permanent and general nature and *originates from the people* rather than from the legislature.” See <https://www.flsenate.gov/laws>. Indeed, not only are we guaranteed a Republican Form of Government (where we elect mere representatives, but we retain the ultimate control and authority) by US Const art IV, § 4, but US Const Am X reminds government officials that all the powers We The People have *not delegated* to the federal or state governments are *reserved to the people*. (Meaning, we *kept* the powers with which we started.) That is why the state constitution not only explains that “[a]ll political power is inherent in the people,”⁹ but that a “public office is a public trust. The people shall have the right to secure and sustain that trust against abuse.”¹⁰

Many portions of the LDC refer to OB’s need to protect the “public health, safety, welfare and quality of life” as the basis for these land use regulations. Although it is thought by some that our state or local government is responsible for public health, public safety and public welfare, those general powers have no basis in our state or federal constitutions.

The term “welfare” appears only twice in the US Constitution. In the Preamble to the US Constitution, it reminds us that we established that Constitution and formed our government to, among other things, promote the general welfare. Not to regulate it. Then, in article I § 8, we see that Congress has the “power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.” But given the sentence as a whole, it is clear to see that “provide for the common defence and general welfare of the United States” refers to that term in the financial sense. This also fits with the meaning that term (provide for) had at the time the Constitution was written. The British Dictionary defines “provide for” as “to supply means of support (to), esp financially.”¹¹ The term “welfare” only appears once in our state constitution, namely in article I § 16. Dealing specifically with victim welfare in setting bonds in criminal cases, that clearly does not apply to the LDC.

⁸ See *also* US Const Am IX.

⁹ FL Const Art I Sec 1.

¹⁰ FL Const Art II Sec 8.

¹¹ British Dictionary, available at <https://www.dictionary.com/browse/provide?s=t>, last accessed November 6, 2022.

The term “public safety,” as used in the Florida and US Constitutions, shows even more limits on our government’s authority to act. The term “safety” only appears once in our US Constitution. That instance is found in article I § 9, where it states “[t]he privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” This provision clearly provides no governmental authority to act, but for the rare need to suspend the privilege of the writ of habeas corpus. Although our state constitution mentions “safety” five times, none of those portions (dealing with religious practices, habeas corpus, crime victim safety or medical marijuana) provide any authority for governments regarding land use regulations.

The term “health” appears nowhere in our US Constitution, thus, there is no Constitutional basis for the government to exercise authority relating to public health. And although the word “health” appears in the Florida Constitution 27 times, none of those references are to this general concept of “public health,” rather focusing on scholarships, education, minimum wage, patient rights, medical malpractice, tobacco and marijuana. This, likewise, leaves the LDC without Constitutional authority on the basis of “public health, safety or welfare.”

Moreover, our entire state constitution as established because “[w]e, the people of the State of Florida, [were] grateful to Almighty God for our constitutional liberty,” and wanted to “secure its benefits.” FL Const Preamble. If we wanted to create a form, structure and set of definitions for governmental power to ensure our public health, public safety and general welfare, we would have so stated. But we did not.

3. Our Use Of Our Property Does Not Infringe Upon A Neighbor's Use Of Their Property

LDC Section 1-13(a)(1) claims enforcement of the LDC by way of “violations and penalties” is intended to “protect the quality of life for current and future citizens of the city.” LDC Section 1-15(e)(4) seems to correctly identify the proper use of land development regulations (although it includes many others that go far beyond this acceptable use by OB):

The proposed use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare or visual impacts on the neighborhood and adjoining properties.

As explained earlier, the purpose of government is to secure our individual, God-given liberties, so that in my exercise of my rights, I am not impeding upon your exercise of your rights. Indeed, the Henry’s fence, shipping containers and pavers impact neighboring properties in *no* negative ways, but do reduce the amount of sandspurs and water runoff transferring to neighboring properties, help to contain sound from the Henrys within the Henrys’ own property, keep soccer balls out of neighbor’s yards as neighborhood kids gather to play in the backyard, significantly help to reduce the amount of damaging winds ripping through, keep frequently loose neighbor dogs out, provide a more crisp and streamlined appearance, and provide a place for neighbors to gather for a leisurely game of basketball. In other words, *our use of our property does not infringe upon any neighbor’s use of their property*, so the government has no business interfering.

4. Even HOAs, Created by Private Covenants, Must Respect Individual Homeowner's Rights

By purporting to control the characteristics of pavers, fences and storage, OB is attempting to act as an homeowners' association rather than a municipality. However, even HOAs, with private covenants and various types of stylistic and beautification requirements, as defined in Fl. St. 720.301, must act in ways that still "protect the rights of association members." Fl. St. 720.302. Even as "the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof," in Fl. St. 720.302, HOAs are still prohibited from restricting parcel owners' rights as seen in Fl. St. 720.304.

B. Henry's Pavers, Shipping Containers & Fence Don't Require a Permit Per the LDC & Community Planning Act

Even the LDC Section 1-07 recognizes the "obligations, restrictions, rights and/or regulations heretofore existing on land located in the corporate limits of the city shall not be impaired, affected or avoided by the adoption of this Land Development Code." Long before the LDC was established, homeowners had inalienable private property rights. These rights continue to exist on all private properties within OB, and thus, shall not be impaired, affected or avoided by the LDC.

Indeed, the Florida Supreme Court explained that the powers of a municipality are to be interpreted and construed in reference to the *purposes* of the municipality and if *reasonable doubt* should arise as to whether the municipality possesses a specific power, such **doubt will be resolved against the City**. *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801 (Fla. 1972), citing *Liberis v. Harper* (Fla. 1925) 89 Fla. 477, 104 So. 853. Indeed, the purpose of the "formation of municipalities" as seen in Fl. St. 165.021, is to provide "municipal services so as to: (1) Allow orderly patterns of urban growth and land use. (2) Assure adequate quality and quantity of local public services. (3) Ensure financial integrity of municipalities. (4) Eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions. (5) Promote equity in the financing of municipal services." Clearly, (2) - (5) do not apply to the municipal action here. And (1) addresses common sense land use issues, such as prohibiting tobacco shops or strip clubs from being next door to an elementary or middle school. But micromanagement of landscaping, storage, and securing of private property (both real and personal) is not covered here. With this in mind, we must examine how the pavers, shipping containers, and fence involved here don't require a permit per the LDC or the Community Planning Act.

The Notice provided by OB claims the shipping "containers being used as sheds installed without" a permit violates LDC Section 2-50(a)(9). However, LDC Section 2-50(dd)(1) entitled *Sheds, utility structures, playhouses and gazebos*, states a "building permit shall be issued prior to the erection of any accessory structure;" however, the LDC defines "erected" the same as it defines "Construction, start of." LDC Section 1-22. "Construction, start of" is further defined where the "actual start of construction means . . . the first placement of permanent construction of a building (including a manufactured home) on a site," where "[p]ermanent construction does not include . . . the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings." Further, the Community Planning Act, which governs the terms as used herein, declares that "structure" is defined by Fl. St. 380.031(19). See Fl. St. 163.3164(45). It only includes movable structures "which can be used for housing, business, commercial, agricultural, or office

purposes either temporarily or permanently,” thus excluding shipping containers such as these not capable of such uses, and in fact, being used as storage.

In applying the land *development* code, which is authorized by and governed by the Community Planning Act, it is also important to acknowledge the statutory definition of “development.” Per Fl. St. 163.3164(14) and 380.04, “development” does **not** include “the use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling,” or a “change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.” Consequently, as securing private property, storage of personal property, and landscaping and parking are customarily incidental uses to enjoyment of a dwelling, the fence, shipping containers and pavers involved cannot, by state law, be considered “development” for purposes of enforcing the land *development* code.¹² Further, OB claims LDC Section 2-50 on “accessory uses and structures” requires the fence permit. However, fences are not covered by “use” as defined in LDC Section 1-22, and they are expressly *excluded* from the definition of “structure” (“structure . . . shall not include fences or signs”) per LDC Section 1-22.

1. Shipping Container Not Against Ordinance, Not Even Mentioned In Ordinance

“The use of personal on-site storage structures shall be limited to situations where a person or business is moving to a new location.” LDC Section 2-50(x)(3) prohibits onsite moving related storage structures like Pods or U-Boxes, which makes sense since they are not designed to withstand extreme weather, like hurricanes. Obviously, permanent structures like sheds or shipping containers are not included in this type of storm-mitigation provision. And for how many shipping containers are used long-term all across OB, they cannot be assumed to be called something else, or to all of a sudden be deemed temporary in nature. As demonstrated throughout this response, the LDC is full of conflicting information, and not a single provision clearly covers the shipping containers. On that point, the Henrys were told on the phone the shipping containers had to be removed, and while the “Notice” doesn’t state they must be removed, it also does *not* indicate which permitting provisions and/or requirements supposedly apply (other than simply “needing a permit”). So, with the LDC not mentioning “shipping containers,” the OB phone call conflicting with the written notice, and the written notice actually providing no notice whatsoever as to which conditions supposedly must be satisfied before a permit is granted, OB cannot stretch the LDC to cover that which is not clearly and unequivocally articulated as being covered by such. Remember, regarding uncertainty on municipal power like this, ***doubt will be resolved against the City.***

C. Land Use Regulations Must Be Consistent and Follow State Law

In addition to the overregulation here leading to the literal impossibility of following all land use ordinances in OB, there are also due process issues. OB Ordinance 2019-41 recognizes that state law (Chapter 163, FL St) requires the LDC to “contain[] all land development regulations for the city,”¹³ OB fails to contain all land development regulations within the LDC. LDC Section 1-13(b) claims that “Enforcement of violations of the regulations shall be subject to the procedures

¹² Per Fl. St. 163.3164(26), “‘Land *development* regulations’ means ordinances enacted by governing bodies for the regulation of any aspect of *development* and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land.”

¹³ See *also* Fl. St. 163.3202(3). “These and all other such regulations shall be combined and compiled into a single land development code for the jurisdiction.”

established in the Code of Ordinances,” making enforcement of LDC requirements something *not* contained *within* the LDC. LDC Section 1-14(6)(a)(4) also declares that no “building permit shall be issued by the chief building official except in conformity with the following: (i) Building and construction regulations of the city’s Code of Ordinances;” AND “(ii) Provisions of this Land Development Code,” meaning OB has some unidentifiable “building and construction regulations *outside* of the LDC. More specifically, LDC 1-14(6)(b) asserts the LDC “is supplemental to the building and construction regulations of the city’s Code of Ordinances and any other related ordinances adopted by the city commission.”

But the manner in which OB attempts to create “land development regulations for the city” outside of the LDC doesn’t stop there. OB homeowners seeking building permits must also include any “items required by the building and code division” (although not identified anywhere within the LDC), “the building permit application checklist” (also not included within the LDC itself), and other unidentified “local and state regulations.” Under the Due Process Clause of the Fourteenth Amendment, the government may not enact laws that are so vague that they either fail to inform ordinary people as to what conduct is prohibited or invite arbitrary and discriminatory enforcement. Even ignoring all else, the inconsistencies and contradictions by the LDC, especially as it is now being applied to the Henrys, thus violates the Due Process Clause. Indeed, the Supreme “Court has long recognized that property regulations can be invalidated under the Due Process Clause.”¹⁴

1. Plain Contradictions For Things Like Utility Structures, etc

The OB LDC has multiple plain contradictions within its requirements. As such, this creates even more confusion and makes it impractical, if not impossible, for the average homeowner to comply, let alone easily, with all that OB is attempting to regulate. LDC Section 2-50(dd)(3) requires that “any utility structure/shed over one hundred fifty (150) square feet shall be considered a garage and must meet the principal building setbacks,” yet by definition in LDC Section 1-22, utility structures only include accessory structures that do “not exceed one hundred fifty (150) square feet.” Additionally, although state law requires cities to enact land development codes that are consistent with their comprehensive *plan*, the land development *code* is the only local *law*, and the only piece *enforceable as law*. However, LDC Section 1-03 claims that if “any provision of this Land Development Code is found inconsistent with the comprehensive plan, the comprehensive plan shall prevail.”

¹⁴ *Stop the Beach Ren v Fla Dept of Env Prot*, 560 US 702 (2010).

Teal Stars Indicate Permit, Paver / Parking, Shipping Container / Shed / Structure, or Fence Violations



Type		House #	Street [1]	Notes
Extensive Re...	Erected with no permit	7	Bayberry	January 2023
Extensive Re...	Erected with no permit	48	Byron Ellinor	2022 extensive remodel without permits (windows
Extensive Re...	Erected with no permit	14B	Byron Ellinor	2022 extensive remodel without permits
Extensive Re...	Erected with no permit	23B	Byron Ellinor	2022-2023 extensive remodeling with 20+ foot dur
Extensive Re...	Erected with no permit	31	Cypress Cir...	work on several windows
Extensive Re...	Erected with no permit	36	Cypress Cir...	2021-2022 extensive remodel without permits
Extensive Re...	Erected with no permit	479	Hollywood St	Jan - Feb 2023 new windows & doors installed
Extensive Re...	Erected with no permit	541	Pinewood St	extensive bathroom gutting/remodeling by JPM Ti
Extensive Re...	Erected with no permit	71	Rockefeller	extensive renovations Fall 2022- winter 2023
Extensive Re...	Erected with no permit	138	Rockefeller	2022 extensive remodel without permits
Extensive Re...	Erected with no permit	223	Rockefeller	2022 extensive remodel without permits
Extensive Re...	Erected with no permit	11	TOTAL	
Extensive Re...				
Extensive Re...		29	Rockefeller	entire structure dilapidated for years, with no city e
Fence	Dilapidated Fence	9	Bayberry	
Fence	Dilapidated Fence	28	Byron Ellinor	white 6' panels close to house
Fence	Dilapidated Fence	41	Byron Ellinor	
Fence	Dilapidated Fence	56	Byron Ellinor	east property line - in much worse condition after I
Fence	Dilapidated Fence	16A	Byron Ellinor	
Fence	Dilapidated Fence	19A	Byron Ellinor	
Fence	Dilapidated Fence	19B	Byron Ellinor	
Fence	Dilapidated Fence	22A	Byron Ellinor	
Fence	Dilapidated Fence	39B	Byron Ellinor	*OB Work Van parked here daily; broken white pic
Fence	Dilapidated Fence	6 1/2	Byron Ellinor	
Fence	Dilapidated Fence	8	Cypress Cir...	
Fence	Dilapidated Fence	24	Cypress Cir...	Parts not repaired in 2022 are still dilapidated
Fence	Dilapidated Fence	31	Cypress Cir...	
Fence	Dilapidated Fence	333	Halifax Dr	
Fence	Dilapidated Fence	336	Halifax Dr	
Fence	Dilapidated Fence	373	Halifax Dr	small red parts & East side fence as well
Fence	Dilapidated Fence	392	Halifax Dr	
Fence	Dilapidated Fence	431	Halifax Dr	
Fence	Dilapidated Fence	100	Magnolia Dr	
Fence	Dilapidated Fence	85	Ormond Pkwy	
Fence	Dilapidated Fence	104	Ormond Pkwy	
Fence	Dilapidated Fence	114	Ormond Pkwy	
Fence	Dilapidated Fence	124	Ormond Pkwy	south property line
Fence	Dilapidated Fence	155	Ormond Pkwy	
Fence	Dilapidated Fence	131	Ormond Sh...	
Fence	Dilapidated Fence	148	Ormond Sh...	
Fence	Dilapidated Fence	374	Pine Rd	
Fence	Dilapidated Fence	417	Pine Rd	
Fence	Dilapidated Fence	506	Pinewood St	broken vinyl fence
Fence	Dilapidated Fence	93	River Beac...	broken vinyl fence posts
Fence	Dilapidated Fence	111	River Beac...	
Fence	Dilapidated Fence	131	River Beac...	
Fence	Dilapidated Fence	232	River Beac...	graffiti on Southwest portion of fence
Fence	Dilapidated Fence	441	Riverside Dr	
Fence	Dilapidated Fence	17	Rockefeller	

Type		House #	Street [1]	Notes
Fence	Dilapidated Fence	29	Rockefeller	south
Fence	Dilapidated Fence	36	Rockefeller	
Fence	Dilapidated Fence	38	Rockefeller	
Fence	Dilapidated Fence	48	Rockefeller	
Fence	Dilapidated Fence	53	Rockefeller	
Fence	Dilapidated Fence	131	Rockefeller	fence panels ripped out with fence frame still in the
Fence	Dilapidated Fence	196	Rockefeller	
Fence	Dilapidated Fence	295	S Atlantic Ave	
Fence	Dilapidated Fence	432	S Atlantic Ave	
Fence	Dilapidated Fence	136	Valencia Dr	
Fence	Dilapidated Fence	205	Valencia Dr	
Fence	Dilapidated Fence	217	Valencia Dr	east property line
Fence	Dilapidated Fence	484	Wild Olive	
Fence	Dilapidated Fence	505	Wild Olive	vinyl fence leaning (possible hurricane damage)
Fence	Dilapidated Fence	49	TOTAL	
Fence	Erected with no permit	52	Byron Ellinor	replaced entire fence after Hurricane Ian with NO
Fence	Erected with no permit	24	Cypress Cir...	
Fence	Erected with no permit	503	Magnolia St	2023 January
Fence	Erected with no permit	31	Ormond Sh...	Erected 2023
Fence	Erected with no permit	196	Rockefeller	
Fence	Erected with no permit	361	S Atlantic Ave	Sellers of 924 Rollins
Fence	Erected with no permit	6	TOTAL	
Fence	Inverted Fence Frame	53	Rockefeller	
Fence	Inverted Fence Frame	136	Valencia Dr	
Fence	Inverted Fence Frame	2	TOTAL	
Fence	Wrong Height/Opacity	96	Arlington Way	hedges in front yard 6ft
Fence	Wrong Height/Opacity	115	Arlington Way	hedges in front yard along property line far over 3ft
Fence	Wrong Height/Opacity	124	Arlington Way	hedges in front yard 6ft
Fence	Wrong Height/Opacity	3	Cypress Cir...	6 ft fence panel separating 33a and 33b in the front
Fence	Wrong Height/Opacity	319	Halifax Dr	
Fence	Wrong Height/Opacity	145	Magnolia Dr	
Fence	Wrong Height/Opacity	204	Magnolia Dr	trees being used as a fence line in the front yard a
Fence	Wrong Height/Opacity	94	Ormond Pkwy	
Fence	Wrong Height/Opacity	145	Ormond Pkwy	
Fence	Wrong Height/Opacity	195	Ormond Pkwy	hedges spinning across the entire property frontage
Fence	Wrong Height/Opacity	441	Riverside Dr	
Fence	Wrong Height/Opacity	210	Valencia Dr	hedges that run the entire frontage of the property
Fence	Wrong Height/Opacity	12	TOTAL	
Pavers/Parking	Erected with no permit	52	Byron Ellinor	OB was onsite at least 4 times in 2022 for various
Pavers/Parking	Erected with no permit	1	TOTAL	
Pavers/Parking	Grass Driveway/Parking	140	Arlington Way	permanent boat parking in front yard
Pavers/Parking	Grass Driveway/Parking	146	Arlington Way	permanent car & motorhome storage on grass on
Pavers/Parking	Grass Driveway/Parking	180	Benjamin	permanent boat parking on grass
Pavers/Parking	Grass Driveway/Parking	1	Byron Ellinor	permanent vehicle parking on grass next to mailbox
Pavers/Parking	Grass Driveway/Parking	5	Byron Ellinor	daily vehicle parking in between two paved driveways

Type		House #	Street [1]	Notes
Pavers/Parking	Grass Driveway/Parking	9	Byron Ellinor	parking on the grass on the south side of the main
Pavers/Parking	Grass Driveway/Parking	10	Byron Ellinor	permanent grass parking next to paved driveway
Pavers/Parking	Grass Driveway/Parking	12	Byron Ellinor	permanent trailer parking on grass next to structure
Pavers/Parking	Grass Driveway/Parking	28	Byron Ellinor	OBPD cruiser permanent parking
Pavers/Parking	Grass Driveway/Parking	30	Byron Ellinor	regular grass parking observed
Pavers/Parking	Grass Driveway/Parking	31	Byron Ellinor	permanent on grass parking to the northwest of pa
Pavers/Parking	Grass Driveway/Parking	56	Byron Ellinor	east side of property
Pavers/Parking	Grass Driveway/Parking	14A	Byron Ellinor	permanent grass parking to the north of paved dri
Pavers/Parking	Grass Driveway/Parking	17A	Byron Ellinor	permanent boat parking West property edge
Pavers/Parking	Grass Driveway/Parking	17B	Byron Ellinor	permanent boat parking West property edge
Pavers/Parking	Grass Driveway/Parking	34B	Byron Ellinor	permanent grass parking west of paved driveway
Pavers/Parking	Grass Driveway/Parking	36B	Byron Ellinor	
Pavers/Parking	Grass Driveway/Parking	37B	Byron Ellinor	permanent grass parking to the east of paved driv
Pavers/Parking	Grass Driveway/Parking	39B	Byron Ellinor	*OB Work Van parked here daily; permanent gras
Pavers/Parking	Grass Driveway/Parking	8B	Byron Ellinor	permanent trailer parking on grass on South side o
Pavers/Parking	Grass Driveway/Parking	11	Cypress Cir...	permanent parking on grass to the east of driveway
Pavers/Parking	Grass Driveway/Parking	24	Cypress Cir...	permanent boat parking
Pavers/Parking	Grass Driveway/Parking	31	Cypress Cir...	permanent parking on front grass & trailer parking
Pavers/Parking	Grass Driveway/Parking	34	Cypress Cir...	vehicles permanently parked on grass next to both
Pavers/Parking	Grass Driveway/Parking	35	Cypress Cir...	daily parking in the grass north of structure
Pavers/Parking	Grass Driveway/Parking	36	Cypress Cir...	vehicles consistently parking in the grass
Pavers/Parking	Grass Driveway/Parking	30A	Cypress Cir...	permanent resident parking next to paved driveway
Pavers/Parking	Grass Driveway/Parking	30B	Cypress Cir...	permanent resident parking next to paved driveway
Pavers/Parking	Grass Driveway/Parking	32A	Cypress Cir...	permanent resident parking next to paved driveway
Pavers/Parking	Grass Driveway/Parking	5A	Cypress Cir...	permanent parking next to paved driveway
Pavers/Parking	Grass Driveway/Parking	15	Fluhart Dr	grass driveway leading to cement pad
Pavers/Parking	Grass Driveway/Parking	475	Grandview ...	little red cars always parked in the grass not in the
Pavers/Parking	Grass Driveway/Parking	491	Grandview ...	
Pavers/Parking	Grass Driveway/Parking	506	Grandview ...	
Pavers/Parking	Grass Driveway/Parking	285	Halifax Dr	permanent grass parking north of accessory struc
Pavers/Parking	Grass Driveway/Parking	374	Halifax Dr	dirt driveway extension
Pavers/Parking	Grass Driveway/Parking	374	Halifax Dr	permanent parking in between to paved driveways
Pavers/Parking	Grass Driveway/Parking	386	Halifax Dr	permanent grass parking on both sides of paved c
Pavers/Parking	Grass Driveway/Parking	391	Halifax Dr	driveway extension
Pavers/Parking	Grass Driveway/Parking	402	Halifax Dr	permanent vehicle parking on both sides of paved
Pavers/Parking	Grass Driveway/Parking	412	Halifax Dr	permanent vehicle parking north of second drivew
Pavers/Parking	Grass Driveway/Parking	468	Halifax Dr	permanent boat parking on South grass next to ga
Pavers/Parking	Grass Driveway/Parking	506	Hollywood St	several cars permanently parked on south propert
Pavers/Parking	Grass Driveway/Parking	95	Magnolia Dr	permanent grass parking next to poured concrete
Pavers/Parking	Grass Driveway/Parking	96	Magnolia Dr	permanent grass parking for multiple vehicles in b
Pavers/Parking	Grass Driveway/Parking	100	Magnolia Dr	
Pavers/Parking	Grass Driveway/Parking	123	Magnolia Dr	
Pavers/Parking	Grass Driveway/Parking	164	Magnolia Dr	grass parking area next to poured driveway
Pavers/Parking	Grass Driveway/Parking	190	Magnolia Dr	permanent motorhome parking on East side prop
Pavers/Parking	Grass Driveway/Parking	473	Magnolia St	permanent camper parking
Pavers/Parking	Grass Driveway/Parking	491	Magnolia St	"state law enforcement" silver truck permanent pa
Pavers/Parking	Grass Driveway/Parking	148	Ormond Sh...	several vehicles parked on both sides of the stree
Pavers/Parking	Grass Driveway/Parking	374	Pine Rd	driveway extension
Pavers/Parking	Grass Driveway/Parking	384	Pine Rd	regularly at least five vehicles parked on unappro
Pavers/Parking	Grass Driveway/Parking	391	Pine Rd	permanent parking on far north side next to garag

Type		House #	Street [1]	Notes
Pavers/Parking	Grass Driveway/Parking	404	Pine Rd	driveway extension
Pavers/Parking	Grass Driveway/Parking	418	Pine Rd	permanent grass parking for a black vehicle on Sc
Pavers/Parking	Grass Driveway/Parking	431	Pine Rd	permanent grass driveway next to paved driveway
Pavers/Parking	Grass Driveway/Parking	411A	Pine Rd	driveway extension & boat parking
Pavers/Parking	Grass Driveway/Parking	496	Pinewood St	permanent RV parking on grass behind fence
Pavers/Parking	Grass Driveway/Parking	30	River Beac...	
Pavers/Parking	Grass Driveway/Parking	134	River Beac...	Boat and trailer parking on unpaid surface
Pavers/Parking	Grass Driveway/Parking	141	River Beac...	Long-term parking on unpaved surfaces
Pavers/Parking	Grass Driveway/Parking	236	River Beac...	permanent boat parking on South property line
Pavers/Parking	Grass Driveway/Parking	242	River Beac...	permanent boat parking at East property line
Pavers/Parking	Grass Driveway/Parking	410	Riverside Dr	permanent boat trailer parking on grass
Pavers/Parking	Grass Driveway/Parking	541	Riverside Dr	
Pavers/Parking	Grass Driveway/Parking	17	Rockefeller	
Pavers/Parking	Grass Driveway/Parking	24	Rockefeller	grass driveway on the far west side of the property
Pavers/Parking	Grass Driveway/Parking	41	Rockefeller	permanent parking area on the grass on the west
Pavers/Parking	Grass Driveway/Parking	115	Rockefeller	permanent boat parking off to the side of the main
Pavers/Parking	Grass Driveway/Parking	118	Rockefeller	permanent grass parking next to driveway & perm
Pavers/Parking	Grass Driveway/Parking	126	Rockefeller	permanent grass parking next to driveway
Pavers/Parking	Grass Driveway/Parking	143	Rockefeller	parking areas off Bayberry Court
Pavers/Parking	Grass Driveway/Parking	146	Rockefeller	permanent boat parking on East grass
Pavers/Parking	Grass Driveway/Parking	178	Rockefeller	motorhome and at least two colors are permanent
Pavers/Parking	Grass Driveway/Parking	212	Rockefeller	permanent parking area on the grass next to the C
Pavers/Parking	Grass Driveway/Parking	215	Rockefeller	permanent grass parking area in addition to paved
Pavers/Parking	Grass Driveway/Parking	223	Rockefeller	5 cars on front lawn with no paved driveway
Pavers/Parking	Grass Driveway/Parking	223	Rockefeller	
Pavers/Parking	Grass Driveway/Parking	553	S Atlantic Ave	permanent trailer parking on North side of luck
Pavers/Parking	Grass Driveway/Parking	553	S Atlantic Ave	permanent boat parking on South side of lot
Pavers/Parking	Grass Driveway/Parking	173	S Beach St	dirt/grass driveway and parking area - City Attorne
Pavers/Parking	Grass Driveway/Parking	97	Valencia Dr	
Pavers/Parking	Grass Driveway/Parking	106	Valencia Dr	parking area extension west of poured driveway
Pavers/Parking	Grass Driveway/Parking	110	Valencia Dr	permanent vehicle parking over grass and sidewa
Pavers/Parking	Grass Driveway/Parking	118	Valencia Dr	permanent vehicle parking over grass and sidewa
Pavers/Parking	Grass Driveway/Parking	169	Valencia Dr	permanent driveway and parking for motorhome
Pavers/Parking	Grass Driveway/Parking	172	Valencia Dr	permanent parking on grass south of poured conc
Pavers/Parking	Grass Driveway/Parking	188	Valencia Dr	permanent trailer parking on east side of property
Pavers/Parking	Grass Driveway/Parking	210	Valencia Dr	main driveway extending the entire north south le
Pavers/Parking	Grass Driveway/Parking	496	Wild Olive	permanent trailer parking
Pavers/Parking	Grass Driveway/Parking	92	TOTAL	
Pavers/Parking	Mulch Driveway/Parking	496	Grandview ...	2 large parking areas
Pavers/Parking	Mulch Driveway/Parking	77	Ormond Sh...	
Pavers/Parking	Mulch Driveway/Parking	137	Ormond Sh...	
Pavers/Parking	Mulch Driveway/Parking	210	Valencia Dr	Maine parking area by secondary structure
Pavers/Parking	Mulch Driveway/Parking	4	TOTAL	
Pavers/Parking	On Property Line	124	Arlington Way	Stone driveway extensions at property line
Pavers/Parking	On Property Line	127	Arlington Way	
Pavers/Parking	On Property Line	146	Arlington Way	
Pavers/Parking	On Property Line	154	Arlington Way	
Pavers/Parking	On Property Line	169	Arlington Way	

Type		House #	Street [1]	Notes
Pavers/Parking	On Property Line	175	Arlington Way	
Pavers/Parking	On Property Line	213	Arlington Way	
Pavers/Parking	On Property Line	216	Arlington Way	
Pavers/Parking	On Property Line	221	Arlington Way	
Pavers/Parking	On Property Line	223	Arlington Way	
Pavers/Parking	On Property Line	224	Arlington Way	
Pavers/Parking	On Property Line	232	Arlington Way	
Pavers/Parking	On Property Line	242	Arlington Way	West property line
Pavers/Parking	On Property Line	242	Arlington Way	East property line
Pavers/Parking	On Property Line	1	Bayberry	
Pavers/Parking	On Property Line	3	Bayberry	
Pavers/Parking	On Property Line	52	Byron Ellinor	driveway runs the entire south property line
Pavers/Parking	On Property Line	52	Byron Ellinor	cement pad along north property line
Pavers/Parking	On Property Line	52	Byron Ellinor	stone parking area along NE property line
Pavers/Parking	On Property Line	16A	Byron Ellinor	
Pavers/Parking	On Property Line	17B	Byron Ellinor	
Pavers/Parking	On Property Line	19A	Byron Ellinor	
Pavers/Parking	On Property Line	19B	Byron Ellinor	
Pavers/Parking	On Property Line	36A	Byron Ellinor	cement pad on far south property line
Pavers/Parking	On Property Line	475	Cedar Street	East property line
Pavers/Parking	On Property Line	475	Cedar Street	south property line
Pavers/Parking	On Property Line	487	Cedar Street	North property line
Pavers/Parking	On Property Line	19	Cypress Cir...	
Pavers/Parking	On Property Line	21	Cypress Cir...	
Pavers/Parking	On Property Line	26	Cypress Cir...	west side
Pavers/Parking	On Property Line	28	Cypress Cir...	
Pavers/Parking	On Property Line	15	Fluhart Dr	cement pad or vehicle is parked under a canopy o
Pavers/Parking	On Property Line	485	Grandview ...	
Pavers/Parking	On Property Line	491	Grandview ...	long concrete driveway all done property line as w
Pavers/Parking	On Property Line	507	Grandview ...	
Pavers/Parking	On Property Line	392	Halifax Dr	north property line
Pavers/Parking	On Property Line	431	Halifax Dr	south property line
Pavers/Parking	On Property Line	464	Hollywood St	
Pavers/Parking	On Property Line	476	Hollywood St	
Pavers/Parking	On Property Line	479	Hollywood St	
Pavers/Parking	On Property Line	480	Hollywood St	
Pavers/Parking	On Property Line	99	Magnolia Dr	
Pavers/Parking	On Property Line	129	Magnolia Dr	
Pavers/Parking	On Property Line	130	Magnolia Dr	*VC council member (back yard pavers)
Pavers/Parking	On Property Line	135	Magnolia Dr	permits were issued for pavers which did not com
Pavers/Parking	On Property Line	135	Magnolia Dr	
Pavers/Parking	On Property Line	135	Magnolia Dr	
Pavers/Parking	On Property Line	136	Magnolia Dr	West property line
Pavers/Parking	On Property Line	136	Magnolia Dr	south property line
Pavers/Parking	On Property Line	136	Magnolia Dr	east property line around pool structure
Pavers/Parking	On Property Line	142	Magnolia Dr	
Pavers/Parking	On Property Line	164	Magnolia Dr	West property line behind fence
Pavers/Parking	On Property Line	187	Magnolia Dr	North property line
Pavers/Parking	On Property Line	190	Magnolia Dr	poured concrete around pool
Pavers/Parking	On Property Line	18	Ormond Pkwy	West property line

Type		House #	Street [1]	Notes
Pavers/Parking	On Property Line	19	Ormond Pkwy	north property line
Pavers/Parking	On Property Line	105	Ormond Pkwy	east side
Pavers/Parking	On Property Line	125	Ormond Pkwy	East side
Pavers/Parking	On Property Line	135	Ormond Pkwy	
Pavers/Parking	On Property Line	144	Ormond Pkwy	
Pavers/Parking	On Property Line	145	Ormond Pkwy	
Pavers/Parking	On Property Line	154	Ormond Pkwy	
Pavers/Parking	On Property Line	155	Ormond Pkwy	
Pavers/Parking	On Property Line	165	Ormond Pkwy	around shed
Pavers/Parking	On Property Line	174	Ormond Pkwy	
Pavers/Parking	On Property Line	194	Ormond Pkwy	
Pavers/Parking	On Property Line	27	Ormond Sh...	
Pavers/Parking	On Property Line	31	Ormond Sh...	
Pavers/Parking	On Property Line	101	Ormond Sh...	West property line
Pavers/Parking	On Property Line	384	Pine Rd	paved driveway on south side
Pavers/Parking	On Property Line	394	Pine Rd	cement pad on south side
Pavers/Parking	On Property Line	394	Pine Rd	poured driveway on north side
Pavers/Parking	On Property Line	483	Pinewood St	
Pavers/Parking	On Property Line	486	Pinewood St	
Pavers/Parking	On Property Line	496	Pinewood St	
Pavers/Parking	On Property Line	48	River Beac...	
Pavers/Parking	On Property Line	55	River Beac...	
Pavers/Parking	On Property Line	73	River Beac...	north property line
Pavers/Parking	On Property Line	152	River Beac...	poured concrete on East property line
Pavers/Parking	On Property Line	152	River Beac...	poured concrete on West property line
Pavers/Parking	On Property Line	178	River Beac...	poured concrete running entire length of West pro
Pavers/Parking	On Property Line	178	River Beac...	south property line
Pavers/Parking	On Property Line	226	River Beac...	poured concrete all along West property line in ba
Pavers/Parking	On Property Line	232	River Beac...	East property line
Pavers/Parking	On Property Line	232	River Beac...	West property line
Pavers/Parking	On Property Line	236	River Beac...	East property line
Pavers/Parking	On Property Line	236	River Beac...	West property line
Pavers/Parking	On Property Line	237	River Beac...	West property line
Pavers/Parking	On Property Line	237	River Beac...	North property line
Pavers/Parking	On Property Line	237	River Beac...	East property line
Pavers/Parking	On Property Line	242	River Beac...	East property line
Pavers/Parking	On Property Line	242	River Beac...	West property line
Pavers/Parking	On Property Line	300	Riverside Dr	south property line
Pavers/Parking	On Property Line	303	Riverside Dr	south property line
Pavers/Parking	On Property Line	303	Riverside Dr	North Property line
Pavers/Parking	On Property Line	306	Riverside Dr	north Property line
Pavers/Parking	On Property Line	372	Riverside Dr	south property line turn around area
Pavers/Parking	On Property Line	373	Riverside Dr	
Pavers/Parking	On Property Line	410	Riverside Dr	curved driveway on South side of the property
Pavers/Parking	On Property Line	468	Riverside Dr	north property line
Pavers/Parking	On Property Line	468	Riverside Dr	south property line
Pavers/Parking	On Property Line	483	Riverside Dr	south property line
Pavers/Parking	On Property Line	489	Riverside Dr	north property line
Pavers/Parking	On Property Line	489	Riverside Dr	south property line
Pavers/Parking	On Property Line	497	Riverside Dr	north property line

Type		House #	Street [1]	Notes
Pavers/Parking	On Property Line	510	Riverside Dr	
Pavers/Parking	On Property Line	553	Riverside Dr	
Pavers/Parking	On Property Line	48	Rockefeller	
Pavers/Parking	On Property Line	131	Rockefeller	
Pavers/Parking	On Property Line	204	Rockefeller	west property line
Pavers/Parking	On Property Line	250	S Atlantic Ave	
Pavers/Parking	On Property Line	281	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	281	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	295	S Atlantic Ave	north west corner
Pavers/Parking	On Property Line	295	S Atlantic Ave	entire south property line
Pavers/Parking	On Property Line	330	S Atlantic Ave	north property line
Pavers/Parking	On Property Line	330	S Atlantic Ave	west property line
Pavers/Parking	On Property Line	333	S Atlantic Ave	
Pavers/Parking	On Property Line	335	S Atlantic Ave	
Pavers/Parking	On Property Line	342	S Atlantic Ave	south property line
Pavers/Parking	On Property Line	342	S Atlantic Ave	West property line
Pavers/Parking	On Property Line	345	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	345	S Atlantic Ave	
Pavers/Parking	On Property Line	353	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	353	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	361	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	361	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	374	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	374	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	375	S Atlantic Ave	south property line
Pavers/Parking	On Property Line	385	S Atlantic Ave	north property line
Pavers/Parking	On Property Line	395	S Atlantic Ave	south property line
Pavers/Parking	On Property Line	432	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	432	S Atlantic Ave	West property line
Pavers/Parking	On Property Line	433	S Atlantic Ave	
Pavers/Parking	On Property Line	445	S Atlantic Ave	
Pavers/Parking	On Property Line	453	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	453	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	484	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	484	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	485	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	490	S Atlantic Ave	West property line
Pavers/Parking	On Property Line	490	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	505	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	505	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	507	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	520	S Atlantic Ave	old OBPD building
Pavers/Parking	On Property Line	533	S Atlantic Ave	
Pavers/Parking	On Property Line	539	S Atlantic Ave	
Pavers/Parking	On Property Line	541	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	541	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	550	S Atlantic Ave	South property line
Pavers/Parking	On Property Line	550	S Atlantic Ave	North property line
Pavers/Parking	On Property Line	550	S Atlantic Ave	East property line
Pavers/Parking	On Property Line	550	S Atlantic Ave	West property line

Type		House #	Street [1]	Notes
Pavers/Parking	On Property Line	106	Valencia Dr	
Pavers/Parking	On Property Line	126	Valencia Dr	
Pavers/Parking	On Property Line	130	Valencia Dr	east property line
Pavers/Parking	On Property Line	160	Valencia Dr	west property line
Pavers/Parking	On Property Line	205	Valencia Dr	
Pavers/Parking	On Property Line	215	Valencia Dr	
Pavers/Parking	On Property Line	496	Wild Olive	
Pavers/Parking	On Property Line	162	TOTAL	
Pavers/Parking	Stone Driveway/Parking	83	Arlington Way	
Pavers/Parking	Stone Driveway/Parking	96	Arlington Way	permanent boat parking
Pavers/Parking	Stone Driveway/Parking	124	Arlington Way	
Pavers/Parking	Stone Driveway/Parking	170	Arlington Way	additional parking area burning the entire frontage
Pavers/Parking	Stone Driveway/Parking	175	Arlington Way	
Pavers/Parking	Stone Driveway/Parking	213	Arlington Way	
Pavers/Parking	Stone Driveway/Parking	216	Arlington Way	
Pavers/Parking	Stone Driveway/Parking	220	Arlington Way	
Pavers/Parking	Stone Driveway/Parking	221	Arlington Way	
Pavers/Parking	Stone Driveway/Parking	224	Arlington Way	
Pavers/Parking	Stone Driveway/Parking	1	Bayberry	end of the driveway is gravel
Pavers/Parking	Stone Driveway/Parking	3	Bayberry	end of the driveway is gravel
Pavers/Parking	Stone Driveway/Parking	5	Bayberry	end of the driveway is gravel
Pavers/Parking	Stone Driveway/Parking	7	Bayberry	end of the driveway is gravel
Pavers/Parking	Stone Driveway/Parking	9	Bayberry	end of the driveway is gravel
Pavers/Parking	Stone Driveway/Parking	29	Byron Ellinor	
Pavers/Parking	Stone Driveway/Parking	52	Byron Ellinor	
Pavers/Parking	Stone Driveway/Parking	6 1/2	Byron Ellinor	driveway
Pavers/Parking	Stone Driveway/Parking	455	Cedar Street	60 ft + gravel parking area
Pavers/Parking	Stone Driveway/Parking	503	Cedar Street	Long, circular Pebble driveway at 503 cedar withir
Pavers/Parking	Stone Driveway/Parking	506	Cedar Street	
Pavers/Parking	Stone Driveway/Parking	481	Grandview ...	
Pavers/Parking	Stone Driveway/Parking	373	Halifax Dr	
Pavers/Parking	Stone Driveway/Parking	431	Halifax Dr	
Pavers/Parking	Stone Driveway/Parking	480	Hollywood St	
Pavers/Parking	Stone Driveway/Parking	491	Magnolia St	
Pavers/Parking	Stone Driveway/Parking	94	Ormond Pkwy	
Pavers/Parking	Stone Driveway/Parking	95	Ormond Pkwy	
Pavers/Parking	Stone Driveway/Parking	204	Ormond Pkwy	
Pavers/Parking	Stone Driveway/Parking	19	Ormond Sh...	Pebbled parking area
Pavers/Parking	Stone Driveway/Parking	36	Ormond Sh...	
Pavers/Parking	Stone Driveway/Parking	67	Ormond Sh...	
Pavers/Parking	Stone Driveway/Parking	67	Ormond Sh...	
Pavers/Parking	Stone Driveway/Parking	101	Ormond Sh...	Gravel parking area for 65 ft+
Pavers/Parking	Stone Driveway/Parking	373	Pine Rd	
Pavers/Parking	Stone Driveway/Parking	383	Pine Rd	
Pavers/Parking	Stone Driveway/Parking	391	Pine Rd	
Pavers/Parking	Stone Driveway/Parking	425	Pine Rd	driveway extension
Pavers/Parking	Stone Driveway/Parking	435	Pine Rd	
Pavers/Parking	Stone Driveway/Parking	411B	Pine Rd	entire parking area
Pavers/Parking	Stone Driveway/Parking	486	Pinewood St	

Type		House #	Street [1]	Notes
Pavers/Parking	Stone Driveway/Parking	16	River Beac...	Large pebbled extended parking area at second b
Pavers/Parking	Stone Driveway/Parking	24	River Beac...	Pebbled driveway extension
Pavers/Parking	Stone Driveway/Parking	92	River Beac...	
Pavers/Parking	Stone Driveway/Parking	105	River Beac...	on driveway off Pinewood
Pavers/Parking	Stone Driveway/Parking	111	River Beac...	
Pavers/Parking	Stone Driveway/Parking	131	River Beac...	
Pavers/Parking	Stone Driveway/Parking	400	Riverside Dr	
Pavers/Parking	Stone Driveway/Parking	441	Riverside Dr	east side of property
Pavers/Parking	Stone Driveway/Parking	441	Riverside Dr	west side of property
Pavers/Parking	Stone Driveway/Parking	468	Riverside Dr	
Pavers/Parking	Stone Driveway/Parking	530	Riverside Dr	Long, U-shaped pebbled driveway
Pavers/Parking	Stone Driveway/Parking	544	Riverside Dr	Long, U-shaped pebbled driveway
Pavers/Parking	Stone Driveway/Parking	29	Rockefeller	gravel driveway extension
Pavers/Parking	Stone Driveway/Parking	169	Rockefeller	end of the driveway is gravel
Pavers/Parking	Stone Driveway/Parking	88	Valencia Dr	Stone driveway extension
Pavers/Parking	Stone Driveway/Parking	110	Valencia Dr	
Pavers/Parking	Stone Driveway/Parking	130	Valencia Dr	
Pavers/Parking	Stone Driveway/Parking	169	Valencia Dr	
Pavers/Parking	Stone Driveway/Parking	495	Wild Olive	
Pavers/Parking	Stone Driveway/Parking	60	TOTAL	
Pavers/Parking	Within 7.5 ft	83	Arlington Way	West property line
Pavers/Parking	Within 7.5 ft	83	Arlington Way	East property line, behind fence
Pavers/Parking	Within 7.5 ft	96	Arlington Way	permanent boat parking
Pavers/Parking	Within 7.5 ft	118	Arlington Way	
Pavers/Parking	Within 7.5 ft	119	Arlington Way	
Pavers/Parking	Within 7.5 ft	123	Arlington Way	
Pavers/Parking	Within 7.5 ft	139	Arlington Way	
Pavers/Parking	Within 7.5 ft	145	Arlington Way	
Pavers/Parking	Within 7.5 ft	170	Arlington Way	
Pavers/Parking	Within 7.5 ft	223	Arlington Way	East property line
Pavers/Parking	Within 7.5 ft	225	Arlington Way	
Pavers/Parking	Within 7.5 ft	225	Arlington Way	East property line
Pavers/Parking	Within 7.5 ft	227	Arlington Way	
Pavers/Parking	Within 7.5 ft	228	Arlington Way	
Pavers/Parking	Within 7.5 ft	7	Bayberry	
Pavers/Parking	Within 7.5 ft	9	Bayberry	
Pavers/Parking	Within 7.5 ft	31	Byron Ellinor	large cement pad in backyard runs along North pr
Pavers/Parking	Within 7.5 ft	37A	Byron Ellinor	
Pavers/Parking	Within 7.5 ft	465	Cedar Street	
Pavers/Parking	Within 7.5 ft	486	Cedar Street	
Pavers/Parking	Within 7.5 ft	487	Cedar Street	south property line - front and back yard
Pavers/Parking	Within 7.5 ft	493	Cedar Street	
Pavers/Parking	Within 7.5 ft	496	Cedar Street	
Pavers/Parking	Within 7.5 ft	503	Cedar Street	Long, circular Pebble driveway at 503 cedar within
Pavers/Parking	Within 7.5 ft	2	Cypress Cir...	south property line
Pavers/Parking	Within 7.5 ft	24	Cypress Cir...	
Pavers/Parking	Within 7.5 ft	26	Cypress Cir...	east side
Pavers/Parking	Within 7.5 ft	28	Cypress Cir...	
Pavers/Parking	Within 7.5 ft	30	Cypress Cir...	

Type		House #	Street [1]	Notes
Pavers/Parking	Within 7.5 ft	468	Grandview ...	second pavers parking location right behind fence
Pavers/Parking	Within 7.5 ft	497	Grandview ...	entire yard is either paved concrete, papers, or St
Pavers/Parking	Within 7.5 ft	503	Grandview ...	
Pavers/Parking	Within 7.5 ft	241	Halifax Dr	backyard
Pavers/Parking	Within 7.5 ft	251	Halifax Dr	on East property line
Pavers/Parking	Within 7.5 ft	285	Halifax Dr	
Pavers/Parking	Within 7.5 ft	305	Halifax Dr	
Pavers/Parking	Within 7.5 ft	315	Halifax Dr	
Pavers/Parking	Within 7.5 ft	327	Halifax Dr	paved turnaround area
Pavers/Parking	Within 7.5 ft	353	Halifax Dr	
Pavers/Parking	Within 7.5 ft	363	Halifax Dr	
Pavers/Parking	Within 7.5 ft	473	Halifax Dr	winding driveway south side
Pavers/Parking	Within 7.5 ft	483	Halifax Dr	permanent poured concrete trailer parking
Pavers/Parking	Within 7.5 ft	488	Halifax Dr	
Pavers/Parking	Within 7.5 ft	503	Halifax Dr	
Pavers/Parking	Within 7.5 ft	504	Halifax Dr	
Pavers/Parking	Within 7.5 ft	488	Hollywood St	on south property line behind fence
Pavers/Parking	Within 7.5 ft	100	Magnolia Dr	SW property corner
Pavers/Parking	Within 7.5 ft	120	Magnolia Dr	
Pavers/Parking	Within 7.5 ft	130	Magnolia Dr	*VC council member
Pavers/Parking	Within 7.5 ft	156	Magnolia Dr	
Pavers/Parking	Within 7.5 ft	187	Magnolia Dr	west property line driveway
Pavers/Parking	Within 7.5 ft	187	Magnolia Dr	East property line driveway
Pavers/Parking	Within 7.5 ft	190	Magnolia Dr	concrete driveway
Pavers/Parking	Within 7.5 ft	194	Magnolia Dr	
Pavers/Parking	Within 7.5 ft	194	Magnolia Dr	backyard
Pavers/Parking	Within 7.5 ft	198	Magnolia Dr	front driveway
Pavers/Parking	Within 7.5 ft	467	Magnolia St	
Pavers/Parking	Within 7.5 ft	468	Magnolia St	
Pavers/Parking	Within 7.5 ft	473	Magnolia St	
Pavers/Parking	Within 7.5 ft	476	Magnolia St	both parts of circle driveway
Pavers/Parking	Within 7.5 ft	19	Ormond Pkwy	West property line
Pavers/Parking	Within 7.5 ft	22	Ormond Pkwy	East property line
Pavers/Parking	Within 7.5 ft	104	Ormond Pkwy	east side
Pavers/Parking	Within 7.5 ft	115	Ormond Pkwy	East side
Pavers/Parking	Within 7.5 ft	124	Ormond Pkwy	
Pavers/Parking	Within 7.5 ft	125	Ormond Pkwy	West side
Pavers/Parking	Within 7.5 ft	164	Ormond Pkwy	west property line
Pavers/Parking	Within 7.5 ft	164	Ormond Pkwy	south property line
Pavers/Parking	Within 7.5 ft	185	Ormond Pkwy	
Pavers/Parking	Within 7.5 ft	67	Ormond Sh...	
Pavers/Parking	Within 7.5 ft	123	Ormond Sh...	poured cement up to property line throughout bac
Pavers/Parking	Within 7.5 ft	137	Ormond Sh...	West property line - next to main structure
Pavers/Parking	Within 7.5 ft	417	Pine Rd	
Pavers/Parking	Within 7.5 ft	470	Pinewood St	
Pavers/Parking	Within 7.5 ft	479	Pinewood St	
Pavers/Parking	Within 7.5 ft	489	Pinewood St	
Pavers/Parking	Within 7.5 ft	24	River Beac...	
Pavers/Parking	Within 7.5 ft	66	River Beac...	
Pavers/Parking	Within 7.5 ft	126	River Beac...	

Type		House #	Street [1]	Notes
Pavers/Parking	Within 7.5 ft	134	River Beac...	
Pavers/Parking	Within 7.5 ft	160	River Beac...	
Pavers/Parking	Within 7.5 ft	199	River Beac...	
Pavers/Parking	Within 7.5 ft	209	River Beac...	
Pavers/Parking	Within 7.5 ft	275	Riverside Dr	North Property line
Pavers/Parking	Within 7.5 ft	340	Riverside Dr	north Property line
Pavers/Parking	Within 7.5 ft	340	Riverside Dr	south property line
Pavers/Parking	Within 7.5 ft	383	Riverside Dr	driveway north of main structure
Pavers/Parking	Within 7.5 ft	383	Riverside Dr	south property line
Pavers/Parking	Within 7.5 ft	403	Riverside Dr	poured driveway extension next to main structure
Pavers/Parking	Within 7.5 ft	403	Riverside Dr	Southside of property line curved driveway
Pavers/Parking	Within 7.5 ft	410	Riverside Dr	north property line
Pavers/Parking	Within 7.5 ft	420	Riverside Dr	
Pavers/Parking	Within 7.5 ft	430	Riverside Dr	
Pavers/Parking	Within 7.5 ft	444	Riverside Dr	
Pavers/Parking	Within 7.5 ft	448	Riverside Dr	north property line
Pavers/Parking	Within 7.5 ft	462	Riverside Dr	North property line
Pavers/Parking	Within 7.5 ft	462	Riverside Dr	south property line
Pavers/Parking	Within 7.5 ft	482	Riverside Dr	north property line
Pavers/Parking	Within 7.5 ft	483	Riverside Dr	north property line
Pavers/Parking	Within 7.5 ft	497	Riverside Dr	south property line
Pavers/Parking	Within 7.5 ft	505	Riverside Dr	north property line
Pavers/Parking	Within 7.5 ft	505	Riverside Dr	south property line
Pavers/Parking	Within 7.5 ft	518	Riverside Dr	
Pavers/Parking	Within 7.5 ft	524	Riverside Dr	
Pavers/Parking	Within 7.5 ft	530	Riverside Dr	
Pavers/Parking	Within 7.5 ft	544	Riverside Dr	north property line
Pavers/Parking	Within 7.5 ft	53	Rockefeller	
Pavers/Parking	Within 7.5 ft	80	Rockefeller	
Pavers/Parking	Within 7.5 ft	90	Rockefeller	
Pavers/Parking	Within 7.5 ft	106	Rockefeller	
Pavers/Parking	Within 7.5 ft	138	Rockefeller	
Pavers/Parking	Within 7.5 ft	146	Rockefeller	
Pavers/Parking	Within 7.5 ft	204	Rockefeller	south property line
Pavers/Parking	Within 7.5 ft	371	S Atlantic Ave	main parking area next to main structure
Pavers/Parking	Within 7.5 ft	373	S Atlantic Ave	
Pavers/Parking	Within 7.5 ft	375	S Atlantic Ave	north property line
Pavers/Parking	Within 7.5 ft	378	S Atlantic Ave	
Pavers/Parking	Within 7.5 ft	385	S Atlantic Ave	south property line
Pavers/Parking	Within 7.5 ft	403	S Atlantic Ave	south property line - middle of property
Pavers/Parking	Within 7.5 ft	405	S Atlantic Ave	
Pavers/Parking	Within 7.5 ft	432	S Atlantic Ave	North property line
Pavers/Parking	Within 7.5 ft	432	S Atlantic Ave	East property line
Pavers/Parking	Within 7.5 ft	460	S Atlantic Ave	west property line
Pavers/Parking	Within 7.5 ft	470	S Atlantic Ave	
Pavers/Parking	Within 7.5 ft	485	S Atlantic Ave	South property line
Pavers/Parking	Within 7.5 ft	507	S Atlantic Ave	north property line
Pavers/Parking	Within 7.5 ft	543	S Atlantic Ave	north property line
Pavers/Parking	Within 7.5 ft	543	S Atlantic Ave	West property line
Pavers/Parking	Within 7.5 ft	545	S Atlantic Ave	north property line

Type		House #	Street [1]	Notes
Pavers/Parking	Within 7.5 ft	545	S Atlantic Ave	south property line
Pavers/Parking	Within 7.5 ft	553	S Atlantic Ave	south side of lot
Pavers/Parking	Within 7.5 ft	130	Valencia Dr	west property line
Pavers/Parking	Within 7.5 ft	175	Valencia Dr	
Pavers/Parking	Within 7.5 ft	188	Valencia Dr	
Pavers/Parking	Within 7.5 ft	217	Valencia Dr	
Pavers/Parking	Within 7.5 ft	465	Wild Olive	
Pavers/Parking	Within 7.5 ft	466	Wild Olive	
Pavers/Parking	Within 7.5 ft	472	Wild Olive	
Pavers/Parking	Within 7.5 ft	481	Wild Olive	
Pavers/Parking	Within 7.5 ft	139	TOTAL	
Shed/Structure	Erected with no permit	34	Cypress Cir...	shed recently installed with no permit, subsequently
Shed/Structure	Erected with no permit	36	Cypress Cir...	shed erected 2022 with no permit, subsequently de
Shed/Structure	Erected with no permit	180	Benjamin	2 shipping containers
Shed/Structure	Erected with no permit	470	S Atlantic Ave	2 x 20ft containers since before 2021
Shed/Structure	Erected with no permit	54	Seton Trail	City Park property with Pods container for over 1 y
Shed/Structure	Erected with no permit	5	TOTAL	
Shed/Structure	On Property Line	118	Arlington Way	
Shed/Structure	On Property Line	121	Arlington Way	accessory structure
Shed/Structure	On Property Line	124	Arlington Way	
Shed/Structure	On Property Line	127	Arlington Way	accessory structure
Shed/Structure	On Property Line	146	Arlington Way	garage
Shed/Structure	On Property Line	154	Arlington Way	garage
Shed/Structure	On Property Line	169	Arlington Way	
Shed/Structure	On Property Line	211	Arlington Way	shed
Shed/Structure	On Property Line	211	Arlington Way	main structure
Shed/Structure	On Property Line	212	Arlington Way	accessory structure
Shed/Structure	On Property Line	180	Benjamin	East property line - shipping containers
Shed/Structure	On Property Line	11	Byron Ellinor	
Shed/Structure	On Property Line	31	Byron Ellinor	
Shed/Structure	On Property Line	19B	Byron Ellinor	
Shed/Structure	On Property Line	6 1/2	Byron Ellinor	main structure
Shed/Structure	On Property Line	6B	Byron Ellinor	shed
Shed/Structure	On Property Line	465	Cedar Street	shed
Shed/Structure	On Property Line	480	Cedar Street	north property line shed
Shed/Structure	On Property Line	491	Grandview ...	shed
Shed/Structure	On Property Line		Grandview ...	shed
Shed/Structure	On Property Line	266	Halifax Dr	main structure
Shed/Structure	On Property Line	476	Hollywood St	shed
Shed/Structure	On Property Line	90	Magnolia Dr	shed
Shed/Structure	On Property Line	95	Magnolia Dr	garage
Shed/Structure	On Property Line	136	Magnolia Dr	pool structure
Shed/Structure	On Property Line	171	Magnolia Dr	sheds
Shed/Structure	On Property Line	198	Magnolia Dr	shed
Shed/Structure	On Property Line	204	Magnolia Dr	accessory structure on east property line
Shed/Structure	On Property Line	19	Ormond Pkwy	West property line
Shed/Structure	On Property Line	105	Ormond Pkwy	
Shed/Structure	On Property Line	27	Ormond Sh...	accessory structure

Type		House #	Street [1]	Notes
Shed/Structure	On Property Line	77	Ormond Sh...	
Shed/Structure	On Property Line	384	Pine Rd	north property line
Shed/Structure	On Property Line	384	Pine Rd	accessory structure on south property line
Shed/Structure	On Property Line	401	Pine Rd	north property line
Shed/Structure	On Property Line	425	Pine Rd	
Shed/Structure	On Property Line	66	River Beac...	accessory structure
Shed/Structure	On Property Line	92	River Beac...	
Shed/Structure	On Property Line	110	River Beac...	accessory structure
Shed/Structure	On Property Line	141	River Beac...	
Shed/Structure	On Property Line	152	River Beac...	shed
Shed/Structure	On Property Line	178	River Beac...	structure on South property line
Shed/Structure	On Property Line	200	River Beac...	
Shed/Structure	On Property Line	218	River Beac...	shed
Shed/Structure	On Property Line	226	River Beac...	shed
Shed/Structure	On Property Line	232	River Beac...	East property line
Shed/Structure	On Property Line	232	River Beac...	West property line
Shed/Structure	On Property Line	237	River Beac...	West property line
Shed/Structure	On Property Line	242	River Beac...	East property line
Shed/Structure	On Property Line	242	River Beac...	West property line
Shed/Structure	On Property Line	271	Riverside Dr	south property line
Shed/Structure	On Property Line	271	Riverside Dr	East property line
Shed/Structure	On Property Line	430	Riverside Dr	shed
Shed/Structure	On Property Line	468	Riverside Dr	north
Shed/Structure	On Property Line	505	Riverside Dr	north property line
Shed/Structure	On Property Line	505	Riverside Dr	south property line
Shed/Structure	On Property Line	541	Riverside Dr	Large shed on the back property line
Shed/Structure	On Property Line	17	Rockefeller	carport
Shed/Structure	On Property Line	17	Rockefeller	accessory structure
Shed/Structure	On Property Line	29	Rockefeller	accessory structure
Shed/Structure	On Property Line	29	Rockefeller	main structure extends all the way to the back and
Shed/Structure	On Property Line	103	Rockefeller	
Shed/Structure	On Property Line	143	Rockefeller	
Shed/Structure	On Property Line	371	S Atlantic Ave	shed
Shed/Structure	On Property Line	371	S Atlantic Ave	main structure
Shed/Structure	On Property Line	374	S Atlantic Ave	South property line
Shed/Structure	On Property Line	375	S Atlantic Ave	main structure
Shed/Structure	On Property Line	385	S Atlantic Ave	main structure
Shed/Structure	On Property Line	433	S Atlantic Ave	
Shed/Structure	On Property Line	445	S Atlantic Ave	
Shed/Structure	On Property Line	484	S Atlantic Ave	south property line
Shed/Structure	On Property Line	533	S Atlantic Ave	main structure
Shed/Structure	On Property Line	539	S Atlantic Ave	main structure
Shed/Structure	On Property Line	539	S Atlantic Ave	South property line
Shed/Structure	On Property Line	173	S Beach St	2 accessory buildings on north property line of 173
Shed/Structure	On Property Line	105	Valencia Dr	shed
Shed/Structure	On Property Line	106	Valencia Dr	shed
Shed/Structure	On Property Line	135	Valencia Dr	accessory structure
Shed/Structure	On Property Line	169	Valencia Dr	accessory structure
Shed/Structure	On Property Line	210	Valencia Dr	shed on east property line
Shed/Structure	On Property Line	80	TOTAL	

Type		House #	Street [1]	Notes
Shed/Structure	Shipping Container	180	Benjamin	2 shipping containers
Shed/Structure	Shipping Container	470	S Atlantic Ave	2 x 20ft containers since before 2021
Shed/Structure	Shipping Container	54	Seton Trail	City Park property with Pods container for over 1 y
Shed/Structure	Shipping Container	3 (5)	TOTAL	
Shed/Structure	Within 7.5 ft	78	Arlington Way	
Shed/Structure	Within 7.5 ft	83	Arlington Way	
Shed/Structure	Within 7.5 ft	120	Arlington Way	
Shed/Structure	Within 7.5 ft	127	Arlington Way	main structure
Shed/Structure	Within 7.5 ft	146	Arlington Way	main structure
Shed/Structure	Within 7.5 ft	213	Arlington Way	accessory structure
Shed/Structure	Within 7.5 ft	213	Arlington Way	main structure
Shed/Structure	Within 7.5 ft	216	Arlington Way	
Shed/Structure	Within 7.5 ft	220	Arlington Way	East property line
Shed/Structure	Within 7.5 ft	220	Arlington Way	West property line
Shed/Structure	Within 7.5 ft	223	Arlington Way	West property line
Shed/Structure	Within 7.5 ft	223	Arlington Way	East property line
Shed/Structure	Within 7.5 ft	224	Arlington Way	
Shed/Structure	Within 7.5 ft	225	Arlington Way	
Shed/Structure	Within 7.5 ft	228	Arlington Way	West property line
Shed/Structure	Within 7.5 ft	228	Arlington Way	East property line
Shed/Structure	Within 7.5 ft	232	Arlington Way	main structure
Shed/Structure	Within 7.5 ft	232	Arlington Way	shed
Shed/Structure	Within 7.5 ft	242	Arlington Way	West property line
Shed/Structure	Within 7.5 ft	242	Arlington Way	East property line
Shed/Structure	Within 7.5 ft	1	Bayberry	
Shed/Structure	Within 7.5 ft	15	Byron Ellinor	shed
Shed/Structure	Within 7.5 ft	25	Byron Ellinor	
Shed/Structure	Within 7.5 ft	37	Byron Ellinor	
Shed/Structure	Within 7.5 ft	52	Byron Ellinor	accessory structure
Shed/Structure	Within 7.5 ft	16A	Byron Ellinor	
Shed/Structure	Within 7.5 ft	37B	Byron Ellinor	
Shed/Structure	Within 7.5 ft	496	Cedar Street	
Shed/Structure	Within 7.5 ft	24	Cypress Cir...	
Shed/Structure	Within 7.5 ft	26	Cypress Cir...	
Shed/Structure	Within 7.5 ft	7	Fluhart Dr	
Shed/Structure	Within 7.5 ft	25	Fluhart Dr	
Shed/Structure	Within 7.5 ft	485	Grandview ...	main structure
Shed/Structure	Within 7.5 ft	491	Grandview ...	main structure
Shed/Structure	Within 7.5 ft	497	Grandview ...	
Shed/Structure	Within 7.5 ft	503	Grandview ...	
Shed/Structure	Within 7.5 ft	275	Halifax Dr	
Shed/Structure	Within 7.5 ft	285	Halifax Dr	
Shed/Structure	Within 7.5 ft	305	Halifax Dr	accessory structure
Shed/Structure	Within 7.5 ft	353	Halifax Dr	main structure at South end of property line
Shed/Structure	Within 7.5 ft	402	Halifax Dr	West property line
Shed/Structure	Within 7.5 ft	421	Halifax Dr	
Shed/Structure	Within 7.5 ft	473	Halifax Dr	mains structure
Shed/Structure	Within 7.5 ft	482	Halifax Dr	main structure

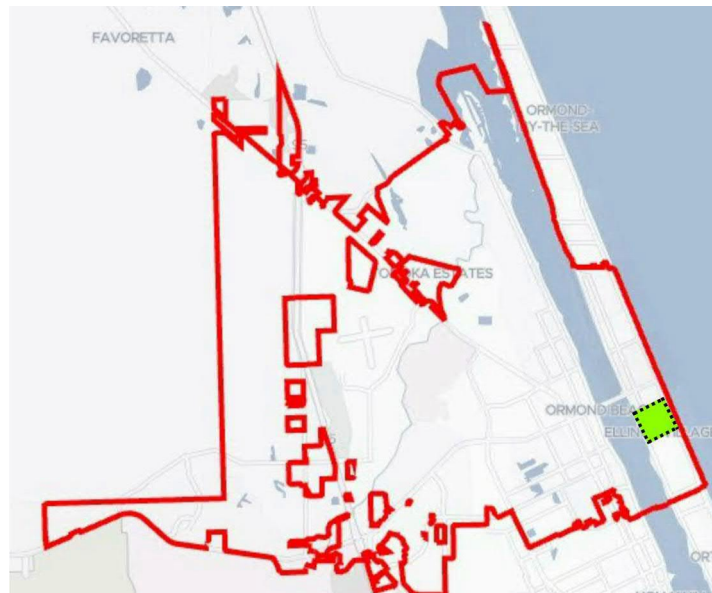
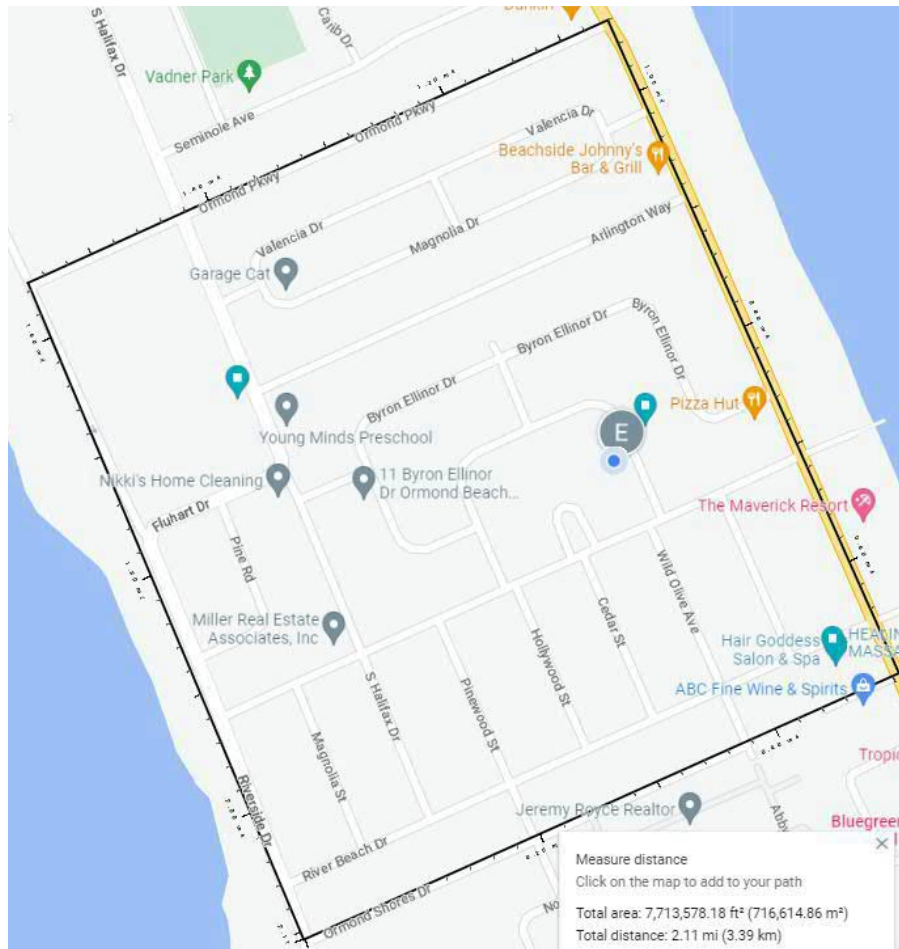
Type		House #	Street [1]	Notes
Shed/Structure	Within 7.5 ft	484	Halifax Dr	main structure
Shed/Structure	Within 7.5 ft	488	Halifax Dr	
Shed/Structure	Within 7.5 ft	493	Halifax Dr	
Shed/Structure	Within 7.5 ft	494	Halifax Dr	main structure
Shed/Structure	Within 7.5 ft	503	Halifax Dr	main structure
Shed/Structure	Within 7.5 ft	504	Halifax Dr	main structure on north side
Shed/Structure	Within 7.5 ft	504	Halifax Dr	accessory structure on South side
Shed/Structure	Within 7.5 ft	464	Hollywood St	
Shed/Structure	Within 7.5 ft	500	Hollywood St	
Shed/Structure	Within 7.5 ft	99	Magnolia Dr	
Shed/Structure	Within 7.5 ft	106	Magnolia Dr	multiple gazebo structures
Shed/Structure	Within 7.5 ft	120	Magnolia Dr	
Shed/Structure	Within 7.5 ft	129	Magnolia Dr	main structure
Shed/Structure	Within 7.5 ft	130	Magnolia Dr	*VC council member (main structure)
Shed/Structure	Within 7.5 ft	136	Magnolia Dr	East side
Shed/Structure	Within 7.5 ft	142	Magnolia Dr	accessory structures
Shed/Structure	Within 7.5 ft	142	Magnolia Dr	main structure
Shed/Structure	Within 7.5 ft	156	Magnolia Dr	
Shed/Structure	Within 7.5 ft	164	Magnolia Dr	east property line
Shed/Structure	Within 7.5 ft	174	Magnolia Dr	
Shed/Structure	Within 7.5 ft	175	Magnolia Dr	main structure
Shed/Structure	Within 7.5 ft	187	Magnolia Dr	main structure
Shed/Structure	Within 7.5 ft	187	Magnolia Dr	accessory structure
Shed/Structure	Within 7.5 ft	194	Magnolia Dr	shed
Shed/Structure	Within 7.5 ft	194	Magnolia Dr	main structure West side
Shed/Structure	Within 7.5 ft	198	Magnolia Dr	main structure West side
Shed/Structure	Within 7.5 ft	204	Magnolia Dr	West Property line
Shed/Structure	Within 7.5 ft	209	Magnolia Dr	
Shed/Structure	Within 7.5 ft	467	Magnolia St	main structure
Shed/Structure	Within 7.5 ft	468	Magnolia St	main structure
Shed/Structure	Within 7.5 ft	476	Magnolia St	main structure
Shed/Structure	Within 7.5 ft	481	Magnolia St	shed at south property line
Shed/Structure	Within 7.5 ft	482	Magnolia St	main structure
Shed/Structure	Within 7.5 ft	482	Magnolia St	main structure
Shed/Structure	Within 7.5 ft	491	Magnolia St	
Shed/Structure	Within 7.5 ft	496	Magnolia St	main structure
Shed/Structure	Within 7.5 ft	503	Magnolia St	
Shed/Structure	Within 7.5 ft	19	Ormond Pkwy	main structure - west property line
Shed/Structure	Within 7.5 ft	19	Ormond Pkwy	north property line - main structure
Shed/Structure	Within 7.5 ft	154	Ormond Pkwy	main structure
Shed/Structure	Within 7.5 ft	165	Ormond Pkwy	shed
Shed/Structure	Within 7.5 ft	55	Ormond Sh...	Garage within 7.5 ft of property line
Shed/Structure	Within 7.5 ft	55	Ormond Sh...	Backyard hut within 7.5 ft of property line
Shed/Structure	Within 7.5 ft	67	Ormond Sh...	House within 7.5 ft of property line
Shed/Structure	Within 7.5 ft	89	Ormond Sh...	
Shed/Structure	Within 7.5 ft	384	Pine Rd	
Shed/Structure	Within 7.5 ft	391	Pine Rd	
Shed/Structure	Within 7.5 ft	401	Pine Rd	south property line
Shed/Structure	Within 7.5 ft	425	Pine Rd	
Shed/Structure	Within 7.5 ft	431	Pine Rd	

Type		House #	Street [1]	Notes
Shed/Structure	Within 7.5 ft	473	Pinewood St	
Shed/Structure	Within 7.5 ft	479	Pinewood St	
Shed/Structure	Within 7.5 ft	486	Pinewood St	
Shed/Structure	Within 7.5 ft	506	Pinewood St	
Shed/Structure	Within 7.5 ft	16	River Beac...	structure
Shed/Structure	Within 7.5 ft	39	River Beac...	main structure
Shed/Structure	Within 7.5 ft	42	River Beac...	main structure
Shed/Structure	Within 7.5 ft	42	River Beac...	accessory structure
Shed/Structure	Within 7.5 ft	48	River Beac...	West property line
Shed/Structure	Within 7.5 ft	48	River Beac...	South property line
Shed/Structure	Within 7.5 ft	50	River Beac...	
Shed/Structure	Within 7.5 ft	55	River Beac...	garage off Halifax
Shed/Structure	Within 7.5 ft	66	River Beac...	main structure
Shed/Structure	Within 7.5 ft	73	River Beac...	north property line
Shed/Structure	Within 7.5 ft	110	River Beac...	shed
Shed/Structure	Within 7.5 ft	116	River Beac...	
Shed/Structure	Within 7.5 ft	116	River Beac...	main structure
Shed/Structure	Within 7.5 ft	116	River Beac...	accessory structure
Shed/Structure	Within 7.5 ft	126	River Beac...	
Shed/Structure	Within 7.5 ft	178	River Beac...	shed within 7.5 ft of East property line
Shed/Structure	Within 7.5 ft	187	River Beac...	
Shed/Structure	Within 7.5 ft	199	River Beac...	
Shed/Structure	Within 7.5 ft	209	River Beac...	gazebo
Shed/Structure	Within 7.5 ft	237	River Beac...	north property line
Shed/Structure	Within 7.5 ft	237	River Beac...	North Property line
Shed/Structure	Within 7.5 ft	275	Riverside Dr	south property line
Shed/Structure	Within 7.5 ft	283	Riverside Dr	North Property line
Shed/Structure	Within 7.5 ft	317	Riverside Dr	north Property line
Shed/Structure	Within 7.5 ft	331	Riverside Dr	north Property line
Shed/Structure	Within 7.5 ft	333	Riverside Dr	shed on north Property line
Shed/Structure	Within 7.5 ft	393	Riverside Dr	shed
Shed/Structure	Within 7.5 ft	400	Riverside Dr	north property line
Shed/Structure	Within 7.5 ft	444	Riverside Dr	south property line
Shed/Structure	Within 7.5 ft	458	Riverside Dr	south property line
Shed/Structure	Within 7.5 ft	462	Riverside Dr	north property line
Shed/Structure	Within 7.5 ft	462	Riverside Dr	south property line
Shed/Structure	Within 7.5 ft	468	Riverside Dr	south property line
Shed/Structure	Within 7.5 ft	475	Riverside Dr	
Shed/Structure	Within 7.5 ft	476	Riverside Dr	
Shed/Structure	Within 7.5 ft	497	Riverside Dr	
Shed/Structure	Within 7.5 ft	509	Riverside Dr	main structure
Shed/Structure	Within 7.5 ft	510	Riverside Dr	main structure
Shed/Structure	Within 7.5 ft	524	Riverside Dr	
Shed/Structure	Within 7.5 ft	530	Riverside Dr	
Shed/Structure	Within 7.5 ft	24	Rockefeller	shed
Shed/Structure	Within 7.5 ft	24	Rockefeller	porch attached to main structure
Shed/Structure	Within 7.5 ft	38	Rockefeller	shed
Shed/Structure	Within 7.5 ft	48	Rockefeller	
Shed/Structure	Within 7.5 ft	53	Rockefeller	shed
Shed/Structure	Within 7.5 ft	80	Rockefeller	accessory structure

Type		House #	Street [1]	Notes
Shed/Structure	Within 7.5 ft	106	Rockefeller	
Shed/Structure	Within 7.5 ft	131	Rockefeller	
Shed/Structure	Within 7.5 ft	178	Rockefeller	shed 2 west property line
Shed/Structure	Within 7.5 ft	178	Rockefeller	shed south property line
Shed/Structure	Within 7.5 ft	204	Rockefeller	
Shed/Structure	Within 7.5 ft	215	Rockefeller	
Shed/Structure	Within 7.5 ft	281	S Atlantic Ave	North property line
Shed/Structure	Within 7.5 ft	281	S Atlantic Ave	South property line
Shed/Structure	Within 7.5 ft	295	S Atlantic Ave	
Shed/Structure	Within 7.5 ft	333	S Atlantic Ave	entire main structure and connected secondary st
Shed/Structure	Within 7.5 ft	333	S Atlantic Ave	main structure - south property line
Shed/Structure	Within 7.5 ft	335	S Atlantic Ave	North property line
Shed/Structure	Within 7.5 ft	335	S Atlantic Ave	south property line
Shed/Structure	Within 7.5 ft	342	S Atlantic Ave	South property line
Shed/Structure	Within 7.5 ft	345	S Atlantic Ave	main structure
Shed/Structure	Within 7.5 ft	353	S Atlantic Ave	North property line
Shed/Structure	Within 7.5 ft	353	S Atlantic Ave	South property line
Shed/Structure	Within 7.5 ft	361	S Atlantic Ave	main structure
Shed/Structure	Within 7.5 ft	373	S Atlantic Ave	
Shed/Structure	Within 7.5 ft	374	S Atlantic Ave	North property line
Shed/Structure	Within 7.5 ft	484	S Atlantic Ave	North property line
Shed/Structure	Within 7.5 ft	505	S Atlantic Ave	North property line
Shed/Structure	Within 7.5 ft	505	S Atlantic Ave	South property line
Shed/Structure	Within 7.5 ft	507	S Atlantic Ave	
Shed/Structure	Within 7.5 ft	543	S Atlantic Ave	
Shed/Structure	Within 7.5 ft	553	S Atlantic Ave	south property line
Shed/Structure	Within 7.5 ft	105	Valencia Dr	
Shed/Structure	Within 7.5 ft	135	Valencia Dr	main structure
Shed/Structure	Within 7.5 ft	151	Valencia Dr	main structure
Shed/Structure	Within 7.5 ft	169	Valencia Dr	main structure
Shed/Structure	Within 7.5 ft	172	Valencia Dr	South property line
Shed/Structure	Within 7.5 ft	172	Valencia Dr	East property line
Shed/Structure	Within 7.5 ft	174	Valencia Dr	East property line
Shed/Structure	Within 7.5 ft	175	Valencia Dr	main structure
Shed/Structure	Within 7.5 ft	188	Valencia Dr	West property line
Shed/Structure	Within 7.5 ft	210	Valencia Dr	2 story accessory structure
Shed/Structure	Within 7.5 ft	215	Valencia Dr	
Shed/Structure	Within 7.5 ft	475	Wild Olive	shed
Shed/Structure	Within 7.5 ft	481	Wild Olive	shed
Shed/Structure	Within 7.5 ft	183	TOTAL	

Photo Samples of Cherry Picking & Equal Protection Violations by OB

1. 115,714 Similar Violations in OB
 - a. Sample of Cypress Neighborhood: Riverside Dr to S Atlantic Ave and Ormond Shores Drive to Ormond Pkwy = 0.28 mi² or 0.7% of OB (small green box on full city map)
 - b. **810 paver/parking, structure/storage, fence violations in plain view** in just 0.7% of OB - Henry's Immediate Neighborhood



2. No Permits Issued **24 Examples**

a. 924 Rollins Sellers



b. Extensive Remodeling / Repairs **11 Violations**





c. Fences 6 Specific Violations, many more after Hurricane Ian





**Now - without
fence permit**



October 2022



**Now - without
fence permit**



**Entire West side fence shown here
now removed as of February 2023**

d. Pavers / Parking Areas 1 Violation OB *knew* about

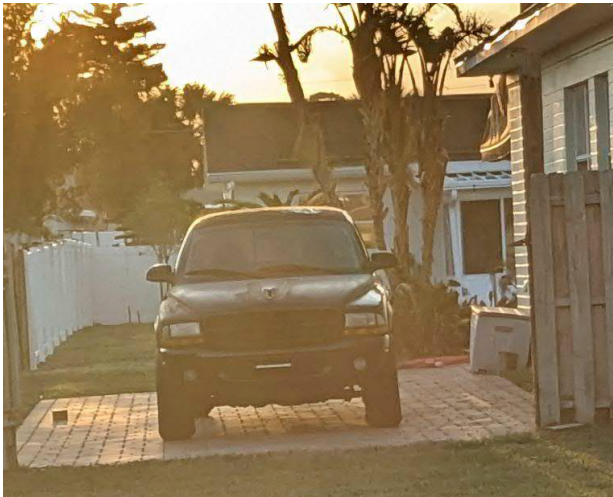


e. Shipping Containers / Sheds 5 Specific Violations



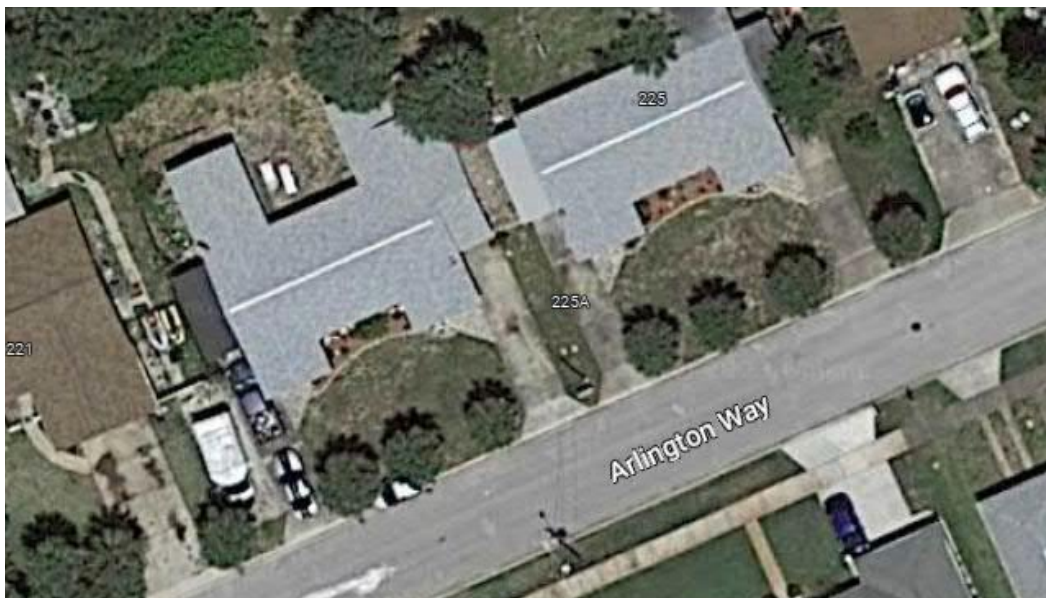
3. Pavers / Parking Area LDC “Requirements” Not Enforced Elsewhere **457 Examples**

a. On Property Line **162 Violations**



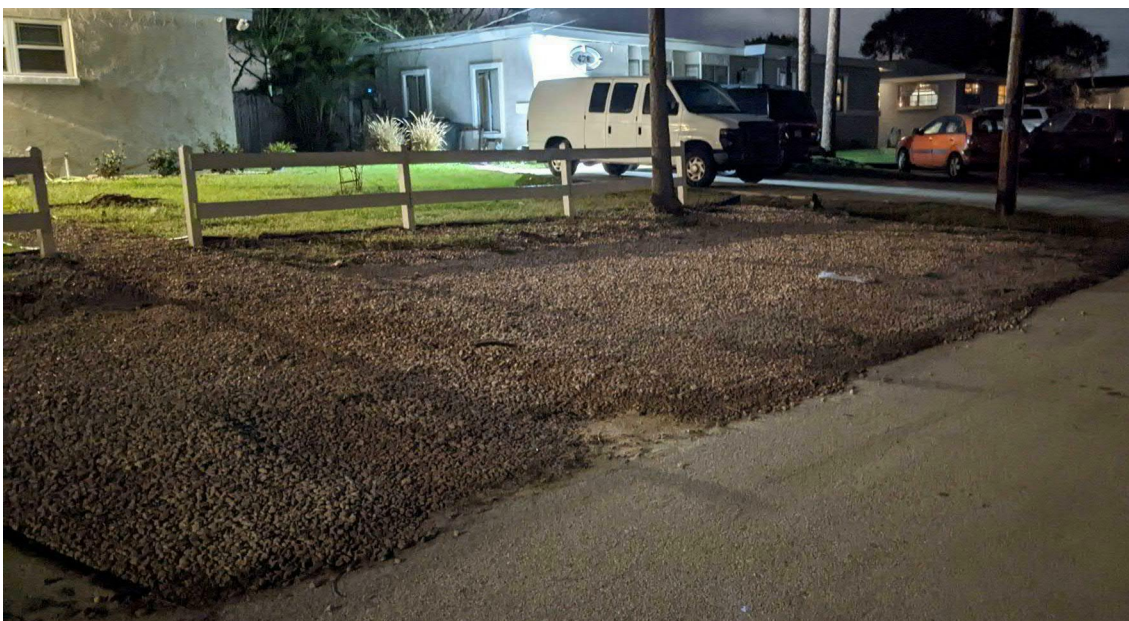
b. Within 7.5 feet of the Property Line **139 Violations**

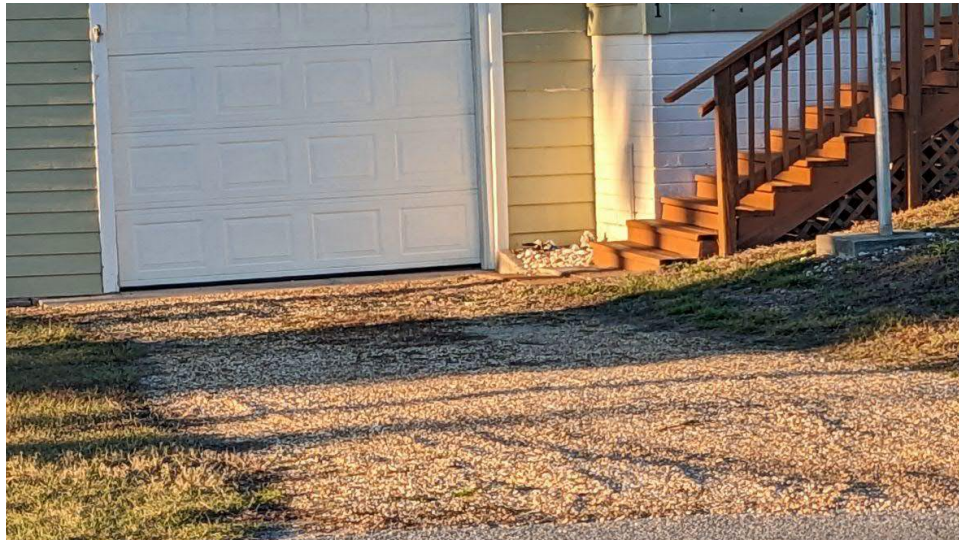




c. Stone Driveway / Parking Area **60 Violations**

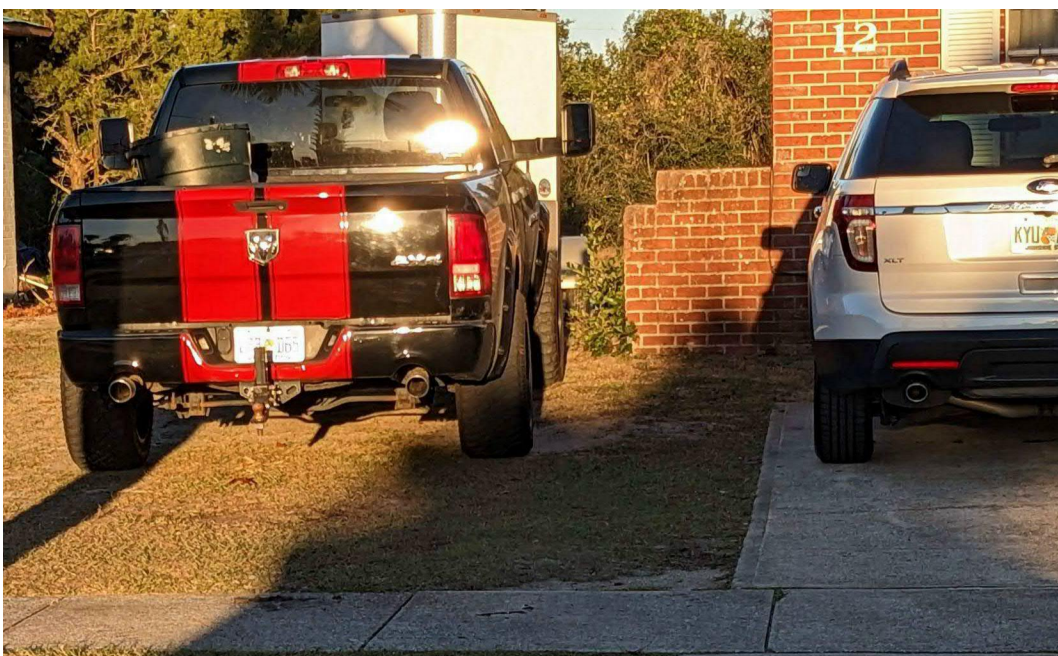






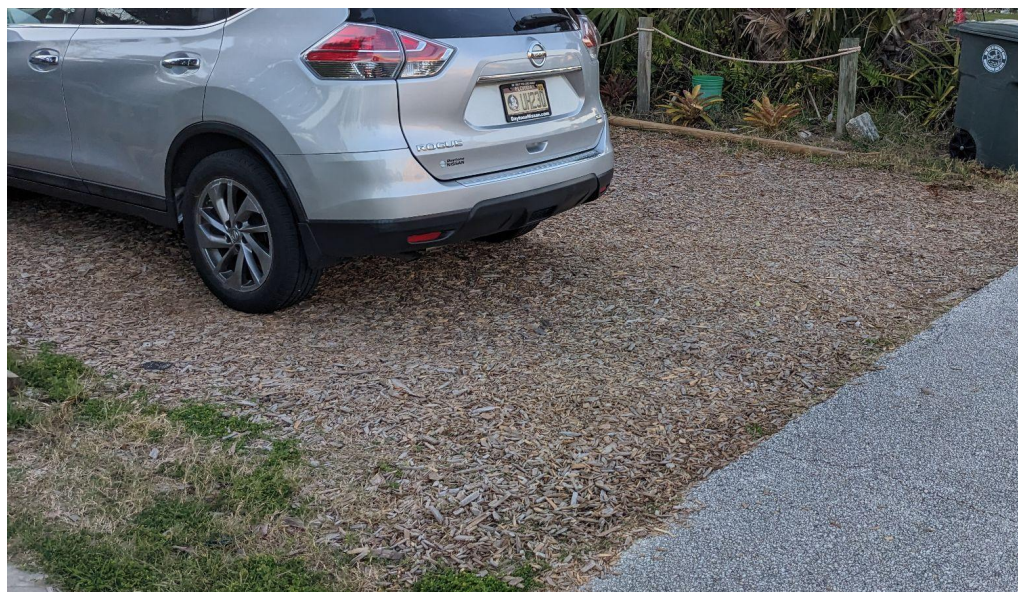
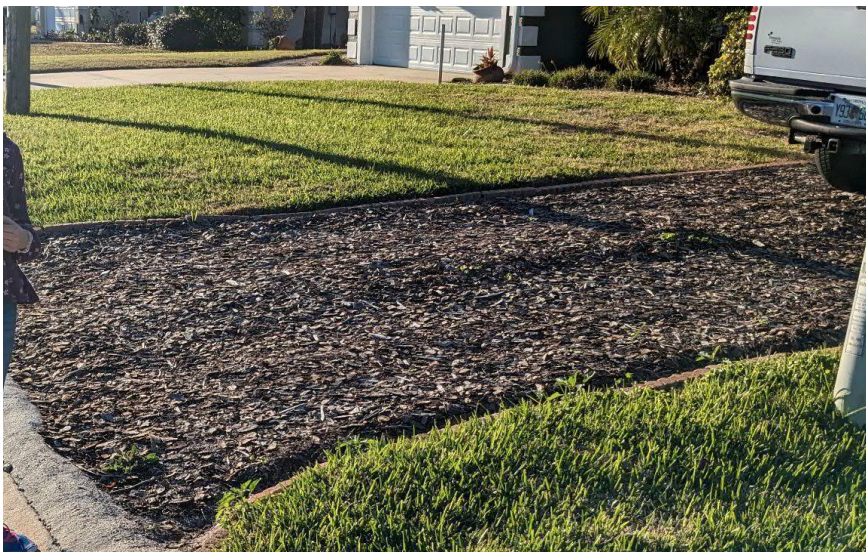
d. Grass Driveway / Parking Area **92 Violations**

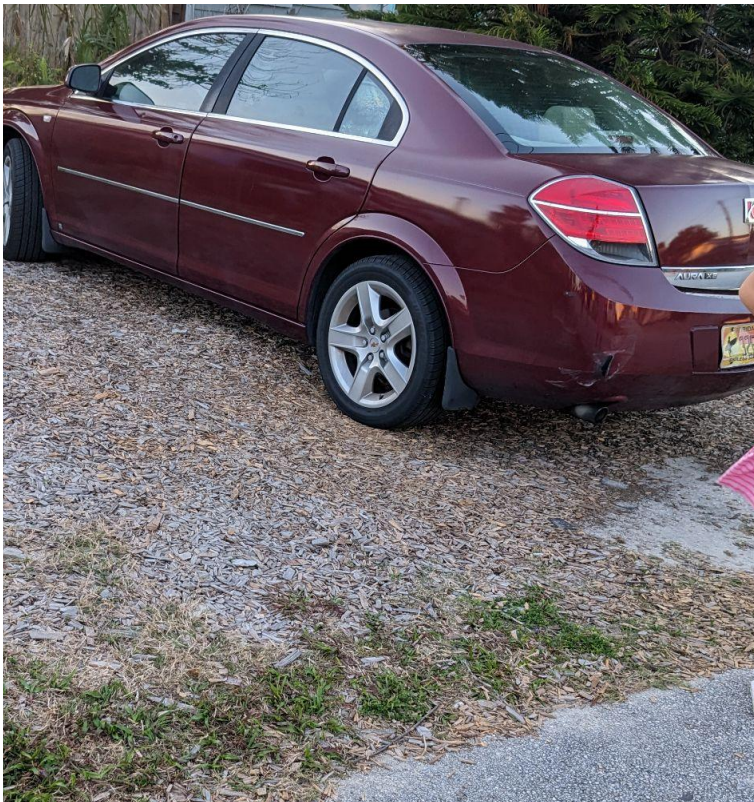






e. Mulch Driveway / Parking Area 4 Violations





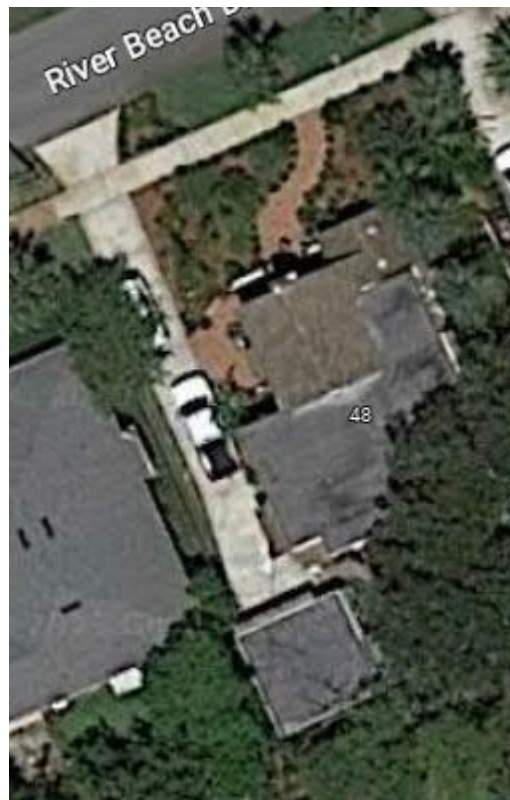
f. Even When Permits Are Issued! (1 Example)



4. Shipping Containers / Shed / Structure **266 Examples**
a. Shipping Containers **3 Violations**

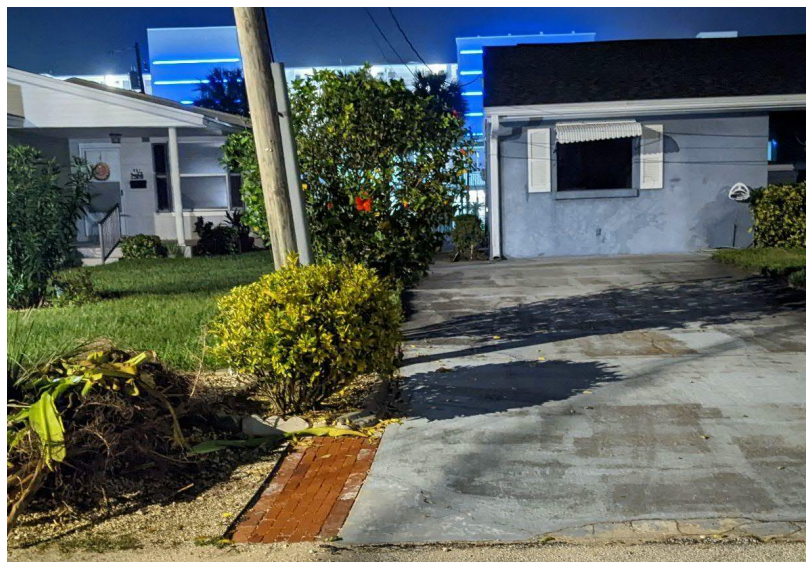


b. On Property Line **80 Violations**





c. Within 7.5 feet of Property Line **183 Violations**



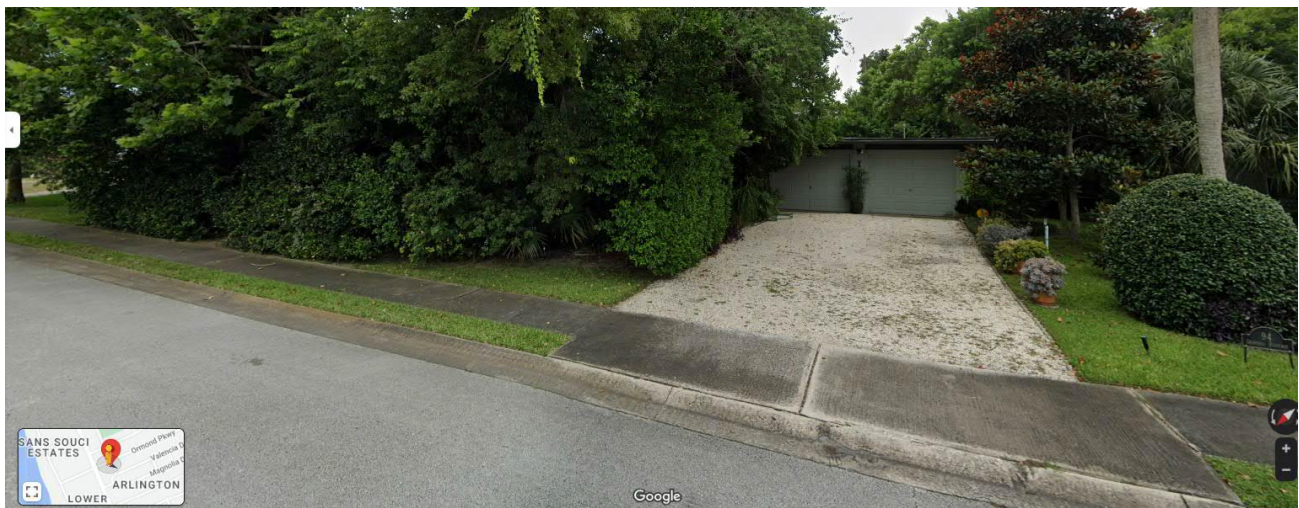


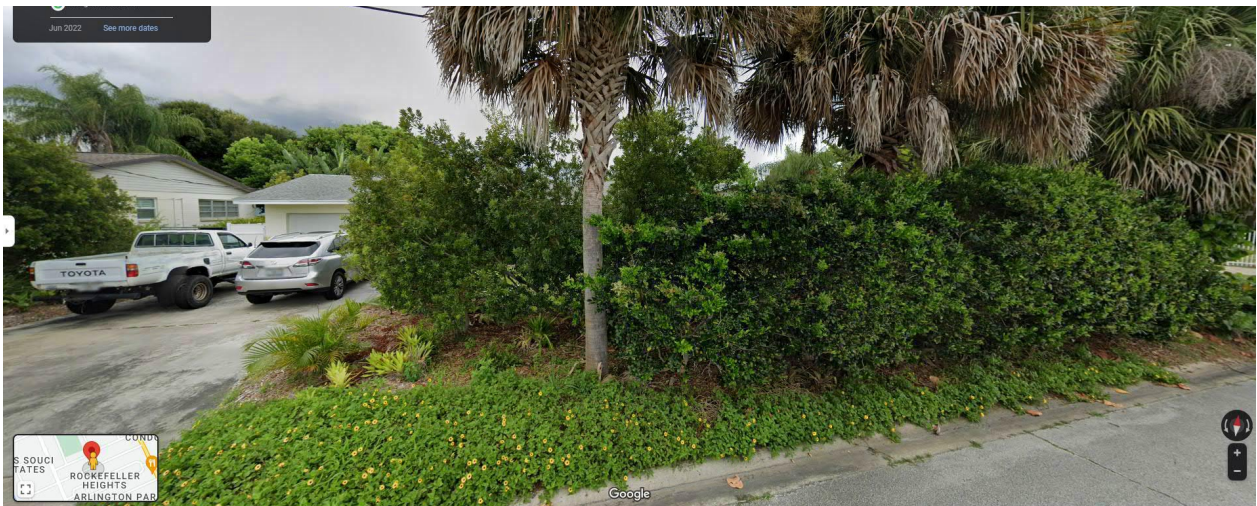
- 5. Fence **63 Examples**
 - a. Dilapidated Fences **49 Violations**





- b. Inverted Fence Frames **2 Violations**
- c. Wrong Height / Opacity **12 Violations**





6. Government Officials Get a Free Pass with LDC Violations
 - a. OBPD Officer living at 5 Byron Ellinor



- b. VC Sheriff Deputy Living at 5 Byron Ellinor



- c. OBPD Officer Living at 28 Byron Ellinor



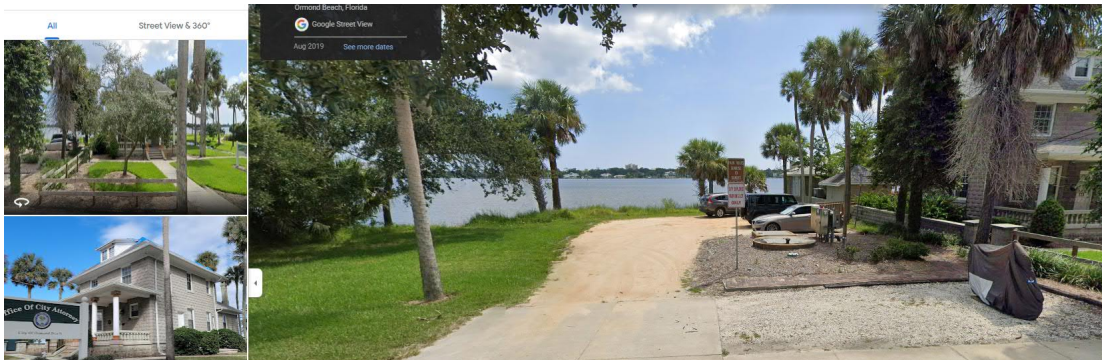
d. OB Employee with City Work Van Living at 39 Byron Ellinor



e. OBPD Officer Regularly Parking at 52 Byron Ellinor



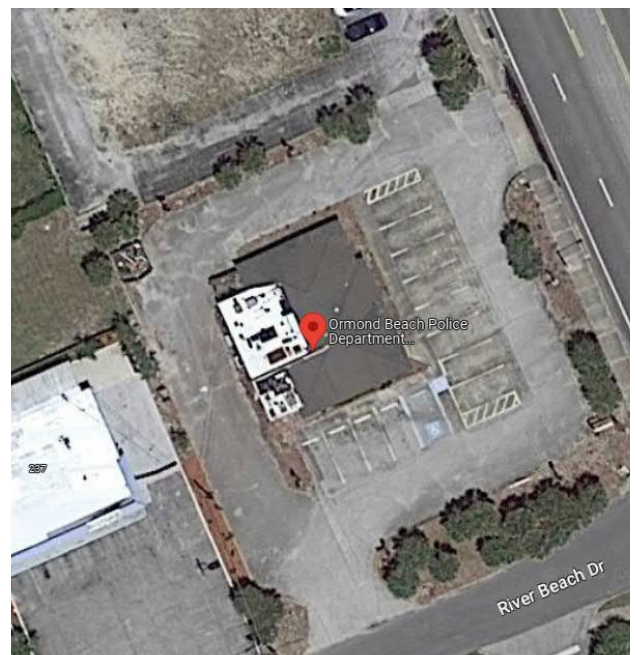
f. City Attorney Office at 173 S Beach Street



g. Volusia County Council & Former OB Commission Member Living at 130 Magnolia Dr



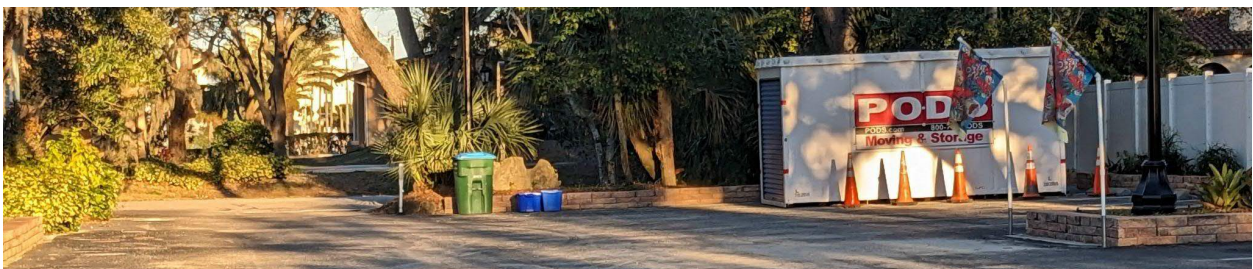
h. Old OBPD Property at 520 S Atlantic Ave



- i. FL State Law Enforcement Living at 491 Magnolia Street



- j. City Park Parking Lot with Pods Container Sitting for Over a Year at 54 Seton Trail



7. Enforcement Pattern Selective and Personal

a. 1/10/23 Posting of Notices in Boulevard, to Embarrass, Not Serve Henrys

i. Facing AWAY from Our Line of Sight, TOWARD the Street





Katherine Henry <[REDACTED]>

33 Cypress Cir

2 messages

Bruce, Janet <Janet.Bruce@ormondbeach.org>

Mon, Nov 7, 2022 at 10:36 AM

To: "[REDACTED]" >

Good morning,

I just wanted to follow up with you in regards to obtaining the building permits for your new fence, pavers and getting the storage containers removed from the property. Per the Notice of Violation that you received on October 20, 2022 and a Stop Work Order was posted on your property on September 2, 2022, you were given 20 days from October 20, 2022 to obtain the permits. I just wanted to check to see if you are in need of any assistance with the process of obtaining the permits. The next step in the enforcement process will be issuing three citations and notice of hearings. Please let me know if you have any questions.

Thank you,

Janet Bruce

Neighborhood Improvement Division

Ormond Beach Police Department

[170 W. Granada Blvd](#)

[Ormond Beach, FL 32174](#)

(386)676-3352 (office)

Notice: Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Katherine Henry <[REDACTED]>

Tue, Nov 8, 2022 at 5:06 PM

To: "Bruce, Janet" <Janet.Bruce@ormondbeach.org>

Good afternoon. Attached, please find the statutory NOTICE of Proposed Action, pursuant to Fl. St. 70.45 Government Exaction, and other related statutes, and the NOTICE to Cease and Desist all LDC actions being taken against Michael and/or Katherine Henry. Please note state law has specific requirements for your written response, as well as your halting of the prohibited governmental conduct. You will also find Exhibits A-D attached.

(One file was too large for a normal attachment, so it, and the NOTICE, are attached separately, here:)

 [NOTICE of Proposed Action & NOTICE to Cease & D...](#)

 [Henry Response to Kelly Emergency Motion for Te...](#)

Katherine Henry

Constitutional Attorney, Educator & Advocate

More Freedom; Less Government

RestoreFreedomKH.com

Restoring our government of the people, by the people, and for the people

Email Notice: The transmitted material is intended only for the use of addressee. It may contain confidential, proprietary and/or legally privileged information. If you are not the intended recipient, please be aware that any review, use, dissemination, distribution, or copying of this communication, in whole or in part, is prohibited. If you received this communication in error, please notify us immediately by email reply or by phone (616-303-0033), delete the communication and destroy any copies. Also, this email was swept for computer viruses. However, we cannot guarantee that the integrity of this email has been maintained in transmission and do not accept responsibility for the consequences of any virus contamination.

[Quoted text hidden]

3 attachments



Notice Of Lis Pendens FILED.pdf

96K



Henry Answer to Kelly Complaint for Ejectment.pdf

4454K



Henry's Response and Motion for Protective Order and Exhibits.pdf

15072K



janet.bruce@ormondbeach.org opened email **Re: 33 Cypress Cir**

January 13

✓ 16 opens

- opened email **Re: 33 Cypress Cir**
Jan 13 at 4:14 PM
- opened email **Re: 33 Cypress Cir**
Dec 29 at 8:34 AM
- opened email **Re: 33 Cypress Cir**
Dec 21 at 11:08 AM
- opened email **Re: 33 Cypress Cir**
Nov 22 at 8:56 AM
- opened email **Re: 33 Cypress Cir**
Nov 22 at 7:57 AM
- opened email **Re: 33 Cypress Cir**
Nov 14 at 4:30 PM
- opened email **Re: 33 Cypress Cir**
Nov 14 at 4:16 PM
- opened email **Re: 33 Cypress Cir**
Nov 14 at 4:10 PM
- opened email **Re: 33 Cypress Cir**
Nov 9 at 11:18 AM
- opened email **Re: 33 Cypress Cir**
Nov 9 at 10:32 AM
- opened email **Re: 33 Cypress Cir**
Nov 9 at 10:20 AM
- opened email **Re: 33 Cypress Cir**
Nov 9 at 10:03 AM
- opened email **Re: 33 Cypress Cir**
Nov 9 at 9:05 AM
- opened email **Re: 33 Cypress Cir**
Nov 9 at 9:01 AM
- opened email **Re: 33 Cypress Cir**
Nov 9 at 7:53 AM
- opened email **Re: 33 Cypress Cir**
Nov 8 at 5:06 PM
- was sent email **Re: 33 Cypress Cir**
Nov 8 at 5:06 PM

UNITED STATES POSTAL SERVICE

Sorry We Missed You!

Item is at:

Post Office™ (See back)

- ☒ Letter
☐ Large envelope, magazine, catalog, etc.
☐ Parcel
☐ Perishable Item
☐ Other:

For Delivery delivered to

For Notice

Priority Express

☒ Certified

(Must claim value or article will be lost)

Restrict

Registered

Article Requiring Payment

☐ Postage Due ☐ COD

☒ Final Notice: Article will be returned to sender on Sat 02/18/2023

PS Form 3849, July 2011

We will redeliver OR you or your agent will pick up, sign

- Check all that apply in Section 3;
 - Sign in section 2 b or c. Leave this notice where the carrier can see it.
- Sign Here to authorize redelivery or to authorize an agent to do so for you:

3. ☐ Redeliver (Enter day of week)

(Allow at least two delivery days for redelivery, or go to usps.com/redelivery or call 800-275-8777 to arrange redelivery.)

☐ Leave item at my address (not available if you or your agent are not present)

(Specify where to leave. Example: "porch", "side door". This option is available if box is checked on the back of this notice requiring your signature at time of delivery.)

☐ Refused ☐ Forward ☐ Other

PS Form 3849, July 2013



UNITED STATES POSTAL SERVICE®

We Redeliver For You!®

Download Informed Delivery® APP to manage your redeliveries.

Sorry we missed you while you were out.

Date: 1/3/23

The item was sent by: J. Bruce

It was sent to: Michael Henry, Katherine

At this address: P.O. BOX 333

About the missed delivery:

It was a:

☐ Package ☒ Letter ☐ Large envelope

☐ USPS® Smart Parcel Locker Eligible (Smaller than 17Hx13Wx23D)

Available for pickup date: _____

This is the:

☐ First attempt ☐ Final notice



To schedule a redelivery:

Scan the QR code or go to usps.com/redelivery

Article number:

5293 0640 7536 3401

We have item/s for you which we could not deliver because:

☐ It requires a payment of \$ _____ for:

Postage due Customs

☐ Receptacle full/item oversized

☐ No secure location available

☐ No authorized recipient available

☒ Signature required

_____ must be 18+ years old _____ must be 21+ years old

☐ Other: _____

Please see reverse to schedule redelivery or pickup.

PS Form 3849, September 2022



Katherine Henry <[REDACTED]>

Special Magistrate Hearing

4 messages

Emery, Ann-Margret <A.Emery@ormondbeach.org>

Thu, Jan 19, 2023 at 4:12 PM

To: "[REDACTED]" <[REDACTED]>

Cc: "Mason, Chris" <Chris.Mason@ormondbeach.org>

Hello Katherine, I have confirmed that your hearing will be continued to Feb. 27. You will be receiving a revised hearing notice. Please let me know if you have any further questions. Thank you, Ann-Margret

Ann-Margret Emery

Deputy City Attorney

City of Ormond Beach

Post Office Box 277

[173 South Beach Street](#) (Ames Park)

Ormond Beach, FL 32175-0277

Direct: (386) 676-3218 Fax: (386) 676-3321

e-mail: A.Emery@ormondbeach.org

Notice: Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

Katherine Henry <[REDACTED]>

Wed, Feb 1, 2023 at 11:44 AM

To: "Emery, Ann-Margret" <A.Emery@ormondbeach.org>

Cc: "Mason, Chris" <Chris.Mason@ormondbeach.org>

Good morning. Just following up, as no notice has been served yet. It seems the court reporters need the official Notice of Hearing in order to schedule the reporter, so I have been unable to schedule one without it.

Restore Freedom
with
Katherine Henry

Katherine Henry

Constitutional Attorney, Educator & Advocate

More Freedom; Less Government

RestoreFreedomKH.com

****Restoring our government of the people, by the people, and for the people****

Email Notice: The transmitted material is intended only for the use of addressee. It may contain confidential, proprietary and/or legally privileged information. If you are not the intended recipient, please be aware that any review, use, dissemination, distribution, or copying of this communication, in whole or in part, is prohibited. If you received this communication in error, please notify us immediately by email reply or by phone (616-303-0033), delete the communication and destroy any copies. Also, this email was swept for computer viruses. However, we cannot guarantee that the integrity of this email has been maintained in transmission and do not accept responsibility for the consequences of any virus contamination.

[Quoted text hidden]

Mason, Chris <Chris.Mason@ormondbeach.org>

Wed, Feb 1, 2023 at 3:11 PM

To: Katherine Henry <[REDACTED]>, "Emery, Ann-Margret" <A.Emery@ormondbeach.org>

Cc: "Radcliffe, Barbara" <Barbara.Radcliffe@ormondbeach.org>

Good afternoon Mrs. Henry,

The above attached notices are en route to your mailing address. I hope that the electronic copies may assist you with scheduling the reporter.

Thank you

Chris

Chris Mason

Neighborhood Improvement

Division Manager

Ormond Beach Police Department

170 W. Granada Blvd.

Ormond Beach, FL 32174

(386)676-3352

(386)615-7074 Fax

From: Katherine Henry <[REDACTED]>

Sent: Wednesday, February 1, 2023 11:44 AM

To: Emery, Ann-Margret <A.Emery@ormondbeach.org>

Cc: Mason, Chris <Chris.Mason@ormondbeach.org>

Subject: Re: Special Magistrate Hearing

[External Email-Use Caution] - OB/IT Helpdesk

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

[Quoted text hidden]
[Quoted text hidden]

3 attachments

 **#22-112237 - NOH for 2-27-23.pdf**
24K

 **#22-112246 - NOH for 2-27-23.pdf**
24K

 **#22-112247 - NOH for 2-27-23.pdf**
32K

Katherine Henry <[REDACTED]>

Wed, Feb 1, 2023 at 3:45 PM

To: "Mason, Chris" <Chris.Mason@ormondbeach.org>

Cc: "Emery, Ann-Margret" <A.Emery@ormondbeach.org>, "Radcliffe, Barbara" <Barbara.Radcliffe@ormondbeach.org>

Bcc: Michael Henry <[REDACTED]>, Lori DeVries <[REDACTED]>

Thank you for the reply. I will see if those copies will satisfy the requests of the court reporters I have contacted. Additionally, by sending to my mailing address, I'm assuming that means they are coming certified mail? I have not been personally served or served by certified mail [as required by FL Stat 162.12(1) and (3)] for these new matters yet for either Court date.

Thank you, again. Have a wonderful afternoon!

Katherine Henry
Constitutional Attorney, Educator & Advocate
Restore Freedom with Katherine Henry, P.C.
More Freedom; Less Government
RestoreFreedomKH.com

Restoring our government of the people, by the people, and for the people

Email Notice: The transmitted material is intended only for the use of addressee. It may contain confidential, proprietary and/or legally privileged information. If you are not the intended recipient, please be aware that any review, use, dissemination, distribution, or copying of this communication, in whole or in part, is prohibited. If you received this communication in error, please notify us immediately by email reply or by phone (616-303-0033), delete the communication and destroy any copies. Also, this email was swept for computer viruses. However, we cannot guarantee that the integrity of this email has been maintained in transmission and do not accept responsibility for the consequences of any virus contamination.

[Quoted text hidden]

**BEFORE THE SPECIAL MAGISTRATE
OF THE
CITY OF ORMOND BEACH, FLORIDA**

**CITY OF ORMOND BEACH,
FLORIDA,**

Petitioner,

vs.

CASE NO.: 22-112237

LOCATION OF VIOLATION:
33 Cypress Circle.
Ormond Beach, FL
("the Property")

**MICHAEL HENRY and
KATHERINE HENRY,**

Respondents.

PARCEL NO.: 4223-02-06-0130

ORDER FINDING VIOLATION

This cause having come on to be heard before the Special Magistrate of the City of Ormond Beach, Florida, February 27, 2023, and upon the evidence and sworn testimony presented the Special Magistrate makes the following findings of fact and conclusions of law:

1. The Special Magistrate has jurisdiction of the parties and the subject matter of this cause.
2. The City of Ormond Beach presented substantial evidence of violation of *City of Ormond Beach Land Development Code*, Chapter 2, Article III, Section

2-50(n)(1)(a): All fences shall require a permit prior to installation or erection. It shall be unlawful for any person to erect a fence within the city without having first made application for and having been issued a permit. Respondents installed a fence without application for or obtaining a permit.

3. Respondent, Katherine Henry, appeared and testified at the hearing. Respondent made the following legal arguments:

a. Respondents' constitutional property rights were violated under the State of Florida and U.S. Constitution. This argument was determined to be without merit.

b. The City of Ormond Beach has "cherry-picked" Respondents' property for citation without citing other property violations within the same area. This argument was determined to be without merit.

c. The application of general zoning law to Respondents' property does not substantially advance a legitimate state interest. This argument was determined to be without merit.

4. At the time of the hearing, the property was not in compliance. Photos of the subject fence as of the date of the hearing are attached hereto as Exhibit A.

5. Upon finding a code violation, the Special Magistrate is authorized to impose a fine that does not exceed \$250 per day and may authorize a fine for each day

the violation continues past the date specified in this Order for compliance. Fla. Stat. Section 162.09 (2022). In addition, the Special Magistrate is authorized to issue an order having the force of law to command whatever steps are necessary to bring a violation into compliance. Fla. Stat. Section 162.08(5)(2022). Pursuant to Chapter 2, Article VII, Section 2-257(b), *City of Ormond Beach Code of Ordinances*, the City is entitled to its costs of prosecuting the code violation in which a violation is found.

Thereupon, and in consideration thereof, it is

ORDERED AND ADJUDGED as follows:

A. Respondents violated *City of Ormond Beach Land Development Code*, Chapter 2, Article III, Section 2-50(n)(1)(a). The citation of one hundred dollars (\$100.00) shall be waived. Respondents shall pay the city's costs of twenty-three and 56/100 dollars (\$23.56) no later than March 27, 2023. Respondents shall bring this violation into compliance no later than March 27, 2023 by either: 1) obtaining an approved fence permit and pass a final inspection; or 2) removing the fence from the property. **IF RESPONDENTS FAIL TO BRING THE PROPERTY INTO COMPLIANCE BY MARCH 27, 2023: 1) A FINE OF TWENTY-FIVE DOLLARS (\$25.00) PER DAY SHALL ACCRUE BEGINNING ON MARCH 28, 2023; AND 2) THE CITY WILL BE AUTHORIZED TO ENTER ONTO THE PROPERTY ON OR AFTER APRIL 10, 2023 TO REMOVE AND DISPOSE OF THE UNPERMITTED FENCE WITH ALL COSTS THEREOF TO BE ASSESSED AGAINST THE RESPONDENTS. IN ADDITION, SHOULD THE CITY**

REMOVE AND DISPOSE OF THE FENCE, THE CITY SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS ASSOCIATED WITH THE REMOVAL.

B. It is the Respondents' responsibility to contact the City of Ormond Beach Neighborhood Improvement Division to schedule a re-inspection of the property to confirm compliance and the date thereof.

C. Failure to timely pay the fine and costs may result in a certified copy of this Order being recorded in the Public Records of Volusia County, Florida which if so recorded shall constitute a lien against the subject property and upon any other real or personal property owned by Respondents. Respondents shall be responsible for all charges incurred to record any lien, or satisfaction of lien, with the clerk of court.

ORDERED *nunc pro tunc* February 27, 2023.

DATED: March 1, 2023

BY: H. Pope Hamrick, Jr.
H. POPE HAMRICK, JR.
CITY OF ORMOND BEACH
SPECIAL MAGISTRATE

Copies to:
Ann-Margret Emery, Deputy City Attorney
Chris Mason, Neighborhood Improvement Manager
Respondents



EXHIBIT
089 A
tabbles

02.21.2023 13:54



EXHIBIT
090 A
tabbles

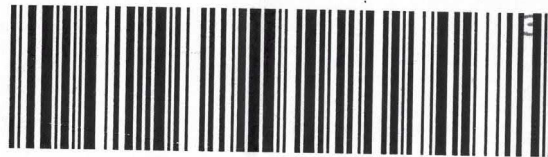
02.21.2023 13:54

Barbara Radcliffe
City of Ormond Beach/NID
170 W Granada Blvd
Ormond Beach, FL 32174

152107

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™ ORLANDO FL 328



9214 8969 0099 9790 1646 5481 51

MAR 2023 PM 5 L

Hasler

03/03/2023

US POSTAGE \$007.09⁰



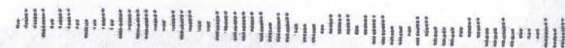
ZIP 32174
011E11680509

received 3/8/23

3-6

Michael Henry & Katherine Henry
PO Box 333
Ormond Beach, FL 32175

32175-033333



22-112237 order

091

**BEFORE THE SPECIAL MAGISTRATE
OF THE
CITY OF ORMOND BEACH, FLORIDA**

**CITY OF ORMOND BEACH,
FLORIDA,**

Petitioner,

vs.

CASE NO.: 22-112246

LOCATION OF VIOLATION:
33 Cypress Circle.
Ormond Beach, FL
("the Property")

**MICHAEL HENRY and
KATHERINE HENRY,**

Respondents.

PARCEL NO.: 4223-02-06-0130

ORDER FINDING VIOLATION

This cause having come on to be heard before the Special Magistrate of the City of Ormond Beach, Florida, February 27, 2023, and upon the evidence and sworn testimony presented the Special Magistrate makes the following findings of fact and conclusions of law:

1. The Special Magistrate has jurisdiction of the parties and the subject matter of this cause.
2. The City of Ormond Beach presented substantial evidence of violation of *City of Ormond Beach Land Development Code*, Chapter 2, Article III, Section

2-50(a)(9): All accessory structures require the issuance of building permits prior to installation. Respondents installed two large steel shipping containers (commonly used to transport goods by truck, train or ship) onto their property without a permit.

3. Respondent, Katherine Henry ("Henry"), appeared and testified at the hearing. Respondent made the following legal arguments:

a. Respondents' constitutional property rights were violated under the State of Florida and U.S. Constitution. This argument was determined to be without merit.

b. The City of Ormond Beach has "cherry-picked" Respondents' property for citation without citing other property violations within the same area. This argument was determined to be without merit.

c. The application of general zoning law to Respondents' property does not substantially advance a legitimate state interest. This argument was determined to be without merit.

4. At the time of the hearing, the property was not in compliance. A permit had not been obtained, and in addition, the use of personal on-site storage structures shall be limited to situations where a person or business is moving to a new location. *City of Ormond Beach Land Development Code*, Chapter 2, Article III Section 2-50(x)(3). Personal storage units shall not be placed on the site for a period over thirty (30) days. Id. Henry testified that the shipping containers have been located on the

subject property for several months with the intended use for long-term storage. Further, Henry testified that the shipping containers are sized 8' x 20' each (160 sq. ft.). A utility structure in excess of 150 sq. ft. is considered a garage for which a garage permit must be obtained and the structure must meet the regulations pertaining to a garage. *City of Ormond Beach Land Development Code*, Chapter 2, Article III Section 2-50(o)(2) and Section 2-50(dd). Photos of the shipping containers as of the date of the hearing are attached hereto as Exhibit A.

5. Upon finding a code violation, the Special Magistrate is authorized to impose a fine that does not exceed \$250 per day and may authorize a fine for each day the violation continues past the date specified in this Order for compliance. Fla. Stat. Section 162.09 (2022). In addition, the Special Magistrate is authorized to issue an order having the force of law to command whatever steps are necessary to bring a violation into compliance. Fla. Stat. Section 162.08(5)(2022). Pursuant to Chapter 2, Article VII, Section 2-257(b), *City of Ormond Beach Code of Ordinances*, the City is entitled to its costs of prosecuting the code violation in which a violation is found.

Thereupon, and in consideration thereof, it is

ORDERED AND ADJUDGED as follows:

A. Respondents violated of *City of Ormond Beach Land Development Code*, Chapter 2, Article III, Section 2-50(a)(9). Respondents shall pay a citation of one hundred dollars (\$100.00) and the city's costs of twenty-three and 56/100 dollars (\$23.56)

no later than March 27, 2023 . Respondents shall bring this violation into compliance no later than March 27, 2023 by removing the shipping containers from the property. **IF RESPONDENTS FAIL TO BRING THE PROPERTY INTO COMPLIANCE BY MARCH 27, 2023: 1) A FINE OF TWENTY-FIVE DOLLARS (\$25.00) PER DAY SHALL ACCRUE BEGINNING ON MARCH 28, 2023; AND 2) THE CITY WILL BE AUTHORIZED TO ENTER ONTO THE PROPERTY ON OR AFTER APRIL 10, 2023 TO REMOVE AND DISPOSE OF THE SHIPPING CONTAINERS WITH ALL COSTS THEREOF TO BE ASSESSED AGAINST THE RESPONDENTS. IN ADDITION, SHOULD THE CITY REMOVE AND DISPOSE OF THE PAVERS, THE CITY SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS ASSOCIATED WITH THE REMOVAL.**

B. It is the Respondents' responsibility to contact the City of Ormond Beach Neighborhood Improvement Division to schedule a re-inspection of the property to confirm compliance and the date thereof.

C. Failure to timely pay the fine and costs may result in a certified copy of this Order being recorded in the Public Records of Volusia County, Florida which if so recorded shall constitute a lien against the subject property and upon any other real or personal property owned by Respondents. Respondents shall be responsible for all charges incurred to record any lien, or satisfaction of lien, with the clerk of court.

ORDERED *nunc pro tunc* February 27, 2023.

DATED: March 1, 2023

BY: H. Pope Hamrick, Jr.
H. POPE HAMRICK, JR.
CITY OF ORMOND BEACH
SPECIAL MAGISTRATE

Copies to:

Ann-Margret Emery, Deputy City Attorney
Chris Mason, Neighborhood Improvement Manager
Respondent



EXHIBIT

097A

tabbles

09.02.2022 09:25



EXHIBIT

098A

tabbles

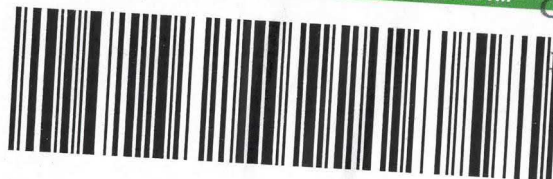
09.02.2022 09:25

Barbara Radcliffe
City of Ormond Beach/NID
170 W Granada Blvd
Ormond Beach, FL 32174

152107

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™



9214 8969 0099 9790 1646 5474 82

ORLANDO FL 328

3 MAR 2023 PM 2 L

Hasler

03/03/2023

US POSTAGE \$007.09



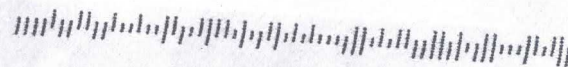
ZIP 32174
011E11680509

signed/received 3/8/23

3-6

Michael Henry & Katherine Henry
PO Box 333
Ormond Beach, FL 32175

32175-093333



23-112246

660

**BEFORE THE SPECIAL MAGISTRATE
OF THE
CITY OF ORMOND BEACH, FLORIDA**

**CITY OF ORMOND BEACH,
FLORIDA,**

Petitioner,

vs.

CASE NO.: 22-112247

LOCATION OF VIOLATION:
33 Cypress Circle.
Ormond Beach, FL
("the Property")

**MICHAEL HENRY and
KATHERINE HENRY,**

Respondents.

PARCEL NO.: 4223-02-06-0130

_____ /

ORDER FINDING VIOLATION

This cause having come on to be heard before the Special Magistrate of the City of Ormond Beach, Florida, February 27, 2023, and upon the evidence and sworn testimony presented the Special Magistrate makes the following findings of fact and conclusions of law:

1. The Special Magistrate has jurisdiction of the parties and the subject matter of this cause.
2. The City of Ormond Beach presented substantial evidence of violation of *City of Ormond Beach Land Development Code*, Chapter 1, Article II, Section

1-14(6)(a)(1): No land shall be cleared, excavated, or filled and no structure shall be erected, repaired, structurally altered without a permit. Respondents installed pavers over a significant portion of the subject property, altering the driveway structure and size, without a permit.

3. Respondent, Katherine Henry, appeared and testified at the hearing.

Respondent made the following legal arguments:

a. Respondents' constitutional property rights were violated under the State of Florida and U.S. Constitution. This argument was determined to be without merit.

b. The City of Ormond Beach has "cherry-picked" Respondents' property for citation without citing other property violations within the same area. This argument was determined to be without merit.

c. The application of general zoning law to Respondents' property does not substantially advance a legitimate state interest. This argument was determined to be without merit.

4. At the time of the hearing, the property was not in compliance. Photos of the pavers as of the date of the hearing are attached hereto as Exhibit A.

5. Upon finding a code violation, the Special Magistrate is authorized to impose a fine that does not exceed \$250 per day and may authorize a fine for each day the violation continues past the date specified in this Order for compliance. Fla. Stat.

Section 162.09 (2022). In addition, the Special Magistrate is authorized to issue an order having the force of law to command whatever steps are necessary to bring a violation into compliance. Fla. Stat. Section 162.08(5)(2022). Pursuant to Chapter 2, Article VII, Section 2-257(b), *City of Ormond Beach Code of Ordinances*, the City is entitled to its costs of prosecuting the code violation in which a violation is found.

Thereupon, and in consideration thereof, it is

ORDERED AND ADJUDGED as follows:

A. Respondents violated *City of Ormond Beach Land Development Code*, Chapter 1, Article II, Section 1-14(6)(a)(1). The citation of one hundred dollars (\$100.00) shall be waived. Respondents shall pay the city's costs of twenty-three and 56/100 dollars (\$23.56) no later than March 27, 2023. Respondents shall bring this violation into compliance no later than March 27, 2023 by either: 1) obtaining an approved permit for the pavers and pass a final inspection; or 2) removing the pavers from the property. **IF RESPONDENTS FAIL TO BRING THE PROPERTY INTO COMPLIANCE BY MARCH 27, 2023: 1) A FINE OF TWENTY-FIVE DOLLARS (\$25.00) PER DAY SHALL ACCRUE BEGINNING ON MARCH 28, 2023; AND 2) THE CITY WILL BE AUTHORIZED TO ENTER ONTO THE PROPERTY ON OR AFTER APRIL 10, 2023 TO REMOVE AND DISPOSE OF THE PAVERS WITH ALL COSTS THEREOF TO BE ASSESSED AGAINST THE RESPONDENTS. IN ADDITION, SHOULD THE CITY**

REMOVE AND DISPOSE OF THE PAVERS, THE CITY SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE OR LOSS ASSOCIATED WITH THE REMOVAL.

B. It is the Respondents' responsibility to contact the City of Ormond Beach Neighborhood Improvement Division to schedule a re-inspection of the property to confirm compliance and the date thereof.

C. Failure to timely pay the fine and costs may result in a certified copy of this Order being recorded in the Public Records of Volusia County, Florida which if so recorded shall constitute a lien against the subject property and upon any other real or personal property owned by Respondents. Respondents shall be responsible for all charges incurred to record any lien, or satisfaction of lien, with the clerk of court.

ORDERED *nunc pro tunc* February 27, 2023.

DATED: March 1, 2023

BY: H. Pope Hamrick, Jr.
H. POPE/HAMRICK, JR.
CITY OF ORMOND BEACH
SPECIAL MAGISTRATE

Copies to:
Ann-Margret Emery, Deputy City Attorney
Chris Mason, Neighborhood Improvement Manager
Respondents



EXHIBIT

104 A

tabbles

02.21.2023 13:54

tabbles®
EXHIBIT
105A



10.25.2022 13:22

Barbara Radcliffe
City of Ormond Beach/NID
170 W Granada Blvd
Ormond Beach, FL 32174

152107

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL™ ORLANDO FL 328



9214 8969 0099 9790 1646 5470 17

Hasler

03/03/2023

US POSTAGE \$007.09⁰



ZIP 32174
011E11680509

Received 3/8/23

3-6

Michael Henry & Katherine Henry
PO Box 333
Ormond Beach, FL 32175

22-112247 Order

32175-000000



BEFORE THE SPECIAL MAGISTRATE
OF THE
CITY OF ORMOND BEACH, FLORIDA

CITY OF ORMOND BEACH, FLORIDA
Petitioner,

CASE NOS: 22-112237
22-112246
22-112247

vs

MICHAEL and KATHERINE HENRY,
Respondents.

PARCEL NO: 4223-02-06-0130

RESPONDENT'S MOTION FOR RELIEF FROM ORDER & MOTION FOR STAY

COME NOW RESPONDENTS MICHAEL HENRY and KATHERINE HENRY [hereinafter, "Henrys"], appearing on their own behalf, and file this Motion, and in support thereof state:

JURISDICTION

1. On 2/27/23, this matter was before Special Magistrate Hamrick [hereinafter, "Magistrate"] after being set for an LDC violation hearing [hereinafter, "Hearing"] by Petitioner City of Ormond Beach, Florida [hereinafter, "OB"].
2. Magistrate issued an Order dated 3/1/23, which was sent out on 3/3/23, with service by Certified Mail completed on 3/8/23, thus the Order was rendered on 3/3/23, per Florida Rules of Court Procedure [hereinafter, "FRCP"] 9.020(h).
3. Henrys contemporaneously file and serve upon OB their Notice of Appeal pursuant to FRCP 9.110(c), well within the 30 days from rendition, as required by law and court rule.
4. This tribunal has jurisdiction to render Relief from its Order pursuant to FRCP 1.540(b)(4), and jurisdiction to issue a Stay under FRCP 9.190(e)(3). See also FRCP 9.600.

MOTION FOR RELIEF FROM ORDER

5. Per FRCP 1.540(b), Henrys may be relieved from the Order because it is void. Per Black's Law Dictionary, Eighth Edition, p 1604, "void" means "of no legal effect." The Order here is void as it was issued with no subject matter jurisdiction, and its terms deny

Henrys due process of law, as required by the US and Florida Constitutions. To allow such an order to stand would be the epitome of a miscarriage of justice.

6. At the hearing, the Magistrate stated the Henrys' legal arguments based on state law were "without merit" because she did not cite a direct example of case precedent for each point. However, all courts and administrative and judicial proceedings in this state are bound to follow all constitutional laws, regardless of whether case precedent can be found. Our state's statutes do not derive their authority from case precedent based thereon, but instead have their own intrinsic value. Case precedent is only valuable to help interpret how a particular law applies to a case if the law contains ambiguity, and is therefore needing judicial interpretation. After all, OB cited not a single case on point to support any of the statutes or ordinances they raised. And what's good for the goose is good for the gander. Further, "The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Ham v. Portfolio Recovery Assocs., LLC*, 308 So.3d 942, 946 (Fla. 2020).

SUBJECT MATTER JURISDICTION

7. Subject matter jurisdiction may be raised at any time (per FRCP 1.140(h)(2)), and is required in order for a judgment or order to have legal effect. See *Wheeler v. State*, 296 So.3d 895 (Fla. 2020). Nowhere in any relevant law is Magistrate given authority to grant OB authority to enter Henrys' property, remove Henrys' property, dispose of Henrys' property, charge Henrys for such removal, impose a lien for an amount including those removal charges, or absolve OB from liability for damages they cause in so doing.
8. OB Ordinance 2016-44 Section 5 states that "[u]nless another penalty is **expressly** provided," punishments may only include "a fine of not more than five hundred dollars (\$500.00) or . . . imprisonment not exceeding sixty (60) days, or both."¹ See *a/so*, FS 162.22. Indeed, if the Henrys had simply failed to appear at the Hearing, Magistrate only had the authority to impose a *fine*. OB Code of Ordinances [hereinafter, "CO"] 2-25(c); CO 2-256(c)(10) and (11); FS 162.21(3)(d)(10).

¹ Jail time does not apply here, though, as Land Development Code [hereinafter, "LDC"] violations may only be civil infractions per FS 162.21(5)(a).

9. Moreover, by definition, Magistrate only has “authority to hold hearings and assess fines” pursuant to CO 2-251 and FS 162.03(2). This limited jurisdiction is also reiterated expressly in CO 2-254(a). As Magistrate points out in his Orders, FS 162.08(5), and CO 2-254(a) allow him to “[i]ssue orders having the force of law to command whatever steps are necessary to bring a violation into compliance with city codes or ordinances.” Further, “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Ham v. Portfolio Recovery Assocs., LLC*, 308 So.3d 942, 946 (Fla. 2020). The word “command” is not defined in CO or LDC, thus we must turn to Webster’s New Collegiate Dictionary. LDC 1-21(b). According to Websters’ (last accessed 3/24/23), “command” means to “order” or “exercise a dominating influence over.” So, in it’s plain sense, Magistrate may order Henrys to pay fines or remove the pavers, etc from their property. But, that cannot legally be stretched to mean Magistrate may also provide OB with authority to take Henrys’ property. In fact, Magistrate recognizes he cannot “command” OB here, and instead implies he can “authorize” OB to act. (If Henry’s do not remove the fence, pavers and shipping containers, “THE CITY WILL BE AUTHORIZED TO ENTER ONTO THE PROPERTY . . . TO REMOVE AND DISPOSE OF” them, per Orders.) Authorizing is to allow or permit OB to do something, while commanding means they *must* do it. So, FS 162.08(5), and CO 2-254(a) allow Magistrate to order Henrys to pay fines or remove the pavers, etc, but NOT to authorize OB to go onto Henrys’ property or take it.
10. FS 162.09(1) and CO 2-258(a) allow for OB to make repairs, but *only* for a “serious threat to the public health, safety and welfare,” as identified in FS 162.06(4) and CO 2-255(e). Henrys’ fence, pavers and shipping containers are *not* such serious threats, nor has OB even alleged such.
11. Even then, only “repairs” are authorized to be made.² With Webster’s defining “repair” as fixing “what is torn or broken,” it makes sense for repairs to be limited to “serious threats to the public health, safety, and welfare” since dilapidated or compromised

² “Repair” is not defined in Florida statutes (i.e., 163.3164, etc.), Ormond Beach Code of Ordinances, Ormond Beach Land Development Code, or Black’s Law Dictionary.

structures might create such a serious threat. In fact, it is only for unsafe structures that OB has that authorization to enter a property. CO 8-4(3)(a). Moreover, Magistrate “shall issue an order affording the proper relief consistent with powers granted herein,” FS 162.07(4), and no powers are granted for Magistrate to authorize OB to “repair” anything on Henrys’ property.

12. Furthermore, there is no other lawful authority to take the Henrys’ fence, pavers, or shipping containers. Black’s Law Dictionary, Eighth Edition, p 1493, defines “taking” as “the act of seizing an article” or “the government’s actual or effective acquisition of private property either by ousting the owner or by destroying the property or by severely impairing its utility.” Here, the Orders meet both categories of a “taking.” Whether stopping us from using our own property or physically taking our property, each must be done under the strict requirements and procedures of the US and Florida Constitutions and state law. Physically taking the Henry’s pavers, fence and shipping containers without just compensation clearly violates US Const Am V and FL Const Art X Sec 6 (“No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.”) But even stopping us from using our own property must be done in a legal manner. For example, FS 553.83 and LDC 1-11 only allow municipalities to seek such injunctive relief relating to use of private property from a court of competent jurisdiction.
13. Procedures to take property are governed by Eminent Domain in Chapter 73 of the Florida Statutes, not Chapter 162. Further, the powers to take *real or personal* property (see FS 166.401(4)), are heavily restricted by Chapters 127, 163 and 166, per FS 730.13(4).³

³ For example, see FS 163.3161(10) “It is the intent of the Legislature that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, comprehensive plans and amendments thereto, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property or which would constitute an inordinate burden on

14. But more pointedly, FS 73.014 and 163.335(7) expressly prohibit taking property in ordinance violation situations, even for “nuisance, slum, or blight conditions,” as it is “not a valid public purpose or use for which private property may be taken” as required by the Florida Constitution. Furthermore, the alleged ordinance violations for the Henry’s pavers, fence and shipping containers don’t even come close to arising to the level of public concern that exists for public nuisances, slum or blight. Indeed, Henrys’ alleged violations (of simply not having a permit for their fence, pavers and shipping containers), qualify as NONE of the permissible purposes for which private property may be taken, such as drainage, streets, public parks, water & sewer lines, laying wires & conduits, or city buildings, pursuant to FS 166.411.
15. Even *if* the Orders purporting to give OB authorization to remove the pavers, etc., qualified as a “repair” under FS 162.09(1) or a taking for public use under FS 166.401, only the city commission is vested with authority to take action, *not* the Magistrate. (CO 2-258(a) stating that “*magistrate shall notify the city commission, which may authorize and make all reasonable repairs;*” FS 162.09(1) stating that *Magistrate “shall notify the local governing body, which may make all reasonable repairs;*” FS 166.401(3) stating “the local governing body of a municipality may not exercise its power of eminent domain **unless the governing body adopts a resolution authorizing** the acquisition of a property, real or personal.”) While those provisions indicate the authority of the city commission to make *repairs* or file petitions for eminent domain, likewise, only circuit court judges have subject matter jurisdiction to authorize a city to *take* property. See FS 73.021 and LDC 1-11, as opposed to the limited jurisdiction of Magistrate to “hold hearings and assess fines” pursuant to CO 2-251, FS 162.03(2) and CO 2-254(a).
16. Moreover, no subject matter jurisdiction exists to authorize a literal taking of private property without just compensation, per US Const Am V and FL Const Art X Sec 6. Specifically, payment must be made to Henrys before OB takes possession of their

property rights as those terms are defined in s. 70.001(3)(e) and (f). Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law.”

private property. FS 73.071, 73.015, 73.081. OB is also required to pay Henrys' attorneys fees per FS 73.091. Most importantly, if OB doesn't pay Henrys in full within 20 days of rendition of a judgment granting eminent domain authority, "the proceedings shall be null and void." FS 73.111.

17. Magistrate also holds no subject matter jurisdiction to order removal of Henrys' shipping containers, as they are legally required to remain on Henrys' property. The Order asserts Henrys' shipping containers constitute a garage, as defined by LDC 2-50(dd)(3)(a), and "must meet the regulations pertaining to a garage." First, LDC 2-50(o) *requires* all residential properties, like Henrys' homestead, to have a garage. Regardless of when or how the garage was built or placed on the property, Henrys' are bound to leave it on the property "unless an additional garage or carport is constructed or presently exists on the subject property."
18. Second, "the regulations pertaining to a garage" from a state law perspective are comprised of standards primarily for "public health and lifesafety" and "protection of property" (FS 553.72(1)) "relative to structural, mechanical, electrical, plumbing, energy, and gas systems" (FS 553.73(2)), and standards for building design elements (See FS 163.3202(5)). The only violation regarding the shipping containers that Magistrate found was that a permit had not been obtained prior to them being placed on Henrys' property. However, the Henry's long-standing communication with OB clearly demonstrated that OB would never issue Henrys a permit for the shipping containers. Indeed, testimony by Janet Bruce and Sarah Cushing included claims that the shipping containers were "not capable of receiving a permit." Specifically, without quoting any portion of the code or state law, Sarah Cushing said the Florida Building Code [hereinafter, "FBC"] does not regulate shipping containers, therefore, they are not able to be permitted. While it is dumbfounding in our constitutional republic to claim that we could *not have* something because it was *not regulated* by the government, the law actually does address this point. In FS 553.79(20)(a), the FBC mandates that for "structures moved into or within a county or municipality [that] do not or cannot comply with the code . . . such buildings or

structures shall not be required to be brought into compliance with the building code." As the shipping containers fit the definition of such structures as defined there, they cannot be required to be brought into compliance with code portions regulating their "construction, erection, alteration, modification, [or] repair." (See FS 553.72(1) and 553.73(1).) That only leaves standards for building design elements. However, "Land development regulations relating to building design elements may not be applied to a single family or two family dwelling," which includes "the location or orientation of the garage." FS 163.3202(5)(b)(1). Also, although local governments may make amendments to FBC, "such additional requirements may not introduce a new subject not addressed in the Florida Building Code." FS 553.73(4)(b)(3). Thus, as Ormond Beach building official Sarah Cushing testified that the "Florida Building Code does not regulate shipping containers," OB is statutorily prohibited from regulating them. Further, Sarah Cushing testified the shipping containers are not tested for wind-borne-debris-impact standards; however, "storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code." FS 553.73(10)(h). Consequently, the order purports to authorize taking the shipping containers for the Henrys' failure to receive a permit for which OB illegally required *and* illegally withheld.

19. Magistrate also holds no subject matter jurisdiction to order removal of Henrys' pavers, as they are legally required to remain on the Henrys' property. Per LDC 2-50(x)(4), there "shall be no parking of vehicles . . . in the front yard of any residential property" except on "asphalt, bituminous brick, concrete, turf block, brick pavers or pervious concrete." Indeed, "driveways" are "paved areas" of "asphaltic concrete, concrete, brick or similar material." LDC 1-22 "driveway" and "paved area". Parking on grass, stone gravel or mulch is prohibited. In fact, without these paved "off-street parking requirements," Henrys' home would be a "noncomplying structure or site" per LDC 1-22. As the Henrys own four vehicles, with one parked on the south driveway, one parked on the north

driveway, and one parked on each of the two driveway extensions, removing Henrys' pavers would mean their vehicles would be parked on the grass/sand/weeds, making it a "noncompliant structure." Magistrate lacks authority to force the Henrys into noncompliance.

20. Further, Magistrate lacks subject matter jurisdiction to prevent the Henrys' use of or to authorize OB's removal of Henrys' pavers under state law. The pavers, undisputed as fitting the definition of "Florida-friendly landscaping," serve "a compelling public interest" "to conserve or protect the state's water resources," per FS 166.048 and 720.3075. As such, the LDC "may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land." FS 166.048. Thus, there is no jurisdiction to enforce such a provision, especially with the Henrys' beachside property, which only sustains weeds and sand, having no extensive irrigation system that would be needed to sustain grass.
21. Likewise, Magistrate lacks subject matter jurisdiction to authorize OB to remove the Henrys' fence. In addition to other numerous constitutional and statutory provisions, FL Const Art I Sec 23 guarantees the Henrys' "right of privacy." Consistent with that privacy, FS 810.115 clearly states that "whoever causes to be broken down, marred, injured, defaced, or cut any fence belonging to or enclosing land not his or her own, commits a misdemeanor in the first degree." Thus, being an explicit violation of state criminal law, Magistrate cannot create authorization for OB to remove the Henrys' fence.
22. Likewise, Magistrates has no subject matter jurisdiction to authorize OB to enter onto Henrys' property, remove any of Henrys' property, dispose of any of Henrys' property or absolve OB from liability for damages or loss sustained by us in OB doing such. Not only would such actions by OB violate US Const Am IV and FL Const Art I Sec 12 protections against searches and seizures without warrants, it would also directly violate a right of privacy guaranteed under FL Const Art I Sec 23. Furthermore, it constitutes unlawful entry under FS 82.01, 82.03(1), 810.08, and 810.12; burglary in dwelling curtilage under FS 810.015, 810.02, and 810.011; criminal and civil trespass under FS 810.08 et al,

felony theft under FS 812.014 et al, obstructing justice (taking private property under color of law) under FS 843.0855. Thus, the provisions of the orders purporting to allow OB to enter Henrys' property, remove Henrys' property, dispose of Henrys' property, and absolve OB from damage or loss to us by doing such, must be removed as legally void.

23. In addition to the foregoing reasons, Magistrate also lacks authorization to provide criminal and civil immunity here. It is only in relation to unsafe structure abatement or nuisances that OB has attempted to provide itself with immunity from civil or criminal prosecution. CO 8-4(3)(a) and 14-100. Even so, that purported immunity is provided directly by the city commission, not authority stemming from the Magistrate.

ULTRA VIRES ACTS DEPRIVED HENRY'S OF DUE PROCESS

24. The Orders are void as stemming from ultra vires acts depriving the Henrys of constitutionally and statutorily required due process.
25. On 10/19/22, OB served Henrys with written Notices of Violation for the pavers, fence and shipping containers. On 11/8/22, Henrys served OB with a response, containing a Notice to Cease & Desist and a Notice of Proposed Litigation under FS 70.45. Under FS 70.45, upon receiving the written notice, OB "shall review the notice of claim and respond in writing to the property owner by identifying the basis for the exaction and explaining why the governmental entity maintains that the exaction is proportionate to the harm created by the proposed use of real property, or by proposing to remove all or a portion of the exaction." To-date, OB has failed to comply with this statutory requirement, instead moving forward with the exaction. OB served the Henrys with Notice of the Hearing, which took place 2/27/23. At the onset of the Hearing, the Henrys moved for dismissal, among other reasons, because of OB's failure to comply with FS 70.45. OB simply stated FS 70.45 didn't apply, and that the Henrys were supposed to have filed a claim under FS 70.45 in circuit court to have those issues addressed. Without providing legal reasoning, Magistrate denied Henrys' motion for dismissal.
26. Chapter 70 of Florida Statutes is entitled "Relief from Burdens on Real Property Rights" - *relief from burdens not compensation after exactions*. The provisions of this chapter are

designed to STOP the city from burdening private property rights. OB argued that meant the Henrys were required to file a case in circuit court under FS 70.45 *prior* to the 2/27/23 Hearing if they wanted that relief. However, OB first took their official action in burdening the Henrys' property rights in serving the Henrys with the Notices of Violation on 10/19/22, to which Henrys promptly supplied the FS 70.45 Notice by 11/8/22. Under FS 70.45(3), the Henrys were required to serve the notice no later than 180 days after imposition of the prohibited exaction, but must then wait at least 90 days from that point before filing an action in circuit court (presumably meaning the city has 90 days to respond to the notice). Ninety days from 11/8/22 is 2/6/23. However, by that point, OB had already served Henrys with the Notice of the Hearing. In fact, OB had attempted to hold the hearing without the proper and legally required notice a month earlier, on 1/23/23. Indeed, although Henrys were not legally served until several weeks later, OB provided documents showing they had already been scheduling the matter for special magistrate hearing by December 2022. Thus, OB not only illegally failed to respond under FS 70.45, but *commenced the special magistrate proceedings against the Henrys several weeks before Henrys were even able to file a suit under FS 70.45*. Since FS 70.45 accounts for "damages" which include not only financial compensation but also "the right to injunctive relief," it is absurd for OB to manipulate the laws involved so as to prevent Henrys from seeking relief from the circuit court *before* the 2/27/23 Hearing, but also preclude Henrys from receiving injunctive relief at the 2/27/23 Hearing.

27. In other words, OB cannot properly initiate special magistrate proceedings during the 90 days they are statutorily required to respond under FS 70.45. And because OB did such, which ultimately resulted in the Hearing being held on 2/27/23, Magistrate lacked subject matter jurisdiction to hold the hearing then, and was required to dismiss or postpone said hearing. If Henrys' 90 days of waiting had expired with no special magistrate hearings scheduled yet, and Henrys, after a reasonable time, had sat on their rights and failed to pursue the FS 70.45 litigation, the magistrate hearings could have *then* been scheduled. But holding otherwise, Magistrate rewarded OB's ultra vires acts

violating the Henrys' due process rights, depriving them of the preventive injunctive relief found in FS 70.45. Now, Henrys are overburdened with commencing the 70.45 litigation *while* appealing these Orders - which contain provisions for OB to unconstitutionally and literally *take* the Henrys' property, the *clearest example of where relief from burdens on real property rights is needed*. (Fittingly, Webster's defines "relief" as "a removal or lightening of something oppressive, painful, or distressing.")

28. Denial of due process may void an otherwise permissible court order. The Florida Supreme Court "has explained that the essence of due process is that fair notice and a reasonable opportunity to be heard must be given to interested parties before judgment is rendered." *Jennings v. State*, 265 So.3d 460 (Fla. 2018), citing *Scull v. State*, 569 So.2d 1251, 1252 (Fla. 1990); and *Huff v. State*, 622 So.2d 982, 983 (Fla. 1993). (Cleaned up). Despite the Henrys' communication via phone and email with OB regarding the pavers, fence and shipping containers going back to 9/2/22, the Henrys received absolutely *no* notice, and an extremely inadequate opportunity to be heard, on the portions of the Orders purporting to authorize OB to enter onto their property, remove their property, dispose of their property, charge them for such removal, use such charges to create a lien against their real and personal property, and be immune from liability for damage or loss sustained by the Henrys from OB's said removal. Aside from all of the aforementioned legal procedures that OB failed to follow, **NONE** of the documents served on Henrys (either by certified mail, USPS, or email) even referenced the entering, removing, disposing, charging, charges creating liens, or immunity from liability for OB. **NOT ONE**. In fact, in looking at the Notices of Hearing and Code Enforcement Citations, submitted into evidence over Henrys' objections, the **ONLY** potential penalty mentioned is that of a fine - even if the Henrys failed to appear.

29. Shockingly, the **FIRST** time the Henrys were notified of these provisions being sought by OB was when Janet Bruce handed the Henrys several large stacks of pages at 9:58AM, only two minutes before the 10AM Hearing (despite Henrys arrival 30 minutes early, and the fact these documents would have been ready for the Hearing a month prior as

originally scheduled). Certainly, when a city seeks to take someone's private property, proper notice must be given so that person "may file his or her written defenses to the petition, *as a matter of right.*" FS 73.051. Indeed, in order to take private property, OB *must* not only provide notice of the intended taking, but must do so "prelitigation." FS 73.0511. Moreover, such prelitigation notice must not only provide basic details on the intent to take the private property, but must specifically "notify the fee owners of statutory rights under s. 73.091." FS 73.0511. Further, this notice is required to be provided by *personal* service under FS 73.031, whereas OB struggled to comply with the less stringent requirements of ordinance violation hearings of service by certified mail, etc. (as described in prior filings). Given notice and opportunity to be heard are hallmarks of constitutionally guaranteed due process, and create grounds for *per se* reversible error rules (see *Mills v State*, 620 So.2d 1006 (Fla. 1993)), such blatant failure to provide notice *and* reasonable opportunity to be heard by itself creates reason why such portions of the Orders are void.

30. Additional due process violations occurred in OB's ultra vires acts regarding pre-filing negotiations. OB is statutorily required to participate in good-faith negotiations *meeting specified statutory requirements before* filing an action in court to take Henrys' property, including providing an offer to pay the Henrys, even "where less than the entire property is sought." FS 73.015(1).
31. Likewise, in filing the action, OB *must* file a *petition for eminent domain* in circuit court, per FS 73.021(1), which OB failed to do in substance and form. In said petition, OB *must* identify 1) the authority under which the property is to be taken, 2) the public use or purpose for which the property is to be taken, and 3) that the property is necessary for that public use or purpose. Clearly, OB's attempt to take the Henry's pavers, fence and shipping containers through a special magistrate hearing, which fails to meet *any* of these statutory requirements, is ultra vires action resulting in severe due process deprivation for the Henrys. Consequently, all parts of the Orders relating to the *taking* of

the Henry's property (the entering, removing, disposing, charging, charges creating liens, or immunity from liability for OB) are void.

32. Additionally, any writ or order imposing fines or purporting to authorize OB to take action on the Henrys' property, *must* be *subsequent* to, and distinct from, the initial order commanding the Henrys to take action. FS 162.07(4) states that orders issued at the conclusion of the special magistrate hearings "may include **a notice that** it must be complied with by a specified date **and that** a fine may be imposed and, *under the conditions specified in s. 162.09(1)*, the cost of repairs may be included along with the fine if the order is not complied with by said date." Indeed, FS 162.09(1) and CO 2-258(a) provide that "upon notification by the code inspector that an [already existing] order of the [Magistrate] has not been complied with," the Magistrate "may order the violator to pay a fine," and shall notify the city commission regarding the need to make repairs. That is why FS 162.08 allows Magistrate "to command" the Henrys to take necessary steps, but does *not* yet allow for fines or repairs to be ordered. FS 73.121 provides that the judge may grant writs of possession if the defendant is still in possession *after* the judgment has been rendered for, and compensation has been paid by, the city. Likewise, under FRCP 1.570(b), (c) and (e), the taking of property must be done in a subsequent proceeding. Thus, the portions of these initial Orders that purport to authorize the charging of fees or for OB to take action on Henrys property are void.
33. Lastly, buried in OB's codes is the provision that OB's burden of proof at ordinance violation hearings is merely by a preponderance of the evidence. Such a low standard is hardly acceptable to use when OB is attempting to literally *take* private property. As such, Orders based on such deficient proof standards are void on their face.

MOTION FOR STAY PENDING APPEAL

34. Per FRCP 9.190(e)(3), Henrys may request Magistrate to enter an order to stay the Orders discussed herein. For all of the aforementioned reasons, the fees Henrys are ordered to pay are void. At the very least, this means the charging of said fees must be stayed pending appeal, as the interests of justice require. Likewise, all parts of the

Orders relating to the taking of the Henry's property (the entering, removing, disposing, charging, charges creating liens, or immunity from liability for OB) are void. Thus, the interests of justice require at the very least that such portions be stayed pending appeal. If the fees and takings portions are *all* removed from the Orders pursuant to the aforementioned Motion for Relief from the Orders, the request for a stay regarding such would no longer be needed. However, in that event, the Henrys still ask the court to stay the remaining portions of the Orders (the commands on Henrys to remove the shipping containers, and to either remove the fence and pavers or obtain permits for such (which legally cannot be done, as outlined in the Henry's prior filings)).

35. To avoid being unduly cumulative, Henrys refer to their prior filings for the description of why they cannot legally obtain permits for the fence and pavers. So, just to summarize, Henrys cannot apply for permits because their property does not currently meet all LDC regulations, such as having a garage. Sarah Cushing testified that OB "wouldn't enforce" that part of the LDC on the Henrys, but her statement regarding such cherry-picking doesn't guarantee to the Henrys OB would actually and intentionally ignore such requirements when determining whether to process an application for a permit (of any kind). Furthermore, according to the LDC, no permit can be issued without 1) a full variance approved regarding a garage, 2) a development order, 3) engineer/architect final site plan being approved, 4) a recent survey of the lot *specifically certified to the city*, and 5) an application that includes incredibly overburdensome requirements, as listed on page 4 of Henrys' February 2022 Response.
36. Additionally, Janet Bruce testified that OB would require the Henrys to pull up their pavers to "check to see if they were installed properly," which is not permissible under the law (nor was any alleged legal justification or authorization even offered by OB for requiring such).
37. Janet Bruce also testified that the Henrys' fence would not be permitted as it stands because it does not meet aesthetic requirements. In other words, 3 small lateral posts run across the fence panels that face the backyards of the neighbors to the north, south,

and west. However, at the front of the property, the fence panels themselves face the road, with the 3 small lateral posts on the inside of the fence. Janet Bruce testified that this does not meet the aesthetic requirements of the LDC, and the Henrys would, therefore, be required to tear down the vast majority of their fence before a permit would be issued. We must keep in mind, however, that this is a matter of subjective aesthetics only, and that nothing would prohibit the neighbors to the south and west from putting up their own fences. Indeed, the neighbor to the north already has their own privacy fence (installed without a permit, and now in bad repair since Hurricane Ian). Moreover, "Land development regulations relating to building design elements may not be applied to a single family or two family dwelling," which includes "the location or architectural styling of windows or doors." FS 163.3202(5)(b)(1). The Henrys' fence is constructed entirely of solid wood doors, as demonstrated by Exhibit A of the Orders. Thus, OB *cannot* regulate the location or architectural styling of the Henrys' solid wood door fence.

38. Further, Janet Bruce testified that OB may refuse to issue a permit for the fence and pavers if, in the sole discretion of the code inspector, they do not have enough aesthetic value - or simply put, they just don't like how they look. Considering the attitude OB has expressed toward the Henrys thus far, and the extent of the ultra vires acts, OB is most likely to disqualify Henrys' fence and pavers on this basis alone, if for none other.
39. As described in detail above, removing the Henrys' pavers and shipping containers would actually put them in violation of that very LDC regarding parking (LDC 2-50(x)(4)), outdoor personal storage (CO 14-94 through 14-96, and LDC 2-50(x)(1)), and needing a garage (LDC 2-50(o)).
40. Removing the Henrys' fence and pavers would irreparably harm them and compromise their structural integrity. Then, should Henrys prevail on appeal, Henrys would not be able to simply put them back.
41. The Henrys spent thousands of hours bringing the pavers and fence materials home, preparing them for installation, and installing them. It would literally take the Henrys an entire year or more to reinstall them after winning on appeal. That's precious time they

could not get back to spend with their kids once they prevail on appeal. Moreover, the Henrys literally put blood, sweat and tears into the pavers and fence, and should not, in the interests of justice, be required to triple that effort and endure that physical pain again until all appeals are exhausted.

42. The Henrys have no other property in Florida, with no family nearby, and thus have no place to even temporarily put their shipping containers, other than their own homestead. This would force the Henrys to rent land for this purpose, which would cost thousands of dollars, and is not something the Henrys have the ability to do. Furthermore, the actual moving of the shipping containers is quite expensive, and estimates put it in the thousands, too, which the Henrys simply cannot come up with, certainly not on short order. (The delivery was included with their purchase of these new shipping containers.) Also, moving the shipping containers requires special equipment, and they are likely to be damaged in moving them, especially if someone attempts to move them with insufficient equipment.
43. Removing the fence will cause irreparable harm by destroying the Henrys' right to privacy, especially considering the neighbor living to our West who admitted in her testimony to continuously watching and taking stacks of pictures of the Henry family. Indeed, FS 163.3177(6)(i)(1)(3) requires OB to respect "constitutionally protected private property rights," including "the right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property."
44. Removing the shipping containers will irreparably harm all of the personal property around and in them (as it is properly secured for storage, but not for transport). Depending on when or how the shipping containers would be moved, either the Henrys' personal property would still be inside unsecured for transport, or sitting outside in the elements getting destroyed. This includes Katherine Henry's wedding dress and momentos, family heirlooms, paper records, medical equipment, tools, and more.
45. Removing the fence, pavers and shipping containers will inevitably harm the real and personal property constituting the Henrys' homestead, as indicated by the Orders'

provisions attempting to shield OB from liability in causing such harm. But in addition to OB's expectations and the Magistrate's that OB would inevitably cause harm to the Henrys' homestead by removing their fence, pavers and shipping containers, even the state legislature foresaw that kind of damage being made to the residual property when a taking like this happens. As such, FS 73.015, 73.071 and 73.081 all account for the money OB would be required to pay the Henrys for damages to the remaining property caused by the taking of the fence, pavers and shipping containers. However, under the current Orders, OB is purportedly allowed to cause such damage without making such reparations.

46. Furthermore, the state legislature understood the urgency of such matters, as identified in FS 73.071(1). Consequently, the Henrys urge the Magistrate to issue the Relief from Orders and Stay Pending Appeal immediately.

CONCLUSION AND PRAYER FOR RELIEF

47. Magistrate issued Orders following the 2/27/23 Hearing that violate many statutory and constitutional provisions. The Henrys will be irreparably harmed by such void Orders being enforced. Thus, Henrys respectfully requests Magistrate to issue an order:

- a. Providing the Henrys complete relief from the 3 current Orders on the basis of being legally void.
- b. In the alternative, granting the Henrys at least partial relief from the Orders on the basis of being legally void, along with providing for a Stay of enforcement of the Orders for the remaining parts, pending the Henrys' appeal of said remaining portions.
- c. In the alternative, granting the Henrys a Stay on all portions of the Orders pending their appeal of said Orders.

Respectfully Submitted: March 24, 2023

/s/ Katherine & Michael Henry
Respondents, Pro Se

I certify that the foregoing document has been furnished to Ann Margret Emery, Deputy City Attorney and Chris Mason, Neighborhood Improvement Division Manager by email today.

/s/ Katherine Henry

Attorney Admitted in the United States Supreme Court and four Additional Jurisdictions

FILING OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry



Cases/OB x

Kat...

[View Katherine's Profile](#)

Fri, Mar 24, 9:30 PM (9 days ago)



to Barbara ▾



Opens: 7



[Save email as template](#)

Greetings! Attached for filing, please find the following documents for Case Nos 22-112237 -112246 and -112247, encaptioned Ormond Beach v Michael and Katherine Henry, held in front of the Special Magistrate (with the appeal & additional claims being heard in the Circuit Court, with no file number yet):

1. Notice of Appeal
2. Notice of Joinder
3. Acknowledgment of Clerk Preparations of Civil Cover Sheet
4. Motion for Relief from Order
5. Motion for Stay Pending Appeal
6. Certificates of Service for each

Also, per FRCP 2.525(c)(4), any document in paper form submitted to the magistrate's clerk was required to be immediately converted into an electronic document. The City submitted several documents in paper form at the 2/27/23 Hearing. Also, per FRCP 9.190(c)(4), the Respondent is required to prepare the record for appeal. Therefore, **please consider this my official request to receive the full electronic copies of all documents submitted by the city during the 2/27/23 Hearing, in the form required by FRCP 2.525(c)(4).**

Unlike prior filings which received no response, please confirm receipt of this email.

Thank you, and have a wonderful weekend!

Katherine Henry

Constitutional Attorney, Educator & Advocate

616-303-0033

from: **Katherine Henry**

<Katherine@restorefreedomkh.com>

to: "Radcliffe, Barbara"

<Barbara.Radcliffe@ormondbeach.org>

date: Mar 24, 2023, 9:30 PM

subject: FILING OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry

Email Filing with H. Pope Hamrick, Special Magistrate (Courtesy Judge's copy)

 **phamrickjr@cfl.rr.com** opened email **FILING OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry SM**  

March 25

 5 opens

[Call](#) [Email](#) [Create Task](#) [More ▾](#)

- opened email **FILING OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry SM**
Mar 25 at 2:50 PM 
- opened email **FILING OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry SM**
Mar 25 at 2:26 PM 
- opened email **FILING OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry SM**
Mar 25 at 1:54 PM 
- opened email **FILING OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry SM**
Mar 25 at 10:57 AM 
- opened email **FILING OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry SM**
Mar 25 at 9:50 AM 
- was sent email **FILING OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry SM**
Mar 24 at 9:30 PM

Email Service on Ann Margaret Emery, Deputy City Attorney

 **undefined undefined** opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry AME**

March 27

 4 opens

- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry AME**
Mar 27 at 12:24 PM 
- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry AME**
Mar 27 at 11:17 AM 
- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry AME**
Mar 27 at 10:58 AM 
- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry AME**
Mar 27 at 10:34 AM 
- was sent email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry AME**
Mar 24 at 9:30 PM

Email service on Chris Mason, Neighborhood Improvement Division Manager



undefined undefined opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

March 31

▼ 14 opens

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 31 at 3:22 PM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 28 at 2:48 PM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 27 at 3:57 PM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 27 at 1:58 PM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 27 at 1:23 PM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 27 at 1:17 PM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 27 at 12:22 PM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 27 at 12:02 PM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 27 at 11:29 AM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 27 at 11:15 AM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 27 at 11:11 AM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 27 at 11:08 AM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 25 at 11:13 AM

opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 24 at 9:34 PM

was sent email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry CM**

Mar 24 at 9:30 PM

Email Service on Janet Bruce, Neighborhood Improvement Division Code Inspector



undefined undefined opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry JB**

March 28

▼ 8 opens + other activity

- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry JB**
Mar 28 at 2:48 PM
- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry JB**
Mar 27 at 10:17 AM
- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry JB**
Mar 27 at 8:40 AM
- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry JB**
Mar 27 at 8:36 AM
- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry JB**
Mar 27 at 8:17 AM
- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry JB**
Mar 27 at 8:09 AM
- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry JB**
Mar 27 at 8:06 AM
- opened email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry JB**
Mar 24 at 9:34 PM
- was sent email **SERVICE OF COURT DOCUMENT, 22-112237 -112246 and -112247, Ormond Beach v Michael and Katherine Henry JB**
Mar 24 at 9:30 PM

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

MICHAEL and KATHERINE HENRY,
Respondents/Appellants,

CIRCUIT CASE NO: 2023-30711 CICI

vs

CITY OF ORMOND BEACH, FLORIDA
Petitioner/Appellee.

Lower Court CASE NOS: 22-112237
22-112246
22-112247

APPELLANTS' EMERGENCY MOTION FOR RELIEF FROM ORDER & MOTION FOR STAY

COME NOW APPELLANTS MICHAEL HENRY and KATHERINE HENRY [hereinafter, "Henrys"], appearing on their own behalf, and file this EMERGENCY Motion, and in support thereof state:

Henrys seek emergency relief from special magistrate ordinance violation orders that **purport to authorize Ormond Beach beginning on 4/10/23 to enter onto the Henrys' homestead, remove their property, dispose of their property, charge them for such removal, use such charges to create a lien against their real and personal property, and be immune from liability for damage or loss sustained by the Henrys from Ormond Beach's said removal.** Here, Henrys articulate how *imminent, vast and irreparable the damage to their property and rights* will be if this emergency relief is not granted. The underlying orders not only lack subject matter jurisdiction, but also *completely* deprive the Henrys of due process of law. While the laws broken by the Magistrate and Ormond Beach are many in number, the issue is actually quite simple - Ormond Beach is expressly prohibited by the US and Florida Constitutions, and state law, from **literally taking and destroying portions of the Henrys' homestead!**

JURISDICTION

1. On 2/27/23, this matter was before Special Magistrate Hamrick [hereinafter, "Magistrate"] after being set for an LDC violation hearing [hereinafter, "Hearing"] by Appellee City of Ormond Beach, Florida [hereinafter, "OB"].

2. Magistrate signed an Order on 3/1/23, which was filed and sent out on 3/3/23, with service by Certified Mail completed on 3/8/23, thus the Order was rendered on 3/3/23, per Florida Rules of Court Procedure [hereinafter, "FRCP"] 9.020(h). (Exhibit 5).
3. On 3/24/23, Henrys filed (with the circuit court and the lower tribunal) and served upon OB their Notice of Appeal pursuant to FRCP 9.110(c), well within the 30 days from rendition, as required by law and court rule.
4. The lower tribunal (Magistrate) has jurisdiction to render Relief from its Order pursuant to FRCP 1.540(b)(4), and jurisdiction to issue a Stay under FRCP 9.190(e)(3). See also FRCP 9.600. Thus, on 3/24/23, Henrys also filed with the Magistrate (and served on OB) their Motion for Relief from Order and Motion for Stay Pending Appeal. (Exhibit 6.)
5. In Henrys' prior lower tribunal filings, both the lower tribunal and Appellee have failed to respond or even acknowledge Henrys' pleadings in any way, despite being expressly requested by Henrys for the lower tribunal and Appellee to do so (especially since there is no established court filing system for the tribunal). Likewise, on 3/24/23, Henrys expressly requested both the lower tribunal and Appellee to acknowledge receipt of the pleadings being filed/served. (See Exhibit 7.) Despite each of the 5 recipients (clerk, Magistrate, Deputy City Attorney, Neighborhood Improvement Division Manager, and Neighborhood Improvement Division Code Inspector) opening the email on 3/24/23 (see exhibit 7), for a total of 38 times between then and 4/2/23, NONE responded to the email, or acknowledged receipt of the pleadings.
6. Per FRCP 2.215(f), the Magistrate "has a duty to rule upon and announce an order or judgment on every matter submitted to that judge within a reasonable time." Further, Magistrate's unlawful Order purports to commence daily fees against the Henrys on 3/27/23, and **purports to authorize OB beginning on 4/10/23 to enter onto the Henrys' property, remove their property, dispose of their property, charge them for such removal, use such charges to create a lien against their real and personal property, and be immune from liability for damage or loss sustained by the Henrys from OB's said removal.** Henrys' Motions for Relief from Order and for Stay Pending

Appeal clearly articulated how ***imminent, vast and irreparable the damage to their property and rights*** would be if any of these portions went into effect. Henrys also explained how these portions of the Orders are void as being in direct conflict with several portions of the US and Florida Constitutions, state laws, and OB codes (as shown later in this filing). However, to-date Magistrate has failed to rule upon or announce an order on this very matter submitted to him. The unlawful fees have already started accruing, and if the Henrys wait any longer for the Magistrate to issue an order on these motions, they will be left with no time for the circuit court to intervene to stop the imminent, vast and irreparable damage to their property and their rights.

7. The circuit court has jurisdiction over this requested relief per FRCP 9.300(c) and 9.310(f), and pursuant to the supervisory authority the circuit court has over lower tribunal proceedings in matters expressly protected by the US and Florida Constitutions. Indeed, the committee notes to FRCP 9.310(f) state that “[a]lthough the normal and preferred procedure is for the parties to seek the stay in the lower court, this rule is not intended to limit the constitutional power of the court to issue stay orders after its jurisdiction has been invoked.” And jurisdiction of this court has been invoked per FRCP 9.110(b) as of 3/24/23 “by filing a notice, accompanied by any filing fees.”

MOTION FOR RELIEF FROM ORDER

8. Per FRCP 1.540(b), Henrys may be relieved from the Orders because they are void. Per Black’s Law Dictionary, Eighth Edition, p 1604, “void” means “of no legal effect.” The Orders here are void as they were issued with no subject matter jurisdiction, and their terms deny Henrys due process of law, as required by the US and Florida Constitutions. To allow such an order to stand would be the epitome of a miscarriage of justice.
9. At the hearing, the Magistrate stated the Henrys’ legal arguments based on state law were “without merit” because she did not cite a direct example of case precedent for each point. However, all courts and administrative and judicial proceedings in this state are bound to follow all constitutional laws, regardless of whether case precedent can be found. Our state’s statutes do not derive their authority from case precedent based

thereon, but instead have their own intrinsic value. Case precedent is only valuable to help interpret how a particular law applies to a case if the law contains ambiguity, and is therefore needing judicial interpretation. After all, OB cited not a single case on point to support any of the statutes or ordinances they raised. And what's good for the goose is good for the gander. Further, "The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Ham v. Portfolio Recovery Assocs., LLC*, 308 So.3d 942, 946 (Fla. 2020).

SUBJECT MATTER JURISDICTION

10. Subject matter jurisdiction may be raised at any time (per FRCP 1.140(h)(2)), and is required in order for a judgment or order to have legal effect. See *Wheeler v. State*, 296 So.3d 895 (Fla. 2020). Nowhere in any relevant law is Magistrate given authority to grant OB authority to enter Henrys' property, remove Henrys' property, dispose of Henrys' property, charge Henrys for such removal, impose a lien for an amount including those removal charges, or absolve OB from liability for damages they cause in so doing.
11. OB Ordinance 2016-44 Section 5 states that "[u]nless another penalty is **expressly** provided," punishments may only include "a fine of not more than five hundred dollars (\$500.00) or . . . imprisonment not exceeding sixty (60) days, or both."¹ See *also*, FS 162.22. Indeed, if the Henrys had simply failed to appear at the Hearing, Magistrate only had the authority to impose a *fine*. OB Code of Ordinances [hereinafter, "CO"] 2-25(c); CO 2-256(c)(10) and (11); FS 162.21(3)(d)(10).
12. Moreover, by definition, Magistrate only has "authority to hold hearings and assess fines" pursuant to CO 2-251 and FS 162.03(2). This limited jurisdiction is also reiterated expressly in CO 2-254(a). As Magistrate points out in his Orders, FS 162.08(5), and CO 2-254(a) allow him to "[i]ssue orders having the force of law to command whatever steps are necessary to bring a violation into compliance with city codes or ordinances." Further, "The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means." *Ham v. Portfolio Recovery Assocs.,*

¹ Jail time does not apply here, though, as Land Development Code [hereinafter, "LDC"] violations may only be civil infractions per FS 162.21(5)(a).

LLC, 308 So.3d 942, 946 (Fla. 2020). The word “command” is not defined in CO or LDC, thus we must turn to Webster’s New Collegiate Dictionary, per LDC 1-21(b). According to Webster’s (last accessed 3/24/23), “command” means to “order” or “exercise a dominating influence over.” So, in its plain sense, Magistrate may order Henrys to pay fines or remove the pavers, etc from their property. But, that cannot legally be stretched to mean Magistrate may also provide OB with authority to take Henrys’ property. In fact, Magistrate recognizes he cannot “command” OB here, and instead implies he can “authorize” OB to act. (If Henry’s do not remove the fence, pavers and shipping containers, “THE CITY WILL BE AUTHORIZED TO ENTER ONTO THE PROPERTY . . . TO REMOVE AND DISPOSE OF” them, per Orders.) Authorizing is to allow or permit OB to do something, while commanding means they *must* do it. So, FS 162.08(5), and CO 2-254(a) allow Magistrate to order Henrys to pay fines or remove the pavers, etc, but NOT to authorize OB to go onto Henrys’ property or take it.

13. FS 162.09(1) and CO 2-258(a) allow for OB to make repairs, but *only* for a “serious threat to the public health, safety and welfare,” as identified in FS 162.06(4) and CO 2-255(e). Henrys’ fence, pavers and shipping containers are *not* such serious threats, nor has OB even alleged such.

14. Even then, only “repairs” are authorized to be made.² With Webster’s defining “repair” as fixing “what is torn or broken,” it makes sense for repairs to be limited to “serious threats to the public health, safety, and welfare” since dilapidated or compromised structures might create such a serious threat. In fact, it is only for unsafe structures that OB has that authorization to enter a property. CO 8-4(3)(a). Moreover, Magistrate “shall issue an order affording the proper relief consistent with powers granted herein,” FS 162.07(4), and no powers are granted for Magistrate to authorize OB to “repair” anything on Henrys’ property.

15. Furthermore, there is no other lawful authority to take the Henrys’ fence, pavers, or shipping containers. Black’s Law Dictionary, Eighth Edition, p 1493, defines “taking” as

² “Repair” is not defined in Florida statutes (i.e., 163.3164, etc.), Ormond Beach Code of Ordinances, Ormond Beach Land Development Code, or Black’s Law Dictionary.

“the act of seizing an article” or “the government’s actual or effective acquisition of private property either by ousting the owner or by destroying the property or by severely impairing its utility.” Here, the Orders meet both categories of a “taking.” Whether stopping us from using our own property or physically taking our property, each must be done under the strict requirements and procedures of the US and Florida Constitutions and state law. Physically taking the Henry’s pavers, fence and shipping containers without just compensation clearly violates US Const Am V and FL Const Art X Sec 6 (“No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.”) But even stopping us from using our own property must be done in a legal manner. For example, FS 553.83 and LDC 1-11 only allow municipalities to seek such injunctive relief relating to use of private property from a court of competent jurisdiction.

16. Procedures to take property are governed by Eminent Domain in Chapter 73 of the Florida Statutes, not Chapter 162. Further, the powers to take *real or personal* property (see FS 166.401(4)), are heavily restricted by Chapters 127, 163 and 166, per FS 73.013(4).³

17. But more pointedly, FS 73.014 and 163.335(7) expressly prohibit taking property in ordinance violation situations, even for “nuisance, slum, or blight conditions,” as it is “not a valid public purpose or use for which private property may be taken” as required by the Florida Constitution. Furthermore, the alleged ordinance violations for the Henry’s pavers, fence and shipping containers don’t even come close to arising to the level of

³ For example, see FS 163.3161(10) “It is the intent of the Legislature that all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights. It is the intent of the Legislature that all rules, ordinances, regulations, comprehensive plans and amendments thereto, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property or which would constitute an inordinate burden on property rights as those terms are defined in s. 70.001(3)(e) and (f). Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking, as provided by law.”

public concern that exists for public nuisances, slum or blight. Indeed, Henrys' alleged violations (of simply not having a permit for their fence, pavers and shipping containers), qualify as NONE of the permissible purposes for which private property may be taken, such as drainage, streets, public parks, water & sewer lines, laying wires & conduits, or city buildings, pursuant to FS 166.411.

18. Even *if* the Orders purporting to give OB authorization to remove the pavers, etc., qualified as a "repair" under FS 162.09(1) or a taking for public use under FS 166.401, only the city commission is vested with authority to take action, *not* the Magistrate. (CO 2-258(a) stating that "*magistrate shall notify the **city commission, which may authorize** and make all reasonable repairs;*" FS 162.09(1) stating that *Magistrate "shall notify the **local governing body, which may make all reasonable repairs;**"* FS 166.401(3) stating "the local governing body of a municipality may not exercise its power of eminent domain **unless the governing body adopts a resolution authorizing** the acquisition of a property, real or personal.") While those provisions indicate the authority of the city commission to make *repairs* or file petitions for eminent domain, likewise, only circuit court judges have subject matter jurisdiction to authorize a city to *take* property. See FS 73.021 and LDC 1-11, as opposed to the limited jurisdiction of Magistrate to "hold hearings and assess fines" pursuant to CO 2-251, FS 162.03(2) and CO 2-254(a).
19. Moreover, no subject matter jurisdiction exists to authorize a literal taking of private property without just compensation, per US Const Am V and FL Const Art X Sec 6. Specifically, payment must be made to Henrys before OB takes possession of their private property. FS 73.071, 73.015, 73.081. OB is also required to pay Henrys' attorneys fees per FS 73.091. Most importantly, if OB doesn't pay Henrys in full within 20 days of rendition of a judgment granting eminent domain authority, "the proceedings shall be null and void." FS 73.111.
20. Magistrate also holds no subject matter jurisdiction to order removal of Henrys' shipping containers, as they are legally required to remain on Henrys' property. The Order asserts Henrys' shipping containers constitute a garage, as defined by LDC

2-50(dd)(3)(a), and “must meet the regulations pertaining to a garage.” First, LDC 2-50(o) *requires* all residential properties, like Henrys’ homestead, to have a garage. Regardless of when or how the garage was built or placed on the property, Henrys’ are bound to leave it on the property “unless an additional garage or carport is constructed or presently exists on the subject property.”

21. Second, “the regulations pertaining to a garage” from a state law perspective are comprised of standards primarily for “public health and lifesafety” and “protection of property” (FS 553.72(1)) “relative to structural, mechanical, electrical, plumbing, energy, and gas systems” (FS 553.73(2)), and standards for building design elements (See FS 163.3202(5)). The only violation regarding the shipping containers that Magistrate found was that a permit had not been obtained prior to them being placed on Henrys’ property. However, the Henry’s long-standing communication with OB clearly demonstrated that OB would never issue Henrys a permit for the shipping containers. Indeed, testimony by Janet Bruce and Sarah Cushing included claims that the shipping containers were “not capable of receiving a permit.” Specifically, without quoting any portion of the code or state law, Sarah Cushing said the Florida Building Code [hereinafter, “FBC”] does not regulate shipping containers, therefore, they are not able to be permitted. While it is dumbfounding in our constitutional republic to claim that we could *not have* something because it was *not regulated* by the government, the law actually does address this point. In FS 553.79(20)(a), the FBC mandates that for “structures moved into or within a county or municipality [that] do not or cannot comply with the code . . . such buildings or structures shall not be required to be brought into compliance with the building code.” As the shipping containers fit the definition of such structures as defined there, they cannot be required to be brought into compliance with code portions regulating their “construction, erection, alteration, modification, [or] repair.” (See FS 553.72(1) and 553.73(1).) That only leaves standards for building design elements. However, “Land development regulations relating to building design elements may not be applied to a single family or two family dwelling,” which includes “the location or orientation of the

garage." FS 163.3202(5)(b)(1). Also, although local governments may make amendments to FBC, "such additional requirements may not introduce a new subject not addressed in the Florida Building Code." FS 553.73(4)(b)(3). Thus, as Ormond Beach building official Sarah Cushing testified that the "Florida Building Code does not regulate shipping containers," OB is statutorily prohibited from regulating them. Further, Sarah Cushing testified the shipping containers are not tested for wind-borne-debris-impact standards; however, "storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code." FS 553.73(10)(h). Consequently, the order purports to authorize taking the shipping containers for the Henrys' failure to receive a permit for which OB illegally required *and* illegally withheld.

22. Magistrate also holds no subject matter jurisdiction to order removal of Henrys' pavers, as they are legally required to remain on the Henrys' property. Per LDC 2-50(x)(4), there "shall be no parking of vehicles . . . in the front yard of any residential property" except on "asphalt, bituminous brick, concrete, turf block, brick pavers or pervious concrete." Indeed, "driveways" are "paved areas" of "asphaltic concrete, concrete, brick or similar material." LDC 1-22 "driveway" and "paved area". Parking on grass, stone gravel or mulch is prohibited. In fact, without these paved "off-street parking requirements," Henrys' home would be a "noncomplying structure or site" per LDC 1-22. As the Henrys own four vehicles, with one parked on the south driveway, one parked on the north driveway, and one parked on each of the two driveway extensions, removing Henrys' pavers would mean their vehicles would be parked on the grass/sand/weeds, making it a "noncompliant structure." Magistrate lacks authority to force the Henrys into noncompliance.
23. Further, Magistrate lacks subject matter jurisdiction to prevent the Henrys' use of or to authorize OB's removal of Henrys' pavers under state law. The pavers, undisputed as fitting the definition of "Florida-friendly landscaping," serve "a compelling public interest"

“to conserve or protect the state’s water resources,” per FS 166.048 and 720.3075. As such, the LDC “may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land.” FS 166.048. Thus, there is no jurisdiction to enforce such a provision, especially with the Henrys’ beachside property, which only sustains weeds and sand, having no extensive irrigation system that would be needed to sustain grass.

24. Likewise, Magistrate lacks subject matter jurisdiction to authorize OB to remove the Henrys’ fence. In addition to other numerous constitutional and statutory provisions, FL Const Art I Sec 23 guarantees the Henrys’ “right of privacy.” Consistent with that privacy, FS 810.115 clearly states that “whoever causes to be broken down, marred, injured, defaced, or cut any fence belonging to or enclosing land not his or her own, commits a misdemeanor in the first degree.” Thus, being an explicit violation of state criminal law, Magistrate cannot create authorization for OB to remove the Henrys’ fence.
25. Likewise, Magistrate has no subject matter jurisdiction to authorize OB to enter onto Henrys’ property, remove any of Henrys’ property, dispose of any of Henrys’ property or absolve OB from liability for damages or loss sustained by the Henrys in OB doing such. Not only would such actions by OB violate US Const Am IV and FL Const Art I Sec 12 protections against searches and seizures without warrants, it would also directly violate a right of privacy guaranteed under FL Const Art I Sec 23. Furthermore, it constitutes unlawful entry under FS 82.01, 82.03(1), 810.08, and 810.12; burglary in dwelling curtilage under FS 810.015, 810.02, and 810.011; criminal and civil trespass under FS 810.08 et al; felony theft under FS 812.014 et al; and obstructing justice (taking private property under color of law) under FS 843.0855. Thus, the provisions of the orders purporting to allow OB to enter Henrys’ property, remove Henrys’ property, dispose of Henrys’ property, and absolve OB from damage or loss to the Henrys by doing such, must be removed as legally void.
26. In addition to the foregoing reasons, Magistrate also lacks authorization to provide criminal and civil immunity here. It is only in relation to unsafe structure abatement or

nuisances that OB has attempted to provide itself with immunity from civil or criminal prosecution. CO 8-4(3)(a) and 14-100. Even so, that purported immunity is provided directly by the city commission, not authority stemming from the Magistrate.

ULTRA VIRES ACTS DEPRIVED HENRYS OF DUE PROCESS

27. The Orders are void as stemming from ultra vires acts depriving the Henrys of constitutionally and statutorily required due process.
28. On 10/20/22, OB served Henrys with written Notices of Violation for the pavers, fence and shipping containers. (Exhibit 1.) On 11/8/22, Henrys served OB with a response, containing a Notice to Cease & Desist and a Notice of Proposed Litigation under FS 70.45. (Exhibit 4, starting on pg 15). Under FS 70.45, upon receiving the written notice, OB “shall review the notice of claim and respond in writing to the property owner by identifying the basis for the exaction and explaining why the governmental entity maintains that the exaction is proportionate to the harm created by the proposed use of real property, or by proposing to remove all or a portion of the exaction.” To-date, OB has failed to comply with this statutory requirement, instead moving forward with the exaction. OB served the Henrys with Notice of the Hearing, which took place 2/27/23. At the onset of the Hearing, the Henrys moved for dismissal, among other reasons, because of OB’s failure to comply with FS 70.45. OB simply stated FS 70.45 didn’t apply, and that the Henrys were supposed to have filed a claim under FS 70.45 in circuit court to have those issues addressed. Without providing legal reasoning, Magistrate denied Henrys’ motion for dismissal.
29. Chapter 70 of Florida Statutes is entitled “Relief from Burdens on Real Property Rights” - *relief from burdens not compensation after exactions*. The provisions of this chapter are designed to STOP the city from burdening private property rights. OB argued that meant the Henrys were required to file a case in circuit court under FS 70.45 *prior* to the 2/27/23 Hearing if they wanted that relief. However, OB first took their official action in burdening the Henrys’ property rights in serving the Henrys with the Notices of Violation on 10/20/22, to which Henrys promptly supplied the FS 70.45 Notice by 11/8/22. Under

FS 70.45(3), the Henrys were required to serve the notice no later than 180 days after imposition of the prohibited exaction, but must then wait at least 90 days from that point before filing an action in circuit court (presumably meaning the city has 90 days to respond to the notice). Ninety days from 11/8/22 is 2/6/23. However, by that point, OB had already served Henrys with the Notice of the Hearing. In fact, OB had attempted to hold the hearing without the proper and legally required notice a month earlier, on 1/23/23. Indeed, although Henrys were not legally served until several weeks later, OB provided documents showing they had already been scheduling the matter for special magistrate hearing by December 2022. (Exhibit 2). Thus, OB not only illegally failed to respond under FS 70.45, but *commenced the special magistrate proceedings against the Henrys several weeks before Henrys were even able to file a suit under FS 70.45*. Since FS 70.45 accounts for “damages” which include not only financial compensation but also “the right to injunctive relief,” it is absurd for OB to manipulate the laws involved so as to prevent Henrys from seeking relief from the circuit court *before* the 2/27/23 Hearing, but also preclude Henrys from receiving injunctive relief at the 2/27/23 Hearing.

30. In other words, OB cannot properly initiate special magistrate proceedings during the 90 days they are statutorily required to respond under FS 70.45. And because OB did such, which ultimately resulted in the Hearing being held on 2/27/23, Magistrate lacked subject matter jurisdiction to hold the hearing then, and was required to dismiss or postpone said hearing. If Henrys’ 90 days of waiting had expired with no special magistrate hearings scheduled yet, and Henrys, after a reasonable time, had sat on their rights and failed to pursue the FS 70.45 litigation, the magistrate hearings could have *then* been scheduled. But holding otherwise, Magistrate rewarded OB’s ultra vires acts violating the Henrys’ due process rights, depriving them of the preventive injunctive relief found in FS 70.45. Now, Henrys are overburdened with commencing the 70.45 litigation *while* appealing these Orders - which contain provisions for OB to unconstitutionally and literally *take* the Henrys’ property, the *clearest example of where relief from burdens on*

real property rights is needed. (Fittingly, Webster's defines "relief" as "a removal or lightening of something oppressive, painful, or distressing.")

31. Denial of due process may void an otherwise permissible court order. The Florida Supreme Court "has explained that the essence of due process is that fair notice and a reasonable opportunity to be heard must be given to interested parties before judgment is rendered." *Jennings v. State*, 265 So.3d 460 (Fla. 2018), citing *Scull v. State*, 569 So.2d 1251, 1252 (Fla. 1990); and *Huff v. State*, 622 So.2d 982, 983 (Fla. 1993). (Cleaned up). Despite the Henrys' communication via phone and email with OB regarding the pavers, fence and shipping containers going back to 9/2/22, the Henrys received absolutely *no* notice, and an extremely inadequate opportunity to be heard, on the portions of the Orders purporting to authorize OB to enter onto their property, remove their property, dispose of their property, charge them for such removal, use such charges to create a lien against their real and personal property, and be immune from liability for damage or loss sustained by the Henrys from OB's said removal. Aside from all of the aforementioned legal procedures that OB failed to follow, NONE of the documents served on Henrys (either by certified mail, USPS, or email) even referenced the entering, removing, disposing, charging, charges creating liens, or immunity from liability for OB. NOT ONE. In fact, in looking at the Notices of Hearing and Code Enforcement Citations, submitted into evidence over Henrys' objections, the ONLY potential penalty mentioned is that of a fine - even if the Henrys failed to appear.
32. Shockingly, the FIRST time the Henrys were notified of these provisions being sought by OB was when Janet Bruce handed the Henrys several large stacks of pages at 9:58AM, only two minutes before the 10AM Hearing (despite Henrys arrival 30 minutes early, and the fact these documents would have been ready for the Hearing a month prior as originally scheduled). Certainly, when a city seeks to take someone's private property, proper notice must be given so that person "may file his or her written defenses to the petition, *as a matter of right.*" FS 73.051. Indeed, in order to take private property, OB *must* not only provide notice of the intended taking, but must do so "prelitigation." FS

73.0511. Moreover, such prelitigation notice must not only provide basic details on the intent to take the private property, but must specifically “notify the fee owners of statutory rights under s. 73.091.” FS 73.0511. Further, this notice is required to be provided by *personal* service under FS 73.031, whereas OB struggled to comply with the less stringent requirements of ordinance violation hearings of service by certified mail, etc. (as described in prior filings). Given notice and opportunity to be heard are hallmarks of constitutionally guaranteed due process, and create grounds for *per se* reversible error rules (see *Mills v State*, 620 So.2d 1006 (Fla. 1993)), such blatant failure to provide notice *and* reasonable opportunity to be heard by itself creates reason why such portions of the Orders are void.

33. Additional due process violations occurred in OB’s ultra vires acts regarding pre-filing negotiations. OB is statutorily required to participate in good-faith negotiations *meeting specified statutory requirements before* filing an action in court to take Henrys’ property, including providing an offer to pay the Henrys, even “where less than the entire property is sought.” FS 73.015(1).
34. Likewise, in filing the action, OB *must* file a *petition for eminent domain* in circuit court, per FS 73.021(1), which OB failed to do in substance and form. In said petition, OB *must* identify 1) the authority under which the property is to be taken, 2) the public use or purpose for which the property is to be taken, and 3) that the property is necessary for that public use or purpose. Clearly, OB’s attempt to take the Henry’s pavers, fence and shipping containers through a special magistrate hearing, which fails to meet *any* of these statutory requirements, is ultra vires action resulting in severe due process deprivation for the Henrys. Consequently, all parts of the Orders relating to the *taking* of the Henry’s property (the entering, removing, disposing, charging, charges creating liens, or immunity from liability for OB) are void.
35. Additionally, any writ or order imposing fines or purporting to authorize OB to take action on the Henrys’ property, *must* be *subsequent* to, and distinct from, the initial order commanding the Henrys to take action. FS 162.07(4) states that orders issued at the

conclusion of the special magistrate hearings “may include **a notice that** it must be complied with by a specified date **and that** a fine may be imposed and, *under the conditions specified in s. 162.09(1)*, the cost of repairs may be included along with the fine if the order is not complied with by said date.” Indeed, FS 162.09(1) and CO 2-258(a) provide that “upon notification by the code inspector that an [already existing] order of the [Magistrate] has not been complied with,” the Magistrate “may order the violator to pay a fine,” and shall notify the city commission regarding the need to make repairs. That is why FS 162.08 allows Magistrate “to command” the Henrys to take necessary steps, but does *not* yet allow for fines or repairs to be ordered. FS 73.121 provides that the judge may grant writs of possession if the defendant is still in possession *after* the judgment has been rendered for, and compensation has been paid by, the city. Likewise, under FRCP 1.570(b), (c) and (e), the taking of property must be done in a subsequent proceeding. Thus, the portions of these initial Orders that purport to authorize the charging of fees or for OB to take action on Henrys property are void.

36. Lastly, buried in OB’s codes is the provision that OB’s burden of proof at ordinance violation hearings is merely by a preponderance of the evidence. Such a low standard is hardly acceptable to use when OB is attempting to literally *take* private property. As such, Orders based on such deficient proof standards are void on their face.

MOTION FOR STAY PENDING APPEAL

37. Per FRCP 9.190(e)(3), Henrys may request an order to stay the Orders discussed herein. For all of the aforementioned reasons, the fees Henrys are ordered to pay are void. At the very least, this means the charging of said fees must be stayed pending appeal, as the interests of justice require. Likewise, all parts of the Orders relating to the taking of the Henry’s property (the entering, removing, disposing, charging, charges creating liens, or immunity from liability for OB) are void. Thus, the interests of justice require at the very least that such portions be stayed pending appeal. If the fees and takings portions are *all* removed from the Orders pursuant to the aforementioned Motion for Relief from the Orders, the request for a stay regarding such would no longer be

needed. However, in that event, the Henrys still ask the court to stay the remaining portions of the Orders (the commands on Henrys to remove the shipping containers, and to either remove the fence and pavers or obtain permits for such [which legally cannot be done, as outlined in the Henry's prior filings]). (See Exhibit 4).

38. To avoid being unduly cumulative, Henrys refer to their prior filings for the description of why they cannot legally obtain permits for the fence and pavers. So, just to summarize, Henrys cannot apply for permits because their property does not currently meet all LDC regulations, such as having a garage. Sarah Cushing testified that OB "wouldn't enforce" that part of the LDC on the Henrys, but her statement regarding such cherry-picking doesn't guarantee to the Henrys OB would actually and intentionally ignore such requirements when determining whether to process an application for a permit (of any kind). Furthermore, according to the LDC, no permit can be issued without 1) a full variance approved regarding a garage, 2) a development order, 3) engineer/architect final site plan being approved, 4) a recent survey of the lot *specifically certified to the city*, and 5) an application that includes incredibly overburdensome requirements, as listed on page 4 of Henrys' February 2022 Response.
39. Additionally, Janet Bruce testified that before issuing a permit, OB would require the Henrys to pull up their pavers to "check to see if they were installed properly," which is not permissible under the law (nor was any alleged legal justification or authorization even offered by OB for requiring such).
40. Janet Bruce also testified that the Henrys' fence would not be permitted as it stands because it does not meet aesthetic requirements. In other words, 3 small lateral posts run across the fence panels that face the backyards of the neighbors to the north, south, and west. However, at the front of the property, the fence panels themselves face the road, with the 3 small lateral posts on the inside of the fence. Janet Bruce testified that this does not meet the aesthetic requirements of the LDC, and the Henrys would, therefore, be required to tear down the vast majority of their fence before a permit would be issued. We must keep in mind, however, that this is a matter of subjective aesthetics

only, and that nothing would prohibit the neighbors to the south and west from putting up their own fences. Indeed, the neighbor to the north already has their own privacy fence (installed without a permit, and now in bad repair since Hurricane Ian). Moreover, "Land development regulations relating to building design elements may not be applied to a single family or two family dwelling," which includes "the location or architectural styling of windows or doors." FS 163.3202(5)(b)(1). The Henrys' fence is constructed entirely of solid wood doors, as demonstrated by "Exhibit A" of the Orders. Thus, OB *cannot* regulate the location or architectural styling of the Henrys' solid wood door fence.

41. Further, Janet Bruce testified that OB may refuse to issue a permit for the fence and pavers if, in the sole discretion of the code inspector, they do not have enough aesthetic value - or simply put, they just don't like how they look. Considering the attitude OB has expressed toward the Henrys thus far, and the extent of the ultra vires acts, OB is most likely to disqualify Henrys' fence and pavers on this basis alone, if for none other.
42. As described in detail above, removing the Henrys' pavers and shipping containers would actually put them in violation of that very LDC regarding parking (LDC 2-50(x)(4)), outdoor personal storage (CO 14-94 through 14-96, and LDC 2-50(x)(1)), and needing a garage (LDC 2-50(o)).
43. Removing the Henrys' fence and pavers would irreparably harm them and compromise their structural integrity. Then, should Henrys prevail on appeal, Henrys would not be able to simply put them back.
44. The Henrys spent thousands of hours bringing the pavers and fence materials home, preparing them for installation, and installing them. It would literally take the Henrys an entire year or more to reinstall them after winning on appeal. That's precious time they could not get back to spend with their kids once they prevail on appeal. Moreover, the Henrys literally put blood, sweat and tears into the pavers and fence, and should not, in the interests of justice, be required to triple that effort and endure that physical pain again until all appeals are exhausted.

45. The Henrys have no other property in Florida, with no family nearby, and thus have no place to even temporarily put their shipping containers, other than their own homestead. This would force the Henrys to rent land for this purpose, which would cost thousands of dollars, and is not something the Henrys have the ability to do. Furthermore, the actual moving of the shipping containers is quite expensive, and estimates put it in the thousands, too, which the Henrys simply cannot come up with, certainly not on short order. (The delivery was included with their purchase of these new shipping containers.) Also, moving the shipping containers requires special equipment, and they are likely to be damaged in moving them, especially if someone attempts to move them with insufficient equipment.
46. Removing the fence will cause irreparable harm by destroying the Henrys' right to privacy, especially considering the neighbor living to the West who admitted in her testimony to continuously watching and taking stacks of pictures of the Henry family. Indeed, FS 163.3177(6)(i)(1)(3) requires OB to respect "constitutionally protected private property rights," including "the right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property."
47. Removing the shipping containers will irreparably harm all of the personal property around and in them (as it is properly secured for storage, but not for transport). Depending on when or how the shipping containers would be moved, either the Henrys' personal property would still be inside unsecured for transport, or sitting outside in the elements getting destroyed. This includes Katherine Henry's wedding dress and momentos, family heirlooms, paper records, medical equipment, tools, and more.
48. Removing the fence, pavers and shipping containers will inevitably harm the real and personal property constituting the Henrys' homestead, as indicated by the Orders' provisions attempting to shield OB from liability in causing such harm. But in addition to OB's expectations and the Magistrate's that OB would inevitably cause harm to the Henrys' homestead by removing their fence, pavers and shipping containers, even the state legislature foresaw that kind of damage being made to the residual property when

a taking like this happens. As such, FS 73.015, 73.071 and 73.081 all account for the money OB would be required to pay the Henrys for damages to the remaining property caused by the taking of the fence, pavers and shipping containers. However, under the current Orders, OB is purportedly allowed to cause such damage without making such reparations.

49. Furthermore, the state legislature understood the urgency of such matters, as identified in FS 73.071(1). Consequently, the Henrys urge the circuit court to issue the Relief from Orders and Stay Pending Appeal immediately.

CONCLUSION AND PRAYER FOR RELIEF

50. Magistrate issued Orders following the 2/27/23 Hearing that violate many statutory and constitutional provisions. The Henrys will be irreparably harmed by such void Orders being enforced. Thus, Henrys respectfully request this court to issue an order:

- a. Providing the Henrys complete relief from the 3 current Orders on the basis of being legally void. *A proposed Order is attached as Exhibit 8.*
- b. In the alternative, granting the Henrys at least partial relief from the Orders on the basis of being legally void, along with providing for a Stay of enforcement of the Orders for the remaining parts, pending the Henrys' appeal of said remaining portions.
- c. In the alternative, granting the Henrys a Stay on all portions of the Orders pending their appeal of said Orders.

Respectfully Submitted: April 3, 2023

/s/ Katherine & Michael Henry
Respondents, Pro Se

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to Barbara Radcliff (Clerk of the lower tribunal), H. Pope Hamrick, Jr. (Special Magistrate of lower tribunal), Ann Margret Emery (Deputy City Attorney), Chris Mason (Neighborhood Improvement Division Manager), Janet Bruce (Neighborhood Improvement Division Code Inspector), by email to

Barbara.Radcliffe@ormondbeach.org, phamrickjr@cfl.rr.com, A.Emery@ormondbeach.org,
Chris.Mason@ormondbeach.org and Janet.Bruce@ormondbeach.org on April 3, 2023.

Respectfully Submitted: April 3, 2023

/s/ Katherine Henry
/s/ Michael Henry
Appellants, Pro Se
PO Box 333, Ormond Beach FL 32175
Katherine@RestoreFreedomKH.com
616-303-0033
Michigan Bar No P71954

**IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA**

CASE NO.: 2023 30711 CICI
DIVISION: 32

MICHAEL HENRY AND KATHERINE HENRY,

Appellants,

v.

CITY OF ORMOND BEACH, FLORIDA,

Appellee.

_____ /

ORDER FOR RESPONSE

THIS CAUSE has come before the Court upon Appellants' Emergency Motion for Relief From Order and Motion to Stay filed on April 3, 2023 (Dckt. No. 5). Having reviewed the motion and the court file, it is ORDERED AND ADJUDGED that Appellee City of Ormond Beach shall file a response to the Emergency Motion within ten (10) days.

DONE AND ORDERED in Chambers at Daytona Beach, Volusia County, Florida this 05 day of April, 2023.

4/5/2023 3:27 PM 2023 30711

CICI


e-Signed 4/5/2023 3:27 PM 2023 30711 CICI

**MARY G. JOLLEY
CIRCUIT JUDGE**

Copies furnished to:

Katherine Henry and Michael Henry
PO Box 333
Ormond Beach, FL 32175
Abraham C McKinnon, Esq
595 W. Granada Blvd. Suite A
Ormond Beach, FL 32174

**IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA**

CASE NO.: 2023 30711 CICI
DIVISION: 32

MICHAEL HENRY AND KATHERINE HENRY,

Appellants,

v.

CITY OF ORMOND BEACH, FLORIDA,

Appellee.

AMENDED ORDER FOR RESPONSE/ORDER FOR TEMPORARY STAY

THIS CAUSE has come before the Court upon Appellants' Emergency Motion for Relief From Order and Motion to Stay filed on April 3, 2023 (Dckt. No. 5). Having further reviewed the motion and the court file, it is ORDERED AND ADJUDGED that

- a. Appellee City of Ormond Beach shall file a response to the Emergency Motion within ten (10) days from Monday, April 10, 2023.
- b. Any action taken on the Order(s) Finding Violation entered by the Special Magistrate on March 1, 2023 **shall be stayed** pending this Court's review of the Response to be filed as ordered herein and a subsequent ruling on Appellants' Emergency Motion.

DONE AND ORDERED in Chambers at Daytona Beach, Volusia County, Florida this 06 day of April, 2023.

4/6/2023 4:20 PM 2023 30711

CICI


e-Signed 4/6/2023 4:20 PM 2023 30711 CICI

**MARY G. JOLLEY
CIRCUIT JUDGE**

Copies furnished via eService:

Michael and Katherine Henry
PO Box 333
Ormond Beach, FL 32175
City of Ormond Beach

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

MICHAEL and KATHERINE HENRY,
Respondents/Appellants,

CIRCUIT CASE NO: 2023-30711 CICI

vs

CITY OF ORMOND BEACH, FLORIDA
Petitioner/Appellee.

Lower Court CASE NOS: 22-112237
 22-112246
 22-112247

APPELLANTS' BRIEF ON APPEAL

This brief is submitted by the Henrys in support of their appeal of the Special Magistrate Orders rendered on 3/3/23. Said Orders are the result of alleged Land Development Code (LDC) violations, prosecution of which was brought by the City of Ormond Beach (OB).

Respectfully Submitted: June 2, 2023

/s/ Katherine Henry
/s/ Michael Henry
Appellants, Pro Se
PO Box 333, Ormond Beach FL 32175
Katherine@RestoreFreedomKH.com
Michigan Bar No P71954

Table of Contents

Statement of Case & Facts.....	1
Summary of Argument.....	4
Standard of Review.....	4
Argument.....	4
I. Our Rights Come From God, Not The Government.....	4
II. The Purpose of Government.....	5
III. The Source of Authority in Government.....	5
IV. OB Has No Authority to Interfere with Henrys Use of Their Homestead.....	6
A. OB May Not Deny Henrys Equal Protection of the Law.....	6
1. OB Violates Equal Protection By Enforcing Permitting Procedures As Against Henrys When OB Wouldn't Enforce Permitting Procedures To Protect Henrys' Interests At Rollins Property.....	6
2. OB Violates Equal Protection When Giving a "Free Pass" to Similarly Situated Neighbors.....	8
B. OB May Not Deny Henrys Substantive Due Process.....	11
1. OB's Actions Violate Regulatory Taking Case Precedent.....	12
2. OB's Actions Violate Laws Protecting Private Property.....	14
3. OB Cannot Force Henrys into NonCompliance.....	17
4. Terms of the LDC Render Henrys' Full Compliance Unreasonable and/or Impossible.....	18
5. Henrys' Pavers, Fence & Conexes Don't Require a Permit Per LDC & Community Planning Act.....	23
a. Conexes Not Against LDC, Not Even Mentioned in LDC.....	26
C. OB May Not Deny Henrys Procedural Due Process of Law.....	28
1. Evidence Admitted in Violation of the Fourth Amendment.....	28
2. Due Process of FS 70.45 Denied.....	30
V. OB Has No Authority to Physically Take Henrys' Pavers, Fence & Conexes.....	32
A. Fifth Amendment Prohibits OB from Physically Taking Henrys' Property.....	32
B. Due Process Denials Invalidate Otherwise Possibly Permissible Action.....	33
C. OB's Physical Taking of Henrys' Property Constitutes Fourth Amendment Unreasonable Seizure.....	33
D. OB's Physical Taking of Henrys' Property Constitutes an Eighth Amendment Cruel & Unusual Punishment.....	35
VI. OB Exceeded Its Authority to Assess Fees & Fines on Henrys.....	36
A. OB's Proposed Fines Violate the Eighth Amendment.....	37
Conclusion.....	38

Table of Authorities

Constitutions	Page(s)
FL Const Art I Sec 1	5,6
FL Const Art I Sec 12	29,34
FL Const Art I Sec 2	5
FL Const Art I Sec 23	29, 34, 35
FL Const Art II Sec 8	6
FL Const Art X Sec 6	32
FL Const Preamble	5
US Const Am IV	28,30,34,35
US Const Am V	32
US Const Am VIII	9,35,36,37,38
US Const Am IX	5
US Const Am X	6
US Const Am XIV	5,6
US Const Art IV, § 4	6
US Const Preamble	5

Statutes	Page(s)
Chapter 70 of Florida Statutes	31
Community Planning Act	24
Florida Building Code	24, 25
OB Ordinance 2016-44 Section 5	37
Private Property Rights Protection Act	14
CO 2-25(c)	37
CO 2-251	36
CO 2-254(a)	36
CO 2-255(e)	34
CO 2-256(c)(10) and (11)	36

CO 2-258(a)	34,37
CO 8-4(3)(a)	34
CO 14-94 through 14-96	17
FRCP 1.110(f)	33
FRCP 1.490(g)	30
FRCP 1.570(b), (c) and (e)	37
FS 112.311(6)	28
FS 162.03(2)	36
FS 162.06(4)	34
FS 162.07(4)	34
FS 162.08	36,37
FS 162.09(1)	34
FS 162.21(3)(d)(10)	36
FS 162.21(5)(a)	36
FS 162.22	36
FS 163.3161	15,32
FS 163.3164	25,26,34
FS 163.3177(6)(i)	15
FS 163.3194(4)	33
FS 163.3202(5)	21,24
FS 163.335(7)	33,34
FS 165.021	23
FS 166.0415(4)	30
FS 166.048	25
FS 166.411	33,35
FS 187.101	14
FS 380.031(19)	25
FS 471.027	30
FS 472.029	30
FS 553.72(1)	24

FS 553.73	24
FS 553.79(20)(a)	24
FS 70.001	14,15
FS 70.002	15
FS 70.45	1-4,16,30,31
FS 720.3075	25
FS 73.014	33,34
FS 73.121	37
FS 775.082	29
FS 775.083	29
FS 81.011	32
FS 810.011	29,35
FS 810.015	29,35
FS 810.02	29,35
FS 810.08	29,35
FS 810.09(3)	29
FS 810.115	35
FS 810.12	30,35
FS 812.014	35
FS 82.01	29,35
FS 82.03(1)	29,35
FS 843.0855	35
LDC 1-03	9
LDC 1-14	18,19,20
LDC 1-15	12,20
LDC 1-16	18
LDC 1-18(f)(1)	19
LDC 1-21	36
LDC 1-22	17,25,26
LDC 2-50	17,18,20,22,25-27

Cases	Page(s)
<i>Austin v US</i> (509 US 602, 1993)	38
<i>Boyd v United States</i> , 116 US 616 (1886)	5,12,30,34-36
<i>Byars v United States</i> , 273 US 28 (1927)	12,30,32
<i>Camara v Municipal Court of City and County of San Francisco</i> , 387 US 523, 528-529 (1967)	29
<i>City of Miami Beach v Fleetwood Hotel, Inc.</i> , 261 So. 2d 801 (Fla. 1972)	23
<i>Dolan v City of Tigard</i> , 512 US 374 (1994)	12,14,16
<i>Ham v Portfolio Recovery Assocs., LLC</i> , 308 So.3d 942, 946 (Fla. 2020)	25,36
<i>Kyllo v United States</i> , 533 US 27 (2001)	29
<i>Murdock v Pennsylvania</i> , 319 US 105 US (1943)	37
<i>Nectow v Cambridge</i> , 277 US 183, 188 (1928)	13
<i>Nollan v California Coastal Comm'n</i> , 483 US 825 (1987)	22
<i>Penn Central Transportation Co v New York City</i> , 438 US 104, 127 (1978)	13,37
<i>Reno v Flores</i> , 507 US 292, 302 (1993)	11
<i>State of Florida v Sarmiento</i> , 397 So.2d 643 (Fla. 1981)	39
<i>State Tax Commission v Aldrich</i> , 316 US 174	37
<i>West Coast Hotel Co v Parrish</i> , 300 US 379 (1937)	12
<i>Zinerman v Burch</i> , 494 US 113, 125 (1990)	11

Statement of Case & Facts

While purchasing a prior residence at 924 Rollins Ave, Ormond Beach in Summer 2021, Henrys had in-depth communication with OB regarding the LDC. As described below,¹ OB cherry-picked their enforcement of the LDC, resulting in an equal protection violation and significant monetary damages to Henrys. Henrys consequently decided to purchase their homestead on Cypress in November 2021. Various portions of the property already had pavers in both the front and back yards,² and there was a dilapidated privacy fence already on the property. Henrys replaced the dilapidated fence with a sturdy one, and uncovered the pavers and placed new ones. On 9/2/22, OB (Janet Bruce) called Henrys about their driveway pavers, privacy fence, and two small conexes [hereinafter, PFCs].³ OB hasn't differentiated which pavers they were specifically objecting to,⁴ but stated the conexes must be removed,⁵ and the fence and pavers must be installed differently and with a permit. OB's statements were contradictory. Henrys voiced several concerns.

After that call, Bruce and another unidentified OB employee came to Henrys' home *unannounced*. Bruce came onto Henrys' property, on and near the north driveway, walking in between two vehicles parked on Henrys' property in that area. So, Bruce not only came onto Henrys' property, but went past barriers Henrys had put into place to keep a nosy neighbor out. Upon being in that intimate curtilage of Henrys' home, Bruce took pictures of Henrys' property. Since Bruce failed to announce her presence, Henrys did not know she was there until reviewing security camera footage later.

On 10/20/22, OB served Henrys with Notices of Violation for the PFCs.⁶ On 11/8/22, Henrys served OB with a response, containing a Notice to Cease & Desist and Notice of Proposed Litigation under FS 70.45.⁷ Under FS 70.45, upon receiving the notice, OB "shall review the

¹ Henrys also brought this issue up at the hearing and in the 11/8/22 Notice. See App 12, 13, 19, 20.

² Many of which had a layer of weeds grown over them.

³ A Conex box, also known as a shipping container or intermodal container, is a type of large metal, weather-resistant container used to store or ship goods. It has two standard lengths - 20 and 40 feet, but other sizes and high cube formats are available. The term "Conex" is a blend of "container" and "express," indicating that the box can travel easily by all means of transport, cutting short on travel time. These boxes evolved into modular units that could be stacked efficiently to store more cargo in one location. The United States military has used these containers for storage and transportation of goods since the 1950s. The logistics method associated here was referred to as Container Express and later became a single term: Conex. <https://search.brave.com/search?q=what+is+a+conex&source=desktop>

⁴ The pavers that were already on the property or ones that Henrys brought to the property.

⁵ and that no permit could be obtained for them.

⁶ App 003, et al.

⁷ Exhibit 4, starting on App 017

notice of claim and respond in writing to the property owner by identifying the basis for the exaction and explaining why the governmental entity maintains that the exaction is proportionate to the harm created by the proposed use of real property, or by proposing to remove all or a portion of the exaction.” As FS 70.45 prohibits Henrys from filing a lawsuit against OB during the 90 days OB has to submit the written response,⁸ Henrys patiently awaited the written response from OB. To-date however, OB has failed to comply with this statutory requirement, instead moving forward with the exaction. Indeed, on 12/29/22, OB drafted three Notices of Hearing, failing to properly serve Henrys for a 1/23/23 Special Magistrate Hearing date. OB finally served Henrys with the Notice of Hearing, rescheduled for 2/27/23.

In the 11/8/22 Notice, Henrys informed OB that Bruce’s criminal trespass onto Henrys’ property violated many laws, including Henrys’ rights against unreasonable searches and seizures, and that all photos and/or other “evidence” obtained in the course of that trespass must be forfeited to Henrys as fruit of the poisonous tree. Henrys explained they had video footage showing Bruce illegally entering onto Henrys’ property. OB never relinquished the illegally obtained photos, but appeared to have no interest in using them either. In fact, throughout all communication with OB prior to the 2/27/23 Hearing, OB never mentioned having photos, nor their intention to introduce them. In fact, it wasn’t until 9:58AM on 2/27/23 that Bruce handed Henrys several large stacks of papers she was going to introduce at the hearing, including the illegally obtained photos.⁹

Likewise, in *none* of the communication from OB prior to the 2/27/23 hearing did OB ever mention they were seeking an order allowing them to physically come onto Henrys’ property, tear up and destroy/remove Henrys’ property, and be absolved of any responsibility for damages

⁸ which would have ended 2/6/23.

⁹ During the hearing, Henrys objected to the hundreds of pages being introduced by OB. They objected on the grounds the documents were served on them at 9:58 for a 10:00AM hearing, and doing so violated their right to Notice and Opportunity to be Heard, especially since OB knew since 11/8/22 that Henrys had video evidence to contradict and even exclude the claims OB made about the photos in question. This due process denial was raised several times by Henrys (i.e., Tr p 3, 25, 53, etc.). Henrys also objected on the grounds the photos were fruit of the poisonous tree, with OB illegally trespassing onto Henrys’ homestead (and two neighboring properties) without permission or a warrant. Bruce said OB employees are trained that they are “permitted” to go onto private residential property to take photos of potential violations without needing a warrant. See e.g., Tr p 54. Without allowing Henrys the opportunity to present their video evidence contradicting the statements made by Bruce, and without much explanation or legal analysis, Magistrate overruled Henrys’ objections and allowed the photos into evidence.

caused to any of Henrys' remaining property.¹⁰ Thus, Henrys were denied Notice and Opportunity to be Heard on these requests made by OB.

At the onset of the 2/27/23 Hearing, Henrys moved for dismissal, among other reasons, because of OB's failure to comply with FS 70.45. OB Attorney Emery simply stated she hadn't "had the opportunity to review the full statute"¹¹ Despite the clear FS 70.45 90-day waiting period, Emery argued that Henrys were required to file a FS 70.45 claim in circuit court prior to the 2/27/23 Hearing to have those issues addressed. Without providing legal reasoning, Magistrate denied Henrys' motion for dismissal.¹²

Henrys also objected to the cherry-picked manner in which these LDC provisions are enforced. Henrys specifically pointed to 810 other "violations" of the same Permit, Pavers, Sheds & Fences portions of the LDC that are openly visible within just a 0.25-mile radius of their home - all of which receive a "free pass" from OB.

Magistrate overruled Henrys' objections with no legal reason provided and rendered 3 Orders in favor of OB on 3/3/23.¹³

On 3/24/23, Henrys filed their Notice of Appeal and filed with Magistrate their Motion for Relief from Order and Motion for Stay Pending Appeal.¹⁴ In Henrys' original lower tribunal filings, both the lower tribunal and OB have failed to respond or acknowledge Henrys' pleadings, despite being expressly requested by Henrys for them to do so.¹⁵ So, on 3/24/23, Henrys expressly requested the lower tribunal and OB to acknowledge receipt of the pleadings being filed/served.¹⁶ Despite each of the 5 recipients¹⁷ each opening the email on 3/24/23,¹⁸ for a total of 38 times between then and 4/2/23, NONE responded to the email, or acknowledged receipt of the pleadings.

¹⁰ See communications, App 003-10 and 078-84.

¹¹ Transcript p 15. For the court's reference, FS 70.45 is **only one page long**, and was explicitly cited to OB in several portions of the 11/8/22 Notice of Proposed Action (NPA), meaning Emery was stating she "hadn't had the time" to read a one-page statute in the course of the 3.5 months before the 2/27/23 Hearing.

¹² See Tr p 19; The Magistrate seemed to place no inherent value in statutes themselves to be enforced, rather concluding that only those statutes with established case precedent to support it should be followed. See, e.g., Tr 6 and 14.

¹³ Exhibit 5, App 085-106.

¹⁴ Exhibit 6, App 107.

¹⁵ Especially since there is no established court filing system for the tribunal.

¹⁶ See Exhibit 7, App 124.

¹⁷ Clerk, Magistrate, Deputy City Attorney, Neighborhood Improvement Division Manager, and Neighborhood Improvement Division Code Inspector.

¹⁸ see exhibit 7.

Summary of Argument

This case exemplifies unconstitutional municipal cherry-picking in every sense. OB illegally commenced this action, violating FS 70.45. The underlying restrictions against Henrys' PFCs do *not* substantially advance legitimate interests, *and* violate many constitutional and statutory protections of Henrys' right to use our their home freely. Henrys' use of their own property harms *no* other properties, and OB is allowing 810 of these very "violations" in the same immediate neighborhood, totaling over 115,000 citywide. These 810 documented violations result in a free pass for OBPD officers, VC Sheriff deputies, city employees, county council & city commission members, state law enforcement officers, official city properties and even the City Attorney's own office!¹⁹ Procedural laws have been violated by OB, who *all* took an oath of office. But this is all a farce anyway, since these permits can't even be issued according to the LDC, nor are they required under the letter of the law. All in all, magistrate's orders are legally void, and thus *must* be set aside on appeal.

Standard of Review

All issues in this appeal are legal, not factual. As such, this court is to review the legal and constitutional issues de novo. OB has employed tactics to transfer the legal burden that is properly due upon them. As the discussion on this point is best explored in the body of this brief, Henrys defer to their section on [Burden of Proof](#).

Argument

In this appeal, the Court is tasked with determining if the three Special Magistrate Orders violate the law. Upon finding they do violate the law, the Court is then tasked with determining the appropriate legal remedy. The more laws the orders violate, and/or the more egregious the violations are, the stronger the legal relief *must* be.

OB and Magistrate violated countless laws throughout these proceedings, some procedural and others substantive. Here, OB is attempting to 1) interfere with Henrys use of their property, 2) physically come and take Henrys' property, and 3) assess fines and fees on Henrys for both.

To determine the severity of OB's law violations, we must begin with an understanding of the source of our rights, and the source of the government's authority to act.

I. Our Rights Come From God, Not The Government

¹⁹ App 11, 13, 14.

With OB's approach to land use regulations being one of "you can't use your property for any purpose without prior written permission from OB, including payment of a fee," it seems remiss not to remind you that we get our rights from God, not the government. In fact, OB acts as though they are our landlords or homeowner's association board (when, in reality, we have neither).²⁰

II. The Purpose of Government

Indeed, it is "to secure these [unalienable] rights [that] Governments are instituted among Men."²¹ And, the purpose of government is to secure our individual, God-given liberties, so that in my exercise of my rights, I am not impeding upon your exercise of your rights. Yes - the *purpose* of government, and of its laws, is to *protect our rights*, not to regulate and punish us. Indeed, that is why the Fourteenth Amendment is worded to guarantee no State shall "deny to any person within its jurisdiction the equal **protection** of the laws." Moreover, the right to have and protect private property is even more sacred than some other rights, as explained by the US Supreme Court. "The great end for which *men entered into society was to secure their property*."²²

III. The Source of Authority in Government²³

"Governments . . . deriv[e] their just powers from the consent of the governed."²⁴ Moreover, "*We, the people* of the State of Florida, being grateful to Almighty God for our constitutional

²⁰ Certainly, we are "endowed by [our] Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Declaration of Independence. The Florida Constitution clearly states "We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty," established our constitution. Preamble. See *also* US Const Preamble, "We the People of the United States in Order to . . . secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." It also explains that "[a]ll natural persons, female and male alike, are equal before the law and have **inalienable rights**, among which are the right to **enjoy and defend** life and liberty . . ." FL Const Art I Sec 2 *Basic Rights*. See *also*, Declaration of Independence. In fact, although the entire first article of the state constitution is focused on explaining our individual liberties (and is hence called "Declaration of Rights"), FL Const Art I Sec 1 reminds government officials that the "enunciation herein of certain rights shall not be construed to deny or impair others **retained** by the people." See *also*, US Const Am IX.

²¹ Declaration of Independence.

²² *Boyd v United States*, 116 US 616 (1886).

²³ OB claims its land use regulations are necessary to protect "the public health, safety, welfare and quality of life" for its residents. However, the text of the Florida and US Constitutions do not provide OB authority for this purpose, let alone allow OB to regulate how we use our own property. See NPA, App 033-34.

²⁴ Declaration of Independence.

liberty” were the ones to “ordain and establish this constitution.” The Florida Senate explains that the Florida Constitution is an “organized system of fundamental principles for the government of the state. It is of a permanent and general nature and *originates from the people* rather than from the legislature.”²⁵ Indeed, not only are we guaranteed a Republican Form of Government,²⁶ but the Tenth Amendment reminds government officials that all the powers We The People have *not delegated* to the federal or state governments are *reserved to the people*.²⁷ That is why the state constitution not only explains that “[a]ll political power is inherent in the people,”²⁸ but that a “public office is a public trust. The people shall have the right to secure and sustain that trust against abuse.”²⁹

In other words, we must start with the presumption that we have the right to act or use our own property as we see fit, and the government may not interfere with that right, unless our actions or use of our property causes harm to someone else.

IV. OB Has No Authority to Interfere with Henrys Use of Their Homestead

This whole case originated when OB began interfering with Henrys use of their own property. So, the first thing we must address is whether OB has the authority to do that.

A. OB May Not Deny Henrys Equal Protection of the Law

Even *if* the language of the specified LDC provisions were enforceable, OB’s actions are nonetheless invalid if they are done in a manner to deprive Henrys of equal protection of the law.

1. OB Violates Equal Protection By Enforcing Permitting Procedures As Against Henrys When OB *Wouldn’t* Enforce Permitting Procedures To Protect Henrys’ Interests At Rollins Property

Under the Equal Protection Clause of the Fourteenth Amendment, government may not selectively enforce laws against one individual while ignoring identically situated individuals. However, that is exactly what OB has done. Less than 2 years ago, when Henrys moved to Florida, a permit/LDC situation arose where OB denied Henrys equal *protection* of the law.

²⁵ See <https://www.flsenate.gov/laws>.

²⁶ by US Const Art IV, § 4, where we elect mere representatives, but we retain the ultimate control and authority.

²⁷ Meaning, we kept the powers with which we started.

²⁸ FL Const Art I Sec 1.

²⁹ FL Const Art II Sec 8.

In July 2021, Henrys entered into a contract to purchase the home at 924 Rollins Avenue. The contract sellers drafted clearly stated *sellers* were responsible for obtaining and finalizing all building permits. After Henrys informed sellers they wanted to purchase the home, sellers began extensive demo / remodeling of the home, filling up two 20' dumpsters. The contract said Henrys could have their property on site and receive mail at 924 Rollins while they were completing the renovations before closing. Acting as a general contractor,³⁰ sellers appeared onsite several times before the closing date, as well as monitored the process via constant text and phone communication.

A few days before closing, OB posted a Stop Work Order at the property, and explained to Henrys the work that must be stopped immediately. Henrys went that day to City Hall to obtain the paperwork to apply for permits. However, later that day, as Henrys were picking up another \$10,000 in windows and building supplies they had previously purchased for the property, sellers called to tell Henrys that they were canceling the contract and changing the locks immediately - with *no* reason stated.

Seller, in fact, came first thing the next morning with a locksmith and attempted to change the locks to the property with Katherine and daughter inside! Sellers then began a harassment and terror campaign, threatening the lives of Henrys and violating 26 different criminal statutes in Florida!³¹ The day *before* closing, sellers filed a lawsuit against Henrys, claiming Henrys failed to go to closing, while simultaneously telling Henrys the *sellers refused* to close on the sale. Henrys hired legal counsel and filed a counterclaim for specific performance of the contract, among other things. However, in the midst of this court battle, Henrys' attorney died in a scuba diving accident, and a fill-in judge was assigned to hold the pending hearings.³² While the case was pending, sellers continued stalking Henrys, and illegally threw all of their personal belongings and approximately \$60,000 in remodeling materials out of the house, resulting in thousands of dollars in damage to Henrys.

As this was all unfolding, Henrys called OBPD several times to have them take legal action on the threats with firearms and other crimes being committed by sellers toward Henrys. Each time, officers refused to take a report or make any arrests, saying that since a civil lawsuit was pending, they wouldn't get involved. Even as sellers brought another dumpster to the property

³⁰ Sellers told Henrys they are, in fact, general contractors who regularly flip homes like this one.

³¹ All facts recited herein are on the record in 2021-11223-CIDL, were shared again with OB on 11/8/22 as attachments to the Notice, and are available in direct links below.

³² The assigned judge was close with Henrys' attorney and was too upset to continue hearings that week.

and had several handymen onsite working on the home (while the lawsuit was pending), OB building officials refused to take action against sellers for working on the home without a single permit! (Sellers had even canceled the 1 permit Henrys had been able to secure!) OB neighborhood improvement, police and building officials were asked by Henrys to take action to stop the sellers from working on the home, as Henrys still had a vested interest in the home and the contract did NOT allow the sellers to remodel or work on the property once Henrys had taken possession in July, but they each refused. This was also despite the Lis Pendens Henrys filed with the county records office.³³

Every attorney (of dozens) Henrys contacted agreed that everything sellers were doing was illegal, and that Henrys would ultimately win in court, but most attorneys were unable to help on such a short notice.³⁴ One of these attorneys was particularly upset by the facts of the case, and even called OB to ascertain why they were refusing Henrys equal *protection* of the law by enforcing the LDC, and stop the sellers from working on the home while the case was being litigated. Not only did OB inform the attorney OB would *not* do anything to enforce the LDC *as against sellers*, but OB also referred to Henrys as “squatters”! This is despite OB receiving copies of Henrys’ CounterComplaint, exhibits, and court orders.³⁵

OB’s enforcement of the LDC *as against Henrys* at the Rollins property, outright refusal to enforce the LDC *as against sellers* at the same property,³⁶ and current attempts to enforce the LDC *as against Henrys* for their current property establishes a ***clear violation of the Henry’s right to equal protection of the law***. Accordingly, OB’s attempts to enforce permitting “requirements” upon Henrys now is a blatantly unconstitutional act by OB.³⁷

2. OB Violates Equal Protection When Giving a “Free Pass” to Similarly Situated Neighbors

Again, under the Equal Protection Clause, government may not selectively enforce laws against one individual while ignoring identically situated individuals. However, OB has done just that, but in yet another context.

³³ Shared with OB as Exhibit A to the 11/8/22 Notice, but also available at <https://wp.me/aecX6i-2uw>.

³⁴ Henrys were given no time to secure replacement counsel after their attorney died.

³⁵ Henrys ultimately decided to purchase the home on Cypress, and subsequently reached a settlement with the sellers regarding the return of at least some of their funds for the Rollins property.

³⁶ especially throughout August and September 2021.

³⁷ Shared with OB as Exhibit B, C & D to the 11/8/22 Notice, Henry Response to Kelly Emergency Motion for Temporary Injunction is also available at <https://wp.me/aecX6i-2uu> ; Henry Answer to Kelly Complaint & Henry CounterComplaint is also available at <https://wp.me/aecX6i-2ut> ; Henry’s Response and Motion for Protective Order is also available at <https://wp.me/aecX6i-2uv>

One way to understand the intersection of our inherent property rights and our right to equal protection of the law is to understand the difference between ***malum in se*** and ***malum prohibitum***. As explained in Black's Law Dictionary, Deluxe Eighth Edition, p 978, ***malum in se*** is "a crime or an act that is inherently immoral, such as murder, arson, or rape," whereas ***malum prohibitum*** is "an act that is a crime merely because it is prohibited by statute." In other words, ***malum in se*** results in direct harm caused to another. No one is alleging Henrys have directly harmed *anyone* by using their PFCs.

What does Equal Protection have to do with the distinction between ***malum in se*** and ***malum prohibitum***? When you commit a ***malum in se*** offense, such as murder, arson or rape, there is harm to a victim that must be accounted for, even if another arsonist or rapist goes free. But the "harm" of a ***malum prohibitum*** offense is to society in general. Indeed, land use regulations are in place to "protect and maintain a high quality of life for the citizenry."³⁸ Certainly, the alleged *permit* requirements of the LDC for fences, pavers, and accessory structures (like conexas) are to ensure compliance with the design and aesthetic requirements of the LDC. But how effective are design and aesthetic requirements if they are not equally enforced?

Henrys are not merely alleging that a few city residents here and there have similar "violations" of the LDC. Rather, Henrys pointed to an astounding 810 Permit, Paver, Accessory Structure & Fence LDC "violations" that are visible within just a 0.25-mile radius of their home - all of which receive a "free pass" from OB. Henrys included a map indicating with a teal star all of said properties,³⁹ along with a categorized spreadsheet showing the exact address and details of such similar "violations,"⁴⁰ and photos of several of said "violations."⁴¹

³⁸ LDC 1-03.

³⁹ App 038.

⁴⁰ App 039-55.

⁴¹ App 056-76.

[illegible]

167

entire city, meaning that it's just representative of the 115,714 similar "violations" currently happening in OB.

Henrys further pointed out these documented neighborhood violations result in a free pass for OBPD officers, VC Sheriff deputies, city employees, county council & city commission members, state law enforcement officers, official city properties and even the City Attorney's own office.⁴² If *these LDC provisions* were so important to the beautification of the community as a whole, wouldn't our own government officials be held to the highest standard of compliance with these provisions?

Singling out Henrys since their arrival in OB, OB repeatedly deny Henrys equal protection of the law. These documented equal protection violations include work without permits, fences failing to meet LDC requirements, accessory structures & pavers installed without setbacks, parking areas without the required material (pavers, concrete, etc.), and other similar provisions. Thus, even *if* the language of the specified LDC provisions is otherwise enforceable, OB's actions are nonetheless invalid.

B. OB May Not Deny Henrys Substantive Due Process

As explained earlier, the purpose of government is to secure our individual, God-given liberties, so that in my exercise of my rights, I am not impeding upon your exercise of your rights. Indeed, Henrys' PFCs impact neighboring properties in *no* negative ways, but do reduce the amount of sandspurs and water runoff transferring to neighboring properties, help contain sound within their own property, keep soccer balls out of neighbor's yards, significantly help to reduce the amount of damaging winds ripping through, and provide a place for neighbors to gather for a leisurely game of basketball. In other words, *Henrys' use of their property does not infringe upon others' use of their property*, so the government has no business interfering.

This interference is exactly what substantive due process protections prohibit. Substantive due process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is *narrowly tailored* to serve a *compelling state interest*."⁴³ It also guarantees regulations will not deprive a person of life, ***liberty, or property*** for arbitrary reasons.⁴⁴ Land use regulations start off well intentioned, but

⁴² App 11, 13, 14.

⁴³ *Reno v Flores*, 507 US 292, 302 (1993) (emphasis added); see also *Zinerman v Burch*, 494 US 113, 125 (1990), citing *Daniels v Williams*, 474 US 327, 331 (1986).

⁴⁴ *West Coast Hotel Co v Parrish*, 300 US 379 (1937).

can often find themselves in the arena of arbitrary regulation of liberty or property. Thankfully, LDC 1-15(e)(4) correctly identifies the proper use of land development regulations⁴⁵:

The proposed use will not substantially or permanently depreciate the value of surrounding property; create a nuisance; or deprive adjoining properties of adequate light and air; create excessive noise, odor, glare or visual impacts on the neighborhood and adjoining properties.

Do OB's actions in this case stick to those permissible purposes for land regulations? Unfortunately not.

1. OB's Actions Violate Regulatory Taking Case Precedent

Whether stopping us from using our own property or physically taking our property, each must be done under the strict requirements and procedures of the US and Florida Constitutions and state law. Certainly, "the plain spirit and purpose of the constitutional prohibitions [are] intended to secure the people against unauthorized official action."⁴⁶ Hence, why the US Supreme Court has held since 1886 "the principles . . . of constitutional liberty and security . . . apply to all invasions on the part of the government and its employes of the sanctity of a man's home and the privacies of life. [T]he essence of the offence . . . is the invasion of his indefeasible right of personal security, personal liberty and private property."⁴⁷

Indeed, "[t]he Constitution extends *special* safeguards to the privacy of the home."⁴⁸ This "indefeasible right of personal security, personal liberty and private property" is exactly what Henrys are fighting for here. Before their current privacy fence was erected and conexes arrived, strangers would often walk through their backyard at all hours; a couple of nosy neighbors admittedly spied on Henrys constantly, threatening their personal security. Before the pavers, the unforgiving sand throughout the front and backyards welcomed only weeds, sandspurs and flooding issues. Without the PFCs *where Henrys have placed them*, Henrys' property was not capable of parking more than two vehicles; not amenable to typical Florida outdoor living; not capable of safely and properly storing necessities and items of personal property; not shielded enough from blunt force hurricane winds; not able to adequately handle the excessive rains that come with each hurricane season. In other words, prohibiting these

⁴⁵ Although it includes many others that go far beyond this acceptable use by OB.

⁴⁶ *Byars v United States*, 273 US 28 (1927).

⁴⁷ *Boyd v United States*, 116 US 616 (1886).

⁴⁸ *Dolan v City of Tigard*, 512 US 374 (1994) (cleaned up).

simple changes made by Henrys to their own property indeed serves to defeat their “right of personal security, personal liberty and private property.”

Moreover, the US Supreme Court has been consistent in identifying regulatory takings prohibited by the US Constitution. The Court held the application of a land use regulation to particular property effects a taking if the *ordinance does not substantially advance legitimate state interests*.⁴⁹ The Court also explained it (perhaps more clearly) that a land “use restriction may constitute a ‘taking’ if not **reasonably necessary to the effectuation of a substantial government purpose**.”⁵⁰ Logically, we must first determine if OB’s land use restrictions in question involve a substantial government purpose. Henrys have repeatedly raised this, pointing out OB does *not* have a “legitimate state interest” or “substantial government purpose”⁵¹ in *any* of the land use regulations being imposed here.⁵² OB has never denied this, and never offered *one* substantial government purpose for even *one* of the involved land use restrictions. Indeed, even Magistrate simply stated Henrys’ argument is “without merit” - *without explaining how this binding case precedent is not applicable to OB*. All these individuals employed by OB seem to think the Constitution, state law and binding Supreme Court precedent are “without merit.” That clearly erroneous philosophy has no bearing on the truth, though.

But, for the sake of argument, even *if* OB had substantial government purposes for each of the land use restrictions at issue here, OB would still have to prove these restrictions are “**reasonably necessary to the effectuation** of [those] substantial government purpose[s].” Since there is no substantial government purpose, these land use restrictions are *not* reasonably necessary to the effectuation of such a purpose, *nor has OB ever claimed they are*. With this case precedent being around for decades, and these precise issues being raised by Henrys for more than 7 months, it would be a little “late in the game” for OB to start trying to fabricate such necessity now.

As applied to Henrys’ PFCs, there is no “substantial advancement of a legitimate state interest” by requiring Henrys to

⁴⁹ See *Nectow v Cambridge*, 277 US 183, 188 (1928).

⁵⁰ *Penn Central Transportation Co v New York City*, 438 US 104, 127 (1978).

⁵¹ Henrys’ 11/8/22 Notice, App 27, 28, 30; Henrys’ 2/27/23 Hearing Response Filed, App 11, 15; Katherine Henry’s Oral Argument and 2/27/23 Testimony, Tr 11, 13, 61, 122, 123.

⁵² Including the confusing and contradictory relevant setback requirements, the aesthetic requirements, the yet to be identified “additional” requirements by OB (see App 030; Tr 108, 109), the alleged complete prohibitions of conexes, or the need to obtain a permit to install a PFCs on privately owned property that does *not* change the type of use of the property, nor negatively impact neighboring properties.

- pay the city and obtain permission before using their homestead for normal residential purposes
- install their fence with certain decorative qualities
- keep their conexes or pavers at least 7.5 (or more) feet away from all side and rear property lines, or completely remove their conexes (which are in much better condition than many of the homes and sheds in this area)
- submit the existing use of buildings on the lot, the number of families the building is designed to accommodate, the location and number of required off-street parking and off-street loading spaces, landscaped buffer areas, a recent survey of the lot *specifically certified to the city* (a cost of \$750 or more), accessory uses of the property, driveway and access standards, impact fees, utility installation fees, sign regulations, etc.

Lastly, we must remember the main purpose of government - to make sure that in my exercise of my rights, I'm not interfering with your exercise of your rights. The US Supreme Court kept this in mind in the regulatory taking jurisprudence, requiring local governments to "make some sort of individualized determination" as to the "nature and extent" of the "impact" of the proposed use of property.⁵³ Even more so, the US Supreme Court held "No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required [conditions are] related both in nature and extent to the impact of the proposed development." *Ibid.* OB has failed to *even allege* Henrys' PFCs as they now sit impact the city or the neighborhood *in any way*, let alone in any negative way that must be countered. Certainly, OB has failed to make *any individualized determination* about the nature and extent of the impact of Henrys' PFCs; let alone how their requirements upon Henrys are "related both in nature and extent to the impact."

2. OB's Actions Violate Laws Protecting Private Property

Aside from cases and constitutional provisions, many state laws also protect private property rights.⁵⁴ In FS 70.001, the legislature recognized "that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without" a court declaring it "a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens." These

⁵³ See, e.g., *Dolan v City of Tigard*, 512 US 374 (1994), *supra*.

⁵⁴ In fact, the Bert J. Harris, Jr., Private Property Rights Protection Act specifically protects private property rights in this very context. The legislature even mandated that "the State Comprehensive Plan shall be . . . consistent with the protection of private property rights." FS 187.101.

private property interests are so important that the legislature created a “separate and distinct cause of action from the law of takings” in FS 70.001. Additionally, FS 163.3177(6)(i) requires local governments to consider “constitutionally protected private property rights” in local decision-making. Even, FS 70.002 acknowledges specific protections exist for our rights to:

- *acquire, possess, and protect our property*
- *use and enjoy our property*
- *exclude others from our property*
- *due process*
- *just compensation for property taken for a public purpose.*

Further, as seen in FS 163.3161, it

is the intent of the Legislature that **all governmental entities in this state recognize and respect judicially acknowledged or constitutionally protected private property rights**. It is the intent of the Legislature that all rules, ordinances, regulations, comprehensive plans and amendments thereto, and programs adopted under the authority of this act must be developed, promulgated, implemented, and applied with sensitivity for private property rights and not be unduly restrictive, and property owners must be free from actions by others which would harm their property or which would constitute an inordinate burden on property rights as those terms are defined in s. 70.001(3)(e) and (f). Full and just compensation or other appropriate relief must be provided to any property owner for a governmental action that is determined to be an invalid exercise of the police power which constitutes a taking.

But OB’s restrictions on Henrys’ use of their property are not “consistent with the protection of private property rights,” nor do they protect Henrys from inordinate burdens, restrictions, or limitations on their private property rights (even those that don’t rise to the level of a “taking”). What’s worse is that OB not only fails to “respect” Henrys’ private property rights, but completely fails to “recognize” those rights.⁵⁵

FS 70.45 *Government Exactions* was enacted to provide specific protections.. “In addition to other remedies available in law or equity, a property owner may bring an action in a court of

⁵⁵ Indeed, FS 163.3177(6)(i)(1)(3) requires OB to respect “constitutionally protected private property rights,” including “the right of the property owner to privacy and to exclude others from the property to protect the owner’s possessions and property.” Certainly, forcing Henrys to remove their privacy fence will cause irreparable harm by destroying Henrys’ right to privacy, especially considering the neighbor living to the West who admitted in her testimony to continuously watching and taking stacks of pictures of the Henry family. This in no way respects Henrys’ right to privacy or to exclude others from their property.

competent jurisdiction under this section to declare a prohibited exaction invalid and recover damages caused by a prohibited exaction.” Here, “‘Prohibited exaction’ means any condition imposed by a governmental entity on a property owner’s proposed use of real property that lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.” Thus, Henrys’ 11/8/22 NPA explained why OB’s exaction is prohibited, as required under FS 70.45(3). The law then required OB to not only respond in writing explaining why OB maintains the exaction is proportionate, but also to ***identify the specific harm created by Henrys’ use of their real property***. Of course, state law allowed OB to remove the exaction, so no further action by either party would be needed. But OB was prohibited from continuing with its exaction during the time it was given to respond to Henrys’ Notice, as FS 70.45 prohibited Henrys from filing for these statutory protections in that 90-day period.⁵⁶

Or, simply put, **FS 70.45**, taking its cues from the 1994 US Supreme Court ***Dolan*** case, required OB to halt all action until providing Henrys with a written response identifying

- the harm caused by Henrys’ use (their PFCs) of their own property AND
- how the permit requirements & other imposed regulations
 - have an essential nexus to a legitimate public purpose
 - would mitigate the “harm” caused by Henrys’ use AND
 - how the severity of OB’s restriction on Henrys’ use is proportionate to the “harm” caused by Henrys’ use

So, ***let’s be clear***. Henrys’ PFCs are all on Henrys’ property. They are all in fully functioning order, *all* having survived the sustained 70+mph winds of Hurricane Ian (and Nicole). Not a single part came off and flew around in the hurricanes, despite many neighbor’s fences and sheds being decimated. Except the ONE nasty neighbor who complained that Henrys “have ruined the neighborhood since they got here,” *most* neighbors genuinely appreciate the PFCs. Indeed, they impact neighboring properties in *no* negative ways, but do reduce the amount of sandspurs and water runoff transferring to neighboring properties, help contain sound within their own property, keep soccer balls out of neighbor’s yards, significantly mitigate wind and flood damage, etc.

⁵⁶ Keep in mind that OB “has the burden of proving that the challenged exaction has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate.”

3. OB Cannot Force Henrys into NonCompliance

Neither OB nor Magistrate can force Henrys to do something that would put them into noncompliance with the LDC. First, Magistrate holds no subject matter jurisdiction (SMJ) to order removal of Henrys' conexas, as they are legally required to remain on Henrys' property. The Order asserts Henrys' conexas constitute a garage, as defined by LDC 2-50(bb)(3)(a), and "must meet the regulations pertaining to a garage." Accordingly, LDC 2-50(o) *requires* all residential properties, like Henrys' homestead, to have a garage. Regardless of when or how the garage was built or placed on the property, Henrys' are bound to leave it on the property "unless an additional garage or carport is constructed or presently exists on the subject property." However, Henrys have no additional garage or carport.

Magistrate also holds no SMJ to order removal of Henrys' pavers, as they are legally required to remain on Henrys' property. Per LDC 2-50(x)(4), there "shall be no parking of vehicles . . . in the front yard of any residential property" except on "asphalt, bituminous brick, concrete, turf block, brick pavers or pervious concrete." Indeed, "driveways" are "paved areas" of "asphaltic concrete, concrete, brick or similar material." LDC 1-22 "driveway" and "paved area". Parking on grass, stone gravel or mulch is prohibited. In fact, without these paved "off-street parking requirements," Henrys' home would be a "noncomplying structure or site".⁵⁷ As Henrys own four vehicles, with one parked on the south driveway, one parked on the north driveway, and one parked on each of the two driveway paver extensions, removing Henrys' pavers would mean their vehicles would be parked on the sand/weeds, making it a "noncompliant structure." Magistrate lacks authority to force Henrys into such noncompliance.

So, removing Henrys' pavers and conexas would actually put them in violation of the LDC regarding parking,⁵⁸ as well as the regulations against outdoor personal storage,⁵⁹ and for needing a garage.⁶⁰ It makes no sense for OB to fight so hard against Henrys' alleged LDC violations in such a manner to force LDC noncompliance. (Nor do OB or magistrate have authority to do so.)

⁵⁷ per LDC 1-22.

⁵⁸ LDC 2-50(x)(4).

⁵⁹ OB Code of Ordinances [hereinafter, "CO"] 14-94 through 14-96, and LDC 2-50(x)(1).

⁶⁰ LDC 2-50(o).

4. Terms of the LDC Render Henrys' Full Compliance Unreasonable and/or Impossible

Terms of the LDC itself render Henrys' full compliance with the LDC unreasonable and/or impossible. Basic requirements of due process prohibit land use regulations from being unreasonable or impossible to comply with. The absurdity, unreasonableness and impossibility of compliance is seen in several relevant LDC provisions.

First, OB argues that according to LDC 1-14, prior to Henrys installing their PFCs, "the city shall have issued an approved development order *and* building permit." But LDC 1-14 not only requires an approved development order and building permit, but also the "development order shall be issued only in conjunction with the approval of . . . a final site plan," which triggers extensive engineering fees and other expenses of site plans. So, for a family living on modest means simply trying to mitigate ongoing flood and wind damage, and stay in compliance with parking and personal storage requirements, the costs are already overwhelming.

Additionally, no applicant may receive a building permit of any kind without "[a]ll requirements of this [LDC being] met unless a variance is granted by the Board of Adjustment and Appeals."⁶¹ In other words, if Henrys wanted to apply for a permit for their PFCs, they would *not* be issued one *unless* their property otherwise met *all* LDC requirements. Henrys' home is a modest 1350 ft², with no garage, carport or basement. Indeed, this is why Henrys placed two small conexes on their property. LDC 2-50(o) *Garages* states "All single-family residences are required to have a garage or carport structure."⁶² The vast majority of homes in Henrys' neighborhood built in 1949, let alone the general OB beachside community, do *not* have garages. So, no garage? You can't get a building permit for anything purporting to require one, unless you first go through the time-consuming and expensive process of applying for - and actually receiving - a variance under LDC 1-16. This is certainly an insurmountable hurdle for Henrys to obtain a permit for their PFCs. Sarah Cushing testified⁶³ that OB "wouldn't enforce" that part of the LDC on Henrys, but her statement regarding such cherry-picking doesn't guarantee to Henrys OB would actually and intentionally ignore such requirements when determining whether to process an application for a permit (of any kind).

The impracticality, unreasonableness, and often impossibility of complying with the "submittal

⁶¹ LDC 1-14(6)(a)(4)(iv).

⁶² There are no "grandfathering" exemptions.

⁶³ Tr 94-98.

requirements” for building permits per LDC 1-14(6)(b) is likewise astounding. First, the submittal requirements include items *not even specified* in the LDC. “Building permit applications . . . shall include *the items as required by the building and code division, building permit application checklist, the state building code, and both local and state regulations.*”⁶⁴ Keeping in mind that this is literally the LDC Section entitled “Submittal Requirements,” you can see that numerous unidentified requirements are placed upon residents. That alone defies all notions of due process. However incredulous this may seem, OB confirmed⁶⁵ that you have to apply for a building permit in order to be given the information about what you can put on your own property!⁶⁶

11 ANN-MARGARET EMERY: And one last
12 question. The respondent mentioned whether
13 or not there was a mechanism for a homeowner
14 to know whether or not a structure would be
15 permitted on the property. Wouldn't the
16 mechanism be the application -- wouldn't it
17 be the application of the permit to review
18 that before they spend the time and money to
19 put something on their property?
20 SARAH CUSHING: That's correct. Yeah.
21 So there's a number of different submittal
22 requirements when a permit comes in. One of
23 which is a site plan that shows the proposed
24 location of the structure, the size of the
25 structure and the setbacks to the applicable

But, it gets even more impractical and unreasonable. OB claims 1-14(6)(b) applies to Henrys' PFCs. But let's look at it another way. Want to put up a swingset for your child? Get a gazebo from Sam's Club as an anniversary gift? Want to set up a bonfire area to make s'mores with

⁶⁴ As if the staggering amount and complexity of land use regulations in OB wasn't enough, provisions of the LDC like sections 1-18(f)(1) claims the “city commission may include additional reasonable and appropriate conditions not specifically provided for in this Land Development Code.”

⁶⁵ Through their Attorney and Planning Department Supervisor.

⁶⁶ Tr 93.

your kids this holiday season? Not only are you required to meet the aforementioned absurd requirements, but your building permit application *must* also contain information including:

- the actual shape and dimensions of the lot,
- the existing use of buildings on the lot,
- the number of families the building is designed to accommodate,
- the location and number of required off-street parking and off-street loading spaces,
- landscaped buffer areas,
- a recent survey of the lot *specifically certified to the city*,
- accessory uses of the property,
- driveway and access standards,
- impact fees,
- utility installation fees,
- sign regulations.

While some items within LDC 1-14(6)(b) are marked as being required only “if applicable,” many of the items - including *all* of those listed here - do not contain that modifier. Again, for a family of modest means simply trying to use and preserve their property for their continued use as a homestead, these requirements for even applying for a permit are unreasonable and overreaching.

OB’s LDC is unreasonable in its subjective “aesthetic” requirements., too The LDC attempts to regulate the “aesthetic” value of a homeowner’s use of their property. Uses not deemed “aesthetically acceptable,” such as in LDC 1-15(e)(7), are withheld “approval” by OB. Bruce testified Henrys’ fence would not be permitted as it stands because it does not meet aesthetic requirements.⁶⁷ In other words, 3 small lateral posts run across the fence panels that face the backyards of the neighbors to the north, south, and west. However, at the front of the property, the fence panels themselves face the road, with the 3 small lateral posts on the inside of the fence. Bruce further testified this does not meet the aesthetic requirements of the LDC, and Henrys would, therefore, be required to tear down the vast majority of their fence before a permit would be issued.⁶⁸ We must keep in mind, however, that this is a matter of subjective

⁶⁷ “Other than fact that they did not obtain a permit, what’s wrong with the fence, anything? . . . The good side is on the inside rather than the outside.” Tr 29.

⁶⁸ Further, Bruce testified that OB may refuse to issue a permit for the fence and pavers if, in the sole discretion of the code inspector, they do not have enough aesthetic value - or simply put, they just don’t like how they look. Considering the attitude OB has expressed toward Henrys thus far, and the extent of

aesthetics only, and that nothing would prohibit the neighbors to the south and west from putting up their own fences. Indeed, the neighbor to the north already has their own privacy fence (installed without a permit, and now in bad repair since Hurricane Ian).



Moreover, "Land development regulations relating to building design elements may not be applied to a single family or two family dwelling," which includes "the location or architectural styling of windows or doors."⁶⁹ Henrys' fence is constructed entirely of solid wood doors.⁷⁰ Thus, OB *cannot* regulate the location, aesthetics, or architectural styling of Henrys' solid wood door fence.



As for these beauty requirements, OB fails to even attempt to claim a legitimate state interest is involved, let alone these provisions of the LDC provide a "substantial advancement" of such.

The impracticality, unreasonableness, and often impossibility can also be seen in the LDC setbacks. Specifically, OB has onerous setbacks for pools, garages, sheds, play structures, gazebos, and all other typical Florida outdoor features, which means that even with a decent-sized parcel over 10,000 square feet, it is literally impossible to meet all the setbacks, and still enjoy these features (some of which are required by the LDC!).

the ultra vires acts, OB is most likely to disqualify Henrys' fence and pavers on this basis alone, if for none other.

⁶⁹ FS 163.3202(5)(b)(1).

⁷⁰ as demonstrated by "Exhibit A" of the Orders.

OB's regulation of setbacks for pavers, etc. is also quite contradictory and confusing.⁷¹ According to LDC 2-50(x)(4)(f), the setback for pavers is 3 feet, while Bruce claims the required setback for pavers is 7.5 feet.⁷² But Cushing testified that the setback for pavers is 8 feet,⁷³ or instead 7.5 feet,⁷⁴ only to turn around and say that since Henrys' home used to be a duplex, the setback is 20 feet!⁷⁵ Not only is it impossible to know which setback Henrys would ultimately be held to, but any of them (certainly the 20 foot setback) are an unreasonable prohibition on using one's own property given that most of these lots don't exceed 88 feet from side to side. In other words, with a 20 foot setback on the south and north side, Henrys would be prohibited from using 40 feet or almost **half of their 88 foot wide property!** What's more is that the US Supreme Court recognized in *Nollan* that land use regulations effect a taking when they "den[y] an owner economically viable use of his land."⁷⁶ Enforcing setbacks of nearly half of Henrys' modest homestead undoubtedly denies them economically viable use of their land!

Yet the unreasonableness continues. Bruce testified that before issuing a permit, OB would require Henrys to pull up their pavers to "check to see if they were installed properly,"⁷⁷ which is not permissible under the law.⁷⁸ Further, there are thousands of pavers on Henrys' property. Removing and replacing them would be back-breaking work for Henrys. And as mentioned earlier, there were already some pavers in both the front and back yards when Henrys purchased the home. Without identifying which pavers OB is requiring to be permitted or removed,⁷⁹ Bruce loosely referenced pavers in the backyard as possibly being involved,⁸⁰ and the Orders don't specify, either.

Many of the requirements OB is trying to enforce upon Henrys' PFCs are confusing, contradictory and unreasonable. But the LDC's requirements for merely *applying* for a permit for the PFCs are impractical, unreasonable and often impossible. As discussed above, according to OB's LDC, no permit can be issued without

⁷¹ This might explain why many properties in OB have pavers or concrete or stone going right up to the property line, with no setbacks.

⁷² See, App 027.

⁷³ Tr 078.

⁷⁴ Tr 76, 80

⁷⁵ Tr 76, 79

⁷⁶ *Nollan v California Coastal Comm'n*, 483 US 825 (1987), citing *Agins v Tiburon*, 447 US 255, 260 (1980).

⁷⁷ Tr 109, etc.

⁷⁸ Nor was any alleged legal justification or authorization even offered by OB for requiring such.

⁷⁹ Henrys are unaware of when the prior pavers were put on their property or if a permit was required or obtained for them.

⁸⁰ Tr 108.

- expensive and time-consuming variance approval regarding the garage requirement,
- a development order,
- engineer/architect final site plan being approved,
- a recent survey of the lot *specifically certified to the city*,
- the aforementioned multitude of unidentified requirements being met,
- subjective aesthetic requirements,
- onerous setbacks consuming *half* of Henrys' property, and
- an application that includes the aforementioned incredibly overburdensome requirements.

5. Henrys' Pavers, Fence & Conexes Don't Require a Permit Per LDC & Community Planning Act

Henrys' PFCs don't actually require a permit per the LDC, the Florida Building Code (FBC), and the Community Planning Act (CPA). In examining this, we must note the Florida Supreme Court explained the powers of a municipality are to be interpreted and construed in reference to the *purposes* of the municipality and if *reasonable doubt* should arise as to whether the municipality possesses a specific power, such ***doubt will be resolved against the City***.⁸¹

First, we must examine the FBC to explore how conexes are *not* regulated, nor needing a permit under Henrys' circumstances. The "regulations pertaining to a garage" from a state law perspective are comprised of standards primarily for "public health and lifesafety" and "protection of property"⁸² **"relative to structural, mechanical, electrical, plumbing, energy, and gas systems"**,⁸³ and **standards for building design elements**.⁸⁴ *The only violation regarding the conexes Magistrate found was that a permit had not been obtained prior to being placed on Henrys' property. However, the Henry's long-standing communication with OB clearly*

⁸¹ City of Miami Beach v Fleetwood Hotel, Inc., 261 So. 2d 801 (Fla. 1972), citing Liberis v Harper (Fla. 1925) 89 Fla. 477, 104 So. 853. Indeed, the purpose of the "formation of municipalities" as seen in FS 165.021, is to provide "municipal services so as to: (1) Allow orderly patterns of urban growth and land use. (2) Assure adequate quality and quantity of local public services. (3) Ensure financial integrity of municipalities. (4) Eliminate or reduce avoidable and undesirable differentials in fiscal capacity among neighboring local governmental jurisdictions. (5) Promote equity in the financing of municipal services." Clearly, (2) - (5) do not apply to the municipal action here. And (1) addresses common sense land use issues, such as prohibiting tobacco shops or strip clubs from being next door to an elementary or middle school. But micromanagement of landscaping, storage, and securing of private property (both real and personal) is not covered here. With this in mind, we must examine how the PFCs involved here don't require a permit per the LDC, FBC, or the CPA.

⁸² FS 553.72(1)

⁸³ FS 553.73(2)

⁸⁴ See FS 163.3202(5)

demonstrated OB would never issue Henrys a permit for the conexes. Indeed, testimony by Bruce and Cushing included claims the conexes were "not capable of receiving a permit."⁸⁵

Specifically, without quoting any portion of the code or state law, Cushing said the FBC does not regulate conexes, therefore, they are not able to be permitted.⁸⁶ While it is dumbfounding in our constitutional republic to claim we could *not have* something because it was *not regulated* by the government, the law actually addresses this point (without extensive regulations or requiring permits). The FBC states "structures moved into or within a county or municipality [that] do not or cannot comply with the code . . . shall not be required to be brought into compliance with the building code."⁸⁷ As the conexes fit the definition of structures as defined there, they cannot be required to be brought into compliance with code portions regulating their "construction, erection, alteration, modification, [or] repair."⁸⁸ That only leaves standards for **building design elements**. However, "Land development regulations relating to building design elements may not be applied to a single family or two family dwelling," which includes "the location or orientation of the garage."⁸⁹ Also, although local governments may make amendments to the FBC, "such additional requirements may not introduce a new subject not addressed in the Florida Building Code."⁹⁰ Thus, as building official Cushing testified that *the FBC does not regulate conexes*, OB is statutorily prohibited from regulating them.⁹¹ Consequently, the order purports to penalize Henrys for their "failure" to receive a permit for the conexes which OB illegally required *and* illegally withheld.

Magistrate also lacks SMJ to prevent Henrys' use of Henrys' pavers under state law. The pavers, undisputed as fitting the definition of "Florida-friendly landscaping," serve "a compelling public interest" "to conserve or protect the state's water resources."⁹² As such, the LDC "may not prohibit or be enforced so as to prohibit any property owner from implementing Florida-friendly landscaping on his or her land."⁹³ Thus, there is no jurisdiction to enforce such a

⁸⁵ Tr 74.

⁸⁶ Tr 93.

⁸⁷ FS 553.79(20)(a).

⁸⁸ See FS 553.72(1) and 553.73(1).

⁸⁹ FS 163.3202(5)(b)(1).

⁹⁰ FS 553.73(4)(b)(3).

⁹¹ Further, Cushing testified the conexes are not tested for wind-borne-debris-impact standards, and therefore, cannot be used by Henrys. However, "storage sheds that are not designed for human habitation and that have a floor area of 720 square feet or less are not required to comply with the mandatory wind-borne-debris-impact standards of the Florida Building Code." FS 553.73(10)(h).

⁹² per FS 166.048 and 720.3075.

⁹³ FS 166.048.

provision, especially with Henrys' beachside property, which only sustains weeds and sand, having no extensive irrigation system that would be needed to sustain grass.

As for what's required by the LDC, OB's October Notice claims the conexes "being used as sheds installed without" a permit violates LDC 2-50(a)(9). However, LDC 2-50(bb)(1) entitled *Sheds, utility structures, playhouses and gazebos*, states a "**building permit shall be issued** prior to the erection of any accessory structure," and the LDC defines "erected" the same as it defines "Construction, start of."⁹⁴ "Construction, start of" is then defined where the "actual start of construction means . . . **the first placement of permanent construction** of a building (including a manufactured home) on a site," **where "[p]ermanent construction does not include . . . the installation of accessory buildings such as garages or sheds not occupied as dwelling units** or not part of the main buildings." Thus, by the very text of the LDC itself, whether the conexes are determined to be garages or sheds, "the installation of [these] accessory buildings" do not trigger the need for a permit to be obtained. And since the "words of a governing text are of paramount concern, and what they convey, in their context, is what the text means."),⁹⁵ OB is bound by the terms as *they* have chosen to define them within the LDC, even if it doesn't fit *their* agenda in this matter.

Further, as to the LDC requirement for building permits to be issued for erection of structures, the CPA, the statute which governs all LDCs, declares that "structure"⁹⁶ only includes movable structures "which can be used for housing, business, commercial, agricultural, or office purposes either temporarily or permanently." These conexes are not capable of such uses, as they do not have plumbing, windows, two methods of egress, etc. Therefore, these conexes, being used as storage, are excluded from the statute's definition of "structure," and thus are not required to receive a permit. Likewise, in applying the land *development* code, authorized by and governed by the CPA, it is important to acknowledge the statutory definition of "development." "Development" does **not** include "the use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling," or a "change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class."⁹⁷ Consequently, as securing private property, storage of personal property, and landscaping and parking are customarily incidental uses to enjoyment of a dwelling, the PFCs involved cannot, by state law, be considered "development" for purposes of

⁹⁴ LDC 1-22.

⁹⁵ *Ham v Portfolio Recovery Assocs., LLC*, 308 So.3d 942, 946 (Fla. 2020).

⁹⁶ Is defined by FS 380.031(19), per FS 163.3164(45).

⁹⁷ FS 163.3164(14) and 380.04.

enforcing the land *development* code.⁹⁸ Or, in other words, since Henrys are simply making normal and customary uses of their homestead, and *not* undertaking significant changes in types of uses, the LDC's authorizing state statute does *not* allow the LDC to be used as a method of regulation against Henrys and their customary uses.

Further, OB claims LDC 2-50 on "accessory uses and structures" requires a fence permit. However, fences are not covered by "use" as defined in LDC 1-22, and they are expressly *excluded* from the definition of "structure" ("structure . . . shall not include fences or signs"). So, without a specific law or code provision actually requiring Henrys to obtain a permit for their fence, no such permit is required.⁹⁹

OB likely does not appreciate this outcome, but they have been unable to come up with *any* viable reason why the plain language of state law (and even the LDC's very own definitions) would not apply here (despite being alerted to this very issue in the 11/8/22 Notice). But in reality, if OB doesn't like the plain language of the law, they cannot simply ignore it. That is just another example of the unconstitutional cherry-picking by OB in their overregulation of the Henrys. With all the conflicting legal provisions, and blatant violations of the law by OB, it's even more essential for ***all doubt to be resolved against the city.***

a. Conexes Not Against LDC, Not Even Mentioned in LDC

OB offered testimony about LDC 2-50(x)(3) that "personal on-site storage structures shall be limited to situations where a person or business is moving to a new location" and that "the storage unit shall not be placed on a period for over 30 days."¹⁰⁰ OB then argued this part of the LDC prohibited Henrys from having their conexes.¹⁰¹ However, "personal onsite storage structures" are not defined. With the broad interpretation OB would like us to use, that term would also include standard sheds and detached garages, because both are used for personal onsite storage. Indeed, OB's ordinances actually *require* personal storage structures to be used for outdoor items.¹⁰² In fact, OB has no legal authority allowing them to interpret 2-50(x)(3) in

⁹⁸ Per FS 163.3164(26), "'Land *development* regulations' means ordinances enacted by governing bodies for the regulation of any aspect of *development* and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land."

⁹⁹ Remembering any doubt, ambiguity, or confusion must "be resolved against the city."

¹⁰⁰ Tr 75.

¹⁰¹ Tr 75.

¹⁰² OB's LDC 2-50(x)(1) and Code of Ordinances 14-94 through 14-96.

such a manner to *include* Henrys' conexes, but *exclude* all other personal onsite storage structures.¹⁰³

It's interesting that Cushing specifically testified about PODS Containers not being allowed for more than 30 days, and *only* being allowed when a person or business is moving, considering that The Maverick Resort just 3 blocks away on AIA has had *several* PODS containers onsite since September 2022, **and** OB's own park at 54 Seton Trail has had a PODS container onsite since February 2021. And neither organization is "moving." In fact, an official LDC complaint was made two months ago about the Seton Trail PODS container, and when asked about its status just last week, Neighborhood Improvement Supervisor Chris Mason stated it had been removed. However, it is *still* there, and video footage of Mason's statement and the current status of the PODS container can be seen at <https://youtu.be/7rRipPNIHEw>.



Now, LDC 2-50(x)(3) prohibits onsite moving related storage structures like PODS or U-Boxes to be used long-term, which makes sense since they are not designed to withstand extreme weather, like hurricanes. Obviously, permanent structures like sheds or conexes are not included in this type of storm-mitigation provision. And for how many conexes are used long-term all across OB, they cannot be assumed to be called something else, or to all of a sudden be deemed temporary in nature. As demonstrated throughout this response, the LDC is full of conflicting information, and not a single provision clearly covers regulations for conexes. On that point, Henrys were told on the phone the conexes had to be removed, and while the October Notice doesn't state they must be removed, it also does *not* indicate which permitting provisions and/or requirements supposedly apply (other than simply "needing a permit"). So, with the LDC not mentioning "shipping containers" or "conexes," the OB phone call conflicting with the written notice, and the written notice actually providing no notice whatsoever as to which conditions supposedly must be satisfied before a permit is granted, OB cannot stretch the

¹⁰³ Especially since the conexes are not considered "structures" per the authorizing statute, as discussed above.

LDC to cover that which is not clearly and unequivocally articulated as being covered by such. We must remember that regarding uncertainty on municipal power like this, ***doubt will be resolved against the City.***

C. OB May Not Deny Henrys Procedural Due Process of Law

Even *if* this language of the LDC was otherwise enforceable, OB's actions are nonetheless invalid if they are done in a manner to deprive Henrys of due process of law. OB officials seem to think the Constitution doesn't apply to them. However, in FS 112.311(6), it was "declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the benefit of the public. They are bound to uphold the Constitution of the United States and the State Constitution." So, where an LDC provision (or a certain application of it) contradicts the protections guaranteed by the Constitution, OB employees and officials ***must*** protect and defend the Constitution and the rights it guarantees.

1. Evidence Admitted in Violation of the Fourth Amendment

Not only does the Fourth Amendment protect us against unreasonable searches and seizures by the government, but our state constitution and state law does, too. However, on 9/2/22, OB officials came, unannounced, to Henrys' home. As later seen on security footage, OB officials not only came onto Henrys' property, but they went past barriers Henrys had put into place to keep a nosy neighbor out. Upon being in that intimate curtilage of Henrys' home, OB officials looked around and took pictures. Although OB knew Katherine Henry (and daughter) were home, as they had just gotten off a long phone conversation with Katherine, they did not announce themselves, instead choosing to sneak around Henrys' property.

Further, "[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. . . . [wherein] ***Articles or information obtained in violation of this right shall not be admissible in evidence.***"¹⁰⁴

Thus, all pictures and other documentation OB took of Henrys' property that day must be immediately forfeited to Henrys, as OB is prohibited from keeping that which they illegally obtained. In other words, any potential "evidence" OB obtained that day is fruit of the poisonous tree, and OB is barred from keeping or benefiting from such.

Numerous US Supreme Court cases have explained that "except in certain carefully defined

¹⁰⁴ FL Const Art I Sec 12 Searches and Seizures.

classes of cases, a search of private property without proper consent is ‘unreasonable’ unless it has been authorized by a valid search warrant,” which OB clearly did *not* have.¹⁰⁵ And Justice Scalia explained that “With few exceptions, the question whether a warrantless search of a home is reasonable and hence constitutional must be answered no.”¹⁰⁶ Further, FL Const Art I Sec 23 *Right of Privacy* further declares that “[e]very natural person has the *right to be let alone and free from governmental intrusion* into the person’s private life.” How much clearer could it be for OB?

In addition to these constitutional protections, state law also prohibits this type of behavior by OB officials. FS 82.01 and 82.03(1) make it a crime for a person to obtain possession of private property by unlawful entry, as was done here.¹⁰⁷

Further, FS 810.08 indicates that when “whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure,” that person “commits the offense of trespass in a structure.”¹⁰⁸ This portion of state law acknowledges that a person is not “authorized” merely by virtue of being a government official, but must fall within certain exceptions to be “authorized.”¹⁰⁹ As the OB officials at the Henry property were not “law enforcement officer[s] whose department has received written authorization from the owner,” nor where they “registered engineers and surveyors and mappers authorized to enter lands,” this action by OB also constituted an illegal entry upon land under FS 810.12.¹¹⁰ Moreover, even FS 166.0415(4) states “[n]othing in this section shall be construed to authorize any person designated as a code inspector to perform any function or duties of a law enforcement officer.” But even so, a law enforcement officer would have to have a warrant in order to come into Henrys’ dwelling (or curtilage thereof).

Consequently, with OB’s actions in obtaining photos of Henrys’ private homestead violating both civil and criminal laws, let alone explicit constitutional protections, OB’s said photos are fruit of

¹⁰⁵ *Camara v Municipal Court of City and County of San Francisco*, 387 US 523, 528-529 (1967).

¹⁰⁶ *Kyllo v United States*, 533 US 27 (2001).

¹⁰⁷ The legislative findings of FS 810.015 “that in order for a burglary to occur, it is not necessary for the licensed or invited person to remain in the dwelling, structure, or conveyance surreptitiously,” are also of importance here. Indeed, under FS 810.02 and 810.011, a burglary occurs upon a person “entering a dwelling [or] structure” including the curtilage thereof, as OB officials did here. Indeed, with Katherine and daughter both in the home when OB officials came onto the property that day, the “burglary is a felony of the second degree” per FS 810.02(3).

¹⁰⁸ Indeed, as “there is a human being in the structure or conveyance at the time the offender trespassed,” this “trespass in a structure” “is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.”

¹⁰⁹ FS 810.09(3).

¹¹⁰ See also FS 810.12(5), 471.027, and 472.029.

the poisonous tree, and inadmissible in any proceeding. Certainly, magistrate shall admit only evidence that would be admissible in court.¹¹¹ Magistrate not only allowed such illegally obtained photos into evidence, but also incorporated some of them right into his Orders. Magistrate did not make a finding that the photos were legally obtained; he simply “overruled” Henrys’ objections and allowed the photos into evidence. It is important to note, though, that the well-established “exclusionary rule” does *not* allow illegally obtained photos like this into evidence, even if the photos could have possibly been obtained in another, *legal* way. No, the Fourth Amendment simply forbids such “evidence” from being used in the proceedings. And, without such “evidence,” OB would have undoubtedly failed to meet their burden of proof on any of the three alleged violations.

2. Due Process of FS 70.45 Denied

The manner in which OB completely subverted the requirements of FS 70.45, and robbed Henrys of the statutory protections for their property contained therein is nothing short of a stealthy attempt to deny Henrys due process of law. But “Constitutional provisions for the security of person and property are to be liberally construed, and “it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.”¹¹²

Chapter 70 of Florida Statutes is entitled “Relief from Burdens on Real Property Rights” - *relief from burdens not compensation after exactions*. The provisions of this chapter are designed to STOP the city from burdening private property rights. OB argued that meant Henrys were required to file a FS 70.45 case in circuit court *prior* to the 2/27/23 Hearing if they wanted that relief. However, OB first took their official action in burdening Henrys’ property rights in serving Henrys with the Notices of Violation on 10/20/22, to which Henrys promptly supplied the FS 70.45 Notice by 11/8/22. Under FS 70.45(3), Henrys were required to serve the notice no later than 180 days after imposition of the prohibited exaction, but must then wait at least 90 days from that point before filing an action in circuit court (meaning the city has 90 days to respond to the notice). Ninety days from 11/8/22 is 2/6/23. However, by that point, OB had already served Henrys with the Notice of the Hearing. In fact, OB had attempted to hold the hearing without proper notice a month earlier, on 1/23/23. Indeed, although Henrys were not legally served until several weeks later, OB had already been scheduling the matter for hearing by December

¹¹¹ FRCP 1.490(g).

¹¹² Byars v United States, 273 US 28 (1927), citing Boyd v US, 116 US 616, 635 (1886).

2022.¹¹³ Thus, OB not only illegally failed to respond under FS 70.45, but *commenced the special magistrate proceedings against Henrys several weeks before Henrys were even able to file a suit under FS 70.45*. Since FS 70.45 accounts for “damages” which include not only financial compensation but also “the right to injunctive relief,” it is absurd for OB to manipulate the laws involved so as to prevent Henrys from seeking relief from the circuit court *before* the 2/27/23 Hearing, but also preclude Henrys from receiving injunctive relief *at* the 2/27/23 Hearing.

In other words, OB cannot properly initiate special magistrate proceedings during the 90 days they are statutorily required to respond under FS 70.45. And because OB did such, which ultimately resulted in the Hearing being held on 2/27/23, Magistrate lacked SMJ to hold the hearing then, and was required to dismiss the matters before him.¹¹⁴ Instead of following FS 70.45, Magistrate rewarded OB’s ultra vires acts violating Henrys’ due process rights, depriving them of the *preventive* injunctive relief found in FS 70.45. Now, Henrys are overburdened with commencing the 70.45 litigation *while* appealing these Orders - which contain provisions for OB to unconstitutionally and literally *take* Henrys’ property, the *clearest example of where relief from burdens on real property rights is needed*. (Fittingly, Webster’s defines “relief” as “a removal or lightening of something oppressive, painful, or distressing.”)

Burden of Proof

Keep in mind that under FS 70.45, **OB “has the burden** of proving that the challenged exaction has an essential nexus to a legitimate public purpose and is roughly proportionate to the impacts of the proposed use that the governmental entity is seeking to avoid, minimize, or mitigate.” By illegally pursuing their exactions, and obtaining the 3 subject orders, OB is attempting to shift the burden of proof over to Henrys. Certainly, OB may not modify who has the burden of proof, or what it is, simply by failing to respond to the 11/8/22 Notice as *required* by state law. We must also consider that the 11/8/22 Notice also informed OB of Henrys’ intent to pursue a Petition for Prohibition under FS 81.011 against OB. Prohibition is only available to *prohibit* or *prevent* action from being taken, and is not available after OB has taken the action. Therefore, OB rebuffed Henrys’ rights to seek preventative relief under FS 81.011 as well. If these are not the very stealthy encroachments upon Henrys’ rights that this court has the duty to

¹¹³ Exhibit 2.

¹¹⁴ If Henrys’ 90 days of waiting had expired with no magistrate hearings scheduled yet, and Henrys, after a reasonable time, had sat on their rights and failed to pursue the FS 70.45 litigation, the magistrate hearings could have *then* been scheduled.

be watchful for, then I don't know what would be.¹¹⁵ Thus, magistrate's orders must be recognized as legally void.

V. OB Has No Authority to Physically Take Henrys' Pavers, Fence & Conexes

Magistrate's orders **purport to authorize OB to enter onto Henrys' homestead, remove their property, dispose of their property, charge them for such removal, use such charges to create a lien against their real and personal property, and be immune from liability for damage or loss sustained by Henrys from OB's said removal.** These orders not only lack SMJ, but also *completely* deprive Henrys of due process of law. While the laws broken by Magistrate and OB are many in number, the issue is actually quite simple - OB is expressly prohibited by the US and Florida Constitutions, and state law, from **literally taking and destroying portions of Henrys' homestead!**

Full and just compensation or **other appropriate relief must be provided to any property owner for a governmental action** that is determined to be an invalid exercise of the police power **which constitutes a taking.** FS 163.3161.

A. Fifth Amendment Prohibits OB from Physically Taking Henrys' Property

The US and Florida Constitutions expressly prohibit OB from literally taking Henrys' property. FL Const Art X Sec 6 *Eminent domain* explains "No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner," which goes hand-in-hand with US Constitution Am V stating "nor shall private property be taken for public use, without just compensation." OB has paid Henrys **no** compensation, nor are they taking their property for a legitimate public purpose.

In deliberating a takings issue, the US Supreme Court held that "If it is law, it will be found in our books; if it is not to be found there, it is not law."¹¹⁶ But here, nowhere in any law is Magistrate given authority to grant OB authority to enter Henrys' property, remove and dispose of Henrys' property, charge Henrys for such removal, impose a lien for those removal charges, or absolve OB from liability for damages they cause in so doing.

But what *is* found in the law is FS 73.014 and 163.335(7), which expressly prohibit taking property in ordinance violation situations, even for "nuisance, slum, or blight conditions," as it is

¹¹⁵ Byars v United States, 273 US 28 (1927).

¹¹⁶ Boyd v US, 116 US 616 (1886).

“not a valid public purpose or use for which private property may be taken” as required by the Florida Constitution. Furthermore, the alleged ordinance violations for Henrys’ PFCs don’t even come close to arising to the level of public concern that exists for public nuisances, slum or blight. Indeed, Henrys’ alleged violations (of simply not having a permit for their PFCs), qualify as NONE of the permissible purposes for which private property may be taken.¹¹⁷

Thus, in paying *no just compensation* and failing to take Henrys’ PFCs *for a legitimate public purpose*, the US and Florida Constitutions expressly prohibit OB from doing what the 3 orders purport to authorize them to do.

B. Due Process Denials Invalidate Otherwise Possibly Permissible Action

As discussed, due process denials invalidate otherwise permissible action. OB’s attempt to physically take Henrys’ property failed to follow *any* required legal process, and thus invalidates magistrate’s orders even if otherwise valid. On point, FS 163.3194(4) mandates that “private property shall not be taken *without due process of law* and the payment of just compensation.” To avoid being unduly cumulative, Henrys rely on the statutes they cited in their Motion for Relief & for Stay,¹¹⁸ as all of the averments made by Henrys therein were admitted by OB.¹¹⁹ Thus, Henrys simply reiterate that OB’s fatal procedural flaws in attempting to take Henrys’ property include: filing the action under the wrong statute, filing prematurely, filing without the requisite statutory pre-lawsuit conditions met, notice and opportunity to be heard on the issue of taking was denied to Henrys, service was not made *personally*, filing without good-faith pre-filing negotiations with Henrys, filing without the statutory requirements for eminent domain petitions, etc. Many of these are *per se* reversible errors, and as such, by themselves invalidate magistrate’s orders.

C. OB’s Physical Taking of Henrys’ Property Constitutes Fourth Amendment Unreasonable Seizure

OB’s physical taking of Henrys’ property violates the prohibitions against unreasonable seizures under the Fourth Amendment and FL Const Art I Sec 12. As the US Supreme Court held in *Boyd*, “suits for penalties and forfeitures incurred by the commission of offences . . . are of this quasi-criminal nature, [and so] they are within the reason of criminal proceedings for all the

¹¹⁷ Such as drainage, streets, public parks, water & sewer lines, laying wires & conduits, or city buildings, pursuant to FS 166.411.

¹¹⁸ Paragraphs 16, 18, 19, and 31-34. FRCP 1.110(f) states “a paragraph may be referred to by number in all subsequent pleadings.”

¹¹⁹ Court rules discussed in full in Henrys’ Response to OB Motion to Strike, paragraphs 5-9.

purposes of the Fourth Amendment of the Constitution.”¹²⁰ In discussing a magistrate’s order purporting to authorize the taking of private property, just like the orders here, the *Boyd* court continued by stating “every invasion of private property, be it ever so minute, is a trespass. . . . According to this reasoning, it is now incumbent upon the defendants to show the law by which this seizure is warranted. If that cannot be done, it is a trespass. . . . Where is the written law that gives any magistrate such a power? I can safely answer, there is none; and, therefore, it is too much for us, without such authority, to pronounce a practice legal which would be subversive of all the comforts of society.” So, just as it was in *Boyd*, magistrate’s orders here are invalid as unreasonable seizures.

Along the same lines, FS 162.09(1) and CO 2-258(a) allow for OB to make repairs, but *only* for a “serious threat to the public health, safety and welfare.”¹²¹ Henrys’ PFCs are *not* such serious threats, nor has OB even alleged such. Even then, only “repairs” are authorized to be made.¹²² Moreover, Magistrate “shall issue an order affording the proper relief consistent with powers granted herein,” FS 162.07(4), and no powers are granted for Magistrate to authorize OB to “repair” anything on Henrys’ property. Thus, the orders constitute an unreasonable seizure prohibited by the Fourth Amendment.

More pointedly, FS 73.014 and 163.335(7) expressly prohibit taking property in ordinance violation situations, even for “nuisance, slum, or blight conditions,” as it is “not a valid public purpose or use for which private property may be taken” as required by the Florida Constitution. Furthermore, the alleged ordinance violations for Henry’s PFCs don’t even come close to arising to the level of public concern that exists for public nuisances, slum or blight. Indeed, Henrys’ alleged violations (of simply not having a permit for their PFCs), qualify as NONE of the permissible purposes for which private property may be taken.¹²³ Thus, the orders constitute an unreasonable seizure under the Fourth Amendment.

Likewise, FL Const Art I Sec 23 guarantees Henrys’ “right of privacy.” Consistent with that privacy, FS 810.115 clearly states that “whoever causes to be broken down, marred, injured,

¹²⁰ *Boyd v United States*, 116 US 616 (1886).

¹²¹ as identified in FS 162.06(4) and CO 2-255(e).

¹²² “Repair” is not defined in Florida statutes (i.e., 163.3164, etc.), Ormond Beach Code of Ordinances, Ormond Beach Land Development Code, or Black’s Law Dictionary. With Webster’s defining “repair” as fixing “what is torn or broken,” it makes sense for repairs to be limited to “serious threats to the public health, safety, and welfare” since dilapidated or compromised structures might create a serious threat. In fact, it is only for unsafe structures that OB has that authorization to enter a property. CO 8-4(3)(a).

¹²³ Such as drainage, streets, public parks, water & sewer lines, laying wires & conduits, or city buildings, pursuant to FS 166.411.

defaced, or cut any fence belonging to or enclosing land not his or her own, commits a misdemeanor in the first degree.” Thus, being an explicit violation of state criminal law, Magistrate cannot create authorization for OB to remove Henrys’ fence.

Similarly, Magistrate has no authority to permit OB to enter onto Henrys’ property, remove or destroy any of Henrys’ property or absolve OB from liability for damages or loss sustained by Henrys in OB doing such. Not only would such actions by OB violate US Const Am IV and FL Const Art I Sec 12 protections against searches and seizures without warrants, it would also directly violate a right of privacy guaranteed under FL Const Art I Sec 23. Furthermore, it constitutes unlawful entry under FS 82.01, 82.03(1), 810.08, and 810.12; burglary in dwelling curtilage under FS 810.015, 810.02, and 810.011; criminal and civil trespass under FS 810.08 et al; felony theft under FS 812.014 et al; and obstructing justice (taking private property under color of law) under FS 843.0855. Thus, the provisions of the orders purporting to allow OB to enter Henrys’ property, remove and destroy Henrys’ property, and absolve OB from damage or loss to Henrys by doing such, are invalid as unreasonable seizures under the Fourth Amendment.

D. OB’s Physical Taking of Henrys’ Property Constitutes an Eighth Amendment Cruel & Unusual Punishment

The Eighth Amendment prohibits cruel and unusual punishments from being inflicted. The many statutes, ordinances, etc discussed herein explain how magistrate completely lacks authority to allow OB to enter onto Henrys’ homestead and remove and destroy their property. With *no* statute allowing such orders to be entered by magistrate, the orders - which rob Henrys of their basic rights to private property - are cruel and unusual punishments prohibited by the Eighth Amendment.

In the *Boyd* case, the US Supreme Court held that “If it is law, it will be found in our books; if it is not to be found there, it is not law.” With this in mind, we must examine additional laws involved, all of which limit penalties imposed by magistrate to fines, *never* allowing for confiscation and destruction of private property or for trespassing onto a homestead.

OB Ordinance 2016-44 Section 5 states that “[u]nless another penalty is **expressly** provided,” punishments may only include “a fine of not more than five hundred dollars (\$500.00) or . . .

imprisonment not exceeding sixty (60) days, or both.¹²⁴ Indeed, if Henrys had simply failed to appear at the Hearing, Magistrate only had the authority to impose a *fine*.¹²⁵

Moreover, by definition, Magistrate only has “authority to hold hearings and assess fines.”¹²⁶ As Magistrate points out in his Orders, FS 162.08(5), and CO 2-254(a) allow him to “[i]ssue orders having the force of law to command whatever steps are necessary to bring a violation into compliance with city codes or ordinances.” Further, “The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.”¹²⁷ The word “command” is not defined in CO or LDC, thus we must turn to Webster’s New Collegiate Dictionary¹²⁸. According to Websters’ (last accessed 3/24/23), “command” means to “order” or “exercise a dominating influence over.” So, in it’s plain sense, Magistrate may order Henrys to pay fines or remove the pavers, etc from their property. But, that cannot legally be stretched to mean Magistrate may also provide OB with authority to take Henrys’ property. In fact, Magistrate recognizes he cannot “command” OB here, and instead implies he can “authorize” OB to act.¹²⁹ Authorizing is to allow or permit OB to do something, while commanding means they *must* do it. So, FS 162.08(5), and CO 2-254(a) allow Magistrate to order Henrys to pay fines or remove the pavers, etc, but NOT to authorize OB to go onto Henrys’ property or take it.

So, whether reading these laws, or the many cited earlier in this brief, it’s clear to see no magistrate has the authority to permit a city to physically take and destroy someone’s property. Thus, magistrate orders in this case constitute cruel and unusual punishment prohibited by the Eighth Amendment.

VI. OB Exceeded Its Authority to Assess Fees & Fines on Henrys

OB exceeded its authority to assess fees and fines on Henrys. Although there are Eighth Amendment issues, first we must address the premature assessment of the fees.

Any writ or order imposing fines or purporting to authorize OB to take action on Henrys’ property, *must* be *subsequent* to, and distinct from, the initial order commanding Henrys to take

¹²⁴ Jail time does not apply here, though, as LDC violations may only be civil infractions per FS 162.21(5)(a); *See also*, FS 162.22.

¹²⁵ CO 2-25(c); CO 2-256(c)(10) and (11); FS 162.21(3)(d)(10).

¹²⁶ CO 2-251 and FS 162.03(2). This limited jurisdiction is also reiterated expressly in CO 2-254(a).

¹²⁷ *Ham v Portfolio Recovery Assocs., LLC*, 308 So.3d 942, 946 (Fla. 2020).

¹²⁸ per LDC 1-21(b).

¹²⁹ If Henrys do not remove the PFCs, “THE CITY WILL BE AUTHORIZED TO ENTER ONTO THE PROPERTY . . . TO REMOVE AND DISPOSE OF” them, per Orders.

action. FS 162.07(4) states that orders issued at the conclusion of the special magistrate hearings “may include **a notice that** it must be complied with by a specified date **and that** a fine may be imposed and, *under the conditions specified in s. 162.09(1)*, the cost of repairs may be included along with the fine if the order is not complied with by said date.” Indeed, FS 162.09(1) and CO 2-258(a) provide that “upon notification by the code inspector that an [already existing] order of [Magistrate] has not been complied with,” Magistrate “may order the violator to pay a fine,” and shall notify the city commission regarding the need to make repairs. That is why FS 162.08 allows Magistrate “to command” Henrys to take necessary steps, but does *not* yet allow for fines or repairs to be ordered. FS 73.121 provides that the judge may grant writs of possession if the defendant is still in possession *after* the judgment has been rendered for, and compensation has been paid by, the city. Likewise, under FRCP 1.570(b), (c) and (e), the taking of property must be done in a subsequent proceeding. Thus, the portions of these initial Orders that purport to authorize the charging of fees or for OB to take action on Henrys property are void.

A. OB’s Proposed Fines Violate the Eighth Amendment

OB’s proposed fines violate the Eighth Amendment’s prohibition against excessive fines. According to their “Response,” they are imposing fines of nearly \$14,000 that exponentially grow EVERY DAY with NO end date. Even the “option” given by magistrate to apply for the permits would have cost Henrys thousands of dollars (as explained above). But, the US Supreme Court has long held that “The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. Those who can tax the exercise of [a constitutionally protected right like that of using one’s own property] can make its exercise so costly as to deprive it of the resources necessary for its maintenance.”¹³⁰ The US Supreme Court further held that fees and fines like those imposed here by OB are like “a license tax¹³¹ — a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution.” *Ibid.* The Court reiterated that “a person cannot be compelled “to purchase, through a license fee or a license tax, the privilege freely granted by the constitution.” *Id.*

¹³⁰ *Murdock v Pennsylvania*, 319 US 105 US (1943).

¹³¹ The Court also pointed out that “It is claimed, however, that the ultimate question in determining the constitutionality of this license tax is whether the state has given something for which it can ask a return. That principle has wide applicability. [*State Tax Commission v Aldrich*, 316 U.S. 174](#), and cases cited. But it is quite irrelevant here. This tax is not a charge for the enjoyment of a privilege or benefit bestowed by the state. **The privilege in question exists apart from state authority. It is guaranteed the people by the Federal Constitution.**”

Further, the US Supreme Court held in *Austin* that forfeiture of property or funds, such as this, violates the Eighth Amendment where there is no correlation to any actual damages sustained by society or to the cost of the proceedings.¹³² That is certainly the case here. There are *no* actual damages sustained by society by Henrys' PFCs, and Henrys have already been forced to bear the burden of paying the costs of these proceedings - the thousands of dollars in court filing and transcript preparation fees. And all just to defend against action that OB and magistrate never had the authority to take in the first place.

Conclusion

1. OB's actions and the magistrate Orders violate the fundamental procedural safeguards of subject matter jurisdiction, due process of law, unreasonable seizures, unlawful per se takings, excessive fines and equal protection of the law.
2. They violate protections provided by case precedent, court rules, OB's very own codes and ordinances, and state statutes.
3. They ignore state statutes on
 - a. Eminent domain
 - b. municipal code enforcement
 - c. real property rights
 - d. land development regulation
 - e. destroying fences
 - f. unlawful entry
 - g. burglary in dwelling curtilage
 - h. trespassing
 - i. theft
 - j. and taking of private property under color of law
4. They even ignore City Code provisions
 - a. prohibiting us from even applying for *any* permits
 - b. requiring our pavers to remain, as sufficient paved, off-street parking is required
 - c. requiring our 2 shipping containers to remain on our property, as city officials & the magistrate deemed them to be "garages," which are required on every residential property, with no exceptions, and our property has no other garages.

¹³² *Austin v US* (509 US 602, 1993)

5. "A fundamental task of the judiciary is to safeguard the constitutional rights of the citizenry."¹³³ Further, it is now uncontested that Henrys will be irreparably harmed by such void Orders being enforced. Indeed, allowing such void Orders to stand would be the epitome of a miscarriage of justice. Thus, Henrys respectfully request this court to issue an order:
- a. Providing us complete relief from the 3 current Orders on the basis of being legally void. *A proposed Order was attached as prior Exhibit 8.*
 - b. Ordering Ormond Beach to immediately reimburse Henrys all the costs of this appeal (court filing fees, transcript preparation fees, FOIA fees, etc.) totaling \$1,750 to-date.

Respectfully Submitted: June 2, 2023

/s/ Katherine & Michael Henry
Respondents, Pro Se

Certificate of Service

I certify that the foregoing document has been furnished to Abraham C McKinnon (lynn@mckinnonandmckinnonpa.com, amckinnon@mckinnonandmckinnonpa.com), Noah McKinnon (nmckinnon@mckinnonandmckinnonpa.com), Barbara Radcliff (Barbara.Radcliffe@ormondbeach.org), H. Pope Hamrick, Jr. (phamrickjr@cfl.rr.com), Ann Margret Emery (A.Emery@ormondbeach.org), Chris Mason (Chris.Mason@ormondbeach.org), Janet Bruce (Janet.Bruce@ormondbeach.org), via the electronic filing portal on June 2, 2023.

Respectfully Submitted: June 2, 2023

/s/ Katherine Henry
/s/ Michael Henry
Appellants, Pro Se
PO Box 333, Ormond Beach FL 32175
Katherine@RestoreFreedomKH.com
616-303-0033
Michigan Bar No P71954

Certificate of Compliance

I certify that the foregoing document has been checked for conformity with FRAP 9.045(e) with the use of word processing software, and that it complies with the applicable font and word count limit requirements to the best of my knowledge.

Respectfully Submitted: June 2, 2023

/s/ Katherine Henry

¹³³ *State of Florida v Sarmiento*, 397 So.2d 643 (Fla. 1981).

/s/ Michael Henry
Appellants, Pro Se
PO Box 333, Ormond Beach FL 32175
Katherine@RestoreFreedomKH.com
616-303-0033
Michigan Bar No P71954

IN THE CIRCUIT COURT, SEVENTH JUDICIAL CIRCUIT, IN AND
FOR VOLUSIA COUNTY, FLORIDA

CASE NO.: 2023 30711 CICI
LOWER CASE NO: 22-00112237
22-00112246
22-00112247
DIVISION: 32-Mary G. Jolley

MICHAEL HENRY AND KATHERINE
HENRY,

Appellants,

v.

CITY OF ORMOND BEACH,
FLORIDA

Appellee.

_____ /

ANSWER BRIEF OF APPELLEE

Abraham C. McKinnon, Esquire
Florida Bar No. 629081
Noah C. McKinnon, Jr., Esquire
Florida Bar No.: 108598
595 W. Granada Blvd., Suite A
Ormond Beach, Florida 32174
(386) 677-3431 – Telephone
(386) 673-0748 – Facsimile
Primary Email: lynn@mckinnonandmckinnopa.com
Secondary: amckinnon@mckinnonandmckinnonpa.com
Attorney for Appellee.

TABLE OF CONTENTS

TABLE OF CITATIONS.....	iii
REFERENCES TO THE RECORD.....	1
STATEMENT OF THE CASE AND FACTS.....	2
APPLICABLE LAW AND STANDARD OF REVIEW.....	7
I. The record shows that the Appellants received due process.....	8
II. The Special Master correctly applied the City's Land Development Code.....	9
III. The Special Master's findings are supported by competent and substantial evidence.....	13
IV. Enforcement of its Land Development Code is a valid exercise of the City's police powers.....	14
V. The Special Master properly rejected Appellants' claim of selective enforcement.....	17
VI. The City's Code enforcement does not amount to any violation of the Appellants' substantive due process rights.....	18
VII. Under Florida law Appellants have no protectable property interest in the unpermitted structures which could be violated by the City.....	21
VIII. Chapter 70, Florida Statutes, does not enjoin the enforcement of the LDC against the Appellants.....	22
CONCLUSION.....	26
CERTIFICATE OF SERVICE.....	27

CERTIFICATE OF COMPLIANCE.....28

<u>TABLE OF CITATIONS</u>	<u>PAGE</u>
<u>United States Constitution</u>	
Amend. V, U.S. Const.....	8
<u>Florida Constitution</u>	
Art. I, § 9, Fla. Const.....	8
<u>Cases</u>	
<i>Albright v. Hensley</i> , 492 So.2d 852, 856 (Fla. 5th DCA 1986).....	16
<i>Ammons v. Okeechobee County</i> , 710 So.2d 641, 645 (Fla. 4 th DCA 1998).....	20
<i>Bell v. State</i> , 369 So. 2d 932, 934 (Fla. 1979).....	18
<i>Board of County Com'rs of Brevard County v. Snyder</i> , 627 So.2d 469, 472, 473 (Fla.1993).....	10, 16
<i>Boatman v. Town of Oakland, Florida</i> , 76 F.3d 341, 346 (11th Cir. 1996).....	19
<i>Chakra 5, Inc. v. City of Miami Beach</i> , 254 So. 3d 1056, 1069–70 (Fla. 3d DCA 2018).....	20
<i>Citrus Cnty. v. Halls River Dev., Inc.</i> , 8 So. 3d 413, 420–21 (Fla. 5th DCA 2009).....	10
<i>City of Coral Gables v. Wood</i> , 305 So.2d 261, 263 (Fla. 3d DCA 1974).....	15
<i>City of Dallas v. Stanglin</i> , 490 U.S. 19, 26 (1989).....	14
<i>City of Jacksonville v. Grubbs</i> , 461 So.2d 160 (Fla. 1st DCA 1984).....	10

<u>TABLE OF CITATIONS</u> (Continued)	<u>PAGE</u>
<i>City of Miami Beach v. Ocean & Inland Co.</i> , 147 Fla. 480, 3 So.2d 364 (1941).....	16
<i>City of Monterey v. Del Monte Dunes at Monterey, Ltd.</i> , 526 U.S. 687, 702, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999).....	25
<i>City of Pompano Beach v. Yardarm Restaurant, Inc.</i> , 834 So.2d 861, 866-70 (Fla. 4th DCA 2003).....	20
<i>Davis Islands Civic Ass'n v. City of Tampa</i> , 05-05809, 2006 WL 408058, at *2 (Fla. Cir. Ct. Jan. 25, 2006).....	8
<i>DeKalb Stone v. County of DeKalb</i> , 106 F.3d 956, 960 (11 th Cir. 1997).....	19
<i>Dep't of Cmty. Affairs v. Moorman</i> , 664 So.2d 930, 933 (Fla.1995).....	15
<i>Department of Law Enforcement v. Real Property</i> , 588 So.2d 957, 960 (Fla.1991).....	8
<i>Dep't of Transp. v. Durden</i> , 471 So. 2d 1271, 1272 (Fla. 1985).....	21
<i>Eisenberg v. City of Miami Beach</i> , 54 F.Supp.3d 1312 (S.D. Fla. 2014).....	18
<i>Fla. Power & Light v. City of Dania</i> , 761 So.2d 1089, 1092 (Fla. 2000).....	14
<i>Harrell's Candy Kitchen, Inc. v. Sarasota–Manatee Airport Auth.</i> , 111 So.2d 439, 443 (Fla.1959).....	15
<i>Jacobi v. City of Miami Beach</i> , 678 So.2d at 366-68 (Fla. 3d DCA 1996).....	20

<u>TABLE OF CITATIONS</u> (Continued)	<u>PAGE</u>
<i>Keene v. Zoning Bd. of Adjustment</i> , 22 So. 3d 665, 668 (Fla. 5th DCA 2009).....	11
<i>Keys Citizens for Responsible Gov't, Inc. v.</i> <i>Florida Keys Aqueduct Auth.</i> , 795 So. 2d 940, 948 (Fla. 2001).....	9
<i>Kuvin v. City of Coral Gables</i> , 62 So. 3d 625, 632–33 (Fla. 3d DCA 2010).....	17
<i>Lee County v. Sunbelt Equities, II, Ltd. P'ship</i> , 619 So.2d 996, 1003 (Fla. 2d DCA 1993).....	8
<i>Lindbloom v. Manatee Cnty.</i> , 808 Fed. Appx. 745, 752 (11th Cir. 2020).....	7
<i>Machado v. Musgrove</i> , 519 So.2d 629, 631–32 (Fla. 3d DCA 1987).....	9
<i>Martin County v. Yusem</i> , 690 So.2d 1288, 1295 (Fla.1997).....	16
<i>Moss v. Hornig</i> , 314 F.2d 89, 92 (2d Cir. 1963).....	17
<i>Nantucket Enterprises, Inc. v. City of Palm Beach Gardens</i> , No. 10-81549-CIV, 2013 WL 3927834, at *2, *7-9 (S.D. Fla. July 29, 2013).....	19
<i>Orange County v. Costco Wholesale Corp.</i> , 823 So.2d 732, 737 (Fla.2002).....	14
<i>Oyler v. Boles</i> , 368 U.S. 448, 456, 82 S.Ct. 501, 506, 7 L.Ed.2d 446, 453 (1962)....	17,18
<i>Reserve, Ltd. v. Town of Longboat Key</i> , 933 F.Supp. 1040, 1044 (M.D. Fla. 1996).....	19

TABLE OF CITATIONS
(Continued)

PAGE

<i>Sarasota Cnty. Bow Point on Gulf Condo. Developers, LLC</i> , 974 So. 2d 431, 433 (Fla. 2d DCA 2007).....	8
<i>Sch. Dist. of Indian River Cnty. v. Fla. Pub. Employees Relations Com'n</i> , 64 So. 3d 723, 727 (Fla. 4th DCA 2011).....	13
<i>Snowden v. Hughes</i> , 321 U.S. 1, 8, 64 S.Ct. 397 (1944).....	17
<i>State v. Hanna</i> , 901 So.2d 201, 204 (Fla. 5th DCA 2005).....	15
<i>St. Johns River Water Mgmt. Dist. v. Koontz</i> , 77 So. 3d 1220, 1223 (Fla. 2011).....	25
<i>Town of Manalapan v. Gyongyosi</i> , 828 So. 2d 1029, 1032 (Fla. 4th DCA 2002).....	14
<i>TR Inv'r, LLC v. Manatee Cnty.</i> , 355 So. 3d 1004, 1012 (Fla. 2d DCA 2023).....	25
<i>United States v. Rickenbacker</i> , 309 F.2d 462 (2 Cir. 1962).....	17
<i>Vill. of Euclid, Ohio v. Ambler Realty Co.</i> , 272 U.S. 365, 388, 47 S.Ct. 114, 71 L.Ed. 303 (1926).....	16
<u>Statutes:</u>	
§ 70.001, Fla. Stat. (2022).....	22,23,24
§ 70.001(4)(a), Fla. Stat. (2022).....	23
§ 70.001(5)(a), Fla. Stat. (2022).....	23,24
§ 70.001(6)(a), Fla. Stat. (2022).....	24
§ 70.45, Fla. Stat. (2022).....	24
§ 70.45(2), Fla. Stat. (2022).....	25
§ 162.02, Fla. Stat. (2022).....	7
§ 162.03(2), Fla. Stat. (2022).....	7

TABLE OF CITATIONS
(Continued)

PAGE

§ 162.07(3), Fla. Stat. (2022).....	7
§ 162.08(5), Fla. Stat. (2022).....	6,7
§ 162.11, Fla. Stat. (2022).....	8
§ 162.22, Fla. Stat. (2022).....	7
§ 163.3167(1), Fla. Stat. (2005).....	9
§ 163.3201, Fla. Stat. (2007).....	10
§ 163.3202, Fla. Stat. (1991).....	10
§ 163.3202(1), Fla. Stat. (2007).....	10
§ 163.3202(2)(b), Fla. Stat. (2007).....	11
§ 475.611(1)(e), Fla. Stat. (2022).....	23

Other Authorities:

<i>Ormond Beach LDC</i> , Ch. 1, Art. II, Sec. 1-14(6)(a)(1).....	3,16
<i>Ormond Beach LDC</i> , Ch. 1, Art. II, Sec. 1-22.....	12
<i>Ormond Beach LDC</i> , Ch. 2, Art. III, Sec. 2-50(a)(9).....	3,12,16
<i>Ormond Beach LDC</i> , Ch. 2, Art. III, Sec. 2-50(n)(1)(a).....	3,11,16
<i>Ormond Beach LDC</i> , Ch. 2, Art. III, Sec. 2-50(dd)(3)(a).....	13
<i>Ormond Beach LDC</i> , Ch. 2, Art. III, Sec. 2-258.....	7

REFERENCES TO THE RECORD

Reference to the Record on Appeal will be referred to as: "R-__" followed by the appropriate page number. Reference to the Continuation of the Record on Appeal will be referred to as T-__" followed by the appropriate page number of the transcript of the proceedings before the Special Magistrate on February 27, 2023. Reference to the items submitted by the Appellee to be included in the Record on Appeal will be referred to as: "Supp. R. Exhibit __".

STATEMENT OF THE CASE AND FACTS

This is appeal from the entry of three (3) Orders, entered on March 1, 2023 by the Special Magistrate for the Ormond Beach Code Enforcement Board, finding violations against the Appellants in Case Nos: 22-112246 (R-92), 22-112237 (R-85) and 22-112247 (R-100), which determined the Appellants were in violation of the City of Ormond Beach Land Development Code (hereinafter referred to as LDC) for having constructed, erected and maintained on their residence a fence, two (2) paver driveways and accessory structures consisting of two (2) 8' x 20' (160 sq. ft.) industrial steel shipping containers without a having obtained required permits and inspections thereof.

Under Chapter 163, Florida Statutes, local governments are required to adopt a comprehensive land use plan and are required to adopt, amend and enforce land development regulations that are consistent with its comprehensive plan. Under this statutory mandate, the City of Ormond Beach, (City) adopted the Ormond Beach Land Development Code (LDC) which implements the City's comprehensive plan.

The Appellants are the owners of a residential duplex located at 33 Cypress Circle, Ormond Beach, Florida. In response to complaints from neighbors, the City of Ormond Beach inspected the Appellants' premises

on September 2, 2022. As a result of the inspection, the City discovered that the Appellants were in the process of constructing a perimeter fence; two (2) paver driveways and had two (2) 8' x 20' (160 sq. ft.) industrial steel shipping containers located in their yard which the Appellants were using for storage.

Chapter 2, Article III, Section 2-50(n)(1)(a) of the Ormond Beach Land Development Code provides:

All fences shall require a permit prior to installation or erection. It shall be unlawful for any person to erect, alter or locate a fence within the city without first having made application for and having been issued a permit.

Chapter 1, Article II, Section 1-14(6)(a)(1) of the Ormond Beach Land Development Code provides:

No land shall be cleared, excavated, or filled and no structure shall be erected, repaired, moved, added to, structurally altered or demolished without the payment of fees and a building permit therefor issued by the chief building official.

Chapter 2, Article III, Section 2-50(a)(9) of the Ormond Beach Land Development Code provides:

All accessory structures require the issuance of building permits by the city building and code division, as specified in section 1-14(6).

The Appellants did not apply for building permits with the City of Ormond Beach to construct the fence, paver driveways or to use the industrial steel shipping containers as accessory structures as required under the City's LDC. On September 2, 2022 the City posted, on the property of the Appellants, a Stop Work Notice instructing the Appellants to immediately cease constructing the fence, paver driveways and use of the industrial steel shipping containers without obtaining a building permit from the City of Ormond Beach (Supp. R. Exhibit 2, Case No: 22-00112237). On October 18, 2022, the City issued the Appellants three Notices of Violation for constructing the fence (Supp. R. Exhibit 2, Case No: 22-00112237), paver driveways (Supp. R. Exhibit 2, Case No: 22-00112247) and use of the two industrial steel shipping containers (Supp. R. Exhibit 2, Case No: 22-00112246) without a required permit in violation of the City of Ormond Beach Land Development Code. The Appellants received the Notices of Violation issued by the City by certified mail on October 20, 2022 (Supp. R. Exhibit 1). The Notices of Violation specifically informed the Appellants that their property must be brought into compliance by obtaining from the City after the fact building permits or removing the structures from their property. Notwithstanding the issuance of the Stop Work Order and Notices of Violation, Appellants continued

construction of the fence, paver driveways and use of the steel shipping containers for storage without seeking permits from the City of Ormond Beach.

On January 31, 2023, the City issued the Appellants Notices of Hearing to be conducted on February 27, 2023 before the Special Magistrate for the violations of the City of Ormond Beach Land Development Code. The Notices of Hearing issued by the City were received by the Appellants by certified mail on February 9, 2023 (Supp. R. Exhibit 1).

At the hearing on February 27, 2023 before the Honorable Pope Hamrick, acting as Special Magistrate for the Ormond Beach Code Enforcement Board, the Appellants appeared, submitted documents, testified before the Special Magistrate and cross examined witnesses. The City presented witness' testimony from the City Neighborhood Improvement Officer, Janet Bruce, Senior Planner for Ormond Beach, Sarah Cushing, and an adjoining property owner, Ms. Joan Conway. The City presented documentary evidence of the issuance of the Notices of Violation, Notices of Hearing, and posted Stop Work Order issued to the Appellants. The City also presented photographic evidence depicting the construction of the fence and paver driveways by the Appellants and their

continued use of the two industrial steel shipping containers on the property.

Following the hearing the Special Magistrate for the Ormond Beach Code Enforcement Board, entered three (3) Orders on March 1, 2023 in Case Nos: 22-112246, 22-112237 and 22-112247, finding violations by the Appellants of the Ormond Beach Land Development Code for having constructed, erected and maintained on their residence the fence, the paver driveways and the accessory structures consisting of the two (2) 8' x 20' (160 sq. ft.) industrial steel shipping containers without a having obtained required permits from the City of Ormond Beach (R-92-106).

The Orders contain monetary fines against the Appellants of \$100.00, awarded costs to the City in the amount of \$70.68 (\$23.56 for each case), and provide that should the Appellants not bring the property into compliance by March 27, 2023, then a fine of \$25 a day for each violation shall accrue beginning on March 28, 2023. The Orders further authorize the City to take steps necessary to bring the violations into compliance; specifically, to remove and dispose of the unpermitted fence, paver driveways and steel shipping containers pursuant to Chapter 162.08(5), Florida Statutes.

APPLICABLE LAW AND STANDARD OF REVIEW:

Florida's Local Government Code Enforcement Boards Act was created to promote the health and safety of state citizens by creating administrative boards to impose administrative fines and other noncriminal penalties to provide an effective and inexpensive method of enforcing county and municipal codes and ordinances where a pending or repeated violation persists. Fla. Stat. § 162.02. Under the Act the special magistrate has the same status as an enforcement board. Id. § 162.03(2). 162.07(3). The Act allows code enforcement boards to “[i]ssue orders having the force of law to command whatever steps are necessary to bring a violation into code compliance,” Fla. Stat. § 162.08(5), as well as “the issuance of a citation, a summons, or a notice to appear in county court or arrest for violation of municipal ordinances,” id. § 162.22, *Lindbloom v. Manatee Cnty.*, 808 Fed. Appx. 745, 752 (11th Cir. 2020). At the conclusion of the hearing, the special magistrate shall issue findings of fact and conclusions of law based on the evidence of record, and shall issue an order affording the proper relief consistent with the powers granted herein. The order may include a notice that it must be complied with by a specified date and that a fine may be imposed for noncompliance if the order is not complied with by the prescribed date. § 2-258 LDC.

Under § 162.11, an appeal of the code enforcement board's order to the circuit court “shall not be a hearing de novo but shall be limited to appellate review of the record created before the enforcement board.” The circuit court is not permitted to go further and reweigh the evidence presented to the administrative agency. See *Lee County v. Sunbelt Equities, II, Ltd. P'ship*, 619 So.2d 996, 1003 (Fla. 2d DCA 1993); *Davis Islands Civic Ass'n v. City of Tampa*, 05-05809, 2006 WL 408058, at *2 (Fla. Cir. Ct. Jan. 25, 2006). *Sarasota Cnty. v. Bow Point on Gulf Condo. Developers, LLC*, 974 So. 2d 431, 433 (Fla. 2d DCA 2007).

I. The record shows that the Appellants received due process.

The basic due process guarantee of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law.” Art. I, § 9, Fla. Const. The Fifth Amendment to the United States Constitution guarantees the same. As the Supreme Court explained in *Department of Law Enforcement v. Real Property*, 588 So.2d 957, 960 (Fla.1991), “[p]rocedural due process serves as a vehicle to ensure fair treatment through the proper administration of justice where substantive rights are at issue.” Procedural due process requires both fair notice and a real opportunity to be heard. See *id.* As the United States Supreme Court explained, the notice must be “reasonably calculated, under all the

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections”. *Keys Citizens for Responsible Gov’t, Inc. v. Florida Keys Aqueduct Auth.*, 795 So. 2d 940, 948 (Fla. 2001).

Here, the record reflects that the Appellants received actual notice of the hearing on February 7, 2023, appeared at the hearing, submitted documents, presented their objections, testified before the Special Magistrate and cross examined witnesses (T-1-138). The Appellants, therefore, received fair notice and a real opportunity to be heard.

II. The Special Master correctly applied the City's Land Development Code.

The purpose of the City's Land Development Code is to provide land development regulations that implement the City's comprehensive plan. The comprehensive plan and the Land Development Code are tools that the city uses to protect and maintain the quality of life for the citizenry of the City. A local comprehensive land use plan is a statutorily mandated legislative plan to control and direct the use and development of property within a county or municipality. §163.3167(1), Fla. Stat. (2005); *Machado v. Musgrove*, 519 So.2d 629, 631–32 (Fla. 3d DCA 1987). The comprehensive plan is similar to a constitution for all future development within the governmental boundary. *Machado*, 519 So.2d at 632. Zoning,

or, a local government's Land Development Code, is the means by which the Plan is implemented. See *City of Jacksonville v. Grubbs*, 461 So.2d 160 (Fla. 1st DCA 1984); *Citrus Cnty. v. Halls River Dev., Inc.*, 8 So. 3d 413, 420–21 (Fla. 5th DCA 2009). Chapter 163 also requires that comprehensive plans be implemented by the “adoption and enforcement” of local regulations or land development codes. §163.3201, Fla. Stat. (2007) (“It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.”) (emphasis added); § 163.3202(1), Fla. Stat. (2007) (“[E]ach municipality... shall adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan.”) (emphasis added); see also *Board of County Com'rs of Brevard County v. Snyder*, 627 So.2d 469, 473 (Fla.1993) (“The local plan must be implemented through the adoption of land development regulations that are consistent with the plan.”) (citing § 163.3202, Fla. Stat. (1991)). § 163.3202, Florida Statutes, further provides:

Local land development regulations shall contain specific and detailed provisions necessary or desirable to implement the

adopted comprehensive plan and shall as a minimum ...
[r]egulate the use of land and water for those land use
categories included in the land use element....

§ 163.3202(2)(b), Fla. Stat. (2007)

Hence, the Land Development Code was enacted to provide specific legislative standards that must be applied to the general provisions of the Plan and enforced to regulate the various land use categories in the Plan. *Keene v. Zoning Bd. of Adjustment*, 22 So. 3d 665, 668 (Fla. 5th DCA 2009).

The Special Master correctly applied the LDC in determining that the Appellants violated the LDC for having constructed, erected and maintained on their residence the fence, the paver driveways and the accessory structures consisting of the two (2) 8' x 20' (160 sq. ft.) industrial steel shipping containers without a having obtained required permits from the City.

Section 2-50(n)(1)(a) provides that all fences shall require a permit prior to installation or erection. It shall be unlawful for any person to erect, alter or locate a fence within the city without first having made application for and having been issued a permit. The undisputed testimonial and photographic evidence clearly show the construction of a fence by the Appellants on their property. (Supp. R. Exhibit 2, Case No: 22-00112237).

Section 1-14(6)(a)(1), of the Ormond Beach Land Development Code, provides that no land shall be cleared, excavated, or filled and no structure shall be erected, repaired, moved, added to, structurally altered or demolished without the payment of fees and a building permit therefor issued by the chief building official. The testimonial and photographic evidence clearly show the Appellants' construction of the paver driveways on their property. (Supp. R. Exhibit 2, Case No: 22-00112247).

Section 2-50(a)(9) requires all accessory structures to obtain a building permit and the structure must meet the applicable Land Development Code and Florida Building Code requirements.

Accessory structures are defined under Section 1-22 of the LDC as any use or detached structure customarily incidental and subordinate to the principal use or structure and located on the same lot containing such principal use or structure. Accessory uses or structures contribute to the comfort, convenience or necessity of the principal use or structure. The term "accessory use and structure" includes, but is not limited to, detached patios, swimming pools, tennis courts, barbecue pits, fireplaces, decorative or ornamental structures, air conditioner compressors, fuel storage tanks, utility buildings, fences, walls and the like. Accessory uses or structures are not allowed except in conjunction with an existing principal use.

The testimonial evidence clearly show that the industrial shipping containers the Appellants placed upon their property are being used by the Appellants for storage incidental to their residence. (Supp. R. Exhibit 2, Case No: 22-00112246.

Section 2-50(dd)(3)(a) provides that, “any utility structure/shed over one hundred fifty (150) square feet shall be considered a garage and must meet the principal setbacks for the zoning district in which the property is located.” Appellant, Katherine Henry, testified that the industrial shipping containers are sized 8’ x 20’ each (160 sq. ft.) (T-70); therefore, the accessory structures are considered garages under the Code.

As accessory structures under the LDC the Appellants were required to obtain a building permit and the structure must meet the applicable Land Development Code and Florida Building Code requirements.

III. The Special Master’s findings are supported by competent and substantial evidence.

“Competent substantial evidence is evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred [S]uch relevant evidence as a reasonable mind would accept as adequate to support a conclusion.” *Sch. Dist. of Indian River Cnty. v. Fla. Pub. Employees Relations Com'n*, 64 So. 3d 723, 727 (Fla. 4th DCA

2011) (quoting *J.S. v. Fla. Dep't of Children & Families*, 18 So. 3d 1170, 1175 (Fla. 1st DCA 2009)) (internal quotation marks omitted). The “competent substantial evidence” standard of review applied to this first-tier review “is tantamount to legally sufficient evidence.” *Fla. Power & Light v. City of Dania*, 761 So.2d 1089, 1092 (Fla. 2000); *Town of Manalapan v. Gyongyosi*, 828 So. 2d 1029, 1032 (Fla. 4th DCA 2002).

The undisputed testimonial and photographic evidence submitted at the hearing show that, without seeking any permit from the City, Appellants constructed a perimeter fence; two (2) paver driveways and have two (2) 8' x 20' (160 sq. ft.) industrial steel shipping containers located in their yard which the Appellants use for storage.

IV. Enforcement of its Land Development Code is a valid exercise of the City's police powers.

The judicial lens through which this Court must examine the City's exercise of its police power is governed by well-established law, beginning with the premise that rational basis scrutiny “is the most relaxed and tolerant form of judicial scrutiny,” *City of Dallas v. Stanglin*, 490 U.S. 19, 26 (1989) (emphasis added), and municipal zoning and land development ordinances, which are legislative enactments, are presumed to be valid and constitutional. See *Orange County v. Costco Wholesale Corp.*, 823 So.2d 732, 737 (Fla.2002) (specifying that ordinances reflecting legislative

action are entitled to a presumption of validity); *State v. Hanna*, 901 So.2d 201, 204 (Fla. 5th DCA 2005) (holding that statutes and ordinances are presumed to be constitutional and all reasonable doubts must be resolved in favor of constitutionality).

Statutes and ordinances in Florida not only enjoy a presumption in favor of constitutionality, the Florida Supreme Court and this Court have repeatedly held that zoning and land use restrictions must be upheld unless they bear no substantial relation to legitimate societal policies or it can be clearly shown that the regulations are a mere arbitrary exercise of the municipality's police power. See *Dep't of Cmty. Affairs v. Moorman*, 664 So.2d 930, 933 (Fla.1995) (“[W]e have repeatedly held that zoning restrictions must be upheld unless they bear no substantial relationship to legitimate societal policies.”); *Harrell's Candy Kitchen, Inc. v. Sarasota–Manatee Airport Auth.*, 111 So.2d 439, 443 (Fla.1959) (holding that zoning regulations are presumptively valid, “and the burden is upon him who attacks such regulation to carry the extraordinary burden of both alleging and proving that it is unreasonable and bears no substantial relation to public health, safety, morals or general welfare”); *City of Coral Gables v. Wood*, 305 So.2d 261, 263 (Fla. 3d DCA 1974) (“A zoning ordinance will be upheld unless it is clearly shown that it has no foundation in reason and

is a mere arbitrary exercise of power without reference to public health, morals, safety or welfare.”).

Zoning and land development regulations must be upheld if reasonable persons could differ as to its propriety. In other words, “[i]f the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.” *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 388, 47 S.Ct. 114, 71 L.Ed. 303 (1926); *Bd. of County Comm'rs of Brevard County v. Snyder*, 627 So.2d 469, 472 (Fla.1993); *City of Miami Beach v. Ocean & Inland Co.*, 147 Fla. 480, 3 So.2d 364 (1941).

The fairly debatable rule has its basis in the deference that the judicial power owes the legislative function under the separation of powers doctrine inherent in our form of government and expressly embodied in our state and federal constitutions. *Albright v. Hensley*, 492 So.2d 852, 856 (Fla. 5th DCA 1986) (Coward, J., dissenting). Thus, “[t]he fairly debatable standard of review is a highly deferential standard requiring approval of a planning action if reasonable persons could differ as to its propriety.” *Martin County v. Yusem*, 690 So.2d 1288, 1295 (Fla.1997).

Chapter 2, Article III, Section 2-50(n)(1)(a), Chapter 1, Article II, Section 1-14(6)(a)(1) and Chapter 2, Article III, Section 2-50(a)(9) of the

LDC are therefore a proper exercise of the City's police power and serve a legitimate public purpose by implementing the City's comprehensive plan as required under § 163.3202(1), Fla. Stat. (2007). *Kuvin v. City of Coral Gables*, 62 So. 3d 625, 632–33 (Fla. 3d DCA 2010).

V. The Special Master properly rejected Appellants' claim of selective enforcement.

Appellants argue that the failure of the City to prosecute other residents of Ormond Beach for various alleged LDC violation constitutes selective and discriminatory enforcement against the Appellants in violation of their equal protection as guaranteed by the United States Constitution.

In order to constitute a denial of equal protection, the selective enforcement, however, must be deliberately based on an unjustifiable or arbitrary classification. *Oyler v. Boles*, 368 U.S. 448, 456, 82 S.Ct. 501, 506, 7 L.Ed.2d 446, 453 (1962). Mere failure to prosecute other offenders is no basis for a finding of denial of equal protection. See *United States v. Rickenbacker*, 309 F.2d 462 (2 Cir. 1962). To show that unequal administration of a government regulation offends the equal protection clause, one must show an intentional or purposeful discrimination. *Snowden v. Hughes*, 321 U.S. 1, 8, 64 S.Ct. 397 (1944) *Moss v. Hornig*,

314 F.2d 89, 92 (2d Cir. 1963); *Bell v. State*, 369 So. 2d 932, 934 (Fla. 1979).

In *Oyler v. Boles*, 368 U.S. 448, 456, 82 S.Ct. 501, 505, 7 L.Ed.2d 446 (1962), the Supreme Court rejected a petitioner's contention of selective enforcement holding:

“The conscious exercise of some selectivity in enforcement is not in itself a constitutional violation. Even though the statistics in this case might imply a policy of selective enforcement, it was not stated that the selection was deliberately based upon an unjustifiable standard such as race, religion, or other arbitrary classification.” *Id* at 456.

Here, there was no evidence that the City engaged in intentional or purposeful discrimination against the Appellants based upon an unjustifiable standard such as race, religion, or other arbitrary classification. Instead, the undisputed evidence before the Special Master was that the complaint leading to the investigation of the Appellants' property came from an adjoining property owner. (T-99).

VI. The City's Code enforcement does not amount to any violation of the Appellants' substantive due process rights.

In *Eisenberg v. City of Miami Beach*, 54 F.Supp.3d 1312 (S.D. Fla. 2014), the plaintiff alleged that City code enforcement officials, including some of the same allegedly corrupt officials at issue in this case, embarked

on a scheme to shut down the plaintiff's hotel using a series of code violation citations. *Id.* at 1316-19. The court, in *Eisenberg*, concluded that plaintiff's substantive due process claim for constitutional deprivation of their liberty and/or property interests did not survive. *Id.* at 1325-27. That conclusion is consistent with the Federal and Florida state courts that have considered and rejected substantive due process claims based on the enforcement or application of a host of land use, zoning, and other similar regulations. See, e.g., *DeKalb Stone v. County of DeKalb*, 106 F.3d 956, 960 (11th Cir. 1997) (rejecting a challenge to denial of nonconforming use exemption to local zoning laws); *Boatman v. Town of Oakland, Florida*, 76 F.3d 341, 346 (11th Cir. 1996) (rejecting a claim that town executives arbitrarily and capriciously refused to issue certificate of occupancy); *Nantucket Enterprises, Inc. v. City of Palm Beach Gardens*, No. 10-81549-CIV, 2013 WL 3927834, at *2, *7-9 (S.D. Fla. July 29, 2013) (finding no cognizable substantive due process claim for a corporate entity's eviction from a commercial leasehold based on allegations that the city improperly “red tagged” plaintiff for failing to obtain a certificate of occupancy, and that the city forced plaintiff out of the leasehold without a court order at the request of the purported owners and landlords of the property); *Reserve, Ltd. v. Town of Longboat Key*, 933 F.Supp. 1040, 1044 (M.D. Fla. 1996)

(finding plaintiffs did not possess a cognizable substantive due process claim for their state-created property interest in a revoked building permit where “both the issuance and revocation of the building permit constitute ‘executive’ and not ‘legislative’ acts.”); *City of Pompano Beach v. Yardarm Restaurant, Inc.*, 834 So.2d 861, 866-70 (Fla. 4th DCA 2003) (rejecting a substantive due process claim based on allegations that the city, as part of attempt to “kill” a restaurant's development project, improperly delayed issuing building permits, improperly revoked building permits, improperly delayed permitting reviews, and attempted to repeal an existing special exemption); *Ammons v. Okeechobee County*, 710 So.2d 641, 645 (Fla. 4th DCA 1998) (rejecting a substantive due process claim based on revocation of commercial occupational license that had been improperly issued under existing zoning regulations); *Jacobi v. City of Miami Beach*, 678 So.2d at 1366-68 (Fla. 3d DCA 1996) (rejecting a substantive due process claim based on the city's refusal to allow reconfiguration of lots under municipal zoning regulations). *Chakra 5, Inc. v. City of Miami Beach*, 254 So. 3d 1056, 1069–70 (Fla. 3d DCA 2018).

Appellants, therefore, have no valid claim that the City violated any of the Appellants’ substantive due process rights.

VII. Under Florida law Appellants have no protectable property interest in the unpermitted structures which could be violated by the City.

Appellants argue in their brief that the removal of the unpermitted fence, driveways and accessory structures amount to an unlawful taking. Under Florida law however, the Appellants have no protectable property interest because they never applied for a permit for the fence, paver driveways or accessory structures.

In *Dep't of Transp. v. Durden*, 471 So. 2d 1271, 1272 (Fla. 1985), the Florida Supreme Court held that there is no property right involved when the government seeks to remove a structure erected in disregard of the established scheme of securing permits for such structures. In *Durden*, the Appellee constructed an outdoor sign without first obtaining permits from the Department of Transportation as required by law. The Court held that “Appellees never applied for a permit nor did they comply with the statutory requirements to have a permit issued. Rather, appellees simply erected the signs and knowingly violated the law. A protectable property interest does not arise in this case from a knowing violation of the law. Consequently, we find it unnecessary to discuss the requirements of procedural due process when the appellees do not have a protectable property interest in the first place.” *Id.*

As was the case in *Durden*, the City here has a clear and established scheme under its LDC for citizens to secure permits for fences, driveways and accessory structures. Having knowingly disregarded that permit process, the Appellants, therefore, have no protectable property interest in the fence, paver driveways or accessory structures which could be taken by the City.

VIII. Chapter 70, Florida Statutes, does not enjoin the enforcement of the LDC against the Appellants.

Contrary to the assertions of the Appellants, Chapter 70, Florida Statutes, does not prohibit or enjoin enforcement of LDC.

Chapter 70.001, Florida Statutes, also referred to as the “Bert J. Harris, Jr., Private Property Rights Protection Act”, provides a statutory cause action for payment of compensation, when a new law, rule, regulation, or ordinance of the state or a political entity in the state, as applied, inordinately burdens an existing use of real property or a vested right to a specific use of real property. In such case, the property owner of real property is entitled to compensation for the actual loss to the fair market value of the real property caused by the action of government.

Prior to filing suit in the Circuit Court seeking compensation under the Bert Harris Act the claimant must, not fewer than 90 days before filing

an action against a governmental entity, present the claim in writing to the head of the governmental entity. The property owner must submit, along with the claim, a written appraisal report as defined in § 475.611(1)(e) that supports the claim and demonstrates the loss in fair market value to the real property. § 70.001(4)(a).

During the 90-day-notice period, unless a settlement offer is accepted by the property owner, the governmental entity provided notice shall issue a written statement of allowable uses identifying the allowable uses to which the subject property may be put. The failure of the governmental entity to issue a statement of allowable uses during the 90-day-notice period shall be deemed a denial for purposes of allowing a property owner to file an action in the Circuit Court. If a written statement of allowable uses is issued, it constitutes the last prerequisite to judicial review for the purposes of the judicial proceeding created by the Act. §70.001(5)(a).

Here, the record shows that there was no pre-suit claim in writing presented by the Appellants to the City along with a written appraisal that supports the claim and demonstrates a loss in fair market value to the Appellants' real property. Even if the Appellants had submitted an appropriate pre-suit written claim, § 70.001 does not enjoin any action of

the City, including enforcement of the preexisting LDC, against the Appellants. Instead, any claimed failure by City to issue a statement of allowable uses during the 90-day-notice period is treated under the statute as a denial of the claim, thereby allowing a property owner to file an action in the Circuit Court. § 70.001(5)(a).

Furthermore, any action asserted under § 70.001 to determine whether an existing use of the real property or a vested right to a specific use of the real property exists must be filed in Circuit Court.

If an action is filed, § 70.001(6)(a) provides that the Circuit Court shall determine whether an existing use of the real property or a vested right to a specific use of the real property existed and, if so, whether, considering the settlement offer and statement of allowable uses, the governmental entity or entities have inordinately burdened the real property.

The Special Master therefore, would have no jurisdiction to adjudicate such a claim.

Appellants make a similar misreading of § 70.45 describing the potential removal of their unpermitted structures as a “government exaction”.

Chapter 70.45, Florida Statutes, provides that a property owner may bring an action in a court of competent jurisdiction to declare a prohibited

exaction invalid and recover damages caused by a prohibited exaction. Such action may be brought by a property owner at the property owner's discretion when a prohibited exaction is actually imposed or when it is required, in writing, as a final condition of approval for the requested use of real property. § 70.45(2).

An 'exaction', is defined as a condition sought by a governmental entity in exchange for its authorization to allow some use of land that the government has otherwise restricted." *St. Johns River Water Mgmt. Dist. v. Koontz*, 77 So. 3d 1220, 1223 (Fla. 2011) (quoting *St. Johns River Water Mgmt. Dist. v. Koontz*, 5 So. 3d 8, 9 (Fla. 5th DCA 2009)), *rev'd on other grounds*, 570 U.S. 595, 133 S.Ct. 2586, 186 L.Ed.2d 697 (2013); *see also City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 702, 119 S.Ct. 1624, 143 L.Ed.2d 882 (1999) (describing exactions as "land-use decisions conditioning approval of development on the dedication of property to public use").

Here, the record clearly shows that Appellants never sought approval from the City to construct and maintain the fence, paver driveways or accessory structures and the City never conditioned the approval of any permit. *See TR Inv'r, LLC v. Manatee Cnty.*, 355 So. 3d 1004, 1012 (Fla. 2d DCA 2023).

CONCLUSION

The Appellee respectfully requests the Court to uphold the Special Masters' Orders issued March 1, 2023 in Case Nos: 22-112246, 22-112237 and 22-112247, finding violations by the Appellants of the Ormond Beach Land Development Code for having constructed, erected and maintained on their residence the fence, the paver driveways and the accessory structures consisting of the two (2) 8' x 20' (160 sq. ft.) industrial steel shipping containers without a having obtained required permits from the City of Ormond Beach (R-92-106).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that June 30, 2023, I electronically filed the foregoing with the Clerk of the Court by using the E-portal system which will send a notice of electronic filing to Michael and Katherine Henry at katherine@restorefreedomkh.com and mike@restorefreedomkh.com.

/s/ Abraham C. McKinnon

Abraham C. McKinnon, Esquire
Florida Bar No. 629081

Noah C. McKinnon, Jr., Esquire
Florida Bar No.: 108598

595 W. Granada Blvd., Suite A
Ormond Beach, Florida 32174

(386) 677-3431 – Telephone

(386) 673-0748 – Facsimile

Primary Email: lynn@mckinnonandmckinnopa.com

Secondary: amckinnon@mckinnonandmckinnonpa.com

Attorney for Appellee.

CERTIFICATE OF COMPLIANCE

I hereby certify that this Answer Brief complies with the applicable font and word count limit requirements in compliance with Rule 9.045 and Rule 9.210(a)(2), of the Florida Rules of Appellate Procedure.

/s/ Abraham C. McKinnon

Abraham C. McKinnon, Esquire

Florida Bar No. 629081

Noah C. McKinnon, Jr., Esquire

Florida Bar No.: 108598

595 W. Granada Blvd., Suite A

Ormond Beach, Florida 32174

(386) 677-3431 – Telephone

(386) 673-0748 – Facsimile

Primary Email: lynn@mckinnonandmckinnopa.com

Secondary: amckinnon@mckinnonandmckinnonpa.com

Attorney for Appellee.

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

MICHAEL and KATHERINE HENRY,
Respondents/Appellants,

CIRCUIT CASE NO: 2023-30711 CICI

vs

CITY OF ORMOND BEACH, FLORIDA
Petitioner/Appellee.

Lower Court CASE NOS: 22-112237
 22-112246
 22-112247

APPELLANTS' REPLY BRIEF ON APPEAL

This brief is submitted by the Henrys in support of their appeal of the Special Magistrate Orders rendered on 3/3/23. Said Orders are the result of alleged Land Development Code (LDC) violations, prosecution of which was brought by the City of Ormond Beach (OB). Henrys' Initial Brief was filed on 6/3/23, with OB's Answer Brief being filed on 6/30/23.

Respectfully Submitted: July 27, 2023

/s/ Katherine Henry
/s/ Michael Henry
Appellants, Pro Se
PO Box 333, Ormond Beach FL 32175
Katherine@RestoreFreedomKH.com
Michigan Bar No P71954

Table of Authorities

Constitutions	Page(s)
FL Const Art I Sec 2	7
US Const Am IV	12
US Const Due Process Clause	4, 7, 12, 13, 15
US Const Equal Protection Clause	2, 5, 6, 13, 15

Statutes	Page(s)
Community Planning Act	5, 9, 10, 11
Florida Building Code	11
FRCP 1.110(f)	12
FRCP 2.430	4
FS 70.001	8
FS 70.45	3, 8, 9, 12
FS 162.22	3-4
FS 163.3167(1)	4
LDC 2-50	11

Cases	Page(s)
<i>Austin v US</i> , 509 US 602 (1993)	15
<i>Boyd v United States</i> , 116 US 616 (1886)	11
<i>City of Miami Beach v Fleetwood Hotel, Inc.</i> , 261 So. 2d 801 (Fla. 1972)	5
<i>Dep't of Transp v Durden</i> , 471 So.2d 1271 (1985)	8
<i>Dolan v City of Tigard</i> , 512 US 374 (1994)	11
<i>Kuvin v Coral Gables</i> , 62 So.3d 625 (Fla. App. 2010)	3,5,6
<i>Oyler v Boles</i> , 368 US 448 (1962)	6
<i>Penn Central Transportation Co v New York City</i> , 438 US 104 (1978)	11
<i>Phillips v. Washington Legal Foundation</i> , 524 US 156 (1998)	7
<i>Students for Fair Admissions v Harvard College</i> , 600 US __ (2023)	5

<i>Tr Inv'r v Manatee Cnty</i> , No. 2D21-2061 (Fla. App. Feb 3, 2023)	2,3,8,9
<i>Tyler v. Hennepin County</i> , 598 U.S. ___, ___ (2023) (slip op., at 5)	7
<i>Webb's Fabulous Pharmacies, Inc. v. Beckwith</i> , 449 US 155 (1980)	11

Table of Contents

Argument.....	1
A. OB Misleads the Court About the Facts of the Case.....	1
B. OB Misleads the Court as to Their Argument via Plagiarism.....	3
C. OB Misleads the Court About the Law.....	3
D. OB Misleads the Court About What is Being Challenged in This Appeal.....	9
1. OB Has NO Authority to Order Henrys to Remove PFCs.....	10
2. The Procedures Used Have Denied Henrys' Rights.....	12
3. OB Has NO Authority to Impose Never-Ending Fees.....	15
Conclusion.....	15

Argument

OB and Magistrate violated countless laws here, some procedural and others substantive. OB's Answer Brief ignores most of these laws, having no sound legal argument to address OB's said violations. Instead, OB misleads this Court - about the facts of the case, origins of OB's legal analysis, the statutes and cases involved, and even what is being challenged in this appeal.

Despite the misleading, the fact remains OB is attempting to 1) interfere with Henrys' use of their property, 2) physically come and take Henrys' property, and 3) assess fines on Henrys for both. However, the law does *not* allow OB to do this.

A. OB Misleads the Court About the Facts of the Case

OB starts their brief by claiming they commenced the cases against Henrys due to "complaints from neighbors,"¹ insinuating *multiple* neighbors complained. However, it's uncontested only one neighbor made a complaint (Ms. Conway), which was largely unfounded,² and fueled by personal animus.³

¹ OB Answer Brief, p 2.

² such as complaining of Henrys violating "HOA rules" for an HOA that does not exist, Henrys interfering with easements that don't exist, etc.

³ Such as when stating things like "Henrys have been ruining the neighborhood since they got here" and "Henrys are the laughing stock of entire neighborhood." This person animus was also demonstrated by the huge stack of pictures she brought to the Magistrate hearing to continue complaining about Henrys. OB also claims Conway is an adjoining property *owner* (OB Answer Brief, p 5), but she owns no property here. She *rents* property owned by Erin Macinnis adjoining Henrys' property, as seen on Volusia County official records <https://vcpa.vcgov.org/parcel/summary/?altkey=3084501#gsc.tab=0>, last accessed July 21, 2023.

OB then claims Henrys' home is a duplex,⁴ despite it being a single family home. Despite zoning for Henrys' property permitting duplexes *and* single family homes, no testimony was elicited regarding the home's current status. Built in 1949, the home has surely seen many changes throughout the years. OB argues *having been* a duplex, Henrys' homestead must abide by a 20 foot North side, 20 foot West rear, and 20 foot South side setback in using their 88 by 123 foot property.⁵

OB then claims they posted "a Stop Work Notice" on Henrys' property.⁶ However, Janet Bruce only testified to "issuing" the Stop Work Order (Tr. 29), *not* posting it. Furthermore, Henrys testified *no* such documents were posted on Henrys' property⁷, nor did Bruce mention *anything* about a Stop Work Order to Henry in their hour-long phone conversation that day, nor in her follow up email to Henry on the same date.⁸ This testimony was unrefuted.⁹

OB then claims the Notice of Violation, including the one for the conexes, "specifically informed the Appellants [they must obtain] after the fact building permits *or remov[e] the structures* from their property."¹⁰ However, the Notice¹¹ said *nothing* about removing the conexes from the property. Rather, they only instructed Henrys to obtain a permit for them, which OB later argued would never be issued by OB as they were not "permissible structures."¹²

Finally, OB claims "Katherine Henry testified that the industrial shipping containers are sized 8' x 20' each (160 sq. ft.),¹³ but that is misleading. Henry's "wild guess" from "the top of her head," where she "had no idea" wasn't proof of a certain size.¹⁴ But, OB's uses this to support their conclusion the conexes constitute a "garage" per the LDC.

⁴ OB Answer Brief, p 2.

⁵ As seen in OB's testimony on Tr 76, 78, 79.

⁶ OB Answer Brief, p 4, 5.

⁷ Rather, these documents were only posted on adjoining property, facing *away* from the Henrys' property, and only secured on a stake with a single staple each, and had come off in that day's storms. So, the Henrys did not discover the content of the posting until much after the storm, when they found 1 of the laminated sheets on the far side of their yard buried in some of their property.

⁸ Tr 32-33, 48-49.

⁹ nor was it disputed when it was brought up to show the context of the intentional denial of equal protection to the Henrys. This issue was first raised in Henrys' 11/8/22 Notice to OB, then in their Responsive Pleadings filed prior to the Magistrate Hearing.

¹⁰ OB Answer Brief, p 4.

¹¹ App 003, which states "The property must be brought into compliance in the following manner: Obtain a building permit for the large metal containers being used as sheds on the property."

¹² See, e.g., Tr 74.

¹³ OB Answer Brief, p 13.

¹⁴ Tr 70.

OB also completely *ignores* that

- Bruce unlawfully came onto Henrys' property on 9/2/22 without a warrant.
- Bruce took photos of Henrys' property while there.
- Henrys later found out by reviewing home-security video footage, and served Bruce, her supervisor, and City Attorney with a Notice to Cease and Desist on 11/8/22, demanding return of those illegally-obtained photos,¹⁵ and noting well-settled law that such photos, as fruit of the poisonous tree, cannot be used as evidence in court proceedings.
- OB failed to return the illegally-obtained photos, or respond to the 11/8/22 Notice.
- OB failed to notify Henrys of intent to use such photos as evidence (until literally 2 minutes before the 10AM hearing).

Regardless of OB's *reasoning* for this misleading, it is not helping to arrive at a just and fair determination.

B. OB Misleads the Court as to Their Argument via Plagiarism

Every good attorney cites relevant cases and statutes. However, attorneys have an ethical duty to cite their sources, instead of plagiarizing. OB has 18 pages of argument, 14 of which have word-for-word copying from cases (often from a dissent, trial court, another jurisdiction, an unpublished case, etc.) *without* proper citing to their original authors,¹⁶ or explaining how those case portions are relevant.

C. OB Misleads the Court About the Law

OB's misleading gets more serious regarding the *law*. First, OB cites¹⁷ to FS 162.22 to say Magistrate has massive powers, even that of "arrest," in cases like this. However, OB leaves off

¹⁵ App 025.

¹⁶ Such as how the 2nd half of p 14, all of p 15, and through the end of p 16 is copied and pasted from the *Kuvin* case, which is from *another jurisdiction*, and thus *not* binding precedent for *this* case. And when OB finally cites to *Kuvin*, later on p 17, the point OB claims is made by *Kuvin* at 632-33 *isn't even the point being discussed!* Likewise, with the exception of the very last sentence, OB's entire section VI (p 18-20) is copied word for word from yet another case from *another jurisdiction*, the *Chakra* case, with only one small reference to the case at the bottom of p 20. Similarly, the majority of the argument made on p 25 is copied and pasted from the *TR Inv'r* case, but *TR Inv'r* is *not* cited for that entire large paragraph; rather, it is cited as supporting OB's claim in the last small paragraph on p 25; however, nothing there supports *that point* made by OB. Also, the *TR Inv'r* case is from *another jurisdiction*, and does *not* involve FS 70.45 *at all*, which is the issue OB claims *TR Inv'r* discusses.

¹⁷ OB Answer Brief, p 7.

the rest of that sentence, which reads “as provided for in chapter 901,” which is Criminal Procedure - *not* relevant here. OB cites *Lindbloom* for support, when in reality, *that* sentence in *Lindbloom* makes the opposite point on Magistrate’s powers, saying “**these powers are narrow**, see Op. Att’y Gen. Fla. 2009-37, **and the punishments are minimal.**” Moreover, *Lindbloom* is a non-binding federal court case,¹⁸ and is *unpublished*.

OB next addresses the authority of this Court,¹⁹ citing two appellate cases from other jurisdictions, *Lee County* and *Sarasota Cnty*, as well as *Davis Islands* from another circuit court. Although none are binding, we must note *Lee County* (and the very part of *Sarasota Cnty* OB cites) emphasizes the three questions that must be asked here: “whether due process was afforded, whether the administrative body applied the correct law, and whether its findings are supported by competent substantial evidence.”²⁰ Indeed, OB downplays this Court’s role in answering these first two questions, merely stating Henrys “received due process” without addressing Henrys’ *specific* allegations of the *several* ways their *substantive*²¹ *and procedural* due process²² rights were denied. Additionally, since *Davis Islands* is an old trial court case, the entire file was destroyed 5+ years ago per FRCP 2.430.²³

OB then misleads about US Supreme Court precedent, claiming such a case stood for a particular point, but then only cited the *Keys Citizens* state court case.²⁴

Next, OB claims FS 163.3167(1) states a city’s comprehensive plan is statutorily mandated “to control and direct the use and development of property” in the city.²⁵ However, that portion of law does not mention the words “control” or “direct,” instead stating the plan is “to guide.” Similarly, it does not cover land “use” (as “use” is not mentioned at all), instead covering “future

¹⁸ other than the Supreme Court, and thus not binding on this state court case. See Georgetown Law’s Handout on *Which Court is Binding?*, available at <https://www.law.georgetown.edu/wp-content/uploads/2018/07/Which-Court-is-Binding-HandoutFinal.pdf>, last accessed on 7/21/23.

¹⁹ OB Answer Brief, p 8.

²⁰ Likewise, in OB’s first full sentence on p 14, they copy and paste the words of the *Town of Manalapan* case to discuss the standard for “competent evidence,” but fail to acknowledge the sentence in *Town* immediately before their copied words, which again reiterates this “court must review the record” to answer these three questions. *Town* clarifies the second question is actually “whether the essential requirements of the law have been observed.”

²¹ Henrys’ Initial Brief, p 11-27.

²² Henrys’ Initial Brief, p 28-31.

²³ When citing to WestLaw, one is supposed to attach a copy of the case, as other parties may not have access to a case not publicly available; this was not done here.

²⁴ OB Answer Brief, p 9.

²⁵ OB Answer Brief, p 9.

development.²⁶ Even the nonbinding *Machado* case OB cites here reiterates the plan covers *future development*.²⁷

OB also claims precedent requires all reasonable doubts regarding their LDC to be resolved in their favor.²⁸ However, to the extent their court of appeals case is even relevant, the *City of Miami Beach* Florida Supreme Court case²⁹ mandates such ***doubt will be resolved against the City***.³⁰ And why wouldn't it? We live in a Constitutional Republic, where our rights to life, liberty and property are given to us by God, and not created or "gifted" by OB. Conversely, OB has *no* authority to act except that which was expressly provided by state constitution, state law or city charter.

OB suggests this Court owes OB deference, and cites a dissent for support. However, the US Supreme Court made it clear "deference does not imply abandonment or abdication of judicial review."³¹ Further, in discussing which municipal action should be upheld,³² OB repeatedly cites cases about "zoning" regulations, but inserts "and land development" and "and land use restrictions" into the words copied and pasted from these "zoning" and "planning" cases. Henrys do not challenge *zoning* or *land development* regulations *here*, as such, cases discussing deference to *them* are misleading.

OB next implies "implementing the City's comprehensive plan" is a "legitimate public purpose," citing to *Kuvin*,³³ however, *Kuvin* does *not* state nor imply implementing the plan constitutes a legitimate public purpose by itself. In fact, *no* cases support such an allegation. Moreover, OB offers *no* legitimate public purpose for *any* of the actions in question.

Misleading on Equal Protection

OB then essentially claims *no* equal protection claim could *ever* succeed because as long as there's at least *some* others being prosecuted for the same offense, such selectivity is

²⁶ Per the Community Planning Act (CPA), being discussed here, Henrys' pavers, fence and conexes (PFCs) are **not** classified as 'development' either, as discussed in detail at Henrys' Initial Brief, p 25-26. Indeed, OB goes on for the next two pages with quotes about regulating *development*.

²⁷ OB Answer Brief, p 9.

²⁸ OB Answer Brief, p 15.

²⁹ Henry Initial Brief, p 23.

³⁰ Further, the cases cited by OB reference presumptions for statutes and ordinances, *not* a city's interpretation of those laws.

³¹ *Students for Fair Admissions v Harvard College*, 600 US __ (2023), slip opinion p 26.

³² OB Answer Brief, p 14-16.

³³ OB Answer Brief, p 17.

constitutional.³⁴ But that's not what the case precedent states. OB cites *Oyler* for stating "The conscious exercise of **some selectivity** in enforcement is not in itself a constitutional violation." But that's the distinction - **some** selectivity versus **much** selectivity in enforcement. William Oyler raised the issue of selectivity in enforcement where 904 men were similarly situated in the entire state³⁵ of 1,880,000 people³⁶ - so, 904 out of 1,880,000. That is a stark contrast to the 115,714 current similar violations within OB (a city of only 43,517 people).³⁷ So, while 904 out of 1,880,000 might not be unconstitutionally selective, 115,714 out of 43,517 certainly is! Moreover, William Oyler was charged with *murder* - a **malum in se** offense as opposed to Henrys' alleged **malum prohibitum** offense. And, when you commit a **malum in se** offense, such as murder, arson or rape, there is harm to a victim that must be accounted for, even if another arsonist or rapist goes free.³⁸ However, Henrys' PFCs harm *no one*, and the requirements OB imposes upon Henrys' PFCs are to satisfy design and aesthetic³⁹ preferences, which are wholly ineffective with such selective enforcement.

OB also suggests Henrys must be part of a predefined class to receive equal protection of the law. However, the US Supreme Court⁴⁰ expressly acknowledges a "class of one," where a party "alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment," just as Henrys did.⁴¹ One neighbor made a complaint against Henrys. That complaint was immediately followed up on and responded to. However, as discussed in prior pleadings, when Henrys made complaints to OB regarding the Rollins property, and OB's own LDC violations⁴² at 54 Seton and the city attorney's office, OB failed to take *any* action, or even respond to Henrys. Especially

³⁴ OB Answer Brief, p 17-18.

³⁵ *Oyler v Boles*, 368 US 448, 455 (1962).

³⁶ Oyler brought his case in 1955, and the population of West Virginia in 1955 was 1,880,000. https://www.google.com/search?q=how+many+people+lived+in+west+virginia+in+1955&rlz=1C1CHBF_enUS912US912&oq=how+many+people+lived+in+west+virginia+in+1955&aqs=chrome..69i57.7893j1j7&sourceid=chrome&ie=UTF-8

³⁷ Henry Initial Brief, p 10-11.

³⁸ Discussed more fully on p 8-11 of Henry Initial Brief.

³⁹ Even OB's own cases cited recognize cases have long held "design restriction ordinance[s] invalid where the principal purpose of the ordinance was to achieve a particular aesthetic appearance instead of protecting property values or other legitimate function of the police power." See, e.g., *Kuvin v Coral Gables*, 62 So.3d 625, 641 (Fla. App. 2010)(concurrence).

⁴⁰ *Willowbrook v Olech*, 528 US 562, 564 (2000).

⁴¹ Henry Initial Brief, p 6-11.

⁴² City Park's LDC Violation re [Pods Container](#), City Attorney's LDC Violation re [Parking Surface](#), City Attorney's LDC Violation re [Utility Structure](#), City Attorney's LDC Violation re [Repairs Without a Permit](#)

considering their undisputed thorough follow-up with the neighbor who complained *against* the Henrys, this undoubtedly shows intentional different treatment.⁴³

OB then cites a long list of cases from other jurisdictions to “prove” Henrys’ substantive due process rights weren’t violated.⁴⁴ However, those cases only relate here in the most general sense, discussing situations of “state-created property interest[s]”⁴⁵, which aren’t at issue here.⁴⁶ Further, the various substantive due process violations discussed by Henrys⁴⁷ are not rebutted - *or even addressed* - by OB.⁴⁸

OB claims⁴⁹ “a protectable property interest does not arise in this case from a knowing violation of the law.” But, it is *not* alleged Henrys obtained ownership of their property through robbery, theft or other unlawful means. Further, Henrys’ property rights in their home and attached PFCs are *not* created by the LDC, OB itself, nor the state.⁵⁰ Indeed, the Florida Constitution acknowledges Henrys “have *inalienable* rights . . . to acquire, possess and protect property.”⁵¹ But, even if state law and the US Constitution were at odds here, the court has “an obligation to ensure that state court interpretations of that law do not evade federal law.” In other words, as the US Supreme Court held last month

State law, for example, “is one important source” for defining property rights. *Tyler v. Hennepin County*, 598 U.S. ___, ___ (2023) (slip op., at 5); [but at] the same time, the Federal Constitution provides that “private property” shall not “be taken for public use, without just compensation.” Amdt. 5. As a result, **States “may not sidestep the Takings Clause by disavowing traditional property interests.”** *Phillips v. Washington Legal Foundation*, 524 U. S. 156, 164 (1998); see also *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U. S. 155, 164

⁴³ The games OB played with service upon Henrys and other matters were also outlined for the Magistrate, as summarized on App 012, parts 6 and 7.

⁴⁴ OB Answer Brief, p 18-20.

⁴⁵ OB Answer Brief, p 20.

⁴⁶ See following paragraph herein. Also, the manner in which this plagiarized material is used brings up several important questions. Where *substantive due process* claims of a multitude of other circumstances have failed for a variety of unspecified reasons, does this necessarily mean that *none* of Henrys’ claims are valid? How are the facts of these cases the same? How does the law in those cases control here?

⁴⁷ Henry Initial Brief, p 11-27.

⁴⁸ And as the Answer Brief is a required pleading, OB is now deemed to have admitted these due process violations. See Henry’s Response to OB’s Motion to Strike, p 2-4, discussing the Florida court rules on point.

⁴⁹ OB Answer Brief, p 21-22.

⁵⁰ Henry Initial Brief, p 5.

⁵¹ FL Const Art I Sec 2.

(1980) (holding that **States may not, “by ipse dixit, . . . transform private property into public property without compensation”**).

Further, OB’s analysis on this issue heavily relies upon *Durden*, which is grossly misleading since the appellees in *Durden* “illegally constructed outdoor advertising signs **adjacent to Interstate 10**”⁵² - substantially different from Henrys’ use of their PFCs *on their own property* that *in no way* impacts any easements or any other property interests of record. So, OB may not use *Durden*,⁵³ nor another case, to “sidestep the Takings Clause by disavowing traditional property interests,” nor may OB “by ipse dixit transform [Henrys’] private property into public property without compensation.”

OB then discusses how property owners may file suit against municipalities under FS 70.001, detailing all pre-suit requirements, ultimately concluding Henrys did not follow all the steps for such a lawsuit.⁵⁴ However, that is misleading, as Henrys have *not sued under FS 70.001*, only citing FS 70.001 to show our legislature’s recognition “that some laws, regulations, and ordinances of the state and political entities in the state, as applied, may inordinately burden, restrict, or limit private property rights without” a court declaring it “a taking under the State Constitution or the United States Constitution. The Legislature determines that there is an important state interest in protecting the interests of private property owners from such inordinate burdens.”⁵⁵ Thus, the importance “in protecting the interests of private property owners” is certainly valid here, while the specifics of a lawsuit under FS 70.001 is not.

OB then claims Henrys “misread” the meaning of “exaction” in FS 70.45.⁵⁶ OB “supports” this claim by plagiarizing *TR Inv’r*.⁵⁷ Aside from being from another jurisdiction, and thus nonbinding, *TR Inv’r* does **not** provide a definition of “exaction” that undercuts Henrys’ claims. Indeed, when copying and pasting onto p 25 the entire paragraph about “exactions,” OB failed to include the beginning of the first sentence, stating the definition provided is one “In the most

⁵² *Dep’t of Transp v Durden*, 471 So.2d 1271, 1272 (1985).

⁵³ OB also claims on p 22 of their Answer Brief that OB “has a clear and established scheme under its LDC for citizens to secure permits for fences, driveways and accessory structures.” In making this statement, OB does *not* deny that OB’s permit scheme includes requirements that are *not* even disclosed until *after* an application for a permit is submitted, and includes impractical, unreasonable and often impossible provisions, as discussed by Henrys on p 18-23 of their Initial Brief, and as shown in OB’s own testimony (as detailed on p 19 of Initial Brief). ***How could the Henrys’ possibly “knowingly disregard” requirements that have not even been disclosed?***

⁵⁴ OB Answer Brief, p 22-24.

⁵⁵ Henry Initial Brief, p 14-15.

⁵⁶ OB Answer Brief, p 24.

⁵⁷ See footnote 15 herein.

general sense,”⁵⁸ and is not speaking to exactions under FS 70.45. In fact, FS 70.45 is *not even mentioned* in *TR Inv’r*. However, case precedent is *not* needed to ascertain the definition of “exaction” under FS 70.45, as that definition is provided by FS 70.45 itself.⁵⁹ And as OB’s “conditions imposed” upon Henrys’ “use of real property . . . lack an essential nexus to a legitimate public purpose and [are] not roughly proportionate to the impacts of the proposed use,” those conditions by OB are “exactions” within the meaning of FS 70.45, and the protections within FS 70.45 thus apply.⁶⁰

Overall, OB’s argument is misleading on the law because *most* of the *binding* authority cited by Henrys (state statutes, US Constitution, state Constitution, binding case precedent, OB’s LDC, etc) is completely *ignored* by OB; not differentiated, or explained differently, but simply ignored. Blatantly ignoring binding authority is outright misleading. Additionally, many of OB’s statutes and cases cited are not on point to the issues of this appeal, and *most* (23 out of 43) of OB’s cited cases are dissenting opinions, unpublished opinions, cases from other jurisdictions, trial court decisions, etc. - *none* of which are binding authority in this case. OB also misstates the law in several places, completely ignoring the actual words of the relevant statutes.

D. OB Misleads the Court About What is Being Challenged in This Appeal

OB misleads even as to what is being challenged in this appeal. As discussed, OB suggests Henrys challenge *zoning* or *land development* regulations, but no *zoning* issues have been raised, and per the CPA (the controlling statute), Henrys’ PFCs are *not* classified as “development.”⁶¹ Indeed, as discussed, OB includes many general points of law not litigated here. But OB also misleads in claiming⁶² Henrys ask this Court to “reweigh the evidence.” That is *not* what Henrys seek in this appeal.

⁵⁸ *Tr Inv’r v Manatee Cnty*, No. 2D21-2061 (Fla. App. Feb 3, 2023). OB cites to this case as 355 So.3d 1004, 1012 (Fla. 2d DCA 2023); however, this case citation does not exist. Henrys even searched in two different case databases (Fastcase, as made available through her outstate attorney licensure, and Google Scholar, which is publicly available), and double checked that there is no other case under this name from 2023 other than the one cited by Henrys in this footnote.

⁵⁹ See Henry Initial Brief, p 16, quoting FS 70.45. “‘Prohibited exaction’ means any condition imposed by a governmental entity on a property owner’s proposed use of real property that lacks an essential nexus to a legitimate public purpose and is not roughly proportionate to the impacts of the proposed use that the governmental entity seeks to avoid, minimize, or mitigate.”

⁶⁰ It is also important to note that OB does *not* allege Henrys failed to comply with the presuit requirements of FS 70.45 (as they did not fail to comply).

⁶¹ Per the CPA, Henrys’ PFCs are **not** classified as ‘development,’ as discussed in detail at Henrys’ Initial Brief, p 25-26.

⁶² OB Answer Brief, p 8.

Magistrate's orders **purport to authorize OB to enter onto Henrys' homestead, remove their property, dispose of their property, charge them for such removal, use such charges to create a lien against their real and personal property, and be immune from liability for damage or loss sustained** by Henrys from OB's said removal. OB fails to point to *any* law that purports to give OB authority to do this. Further, it is a blatant violation of the takings clauses of the US and Florida Constitutions, and many state laws. Henrys are challenging this clearly unlawful action by OB.

The only other points at issue are OB's ordering Henrys to

- remove their conexas
- remove their fence and pavers,⁶³ and
- pay never-ending extensive fines

So, the necessary questions are

- does OB have authority to order Henrys to remove PFCs?
- does the *procedure* used deny Henrys' rights?
- does OB have authority to impose vast, never-ending fines?

1. OB Has NO Authority to Order Henrys to Remove PFCs

OB has *no* authority to order Henrys to remove their PFCs. First, none of them are classified as "development" in the controlling statute(s).⁶⁴ Also, OB is prohibited from denying Henrys economically viable use of their modestly-sized homestead. But this occurs when Henrys are told their conexas must be removed, and their pavers must abide by setbacks that prohibit use of nearly *half* their property,⁶⁵ especially when these setbacks contradict the LDC's requirement that the pavers be "contiguous to the existing driveway extend[ing] from the existing driveway

⁶³ At times, OB suggests simply getting a permit would suffice, but OB won't issue a permit for the fence and pavers because of subjective aesthetic "requirements," nor without removing and completely redesigning them. Henry Initial Brief, p 20. Further, it is unreasonable and virtually impossible for Henrys to satisfy all the requirements for applying for the permits. Henry Initial Brief, p 18-23.

⁶⁴ Per the CPA, Henrys' PFCs are **not** classified as 'development,' as discussed in detail at Henrys' Initial Brief, p 25-26.

⁶⁵ Henry Initial Brief, p 22.

toward the side lot line.”⁶⁶ Relatedly, OB cannot require Henrys to remove their pavers or conexes when doing so will force the Henrys into noncompliance with the LDC.⁶⁷

Further, OB has no authority to force Henrys to remove their pavers, as they are undisputedly Florida-friendly landscaping protected under state law.⁶⁸ Similarly, state laws on fences and privacy⁶⁹ and the Florida Building Code’s provisions on regulating “design”⁷⁰ prevent OB from forcing Henrys to remove their privacy fence. Moreover, under the CPA, Henrys’ conexes are not “structures” which require permits.⁷¹ Henrys’ conexes are not against the LDC, and are not even mentioned in the LDC.⁷² Even more telling is that the Florida Building Code does *not* allow OB to control the location of Henrys’ conexes, apply typical building requirements to them, or even to regulate them at all!⁷³

In addition to this (and other⁷⁴) statutory authority on point, *regulatory taking case precedent* also prohibits OB from forcing the removal of Henrys’ PFCs from their own property.⁷⁵ The US Supreme Court made it clear “[t]he Constitution extends *special* safeguards to the privacy of the home.”⁷⁶ The Court explained this is because “the principles . . . of constitutional liberty and security . . . apply to all invasions on the part of the government and its employes of the sanctity of a man’s home and the privacies of life. [T]he essence of the offence . . . is the invasion of his ***indefeasible right of personal security, personal liberty and private property.***”⁷⁷ Thus, it makes sense that a land “use restriction may constitute a ‘taking’ if not reasonably ***necessary*** to the effectuation of a ***substantial*** government purpose.”⁷⁸ OB has failed to identify *any* legitimate government purpose, let alone a ***substantial*** one, instead claiming the purpose of forcing the removal of Henrys’ PFCs from their own property is merely to “implement [OB’s] comprehensive plan.”⁷⁹ There was no finding, nor even an allegation, that Henrys’ PFCs harm

⁶⁶ LDC 2-50(x)(4)(c).

⁶⁷ Henry Initial Brief, p 17.

⁶⁸ Henry Initial Brief, p 24-25.

⁶⁹ Henry Initial Brief, p 15 at footnote 55; p 34-35.

⁷⁰ Henry Initial Brief, p 21.

⁷¹ Henry Initial Brief, p 25.

⁷² Henry Initial Brief, p 26-28.

⁷³ Henry Initial Brief, p 23-24.

⁷⁴ Henry Initial Brief, p 14-16.

⁷⁵ This issue is explained in more detail in Henry Initial Brief, p 12-14.

⁷⁶ *Dolan v City of Tigard*, 512 US 374 (1994) (cleaned up).

⁷⁷ *Boyd v United States*, 116 US 616 (1886).

⁷⁸ *Penn Central Transportation Co v New York City*, 438 US 104, 127 (1978). See Henry Initial Brief, p 13.

⁷⁹ OB Answer Brief, p 17. OB also states that in general, the LDC was adopted to “regulate the various land use categories in [OB’s comprehensive] Plan.” *Ibid* at 11. But, this is irrelevant

any person or property; nor was there a finding (or allegation) that removing Henrys' PFCs was **necessary** to prevent such harm. Certainly, even **if** general aesthetics or implementing the comprehensive plan was a substantial government purpose, removing Henrys' PFCs is *not* necessary to meet those goals while 115,714 like LDC violations currently exist within OB.

For the PFCs, the *only* violation Magistrate found is that Henrys did not obtain permits for them.⁸⁰ That is it. Magistrate (and OB) completely ignored the plethora of laws, LDC provisions, cases and constitutional provisions that prohibit OB from including some of the conditions for the permits or that prohibit OB from requiring a permit for them at all. Further, it is uncontested Henrys' PFCs harm no one, and in fact, bring several benefits to Henrys' property and others nearby.⁸¹

2. The Procedures Used Have Denied Henrys' Rights

The *procedures* used by OB have denied Henrys' rights. As discussed, due process denials invalidate otherwise permissible action. Magistrate admitted evidence (and subsequently used some as exhibits in his orders) illegally obtained by OB without a warrant, which is clearly prohibited by the 4th Amendment and other laws.⁸² OB failed to follow the law in serving Henrys with Notices in this matter.⁸³ And the manner in which OB completely subverted the requirements of FS 70.45, and robbed Henrys of the statutory protections for their property contained therein, is nothing short of a stealthy attempt to deny Henrys due process of law.⁸⁴ Thus, the due process denials invalidate the entire action taken against Henrys.

OB's attempt to physically take Henrys' property failed to follow *any* required legal process, and thus invalidates Magistrate's orders even if otherwise valid. On point, FS 163.3194(4) mandates "private property shall not be taken *without due process of law* and the payment of just compensation." To avoid being unduly cumulative, Henrys rely on the statutes cited in their Motion for Relief & for Stay,⁸⁵ as all of the averments made by Henrys therein were admitted by

since *land use categories* are not being challenged here, nor is there a dispute that Henrys are using their *residentially-zoned* homestead property for normal *residential* purposes.

⁸⁰ App. 85, et al.

⁸¹ Henry Initial Brief, p 5,16.

⁸² Henry Initial Brief, p 28-30.

⁸³ As described by Henrys in various places, including part 6 and 7 of App 012.

⁸⁴ Henry Initial Brief, p 30-32.

⁸⁵ Paragraphs 16, 18, 19, and 31-34. FRCP 1.110(f) states "a paragraph may be referred to by number in all subsequent pleadings."

OB.⁸⁶ Thus, Henrys simply reiterate OB's fatal procedural flaws in attempting to take Henrys' property include: filing the action under the wrong statute, filing prematurely, filing without the requisite statutory pre-lawsuit conditions met, notice and opportunity to be heard on the issue of taking was denied to Henrys, service was not made *personally*, filing without good-faith pre-filing negotiations with Henrys, filing without the statutory requirements for eminent domain petitions, etc. Many of these are *per se* reversible errors, and as such, by themselves invalidate Magistrate's orders.

Moreover, although Henrys' eventually received notice of the magistrate hearing, they received **no** notice before the hearing OB intended to physically remove Henrys' PFCs from their own property.⁸⁷ Consequently, Henrys did *not* receive a meaningful opportunity to be heard on these issues. Although OB ignores these facts, that does not change the law on point - which requires the results to be overturned for violation of procedural due process (as they are not harmless errors).

Equal protection violations have the same result.⁸⁸ OB's enforcement of the LDC *as against Henrys* at the Rollins property, outright refusal to enforce the LDC *as against sellers* at the same property, and current attempts to enforce the LDC *as against Henrys* for their current property establishes a **clear violation of Henrys' right to equal protection of the law**.⁸⁹ Especially where Henrys' alleged LDC violations are not *malum in se* but merely *malum prohibitum*, the obvious, *uncontroverted*, and astounding number of like violations getting a "free pass" is the epitome of an equal protection violation.

⁸⁶ Court rules discussed in full in Henrys' Response to OB Motion to Strike, paragraphs 5-9.

⁸⁷ Henry Motion for Relief from Order and for Stay, paragraphs 31 and 32. See, e.g., "NONE of the documents served on Henrys (either by certified mail, USPS, or email) even referenced the entering, removing, disposing, charging, charges creating liens, or immunity from liability for OB. NOT ONE. In fact, in looking at the Notices of Hearing and Code Enforcement Citations, submitted into evidence over Henrys' objections, the ONLY potential penalty mentioned is that of a fine - even if the Henrys failed to appear. Shockingly, the FIRST time the Henrys were notified of these provisions being sought by OB was when Janet Bruce handed the Henrys several large stacks of pages at 9:58AM, only two minutes before the 10AM Hearing (despite Henrys arrival 30 minutes early, and the fact these documents would have been ready for the Hearing a month prior as originally scheduled)."

⁸⁸ See section herein on [Misleading on Equal Protection](#).

⁸⁹ Henry Initial Brief, p 6-8.

Teal Stars Indicate Permit, Paver / Parking, Shipping Container / Shed / Structure, or Fence Violations



Indeed, these stars include work without permits, fences failing to meet LDC requirements, accessory structures & pavers installed without setbacks, parking areas without the required material (pavers, concrete, etc.), and other similar provisions. Undeniably, these “free passes” have been handed out to OBPD officers, VC Sheriff deputies, city employees, county council & city commission members, state law enforcement officers, official city properties and even the City Attorney’s office.⁹⁰ If *these LDC provisions* were so important to the beautification of the

⁹⁰ App 11, 13, 14.

community, wouldn't our own government officials be held to the highest standard of compliance with these provisions?⁹¹ Thus, even *if* OB's commands to remove Henrys' PFCs were otherwise lawful, OB's ***undisputed*** selectivity of enforcement invalidates their action.

3. OB Has NO Authority to Impose Never-Ending Fees

OB also has *no* authority to impose fees *as they have done here*. First, the orders imposing the fees are invalid as legally premature.⁹² But regardless of timing, the fees imposed upon Henrys by OB are unconstitutional in their entirety, let alone unconstitutionally *excessive*.⁹³ Certainly, fines that already total \$14,000 and grow *every day* with *no* end date are excessive for ANY offense, let alone a ***malum prohibitum*** offense where there is no harm. Further, the fees imposed here have no correlation to any actual damages sustained by society or to the cost of the proceedings.⁹⁴ There are *no* actual damages sustained by society from Henrys' PFCs, and Henrys have already been forced to bear the burden of paying the costs of these proceedings - thousands in court filing and transcript preparation fees.

Conclusion

Magistrate's orders purport to authorize OB to literally take and destroy portions of Henrys' homestead, force Henrys to remove their PFCs from their own property, and charge Henrys extensive fines and fees. However, *no* law provides this authority, *and* many laws and the Constitution expressly prohibit such government action. Moreover, the equal protection and due process violations further invalidate OB's actions. Henrys simply ask their God-given, Constitutionally-protected rights be defended from OB's illegal actions.

Respectfully Submitted: July 27, 2023

/s/ Katherine & Michael Henry
Respondents, Pro Se

Certificate of Service

⁹¹ Furthermore, OB seemingly insinuates OB's LDC was implemented for the "public health, morals, safety or welfare" of our community. OB Answer Brief, p 16. However, if OB's actions against the Henrys were truly about the public health, morals, safety or welfare, why are there so many of the same "violations" in such a small area?

⁹² Henry Initial Brief, p 36-37.

⁹³ Henry Initial Brief, p 37-38.

⁹⁴ Austin v US (509 US 602, 1993)

I certify that the foregoing document has been furnished to Abraham C McKinnon (lynn@mckinnonandmckinnonpa.com, amckinnon@mckinnonandmckinnonpa.com), Noah McKinnon (nmckinnon@mckinnonandmckinnonpa.com), Barbara Radcliff (Barbara.Radcliffe@ormondbeach.org), H. Pope Hamrick, Jr. (phamrickjr@cfl.rr.com), Ann Margret Emery (A.Emery@ormondbeach.org), Chris Mason (Chris.Mason@ormondbeach.org), Janet Bruce (Janet.Bruce@ormondbeach.org), via the electronic filing portal on July 27, 2023.

Respectfully Submitted: July 27, 2023

/s/ Katherine Henry
/s/ Michael Henry
Appellants, Pro Se
PO Box 333, Ormond Beach FL 32175
Katherine@RestoreFreedomKH.com
616-303-0033
Michigan Bar No P71954

Certificate of Compliance

I certify that the foregoing document has been checked for conformity with FRAP 9.045(e) with the use of word processing software, and that it complies with the applicable font and word count limit requirements to the best of my knowledge.

Respectfully Submitted: July 27, 2023

/s/ Katherine Henry
/s/ Michael Henry
Appellants, Pro Se
PO Box 333, Ormond Beach FL 32175
Katherine@RestoreFreedomKH.com
616-303-0033
Michigan Bar No P71954



Katherine Henry <khenry4mi@gmail.com>

COURT/CLERK SERVICE OF COURT DOCUMENT 2023 30711 CICI

noreply@volusiacoc.org <noreply@volusiacoc.org>

Thu, Mar 7, 2024 at 5:44 AM

To: Katherine@restorefreedomkh.com

You are receiving this court or clerk originated document via your email address(es) registered on the Florida Statewide ePortal, pursuant to [Volusia County Administrative Order P-2016-152](#).

If you receive eService on a case in which you no longer represent a party, you may remove yourself from the service list for that case on the Statewide ePortal. Instructions on how to remove yourself from a case on the ePortal can be found [here](#).

COURT: IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT, VOLUSIA COUNTY, FLORIDA
CASE NUMBER: 2023 30711 CICI
CASE NAME: MICHAEL HENRY, ET AL v. CITY OF ORMOND BEACH FLORIDA
DOCUMENT: ORDER TO VACATE / VACATING
SERVED BY: Clerk of the Circuit Court, Volusia County
PHONE: 386-736-5915
SENT ON: 03/07/2024 05:43:57 AM

03/04/2024 - ORDER TO VACATE / VACATING

CC: ABRAHAM C MCKINNON - amckinnon@mckinnonandmckinnonpa.com
ABRAHAM C MCKINNON - lynn@mckinnonandmckinnonpa.com

[Quoted text hidden]

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

CASE NO.: 2023 30711 CICI
DIVISION: 32

MICHAEL AND KATHERINE HENRY,

Appellants,

v.

CITY OF ORMOND BEACH,

Appellee.

ON APPEAL FROM THE
CITY OF ORMOND BEACH SPECIAL MAGISTRATE

This is an appeal brought pursuant to section 162.11 of the Florida Statutes (2023) of three Orders Finding Violation entered against Appellants Michael and Katherine Henry (“Appellants”) by the Special Magistrate of the City of Ormond Beach (“Appellee/COOB”). Upon review of the appellate court file and having heard oral argument on January 4, 2024, the Court finds as follows:

Appellants timely challenge three Orders Finding Violation, entered on February 27, 2023, each for a separate violation of the City of Ormond Beach Land Development Code (“OBLDC”) for property located at 33 Cypress Drive, Ormond Beach, Volusia County, Florida.

In Case No. 22-112237, the Special Magistrate found Appellants in violation of chapter 2, article III, section 2-50(n)(1)(a) of the OBLDC for installation of a fence without applying for or obtaining a permit, and imposed a fine of \$25 per day until the property is brought into compliance. (Dckt. No. 12 at 85-88, Dckt. No. 13 at Tr. 132-133).

In Case No. 22-112246, the Special Magistrate found Appellants in violation of chapter 2, article III, section 2-50(a)(9) of the OBLDC for installation of accessory structures, to wit: two

large steel shipping containers, without a permit, and imposed a fine of \$25 per day until the property is brought into compliance. (Dckt. No. 12 at 93-96, Dckt. No. 13 at Tr. 134).

In Case No. 22-112247, the Special Magistrate found Appellants in violation of chapter 1, article II, section 1-14(6)(a)(1) of the OBLDC for the installation of pavers without a permit, and imposed a fine of \$25 per day until the property is brought into compliance. (Dckt. No. 12 at 100-103, Dckt. No. 13 at Tr. 135).¹

Each Order of Violation further states if the Respondents fail to bring the property into compliance, “The City will be authorized to enter the property on or after April 10, 2023 to remove and dispose of the [fence, shipping containers, and pavers] with all costs thereof to be assessed against the Respondents.” (Dckt. No. 12 at 87-88, 95, 102, and Dckt. No. 13 at Tr. 133, 135, and 136).²

Section 162.11 of the Florida Statutes (2023) provides for a plenary appeal to the circuit court as a matter of right from a final administrative order of an enforcement board. *Central Florida Investments, Inc. v. Orange County*, 295 So. 3d 292, 293 (Fla. 5th DCA 2019).

Appellants raise six points on appeal which are restated and reordered as follows: (i) the denial of equal protection based upon a disparity of treatment; (ii) the denial of substantive due process through the code enforcement process, the findings of violation, and the penalties; (iii) the denial of procedural due process based upon a Fourth Amendment violation; (iv) violation of the Eighth Amendment; and (v) an improper taking.

¹ The Special Magistrate ordered Appellants to pay \$100 for all three citations, waiving imposition in two of the cases thus requiring Appellants to pay \$100. The Special Magistrate also imposed costs in all three cases. *See* Dckt. No. 12 at 88, 96, and 102-103, Dckt. No. 13 at Tr. 133, 134, and 136.

² Accrual of the daily fines and the remedial action directed in the Orders of Violation have been stayed pending this appeal. (Dckt. No. 24).

In reviewing each issue on appeal, this Court notes that appellate review of a local governmental administrative action encompasses “. . . whether due process was afforded, whether the administrative body applied the correct law, and whether its findings are supported competent substantial evidence.” *Sarasota County. v. Bow Point on Gulf Condo. Developers, LLC*, 974 So. 2d 431, 433 (Fla. 2d DCA 2007) (citing *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So.2d 996, 1003 (Fla. 2d DCA 1993)). “The last requirement involves a purely legal question: whether the record contains the necessary quantum of evidence. The circuit court is not permitted to go farther and reweigh that evidence.” *Sunbelt Equities*, 619 So. 2d at 1003.

Section 162.11 of the Florida Statutes (2023) provides that an appeal of a final administrative order is limited to the record created before the enforcement board. From that record, this Court finds that Appellants were afforded due process in the proceedings below, as they were lawfully provided notices of the violations, given an opportunity to correct the violations, issued citations, provided notice of the hearing, and had an opportunity to be heard at the hearing. The Court finds that Appellants were not denied procedural due process and therefore shall address each point on appeal only as to whether the law was properly applied and that the findings are supported by competent substantial evidence.

Appellants first contend that the Orders of Violation are violative of their right of equal protection afforded under the Fourteenth Amendment of the United States Constitution. Appellants contend that Appellee/COOB have selectively enforced the OBLDC, engaging in “cherry picking” of their property in contrast to a multitude of other properties which they contend are also in violation of the OBLDC.

Equal protection claims generally concern governmental classification and treatment that impacts an identifiable group of people differently than another group of people. *Foley v. Orange*

Cnty., 638 F. App'x 941, 944 (11th Cir.) (citing *Corey Airport Servs., Inc. v. Clear Channel Outdoor, Inc.*, 682 F.3d 1293, 1296 (11th Cir. 2012)), *cert. denied*, 580 U.S. 961 (2016). To establish a “class of one” equal protection violation, a plaintiff must show that he or she have “been intentionally treated different from others similarly situated and that there is no rational basis for the difference in treatment.” *Id.* (quoting *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000)). “To be similarly situated, the comparators must be *prima facie identical in all relevant respects*.” *Id.* (quoting *Grider v. City of Auburn*, 618 F.3d 1240, 1263–64 (11th Cir. 2010)) (emphasis in original).

During the hearing, Appellants presented the Special Magistrate with “63 examples” of properties they asserted to be in violation of the OBLDC, and they argued that they were the subject of “cherry picking” by Appellees/COOB. The Special Magistrate summarily rejected this equal protection claim. *See* Dckt. No. 13, Tr. at 33-40, 132.

A review of the record reveals that Appellants did not identify with particularity to the Special Magistrate another nonconforming property that was “prima facie identical in all relevant respects” to its own, i.e., with the same three distinct violations under the OBLDC. Only upon that initial showing could then the Special Magistrate assess whether another similarly situated property owner was intentionally treated differently by Appellee/COOB, and if there were a rational basis for the purported unequal treatment. With that, the Special Magistrate properly applied the law, his findings are supported by competent substantial evidence, and there is no basis to disturb his ruling. *Cf. Foley*, 638 F. App'x at 944 (11th Cir. 2016) (plaintiffs failed to establish equal protection violation in enforcement of ordinance requiring property owner to obtain a permit for an accessory building on their property).

Next, Appellants present a lengthy point on appeal identified as substantive due process, which cites varying propositions of law that are disjointed and lack clarity but from which this Court extracts an unavailing argument.

As a threshold point, the Court notes that the constitutional right to substantive due process is one that protects against arbitrary legislative action, *not* arbitrary executive action. *City of Pompano Beach v. Yardarm Rest., Inc.*, 834 So. 2d 861, 869 (Fla. 4th DCA 2002) (citing *McKinney v. Pate*, 20 F.3d 1550 (11th Cir.1994), *cert. denied*, 513 U.S. 1110 (1995)). Executive acts characteristically apply to a limited number of persons—often to just one person—and typically arise from the ministerial or administrative activities of members of the executive branch, whereas “legislative acts” generally apply to a larger segment of society, if not to the entire society. *Id.* The issuance and revocation of building permits constitute “executive” and not “legislative” acts. *Id.* (quoting *Reserve, Ltd. v. Town of Longboat Key*, 933 F.Supp. 1040, 1043-44 (M.D. Fla. 1996)).

Here, Appellants challenge Appellee/COOB’s executive action in the enforcement of its building code specific to them, but they make no cogent argument upon which this Court can find that the Special Magistrate misapplied the law in this regard or that he rejected their argument in the face of competent substantial evidence to the contrary. In sum, this strained substantive due process challenge is without any legal merit. *See id.* and also *DeKalb Stone, Inc. v. County of DeKalb, Georgia*, 106 F.3d 956, 960 (11th Cir.) (rejecting a substantive due process challenge to denial of nonconforming use exemption to local zoning laws), *cert. denied*, 522 U.S. 861 (1997); *Boatman v. Town of Oakland, Florida*, 76 F.3d 341, 346 (11th Cir. 1996) (rejecting a claim that town executives arbitrarily and capriciously refused to issue certificate of occupancy); *Reserve II*, 933 F. Supp. at 1044 (no cognizable substantive due process claim for revoked building permit); and *Jacobi v. City of Miami Beach*, 678 So.2d 1365, 1366-68 (Fla. 3d DCA 1996) (rejecting a

substantive due process claim based on the city's refusal to allow reconfiguration of lots under municipal zoning regulations).

Moreover, Florida law authorizes counties and local government to regulate local land development and promulgate zoning regulations. *Bennett v. Walton Cnty*, 174 So. 3d 386, 387-88 (Fla. 1st DCA 2015). Again, assuming arguendo that Appellants cogently identified an offending legislative act below, the Special Magistrate would then have had to examine that act under the rational basis test, analyzing whether the regulation was rationally related to a legitimate governmental purpose. *Id.* at 388 (citations omitted). The rational basis standard “is highly deferential . . . If the question is at least debatable, there is no substantive due process violation.” *Id.* (quoting *WCI Communities, Inc. v. City of Coral Springs*, 885 So.2d 912, 914 (Fla. 4th DCA 2004)). *See also Pinellas Cnty. v. Richman Grp. of Fla., Inc.*, 253 So. 3d 662, 669 (Fla. 2d DCA 2017) (substantive due process challenges are analyzed under the rational basis test; that is, a legislative act of the government will not be considered arbitrary and capricious if it has a rational relationship with a legitimate general welfare concern), *rev. denied*, 2018 WL 6264578 (Fla. 2018), *cert. denied*, ___ U.S. ___, 139 S.Ct. 1401 (2019). Appellants would be hard-pressed to overcome this standard. Appellants’ substantive due process attack on the proceedings below is without legal and factual merit.³

³ Included in their substantive due process argument both below and on appeal, Appellants challenge the authority of Appellee/COOB under chapter 70 of the Florida Statutes (2023), also known as the Bert J. Harris, Jr., Private Property Rights Protection Act. This entire argument is legally misplaced as a claim under chapter 70 must be raised in accordance with the specific procedural and substantive requirements contained therein, which are separate and distinct from that considered in chapter 162 proceedings. *See e.g., Wendler v. City of St. Augustine*, 108 So. 3d 1141, 1142 (Fla. 5th DCA) (chapter 70 claim was distinct from administrative proceeding before City’s Historic Architectural Review Board which had included review of board action by the City Commission and then certiorari review in circuit court), *rev. denied*, 122 So.3d 867 (Fla. 2013), and *Russo Assocs., Inc. v. City of Dania Beach Code Enft Bd.*, 920 So. 2d 716, 717 (Fla. 4th DCA 2006) (property owner filed written claim under chapter 70 following zoning violation findings by

Next, Appellants contend that photographs taken by city officials, which were admitted as evidence of violations of the OBLDC, were the product of a Fourth Amendment violation.⁴ This argument is unsupported by the record as the city official testified that she took the photographs from the sidewalk without entry on Appellants' property. Dckt. No. 13 at Tr. 25, 54- 55. Appellants' challenge under the Fourth Amendment is without legal and factual merit.

Next, Appellants contend that the Orders of Violation, which impose the accrual of daily fines, are excessive in violation of the Eighth Amendment. A careful review of the transcript of the hearing reveals that Appellants did not make a specific argument regarding an Eighth Amendment violation. Accordingly, the Court finds appellate review of this constitutional claim has been waived.

Waiver notwithstanding, the Court notes that "[t]here is a strong presumption that the amount of a fine is not unconstitutionally excessive if it lies within the range of fines prescribed by the legislature." *Moustakis v. City of Fort Lauderdale*, 338 F. App'x 820, 821 (11th Cir. 2009). *Cf. United States v. Bajakajian*, 524 U.S. 321, 336 (1998) (holding substantial deference should be given to legislature in determining whether fine is excessive in violation of Eighth Amendment of United States Constitution) and *Riopelle v. Dep't of Fin. Servs., Div. of Workers' Comp.*, 907

code enforcement board and court addressed the statute of limitations for the separate cause of action under chapter 70).

⁴ Appellants also contend that their own video evidence shows improper entry on their property. Yet, in support of a request for dismissal at the outset of the hearing, Appellants alluded to video surveillance, but they stated they could not offer it as evidence because they were unaware that these photographs would be presented by Appellee/COOB at the hearing, and therefore they did not bring the videos. *See* Dckt. No. 13 at Tr. 25-27, 53. The request for dismissal was denied. *Id.* The transcript of the hearing establishes that Appellants had notice of the violations alleged against them, and they vociferously defended themselves at the hearing. Any argument regarding a Fourth Amendment violation based upon video evidence, which could have and was not offered below, has been waived.

So. 2d 1220, 1223 (Fla. 1st DCA 2005) (holding substantial deference should be given to legislature in determining whether fine is excessive in violation of Florida Constitution).

Here, the fines imposed and accrued are within the range of fines prescribed by section 162.09(2)(a) of the Florida Statutes (2023), which provides that a local government may impose a fine for each day a property is in violation of a local code, so long as the fine does not exceed \$250 per day for a first violation, and \$500 per day for a repeat violation. The statute does not delineate a cap on reparable violations. *Moustakis*, 338 F. App'x at 821 (“Section 162.09(2)(a) of the Florida Statutes clearly provides a cap on the amount of fines that can accrue from daily code violations, but limits the application of the cap to irreparable code violations. Under the statutory construction principle of *inclusio unius est exclusio alterius* (“the inclusion of one is the exclusion of another”), the Florida Legislature's provision for a cap on irreparable code violations is a clear indication that it intentionally omitted a cap for reparable code violations”).

In *Moustakis*, the Eleventh Circuit United States Court of Appeals determined, “The \$150 per day fine that has accrued for 14 years and now totals \$700,000 is within the range of fines prescribed by the Florida Legislature and accordingly is due our substantial deference.” *Id.* at 822. The same holds true here. Finally, and despite waiver, to the extent that Appellants’ Eighth Amendment challenge can be liberally construed as constituting a facial challenge to section 162.09, the facial constitutionality of a statute may not be raised in an administrative proceeding. *See Wilson v. Cnty. of Orange*, 881 So. 2d 625, 631 (Fla. 5th DCA 2004). This claim fails in all respects.

Finally, Appellants contest the legality of the remedial action in the Orders of Violation, which directs Appellee/COOB to enter the property and remove the offending fence, shipping containers, and pavers if the property was not brought into compliance by a date certain identified

in each of the Orders of Violation. Appellants identify this as an unlawful taking or seizure of their property. Though inartful in its presentation to the Special Magistrate below and here on appeal, Appellants have properly contested the legal scope of the sanctions in the Orders of Violation.

This Court does not disagree with the proposition, as cited by Appellee/COOB, that a protectible property interest does not arise in this case from a knowing violation of the law. *Dep't of Transp. v. Durden*, 471 So. 2d 1271, 1272 (Fla. 1985) and that section 162.08(5) of the Florida Statutes (2023) allows a code enforcement board to “[i]ssue orders having force of law to command whatever steps are necessary to bring a violation into compliance.”

However, section 162.09(1) empowers an enforcement board to impose a daily fine on a violator, and further provides:

In addition, if the violation is a violation described in s. 162.06(4), *the enforcement board shall notify the local governing body, which may make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to this section.* Making such repairs does not create a continuing obligation on the part of the local governing body to make further repairs or to maintain the property and does not create any liability against the local governing body for any damages to the property if such repairs were completed in good faith.

(Emphasis added).

Section 162.06(4) states:

If the code inspector has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare or if the violation is irreparable or irreversible in nature, the code inspector shall make a reasonable effort to notify the violator and may immediately notify the enforcement board and request a hearing.⁵

⁵ Article VII, Division 2, Sections 2-255 and 2-258 of the City of Ormond Beach, Code of Ordinances, mirror these statutory provisions.

Here, in all three cases, the code inspector issued Notices of Violation and gave Appellants twenty (20) days to correct the violations, following the procedures set forth in section 162.06(2). *See* Dckt. No. 16 at 11, Dckt. No. 18, at 11, and Dckt. No. 20 at 11. The code inspector did not institute these code enforcement proceedings against Appellants under section 162.06(4) on the emergent grounds that the permit violations presented “a serious threat to the public health, safety, and welfare” or that the violations “were irreparable or irreversible in nature.” Only upon such a showing, may the local governing body enter the property to make all reasonable repairs or take action to bring the property into compliance. *See* section 162.09(1). In other words, under section 162.09(1), “having determined that a violation presents a serious threat to the public health, safety, and welfare or is irreparable or irreversible in nature,” the enforcement board must notify the local governmental body and then the governmental body enforcing the code is authorized to make all reasonable repairs required to bring the property into compliance. *See* Op. Att’y Gen. Fla. 2009-37 (2009).

A review of the transcript of the hearing reveals that no evidence was presented, and no argument was made by Appellee/COOB, that Appellants’ violations posed a serious threat to the public health, safety or welfare or that these violations were irreparable or irreversible in nature. The record is devoid of any such facts, and thus, there is no evidence, let alone competent substantial evidence, to support the portion of each Order of Violation which directs Appellee/COOB to enter Appellants’ property (following the time period provided for Appellants to bring the property into compliance), and remove the violating fence, shipping containers or pavers, as a sanction under its chapter 162 proceedings. The Orders of Violation do, however, lawfully impose monetary sanctions in the form of citations, associated costs, and the accrual of a daily fine.

Accordingly, this Court finds that the Orders of Violation which direct Appellee/COOB to enter the property to take the action necessary to bring the property into compliance departs from the essential requirements of the law. Those portions of the Orders of Violation are hereby stricken. This ruling in no manner disturbs the proper imposition of the one-time citation fine and the costs associated therewith, and the imposition of the daily fine and its accrual as set forth in the Orders of Violation.

WHEREFORE, based upon the foregoing, the Orders of Violation are **AFFIRMED** in part and **REVERSED** in part. The Stay of the Orders of Violation as to the imposition of the daily fine is hereby **VACATED** upon issuance of this Order.

DONE AND ORDERED in Chambers at Daytona Beach, Volusia County, Florida, on 04 day of March, 2024.

3/4/2024 4:59 PM 2023 30711

CICI



e-Signed 3/4/2024 4:59 PM 2023 30711 CICI

Mary G. Jolley
Circuit Judge

Copies furnished via *eService* to all parties of record

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 AlA, 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

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

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

20 SARAH CUSHING: That's correct. Yeah.
21 So there's a number of different submittal
22 requirements when a permit comes in. One of
23 which is a site plan that shows the proposed
24 location of the structure, the size of the
25 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 uncertainty 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.)

C E R T I F I C A T E O F R E P O R T E R
STATE OF FLORIDA)
COUNTY OF VOLUSIA)

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

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

Dated this 16th day of April, 2022.



Shannon Green, RPR
Registered Professional Reporter

ANN-MARGARET EMERY: [68] 2/4 2/7 2/10 2/13 15/18 24/22 25/5 28/12 28/17 30/6 42/9 42/12 45/9 45/23 46/6 46/13 47/6 47/10 47/17 48/5 48/11 48/24 49/12 55/5 65/15 69/23 70/3 70/7 70/10 70/15 70/23 71/4 71/9 72/1 72/6 72/20 73/1 73/5 73/9 73/12 73/16 73/23 74/25 77/13 92/15 92/17 93/10 97/18 98/2 98/7 98/16 99/6 102/23 103/18 112/8 119/22 129/6 130/18 130/22 131/11 131/19	134/20 134/23 135/6 136/16 136/24 137/3 137/5 JANET BRUCE: [40] 20/7 20/14 20/18 21/20 22/1 22/4 22/7 23/3 23/15 23/18 24/25 25/8 28/23 29/16 29/19 29/23 30/4 30/14 31/20 49/19 51/12 53/10 54/17 55/10 56/1 72/18 105/8 105/13 107/2 107/20 108/7 108/10 108/13 108/21 109/10 110/12 111/11 112/10 120/13 121/22 KATHERINE HENRY: [186] MS. CONWAY: [16] 98/20 98/23 98/25 99/2 99/9 99/16 99/19	99/22 99/24 100/8 101/8 101/21 102/3 102/11 102/20 102/25 SARAH CUSHING: [50] 74/17 74/20 75/5 77/20 78/9 78/21 79/9 79/18 80/4 81/4 81/12 82/2 82/10 84/6 84/11 85/18 86/1 86/6 86/12 86/20 87/1 87/11 87/16 87/21 88/5 88/12 89/11 89/20 90/8 90/14 90/19 90/25 91/13 91/20 92/1 92/3 92/7 92/14 92/21 93/19 94/18 94/24 96/15 97/16 98/13 112/12 112/16 113/3 114/6 114/15
--	--	--

	10th [5] 17/24	91/11 91/15
THE COURT:	31/11 57/1	91/24 95/15
[209]	133/19 136/5	95/18
UNIDENTIFIED	11 [1] 126/1	16 [1] 135/12
SPEAKER: [2]	11223 [1] 5/15	162.07 [1]
73/7 111/16	112237 [3] 1/3	27/3
	20/23 21/20	163.3149 [1]
\$	112246 [5] 1/4	123/11
\$23.56 [2]	5/24 49/23	163.3161 [1]
31/22 57/10	73/19 136/20	123/24
\$25 [7] 31/1	112247 [4] 1/4	163.31776 [1]
56/16 109/21	6/8 105/4	123/12
120/25 133/9	105/14	16th [1]
134/15 135/20	11246 [1]	138/17
\$750 [1] 44/16	49/15	17 [1] 78/11
.	11247 [1]	18 [1] 39/2
.7 [2] 35/20	72/12	180 [1] 11/22
38/17	1146 [1] 6/14	187.101 [1]
0	115 [1] 128/2	123/10
0130 [4] 5/15	12 [3] 78/20	19 [3] 59/6
5/25 6/9 72/13	85/23 85/25	60/19 61/24
1	13th [2] 29/7	1925 [1] 62/3
1-14 [1]	29/10	1949 [1] 96/8
135/12	14 [2] 105/19	1983 [1] 118/3
1-22 [5] 59/23	135/12	1st [1] 107/22
59/25 89/23	146 [2] 109/14	2
91/3 91/4	120/17	2-17 [1] 78/11
10 [2] 121/12	150 [14] 76/13	2-5 [1] 130/14
122/8	76/17 76/24	2-50 [24] 5/22
10-minute [2]	80/7 80/10	6/5 30/18 56/6
69/21 72/9	83/12 90/5	56/15 59/14
	90/22 91/10	59/15 75/11

2	133/10 133/19	81/17 113/5
2-50... [16]	134/9 134/17	134/15
76/7 76/8 89/5	135/16 135/22	250 [1] 90/18
89/5 89/12	136/6	25th [2] 55/22
89/14 89/16	21st [3] 29/11	108/9
90/12 90/16	55/22 108/15	263 [2] 69/3
91/22 92/2	22 [7] 29/2	69/7
131/14 132/25	59/23 59/25	266 [1] 126/21
134/5 134/14	89/23 91/3	27 [6] 1/14
135/2	91/4 105/12	30/22 56/10
20 [12] 39/3	22-11223 [1]	109/17 120/21
70/23 76/24	5/15	134/9
76/25 77/20	22-112237 [3]	27th [2] 133/5
78/9 78/18	1/3 20/23	135/16
78/21 78/25	21/20	28 [4] 31/2
79/2 79/2 86/9	22-112246 [5]	56/17 109/22
200 [1] 95/18	1/4 5/24 49/23	121/1
2021 [2] 45/23	73/19 136/20	28th [3]
81/2	22-112247 [4]	133/10 134/17
2022 [10] 12/2	1/4 6/8 105/4	135/21
29/4 29/6 29/7	105/14	2:30 [1] 4/20
29/10 38/3	22-11246 [1]	2nd [5] 29/4
107/22 107/25	49/15	29/6 55/21
108/9 138/17	22-11247 [1]	55/22 107/25
2023 [22] 1/14	72/12	
29/12 30/22	23 [1] 122/17	3
31/2 31/11	23.50 [1]	3-25 [1] 113/5
56/10 56/17	133/3	30 [5] 68/5
57/1 108/15	23.56 [3]	75/18 127/1
109/17 109/22	110/4 134/19	137/8 137/9
120/21 121/1	136/13	32176 [1] 1/9
121/12 133/5	25 [4] 81/17	33 [11] 1/9
		5/18 6/2 6/11

3	91/22 92/2 131/14 132/25 134/5 134/14 135/2 52 [1] 37/20	90 [1] 11/20 924 [3] 46/6 46/12 47/25 9:58 [1] 3/14 9A [2] 78/14 99/3 9E [1] 78/14
33... [7] 20/25 46/13 49/25 72/14 81/9 83/3 105/16 333 [3] 5/17 6/1 6/10 380.031 [1] 60/18 39 [1] 37/15	6 63 [4] 35/21 37/12 38/14 127/4 6th [2] 58/7 58/8	A A1A [1] 37/3 abide [1] 91/17 able [24] 14/4 27/17 33/23 35/22 45/6 46/24 64/7 67/13 68/9 68/17 71/16 79/14 79/20 80/19 82/1 86/16 86/18 93/9 96/23 102/17 114/18 115/16 116/3 128/16 about [77] 3/14 4/20 4/20 7/5 7/25 11/10 12/6 18/24 27/25 32/11 33/15 34/14 34/15 34/20 35/19 35/21
4	7 70.001 [1] 123/11 70.4 [1] 7/17 70.45 [11] 3/23 7/10 7/17 8/6 9/9 10/12 10/14 10/18 13/16 18/12 128/7	
4223-02-06-0130 [3] 5/15 6/9 72/13 4223-03-06-0130 [1] 5/25 445 [1] 7/12 45 [2] 7/12 7/19 457 [1] 126/18		
5	8 80 [1] 86/10 810 [1] 127/23 88 [1] 79/24 8th [3] 12/2 57/23 58/18	
50 [27] 5/22 6/5 21/2 30/18 37/8 50/3 56/6 56/15 59/14 59/15 75/11 76/7 76/8 89/5 89/5 89/12 89/14 89/16 90/12 90/16	9 9/1/22 [1] 29/2	

A	above [3] 75/20 87/4 93/1	accommodate [1] 44/23
about... [61] 36/14 38/1 38/24 39/20 40/2 40/16 44/9 46/6 46/8 46/10 47/6 47/13 52/23 53/2 58/19 61/6 62/4 67/22 68/12 69/1 71/20 77/1 79/16 85/2 85/6 87/20 89/5 89/9 89/16 90/3 90/13 90/18 90/19 91/5 91/8 95/11 95/13 95/14 102/2 102/17 110/6 110/9 110/19 110/22 111/6 111/23 112/3 113/15 115/8 117/9 118/5 119/7 122/8 122/20 122/25 126/6 126/7 126/13 128/3 129/17 136/5	Absence [2] 133/8 136/3 Absent [8] 30/25 31/8 56/15 56/23 109/20 120/24 121/9 135/20 absolutely [4] 14/10 16/14 18/11 119/25 absurd [1] 38/8 AC [1] 60/25 access [3] 45/2 86/6 113/5 accessory [24] 45/1 56/12 59/1 59/18 60/6 75/10 76/4 76/5 76/23 77/11 77/19 80/2 80/6 80/7 80/11 80/15 83/12 89/12 89/14 90/4 91/9 91/18 112/18 134/11	according [2] 43/9 76/11 accountable [1] 97/4 accrue [5] 31/3 56/18 109/23 121/2 135/22 accurate [3] 80/21 88/11 104/16 achieved [11] 30/22 31/4 56/19 109/18 109/24 120/21 121/3 133/12 134/18 135/16 135/23 acknowledge [1] 40/20 acquired [1] 62/10 acre [2] 79/18 79/24 across [2] 24/10 43/1 act [1] 60/14 acted [1] 9/6 action [12] 8/12 8/18

A	136/9	affecting [1]
action... [10]	additional [1]	16/2
11/15 11/21	44/15	affidavits [3]
12/1 12/20	address [5]	21/8 50/10
13/4 18/19	20/25 49/25	105/24
19/8 26/15	83/16 92/19	afford [1]
138/15 138/16	105/16	9/22
actions [2]	addressed [1]	aforementioned
19/9 124/4	5/5	[5] 31/16
actual [7]	adjoining [1]	57/7 121/17
18/6 43/9	132/13	133/24 136/10
44/19 60/1	adjourned [1]	after [20] 7/6
61/20 69/2	137/12	11/23 19/14
129/3	admit [3]	19/15 19/15
actually [24]	23/12 103/4	29/7 31/11
3/22 4/9 19/10	103/11	47/4 57/1 63/4
21/15 36/24	admitted [13]	66/5 71/14
46/21 49/5	21/13 23/1	83/23 100/23
52/18 61/21	23/22 24/5	101/12 121/12
64/5 68/1	50/15 51/11	122/8 124/25
68/18 71/16	51/21 52/3	133/18 136/5
75/25 85/20	52/17 52/25	afternoon [2]
91/4 97/9	55/8 106/19	4/16 112/13
103/10 110/8	107/11	again [15]
114/21 114/24	advance [2]	7/13 27/7
117/25 119/10	122/23 132/19	27/21 29/23
126/24	advised [1]	32/13 59/23
addition [9]	108/1	67/18 67/24
11/13 27/24	aerial [3]	68/10 68/23
31/15 44/3	77/5 79/6 79/9	74/21 78/16
53/6 57/6	aerials [1]	79/2 88/6
121/16 133/23	79/11	113/23

A		
against [17]	29/5 31/13	121/14 121/25
9/20 10/2	31/25 33/9	122/5 122/14
12/20 13/2	33/16 35/2	123/18 123/20
14/5 16/16	35/8 36/25	123/20 125/6
31/14 57/4	38/16 40/11	125/13 126/8
62/7 62/16	40/22 42/4	126/11 129/5
99/23 121/15	42/7 42/14	129/8 129/10
123/8 125/18	43/3 43/21	131/19 131/20
125/19 133/22	49/14 50/20	132/2 133/21
136/8	53/10 57/3	136/7 136/16
ago [2] 25/18	58/15 59/1	137/3 137/11
44/10	60/15 62/10	alleged [6]
agree [3]	63/7 63/20	5/19 9/2 49/16
94/22 103/13	63/21 63/24	63/24 72/14
111/11	67/14 67/24	105/4
agricultural	68/14 69/15	allow [3] 4/13
[1] 60/23	71/3 71/8	6/20 17/24
ahead [8] 3/20	71/25 72/7	allowable [1]
25/14 52/20	72/11 75/7	64/1
70/2 70/20	75/9 78/14	allowed [3]
130/4 131/24	82/18 82/19	64/3 65/23
132/5	84/22 89/13	108/21
all [107] 2/6	93/2 94/22	alluded [2]
2/20 3/13 3/13	97/24 100/21	25/15 122/11
3/21 4/20 6/24	101/22 102/9	almost [3]
8/5 13/19 14/7	103/16 103/20	15/9 39/4
15/14 15/17	103/23 104/14	70/16
16/6 17/6 18/2	108/1 108/10	alone [5]
18/15 18/21	108/11 108/13	33/14 38/16
19/13 24/24	109/9 109/19	41/4 122/18
28/4 28/23	111/1 115/15	123/1
	116/24 119/9	along [4]

A	always [3] 55/1 113/2 128/14	4/5 10/21 47/16 65/15 65/20 66/8
along... [4] 13/19 43/24 64/18 77/8	am [12] 2/13 38/20 66/25 79/12 103/20	66/16 66/21 77/4 79/21 86/23 93/4
already [17] 5/14 6/23 19/23 19/24 26/16 37/6 37/19 42/1 47/16 51/23 53/16 58/23 65/17 96/21 102/7 113/12 120/6	108/23 110/16 124/11 125/13 138/11 138/13 138/15	114/5
also [24] 3/18 23/4 26/25 27/13 30/8 30/11 32/5 37/15 38/7 43/25 51/13 62/21 68/12 72/24 72/25 77/24 79/5 84/21 91/2 107/3 108/2 123/22 125/24 126/11	Amazon [1] 65/24	answered [1] 66/16
alternative [2] 96/25 97/7	among [1] 9/19	answering [1] 46/10
although [3] 27/4 27/25 32/17	amongst [1] 58/4	answers [2] 64/25 112/15
	amount [3] 36/23 124/16 134/19	any [65] 2/25 3/8 7/7 11/1 14/21 21/12 23/21 24/24 30/2 31/17 32/14 33/7 33/8 33/9 33/9
	analogy [1] 118/12	36/20 43/23 45/18 48/12 50/14 50/24 51/7 51/20 53/20 54/25 55/5 57/8 57/13 57/21 59/18 60/9 62/6 62/13 62/14 63/13 64/17 64/20 74/24 77/4
	Anderson [1] 102/6	
	angle [3] 52/6 52/16 53/19	
	another [11] 19/6 39/3 40/14 41/4 47/4 78/20 83/21 98/4 101/13 103/17 116/21	
	answer [13]	

A	Anyway [1] 14/20	124/1
any... [26] 77/16 80/2 81/20 87/24 90/22 91/5 95/10 101/7 106/4 108/20 111/3 113/16 115/6 116/6 119/21 121/18 122/25 123/5 125/15 125/16 130/21 133/2 133/25 136/12 138/12 138/14	anywhere [5] 33/12 58/13 62/19 71/17 89/20	applies [4] 43/3 45/12 45/14 47/21
anybody [2] 42/9 76/25	apologize [4] 7/22 59/23 66/24 110/15	apply [13] 27/5 43/1 43/7 43/19 44/4 68/10 81/23 94/21 97/25 98/6 98/8 125/3 125/7
anyhow [2] 65/20 66/8	appeal [3] 2/18 39/18 137/9	applying [1] 45/7
anyone [3] 73/3 98/9 125/20	appeals [1] 118/3	appraiser's [3] 21/9 50/11 106/1
anything [18] 9/14 18/21 29/16 33/12 33/15 35/14 47/6 55/9 76/11 80/22 85/18 89/9 96/10 113/16 116/18 120/1 125/4 137/5	appeared [1] 36/16	appreciate [4] 14/16 87/10 100/7 100/9
	appears [3] 15/21 53/15 129/25	approach [1] 51/25
	applicable [3] 78/25 93/25 96/13	approached [1] 133/6
	application [7] 15/23 44/18 93/16 93/17 122/21 131/3 132/17	appropriate [7] 4/25 15/12 17/7 82/25 84/17 84/25 137/3
	applied [5] 17/5 17/13 30/9 68/24	approvable [2] 56/11 134/10
		approval [4] 74/10 74/12

A	36/15 37/15	97/13 97/15
approval... [2]	38/18 39/6	98/15 100/14
125/5 134/17	40/19 40/25	101/23 101/24
approved [8]	47/25 52/2	102/12 102/18
30/23 43/11	53/10 54/23	106/22 107/21
44/6 74/7	55/14 55/19	107/23 108/10
109/19 120/22	56/11 58/11	108/15 108/19
133/6 135/17	59/24 60/23	108/25 109/1
approximately	60/24 63/2	112/18 112/19
[2] 45/22	63/20 63/21	115/3 115/17
70/11	65/21 65/23	117/1 123/1
April [7]	66/6 67/7 68/4	123/22 125/10
17/24 57/1	68/18 68/20	125/13 127/3
70/15 121/12	70/17 71/1	127/7 127/16
133/19 136/5	71/2 71/3 71/4	127/16 127/22
138/17	71/7 71/10	128/24 128/25
architect [1]	71/19 73/16	129/2 129/8
44/6	73/17 74/6	131/7 132/11
are [134] 2/12	74/10 74/12	133/3 134/10
4/4 4/15 8/3	74/16 75/8	area [7] 33/24
8/12 9/4 10/14	75/10 75/20	74/9 92/4
14/7 18/24	76/5 76/6	115/12 118/18
19/17 19/23	76/11 76/11	126/18 132/14
21/24 22/23	79/3 79/17	areas [6]
23/11 24/4	79/25 82/11	44/25 119/7
26/11 26/24	84/1 84/8	124/12 126/7
28/16 28/25	85/13 88/16	126/23 127/2
29/5 31/24	89/25 91/6	aren't [4]
31/25 34/2	91/7 91/9	28/19 93/7
34/3 35/16	91/25 92/11	96/6 101/10
35/17 35/24	93/1 95/1 97/9	argue [1]
36/6 36/12	97/11 97/12	110/5

A	109/13 120/16	assessed [5]
argued [1]	122/16 130/14	31/14 57/4
94/14	131/13 132/24	121/15 133/22
arguing [2]	134/4 134/13	136/8
15/23 18/22	135/1 135/11	assisting [1]
argument [15]	as [148]	89/1
14/24 18/17	Aside [1] 7/4	associated [14]
26/14 38/24	ask [17] 14/21	30/20 31/18
39/12 39/19	19/8 42/10	56/8 56/13
39/21 40/6	45/19 64/5	57/9 109/16
40/14 42/3	64/7 64/17	120/19 121/19
51/24 58/19	64/20 64/22	133/2 133/25
125/8 132/8	92/16 99/5	134/7 134/12
132/12	106/13 125/24	135/14 136/12
arguments [9]	128/16 129/5	assume [2]
6/18 7/7 19/15	130/3 131/23	47/21 61/8
19/17 32/4	asked [10]	assuming [4]
73/20 119/22	58/14 64/17	63/4 76/15
132/3 132/17	70/19 74/4	80/13 120/10
arose [1]	112/3 116/3	atrocious [1]
34/25	116/13 122/12	100/15
around [11]	122/20 130/11	attach [1]
35/1 37/2 49/2	asking [18]	83/10
54/2 63/8 96/6	17/20 17/22	attached [5]
100/19 111/10	19/3 23/11	12/10 49/9
111/18 125/20	23/25 27/15	60/11 95/3
129/21	27/24 42/16	97/3
article [19]	46/7 52/3	attempt [1]
5/21 6/5 21/2	66/25 85/2	29/8
30/17 50/2	85/6 87/7	attempting [1]
56/5 56/14	95/24 95/25	16/20
72/16 105/18	122/5 128/19	attorney [9]

A	awarded [1] 28/8	72/2 86/11
attorney... [9] 14/16 14/18 14/20 65/15 94/14 95/1 125/9 138/12 138/14	away [4] 48/23 49/1 113/21 124/15	basis [3] 12/13 71/24 126/16
attorney's [3] 64/21 115/11 127/11	B	battered [1] 71/8
attorneys [1] 11/9	back [24] 12/21 24/15 26/14 27/1 55/11 57/22 67/16 68/19 69/25 72/22 76/23 77/20 81/15 81/17 81/21 95/19 99/16 100/22 108/17 112/21 119/19 120/3 122/8 130/21	Bayberry [1] 99/3
August [1] 46/5		be [203]
authority [5] 6/19 31/10 56/25 121/11 136/4		BEACH [44] 1/1 1/9 5/17 5/18 6/1 6/3 6/10 6/11 16/3 19/16 19/20 20/10 20/22 29/13 31/5 33/22 35/20 37/19 38/5 38/6 38/10 38/11 38/12 43/10 43/16 49/22 49/25 56/20 62/2 74/23 75/5 94/17 105/11 110/1 117/25 121/6 127/8 127/10 127/13 128/1 129/24 132/13 133/14 135/25
authorized [1] 138/8	backwards [2] 29/22 29/25	beachside [3]
automatically [2] 83/13 91/16	backyards [1] 35/14	
available [3] 11/14 74/24 82/5	bad [1] 33/2	
Avenue [2] 46/6 46/12	barely [1] 34/1	
avoid [1] 11/8	based [3] 107/17 113/11 113/22	
avoided [1] 129/11	baseless [2] 101/16 102/18	
award [1] 28/6	basically [2]	

B	115/21 128/17	before [34]
beachside...	129/25 130/9	2/6 2/25 4/3
[3] 36/23	131/5 135/3	4/11 9/13
63/2 67/25	bedrooms [2]	11/21 15/24
bear [2] 17/11	100/22 103/3	16/6 16/7
44/14	been [53] 9/2	16/17 17/21
bears [1]	9/24 13/19	18/2 20/11
13/14	15/8 16/5 16/6	20/22 21/18
beaten [1]	16/21 16/22	22/21 33/2
71/8	21/16 21/17	35/10 39/2
because [54]	22/8 22/21	42/7 43/14
3/23 9/2 9/16	22/25 23/15	46/20 49/22
9/23 11/9 15/4	25/13 29/12	53/7 57/14
16/17 16/22	29/24 31/3	58/7 88/3
18/10 19/24	33/22 34/10	93/18 97/25
24/20 25/14	37/6 37/19	105/11 106/17
28/4 28/9 30/8	39/1 43/23	106/18 115/23
35/2 36/5 37/1	46/24 48/4	122/12
38/1 39/8 40/8	56/18 57/20	begin [1]
43/8 46/3	61/20 61/22	107/22
46/11 48/14	64/10 68/22	beginning [13]
51/8 62/8	69/17 70/9	7/15 23/13
62/13 63/6	71/8 84/4	31/2 34/9
66/10 66/18	100/13 102/7	54/22 55/12
67/10 74/5	104/17 108/18	56/17 98/23
79/1 83/11	108/21 109/8	109/22 121/1
85/1 87/6 90/8	109/24 111/6	133/10 134/16
94/11 95/17	113/2 121/2	135/21
100/10 100/20	126/16 126/17	behalf [1]
101/15 102/8	128/9 129/11	129/12
102/16 103/9	132/10 133/12	behind [1]
104/8 107/1	135/23	99/4

B	131/16	both [5] 21/24
being [40] 7/9	benefit [3]	24/12 42/19
21/12 21/25	47/24 48/2	100/3 127/1
23/22 24/5	118/15	bother [1]
24/12 25/19	besides [2]	48/19
32/11 33/23	3/20 40/3	bottom [2]
35/24 43/11	best [2] 10/21	53/8 110/23
44/2 44/6	82/24	bought [1]
46/18 50/4	better [6]	100/14
50/14 51/20	21/17 79/14	boulevard [2]
61/2 63/3 63/8	111/3 111/7	32/21 48/22
63/9 67/11	116/7 116/12	box [3] 5/16
67/13 68/13	between [4]	6/1 6/10
69/9 69/13	24/14 26/7	BP [2] 84/22
71/8 88/1	54/1 54/13	85/3
91/11 107/24	beyond [3]	break [5] 42/9
108/25 116/25	87/5 93/1	69/18 69/22
118/14 123/1	123/20	72/9 131/23
126/5 126/14	bigger [3]	breakdown [2]
126/21 127/4	33/17 79/17	31/23 57/11
127/17 128/16	79/23	briefly [1]
believe [14]	bit [9] 21/16	74/1
12/24 16/3	53/25 58/18	bring [7] 3/2
21/19 26/2	69/18 97/2	4/10 11/15
26/5 66/2 66/2	111/15 115/21	53/22 67/1
70/14 77/18	115/22 116/4	67/3 70/20
89/23 110/16	black [1]	bringing [1]
117/2 117/6	111/4	5/6
136/22	blue [1] 34/12	brings [1]
believes [2]	board [1] 43/2	100/18
12/4 12/7	books [2] 48/4	brought [11]
below [1]	61/23	3/22 5/1 13/6

B	60/12	C
brought... [8] 15/8 27/10 47/3 67/12 99/10 104/18 117/22 119/15 Bruce [8] 20/9 20/20 49/20 58/6 67/13 72/20 105/9 110/9 buffer [1] 44/25 build [6] 95/10 96/11 113/19 114/4 114/8 114/9 building [26] 5/20 6/3 6/12 22/16 29/3 44/21 44/22 49/16 55/15 59/17 60/3 72/15 76/12 85/5 85/6 85/9 90/24 92/19 92/25 93/4 93/8 94/3 94/4 94/9 105/5 114/22 buildings [3] 60/6 60/8	builds [2] 95/1 95/5 built [9] 29/21 43/12 76/11 95/6 96/8 100/17 109/8 124/15 126/6 bunch [3] 43/17 101/16 103/1 burden [6] 13/3 13/14 14/5 17/11 124/6 124/10 burdensome [1] 45/4 business [3] 60/22 72/5 75/16 button [1] 111/18 buy [2] 35/6 94/6 buyer [1] 81/7 buying [1] 40/5 Byron [3] 37/15 37/20 78/5	call [12] 3/5 5/13 5/14 33/14 39/15 47/8 47/11 47/15 74/14 80/25 83/2 122/8 called [2] 2/24 5/11 calling [1] 117/13 calls [1] 82/19 came [2] 81/3 87/21 camera [2] 54/20 55/3 Camry [1] 35/7 Camrys [1] 35/9 can [78] 3/8 4/3 6/25 8/10 10/4 10/13 20/15 25/19 27/1 28/13 28/15 35/15 35/17 36/15 38/9 38/11 38/14 39/1 39/10 40/12 41/16 42/15

C	15/10 28/8	20/10 20/22
can... [56]	29/19 42/19	20/23 21/11
43/10 44/1	42/19 43/7	21/20 22/14
44/5 44/7	43/19 53/19	22/20 23/9
44/18 53/12	63/15 64/14	29/1 30/4 30/5
55/11 60/21	74/8 82/16	30/14 30/21
61/19 62/22	85/15 98/5	31/19 31/20
65/13 67/1	115/7 116/19	31/21 31/22
67/3 69/11	124/13 124/13	31/23 32/1
71/21 74/6	124/14 124/16	39/10 39/17
76/13 77/24	canceled [1]	41/11 41/14
80/12 80/16	46/23	49/15 49/22
81/9 82/10	cannot [7]	49/23 50/13
82/25 83/7	43/6 65/4 65/7	51/18 54/22
83/16 88/4	113/19 115/3	54/22 54/25
88/11 89/7	115/9 118/8	55/15 55/15
89/10 89/21	car [7] 32/17	55/18 56/1
89/22 90/11	52/11 52/12	56/8 57/10
93/4 95/18	53/20 54/2	57/14 61/20
97/25 98/1	54/3 54/9	62/3 65/18
98/3 98/8	care [1] 64/25	69/16 69/22
103/22 111/19	cargo [4]	72/12 72/12
113/20 114/7	74/11 75/3	72/23 73/1
118/11 118/20	92/20 131/6	73/4 73/5 73/6
118/25 119/7	carport [1]	73/9 73/11
119/15 119/17	95/4	73/18 73/20
127/23 130/21	case [100] 1/3	74/3 74/3
130/22 131/3	2/24 3/8 3/22	91/14 101/1
131/4 133/6	5/15 5/24 5/24	103/21 103/24
134/22 134/25	6/8 6/8 8/18	105/4 105/11
can't [22]	9/3 10/9 13/19	105/12 106/3
13/17 15/6	17/21 18/23	107/9 109/16

C	9/17 9/18	cetera [3]
case... [19]	12/16 12/22	9/18 67/7
110/4 110/6	causing [5]	81/18
110/18 117/3	8/24 9/1 9/1	challenge [1]
117/7 117/8	14/1 125/20	16/9
118/4 119/22	cease [1]	challenged [1]
119/24 120/12	108/2	13/5
120/20 122/7	center [4]	challenging [1]
122/20 132/22	80/3 113/20	17/3
134/2 134/20	114/22 124/15	chance [5]
135/9 136/15	certain [10]	4/11 53/22
136/20	62/15 92/9	75/23 76/16
cases [15] 2/2	93/3 96/20	104/5
6/21 14/22	97/12 118/14	changing [3]
14/23 28/8	124/12 124/12	115/18 116/16
28/19 29/5	124/13 124/16	123/3
40/25 41/7	certainly [10]	chapter [18]
61/22 74/4	26/6 62/17	5/21 6/4 21/1
117/3 117/23	65/6 70/21	30/17 50/2
129/8 137/3	72/4 77/17	56/5 56/14
catch [2]	81/16 104/18	72/16 105/18
106/7 116/10	115/23 131/1	109/13 120/16
catchall [1]	certified [14]	130/14 131/13
86/15	28/9 31/24	132/24 134/4
categorizes [1]	40/20 41/3	134/13 135/1
89/6	41/9 41/10	135/11
category [1]	41/20 42/1	chapters [1]
89/18	44/8 44/12	14/9
cause [2]	44/13 44/17	charge [1]
13/11 75/25	48/21 57/21	41/8
caused [7]	certify [2]	chart [1]
3/25 4/3 8/21	138/7 138/11	34/17

C	21/6 23/6	28/12 29/13
cherry [12]	30/20 50/8	30/9 31/5 31/9
9/7 13/17	51/15 56/7	31/15 31/16
14/11 33/18	105/22 107/6	33/21 35/20
34/17 38/9	109/15 118/2	37/14 37/16
38/25 39/13	119/24 120/19	37/17 37/25
39/19 40/6	131/15 131/17	38/11 44/9
47/22 68/10	132/16 133/2	44/17 45/8
cherry-pick [5]	134/6 135/14	46/4 47/5 47/8
13/17 14/11	citations [1]	47/12 49/22
38/9 47/22	132/15	55/4 55/9
68/10	cite [2] 60/4	56/20 56/24
cherry-picking	95/8	57/6 57/8
[7] 9/7 33/18	cited [4]	57/18 58/5
34/17 38/25	58/16 61/22	62/1 62/7
39/13 39/19	62/12 118/24	62/16 64/7
40/6	citing [3]	64/11 64/21
choosing [1]	62/2 63/14	65/12 68/9
96/13	63/18	72/18 72/22
circle [12]	city [117] 1/1	72/23 73/19
1/9 5/18 6/2	3/5 6/18 6/25	73/21 73/25
6/11 20/25	7/6 8/9 8/12	74/14 74/23
46/13 49/25	9/20 9/24 10/2	75/5 81/15
72/15 81/9	13/2 13/3	82/6 84/3 84/6
83/3 105/16	14/13 15/9	84/15 84/16
120/3	15/18 16/10	86/23 87/16
circuit [8]	16/17 18/10	87/21 94/14
10/10 15/24	18/22 19/5	105/11 110/1
16/8 18/6	19/16 19/20	113/14 115/10
39/11 39/18	19/25 20/10	117/25 118/8
137/9 137/10	20/22 22/15	121/6 121/10
citation [18]	24/21 26/21	121/16 121/17

C	claim [2]	84/16
city... [22]	12/11 26/11	close [1]
122/3 125/9	claiming [1]	20/14
125/18 126/12	32/9	closely [1]
126/17 127/10	clarification	88/17
127/11 128/1	[8] 58/14	closing [1]
128/3 129/6	64/9 85/10	46/20
129/15 132/13	88/8 88/9	cluster [1]
133/14 133/18	97/18 104/3	78/2
133/23 133/24	136/18	code [84] 5/21
135/25 136/3	clarifications	6/4 6/13 8/5
136/9 136/11	[1] 124/23	16/9 17/12
136/21 136/22	clarified [1]	21/1 21/10
City of Ormond	71/15	30/16 30/21
Beach [17]	clarify [7]	34/25 35/23
19/16 19/20	19/2 25/7 30/8	43/9 43/15
20/10 20/22	90/12 95/25	43/25 47/24
29/13 31/5	98/1 104/4	49/17 50/2
35/20 49/22	clarifying [1]	50/12 56/4
56/20 74/23	113/15	56/14 58/13
75/5 105/11	clear [7]	58/20 58/24
110/1 117/25	16/23 17/2	59/14 59/20
121/6 128/1	17/15 69/10	60/16 60/17
132/13	118/13 118/22	63/14 63/17
city's [9]	124/8	63/22 65/17
23/2 28/22	clearly [5]	66/3 68/4
32/3 51/12	3/17 27/21	71/15 72/16
67/25 78/12	61/19 125/17	75/11 76/12
83/19 106/19	128/22	78/12 81/23
107/11	clerk [2]	85/6 88/18
civil [4] 10/2	116/9 122/6	89/8 89/20
10/9 13/2 14/4	clerk's [1]	91/13 92/19

C	come [16] 27/17 32/20 37/4 39/4 61/7 66/5 69/25 74/15 76/25 82/16 82/20 98/19 101/3 102/1 112/24 129/8	130/1 company [1] 44/12 competent [1] 11/16 complaint [6] 99/13 99/15 99/18 99/21 100/5 101/5 complaints [2] 101/22 101/24 completed [1] 29/12 completely [2] 47/4 108/15 completes [1] 137/10 complex [2] 11/10 14/7 compliance [29] 30/22 30/25 31/3 31/8 31/9 56/15 56/18 56/23 56/24 109/18 109/21 109/23 110/3 120/21 120/24 121/2 121/9 121/10 133/5 133/9 133/11 133/17 134/15 134/18 135/16
code... [38] 92/24 92/25 93/8 94/4 94/9 94/15 94/23 95/7 95/24 96/2 97/9 97/10 97/13 97/16 97/19 97/22 105/6 105/17 106/2 109/13 109/17 112/25 113/23 114/15 115/8 115/13 120/16 120/20 124/21 127/3 128/22 129/4 132/24 133/4 134/4 134/13 135/11 135/15	comes [12] 10/7 15/5 27/13 36/13 40/17 41/16 63/2 63/13 67/6 69/4 93/22 106/9 commenced [1] 4/9 comment [1] 108/20 commercial [3] 60/22 127/2 127/13 common [1] 71/17 communicate [1] 82/6 communicated [2] 48/15 48/16 community [3] 60/13 77/9	
coded [1] 34/6 codes [3] 16/6 43/22 129/1 collect [1] 26/2 color [4] 34/6 34/7 34/8 68/21 column [3] 34/9 78/7 78/17		

C	conditions [1] 14/6	123/21
compliance...	conduct [2] 3/10 4/16	constructed [2] 23/15 29/25
[4] 135/20	conducted [1] 4/18	constructing [1] 118/6
135/23 136/2	Conex [4] 75/8	construction [10] 23/13
136/3	77/13 90/1	45/13 45/15
complicated [1]	91/5	59/21 59/25
14/8	confirm [6] 31/7 56/22	60/1 60/2 60/5
complied [1]	110/3 121/8	108/5 118/9
70/21	133/17 136/2	contact [7] 31/5 56/20
comply [10]	confirmation [1] 3/18	83/6 109/25
18/8 30/21	confusion [2] 90/11 125/15	121/5 133/14
56/9 109/17	connected [1] 138/14	135/24
112/25 120/20	consider [1] 123/13	contacted [1] 86/22
133/3 133/4	considered [2] 90/23 91/24	container [9] 49/17 62/25
134/7 135/15	constitute [2] 33/7 124/5	64/1 67/14
composite [9]	constitution [3] 122/14	68/1 75/9 75/9
23/2 24/1 24/3	128/20 132/11	103/14 126/8
26/21 28/23	Constitutional [1] 132/9	container-type [1] 126/8
51/12 52/25	constitutionall y [2] 123/13	containers [50] 6/6 50/4
106/20 107/12		52/23 55/13
concern [6]		55/19 56/9
3/12 5/4 8/3		56/11 57/3
66/23 119/14		57/7 58/1 58/9
129/23		58/11 60/10
concerns [1]		
5/3		
concluded [1]		
137/14		
concrete [1]		
113/16		
condition [1]		
11/2		

C	continued [1] 29/8	99/23 112/7 114/1 114/12
containers...	continues [1] 68/7	correction [1] 134/22
[37] 60/24	continuing [2] 104/11 107/14	correctly [2] 109/8 123/5
61/2 61/3	conversation [1] 48/18	cost [9] 23/9 41/6 51/19
61/16 62/18	conversations [1] 93/6	57/10 107/9 109/16 134/7
62/23 63/3	convoluted [1] 59/24	135/15 136/12 costing [1] 44/16
63/11 67/6	Conway [1] 98/21	costs [25] 22/13 28/1
67/23 68/2	copied [1] 87/14	28/1 28/6 28/7 28/14 28/15
68/13 68/21	copies [2] 32/14 107/4	30/21 31/13 31/19 31/20
69/1 69/2 70/5	copy [16] 21/4 21/6 21/9	31/22 40/17 41/13 41/18
70/18 71/3	21/10 41/5 50/6 50/8	44/15 56/8 57/3 110/4
71/7 71/12	50/11 50/12 81/22 105/21	120/20 121/14 133/3 133/21
73/12 74/11	105/23 105/25 106/1 111/4	134/19 136/8 cottages [1] 100/16
74/11 75/3	119/15 correct [12] 18/19 21/20	could [26] 14/23 17/6
75/8 92/20	23/18 78/22 84/11 87/25	24/18 25/11 27/9 48/5
101/18 123/3	88/1 93/20	
126/22 126/24		
128/25 130/13		
131/3 131/6		
131/7 134/8		
134/10		
context [2] 7/6 54/5		
contexts [1] 60/20		
continue [13] 4/4 4/11 13/25		
28/24 31/3		
40/10 56/18		
109/23 118/11		
121/2 133/11		
134/17 135/22		

C	court [17] 10/10 11/15 14/22 14/23 15/24 16/9 18/7 39/11 39/12 39/18 61/20 62/1 62/13 99/4 118/3 125/17 137/9 cover [1] 43/7 covered [5] 62/15 68/3 91/12 128/23 128/25 created [2] 8/6 16/2 creates [1] 115/5 cross [1] 102/23 cross-examine [1] 102/23 cumulative [1] 78/25 curiosity [1] 53/9 curious [1] 34/20 current [6] 23/8 31/21 51/17 55/24	95/6 107/7 currently [3] 55/19 125/1 126/15 Cushing [3] 74/19 74/22 112/14 cutting [1] 40/1 CYPRESS [11] 1/9 5/18 6/2 6/11 20/25 46/13 49/25 72/14 81/9 83/3 105/16
could... [20] 52/12 54/5 67/14 70/21 75/1 75/3 77/6 78/19 79/14 81/16 85/1 95/7 104/19 109/2 111/3 111/15 114/5 119/13 129/11 136/23 couldn't [1] 36/17 council [1] 127/12 counsel [2] 138/12 138/14 county [5] 10/9 39/3 127/9 127/12 138/3 couple [3] 42/11 45/19 100/3 coupled [1] 19/5 course [7] 26/13 74/18 75/6 82/11 86/6 98/14 114/7	D damage [6] 31/17 57/8 116/1 121/18 133/25 136/12 damages [2] 11/18 12/9 darn [1] 69/10 date [10] 1/13 23/14 31/8 56/23 68/8 110/3 118/4 121/9 133/17 136/2 Dated [1] 138/17 daughter [1]	

D	18/12 22/18	89/19 90/6
daughter... [1]	deals [2]	91/9 91/16
100/12	82/21 92/23	95/17
day [26] 17/23	debris [1]	defines [2]
26/4 26/8 31/1	110/20	59/20 59/21
32/9 32/13	decide [3]	definite [1]
33/2 37/18	28/6 41/17	33/19
48/16 49/7	124/25	definitely [3]
53/18 56/16	decided [5]	75/7 84/17
58/7 58/7	8/16 13/1	114/8
69/13 81/3	18/12 32/20	definition [5]
81/4 109/21	35/3	58/24 58/25
115/25 120/25	decimated [1]	83/13 90/8
133/9 134/15	71/25	92/6
134/16 135/20	decimation [1]	definitions [7]
137/9 138/17	37/5	10/25 61/4
days [8] 11/21	decision [5]	63/20 89/23
11/23 44/15	82/23 89/2	89/24 91/4
46/20 68/5	102/3 104/24	128/21
75/18 100/1	123/15	Del [1] 118/1
127/1	decision-making	Del Marco [1]
dd [5] 59/15	[1] 123/15	118/1
76/8 90/18	decisions [1]	delete [2]
91/22 92/2	122/7	135/2 135/6
dead [1] 80/3	declare [1]	deleted [1]
deadline [1]	11/17	130/15
9/23	defend [1]	delivered [1]
deaf [2] 42/18	122/16	4/19
42/21	defer [2]	demonstrate [1]
deal [2] 18/14	64/21 97/17	38/19
66/20	defined [7]	demonstrated
dealing [2]	59/25 89/10	[2] 64/10

D	65/7	50/1 50/12
demonstrated...	deputy [1]	56/4 56/14
[1] 126/2	38/5	58/12 58/24
demonstration	designed [1]	59/14 59/20
[1] 54/4	44/22	60/16 60/17
denied [4]	desire [1] 2/3	68/4 72/16
20/6 26/16	detached [12]	75/11 78/12
27/23 98/9	76/5 77/1	88/18 92/24
deny [1] 19/18	77/10 83/10	94/15 94/23
denying [1]	83/14 91/16	95/6 95/24
60/9	91/17 92/9	96/2 105/6
department [14]	92/10 95/3	105/17 106/2
74/23 77/3	95/17 97/2	109/12 112/25
84/10 84/18	detail [1]	113/23 114/15
85/4 85/5	81/20	115/8 115/13
85/10 85/14	detailed [2]	120/16 124/21
93/4 93/10	106/14 128/8	127/3 128/22
94/2 94/3	details [2]	128/24 132/24
112/14 127/9	102/2 123/19	134/3 134/13
departments [1]	determination	135/11
84/25	[1] 103/22	developments
dependent [1]	determinations	[1] 43/22
80/5	[1] 42/8	did [40] 9/21
depending [3]	determine [2]	12/1 12/5 12/8
10/7 67/18	34/16 109/7	18/9 26/8 29/4
88/20	development	29/15 33/19
depends [2]	[52] 5/21 6/4	34/16 34/17
84/12 114/16	6/13 8/5 21/1	35/25 45/21
depth [1] 77/4	21/10 30/16	45/21 45/24
deputies [1]	35/23 43/9	46/8 46/21
127/10	43/15 43/25	47/10 47/11
deputized [1]	44/2 47/24	48/7 54/21

D	52/16 58/4	discussion [1]
did... [19]	65/25 78/3	59/6
55/14 55/16	89/13 89/24	discussions [1]
59/3 63/23	93/21 112/18	28/3
73/3 79/22	112/19 118/5	Dismiss [3]
98/15 99/5	126/23	18/18 19/4
106/16 106/18	differently [1]	26/15
106/22 107/21	53/25	dismissed [1]
107/24 108/2	dilapidated [2]	19/9
108/17 116/14	36/17 36/19	dismissing [1]
128/4 137/2	diligence [4]	12/19
138/8	82/15 87/4	dispose [5]
didn't [27]	87/5 88/2	31/16 57/7
9/6 18/8 26/10	dimensions [1]	121/17 133/23
33/4 43/7 46/2	44/20	136/10
47/8 48/12	dip [1] 115/22	distinct [1]
48/18 48/20	direct [1]	26/19
49/1 49/10	60/4	district [17]
49/11 53/22	directed [1]	14/22 39/11
59/23 63/11	81/12	76/19 76/21
65/21 66/17	direction [5]	76/22 77/22
99/11 104/5	53/20 79/15	77/24 78/1
104/5 106/7	88/9 88/22	78/2 78/10
110/15 116/10	97/18	78/11 78/15
117/3 131/8	directly [4]	78/24 82/14
136/21	87/15 87/21	83/17 88/21
difference [1]	99/4 100/21	118/3
88/19	dirt [3]	districts [1]
different [17]	115/10 115/11	88/19
21/23 23/24	116/4	division [6]
24/3 40/18	disagree [1]	31/6 56/21
47/18 48/2	66/5	110/2 121/7

D	94/10 94/21	30/3
division... [2]	95/10 96/9	does [22] 6/18
133/15 136/1	96/17 97/21	45/8 60/5
do [105] 2/3	98/3 99/2	63/19 64/11
2/5 3/5 4/14	101/1 101/17	66/9 66/18
4/15 5/10 6/20	103/9 103/17	69/19 79/16
9/4 9/14 9/16	104/6 107/16	81/23 82/14
14/14 14/20	108/6 108/19	89/9 91/19
14/21 16/12	109/3 109/9	92/19 94/21
16/20 17/16	111/23 115/14	96/14 97/13
17/20 18/10	117/2 117/16	97/19 113/1
20/12 21/15	119/13 119/21	114/24 122/23
22/25 28/14	120/4 120/8	132/19
30/2 31/18	120/13 124/11	doesn't [18]
32/3 32/5 40/9	124/13 124/13	14/10 17/10
40/16 40/20	124/14 124/18	34/7 35/1
41/17 42/7	124/19 125/4	38/19 45/18
43/24 45/5	125/12 129/5	82/6 91/4 96/2
47/5 48/5	129/18 130/2	96/8 101/7
52/18 57/12	130/11 131/1	102/2 111/5
57/16 61/9	131/9 131/10	113/11 119/9
62/5 63/11	138/7	125/21 129/22
64/19 64/22	document [3]	130/5
65/7 65/13	36/21 57/17	doing [10]
66/3 69/24	57/18	2/18 6/21 9/12
70/2 70/7	documentation	16/20 39/8
70/24 77/17	[3] 7/16 18/6	39/9 61/15
78/8 81/16	113/12	72/5 116/17
82/9 82/17	documented [2]	128/3
83/5 83/22	35/21 38/15	dollar [11]
87/4 88/2 88/2	documents [3]	21/5 30/20
88/4 91/10	7/21 25/16	50/7 56/7

D	128/10 130/7	driveway [7]
dollar... [7]	130/8 130/10	45/1 111/8
105/22 109/15	131/4 136/22	111/10 112/20
120/19 133/2	done [13] 2/25	113/5 113/6
134/6 135/14	24/18 38/25	113/17
136/14	46/17 48/11	driveways [2]
don't [58]	97/12 108/15	108/16 112/18
5/11 16/10	109/5 118/14	drop [1] 65/24
22/12 26/2	123/5 126/3	due [11] 3/17
26/4 27/16	126/9 126/11	25/13 27/5
28/10 34/7	door [9] 32/18	27/22 27/23
39/17 40/1	33/11 33/12	55/15 82/15
40/17 41/5	48/19 54/24	87/4 87/5 88/2
41/24 48/17	55/1 64/12	125/14
51/5 51/7 56/2	65/23 96/7	dumpster [1]
60/9 60/24	doublecheck [1]	47/4
61/4 61/6	117/7	Dumpsters [1]
62/19 62/23	doubt [4] 62/7	46/17
63/6 64/25	62/14 62/16	duplex [6]
66/2 66/2	102/8	76/22 78/5
66/11 66/24	down [11]	78/7 78/17
67/8 71/20	37/22 68/16	79/1 79/1
72/6 80/25	82/2 100/18	during [3]
81/11 84/4	107/24 108/10	63/10 71/20
86/6 97/2 97/3	108/11 108/13	100/12
98/9 99/19	129/8 129/14	dwelling [2]
100/7 100/8	131/15	60/7 60/11
100/9 102/1	drainage [3]	E
102/19 103/10	80/14 115/18	each [9] 2/11
103/14 103/19	116/16	31/23 40/21
106/16 113/9	driver [1]	41/11 41/14
124/25 128/10	65/24	43/15 86/10

E	election [1] 58/7	employing [1] 119/1
each... [2] 96/7 136/14	Ellinor [4] 37/16 37/20	enclose [2] 96/22 97/6
ear [2] 42/19 42/21	78/5 100/15	enclosure [1] 96/24
earlier [10] 27/20 53/22	else [16] 9/14 18/21 40/13	encourage [1] 87/3
76/2 81/24	61/16 62/19	encouraged [2] 77/12 114/9
90/17 90/25	69/19 72/6	encouraging [2] 118/15 118/16
94/12 94/13	84/5 96/15	encroaching [1] 115/17
106/5 128/18	98/25 103/15	end [5] 27/16 41/8 67/11
easements [3] 76/16 80/15	104/16 119/13	80/2 125/8
80/17	120/1 122/9	ended [1] 32/12
easier [1] 70/21	137/5	energy [3] 118/7 118/10
Easiest [1] 110/18	email [13] 32/15 33/15	118/16
edge [1] 112/22	48/15 58/6	enforce [3] 47/23 48/1
effect [1] 16/5	83/6 83/8	96/11
effects [1] 122/22	83/15 84/3	enforced [3] 126/21 127/4
eight [3] 78/19 78/24	84/13 84/15	127/17
85/23	84/21 85/2	enforcement [7] 24/18 65/4
either [8] 8/15 13/22	86/5	65/17 66/3
15/11 17/13	emailing [1] 32/12	126/15 127/14
27/20 46/13	emails [3] 81/21 82/18	
87/25 113/10	84/21	
	employee [3] 37/17 138/12	
	138/13	
	employees [2] 38/11 127/11	

E	11/14	68/19 68/24
enforcement...	erected [1]	81/11 81/23
[1] 128/13	59/21	88/3 95/15
enforcing [1]	erection [1]	96/9 97/25
97/11	59/18	102/23 103/11
engineer [1]	especially [1]	124/19 125/7
44/5	63/1	127/7 128/5
enlarge [1]	essential [2]	128/16 128/21
113/17	11/4 13/6	event [1]
enter [6]	essentially [6]	12/21
28/22 31/10	24/16 54/2	ever [2] 9/2
56/25 121/11	63/9 71/18	15/14
133/18 136/4	111/9 118/14	every [5] 37/1
entire [4]	esthetic [1]	37/18 39/4
10/12 34/25	104/15	63/1 82/14
37/13 46/16	estimate [1]	everybody [2]
entitled [1]	12/9	37/3 82/13
59/15	et [3] 9/18	everyone [7]
entity [7]	67/7 81/18	69/19 98/25
11/2 11/7	et cetera [3]	118/15 122/15
11/25 12/10	9/18 67/7	131/23 132/2
12/15 13/3	81/18	132/4
13/14	even [35]	everything [4]
envelope [1]	12/20 13/1	61/10 65/3
40/21	13/4 13/20	104/16 109/3
epitome [1]	24/13 24/18	everywhere [1]
18/1	26/7 32/22	35/9
equal [5]	33/2 37/2 43/7	evidence [20]
33/19 38/19	44/9 58/13	3/14 7/7 21/4
38/21 47/20	61/23 63/24	23/2 23/12
69/9	65/4 66/24	25/24 25/25
equity [1]	67/14 68/14	26/11 27/4

E	34/2 35/3	exists [5]
evidence...	35/22 37/12	30/18 56/6
[11] 30/3	38/14 69/8	86/3 109/14
50/6 50/15	122/13 123/10	120/17
53/23 103/5	126/18 126/21	expand [1]
103/12 104/19	127/15	96/18
105/21 107/4	exceed [1]	expansion [1]
107/11 126/12	91/10	95/11
exacerbated [1]	exceeding [1]	expect [1]
115/24	91/15	14/13
exact [2] 41/7	exceedingly [1]	expense [1]
52/5	124/8	129/12
exaction [14]	except [1]	experience [1]
11/1 11/11	62/24	18/11
11/17 11/18	exception [1]	explain [8]
11/24 12/4	124/21	12/7 28/15
12/8 12/14	excluded [1]	54/4 75/2 75/3
12/15 12/19	61/5	82/2 83/14
12/23 13/5	excuse [2]	111/24
16/19 17/7	38/5 60/18	explained [1]
exactly [8]	exempt [1]	62/13
8/20 10/21	95/7	explaining [1]
18/9 49/11	exhibit [9]	12/14
50/18 80/18	23/2 26/21	extension [1]
83/5 98/6	28/22 51/12	115/6
examine [1]	55/9 106/19	extensive [3]
102/23	106/25 107/11	34/11 119/5
example [5]	110/17	126/2
25/20 38/13	exist [2] 9/7	extra [1]
43/18 45/15	14/6	116/4
45/17	existing [2]	extrapolate [1]
examples [11]	44/20 96/21	127/24

E	33/20	55/22 108/14
extremely [1] 42/25	fairness [1] 96/5	fee [1] 131/4
eyes [1] 33/24	fall [5] 45/23	feel [4] 3/25
eyesore [1] 100/18	63/6 70/12 70/12 89/18	4/25 5/4 88/8
F	fallen [1] 33/4	feels [1] 22/15
face [3] 15/6 17/5 17/13	familiar [4] 79/3 79/7	fees [2] 45/2 45/3
facing [3] 32/23 48/22 49/1	79/12 81/1	feet [39] 67/16 69/7
fact [16] 17/14 18/3 25/19 27/14 29/14 34/3 43/5 45/11 55/16 81/21 87/14 94/23 101/17 103/22 127/6 132/7	families [1] 44/22	76/13 76/14 76/17 76/24 76/24 76/25
fact-less [1] 101/17	family [4] 45/14 78/2 78/4 78/23	77/20 78/9 78/19 78/19 78/20 78/21
facts [2] 101/16 104/13	far [14] 4/18 22/19 22/25 36/16 39/25 41/17 41/19 51/23 53/14 64/4 66/21 67/23 106/9 126/25	79/25 80/8 80/10 80/12 80/13 81/17 83/12 85/23 86/10 90/5 90/23 91/10 91/11 91/15 91/24 95/15 95/18 112/6 112/21 112/24 113/2 113/14 114/25 115/4 124/17
factual [1] 3/1	favor [1] 17/20	fence [52] 5/22 21/3 22/17 23/13
failure [2] 129/9 131/14	feature [1] 55/3	
fair [1] 33/8	FEBRUARY [4] 1/14 29/11	
fairly [1]		

F		
fence... [48]	68/16 70/1	30/15 56/3
23/15 23/17	100/1	109/11 120/15
29/3 29/9	Fifth [1]	findings [4]
29/12 29/16	118/2	42/8 67/10
29/21 29/21	figure [3]	67/18 132/6
29/24 30/23	21/15 97/15	fine [14] 3/3
30/25 31/12	119/13	31/1 56/16
31/16 34/2	file [10] 8/10	66/17 85/24
34/13 34/14	9/20 9/25 10/6	100/2 101/5
35/23 35/24	10/9 13/2 14/4	109/21 120/25
36/19 37/4	18/3 18/4 28/7	125/11 133/9
37/5 37/9	filed [2] 10/2	134/16 135/21
37/15 37/22	16/16	136/14
37/24 38/15	filing [2]	finer [1]
40/3 43/8	11/21 18/6	17/23
43/21 45/25	fill [1] 116/4	finish [2]
46/15 48/9	final [5]	29/9 122/4
48/10 57/24	30/24 44/6	finished [1]
74/3 80/16	120/23 133/7	69/16
100/15 100/17	135/18	finishing [1]
123/4 125/4	financially [1]	58/5
126/14 127/2	138/15	first [19]
128/23 130/5	find [16]	3/13 21/25
133/7 133/8	17/19 19/16	22/2 22/3 22/5
133/20 133/24	33/4 47/9	22/6 23/24
fences [5]	47/12 49/10	24/6 34/9 35/6
36/17 74/5	49/12 57/17	35/7 40/22
76/7 126/5	59/10 132/8	50/18 60/2
126/5	132/11 132/17	67/24 68/14
few [6] 23/24	132/22 134/2	73/4 94/22
35/3 37/6	134/9 135/10	99/12
	finding [4]	fit [2] 60/25

F	138/2	form [3] 95/4
fit... [1]	flying [1]	95/10 110/9
64/13	63/8	formal [1]
five [2]	folks [1]	27/4
100/18 126/7	131/22	formally [1]
Fleetwood [1]	follow [9] 9/8	2/24
62/2	10/5 10/8	former [1]
flexible [1]	13/18 14/12	127/12
64/25	94/11 128/4	forth [1]
flipping [1]	128/20 128/20	81/22
97/1	follow-up [1]	forum [2]
flood [3]	94/11	15/22 16/11
116/25 118/17	followed [1]	forward [11]
119/1	14/12	8/2 74/16
FLORIDA [38]	following [2]	82/25 84/17
1/9 3/23 5/17	74/1 128/6	84/25 85/8
5/19 6/12 7/10	foot [3] 78/24	85/9 95/10
7/17 7/25 10/5	95/19 114/11	97/7 98/20
10/12 14/9	footage [8]	101/20
14/17 14/19	25/15 25/18	forwarded [1]
14/22 27/3	26/5 27/10	87/13
27/3 60/18	37/8 37/14	found [6] 14/8
61/20 61/23	48/24 127/25	32/16 37/15
62/1 63/5	footprint [1]	48/23 58/3
65/20 76/12	96/18	77/24
85/6 92/19	foregoing [2]	four [6] 15/9
92/25 93/8	137/13 138/9	15/10 17/1
94/4 94/9	foremost [1]	25/17 26/9
116/21 117/1	99/12	38/2
117/12 123/10	forgot [3]	fourth [1]
123/11 123/24	42/12 42/25	53/13
127/13 132/10	135/5	frankly [3]

F	further [15] 8/18 24/15 31/4 51/7 55/9 56/19 71/16 81/20 108/4 109/24 111/24 121/4 133/13 135/23 138/11	97/11 97/14 97/20 97/22 97/23 125/2 125/3
frankly... [3] 71/22 81/11 84/3		
free [3] 122/18 124/4 127/7		garages [5] 60/7 77/2 77/10 92/10 125/1
freight [1] 62/24	furthered [1] 123/1	gave [2] 32/14 68/14
front [13] 32/18 33/12 33/13 40/19 49/2 54/24 55/1 64/12 65/23 68/18 71/23 110/21 119/8	G	gazebo [1] 59/16
frontage [1] 79/25	gain [1] 102/14	gazebos [1] 76/10
fruit [3] 24/17 26/12 51/24	garage [44] 43/12 43/13 43/16 43/20 45/12 45/13 45/17 71/14 71/17 76/5 77/10 81/9 83/10 83/14 90/23 91/17 91/18 91/24 92/6 92/9 94/12 94/18 94/24 95/2 95/3 95/3 95/4 95/9 95/16 95/17 96/4 96/8 96/12 96/21 96/24 97/3 97/3	general [11] 33/22 34/10 59/6 67/23 84/6 84/14 84/21 84/22 85/2 122/21 132/18
full [5] 15/20 16/7 43/11 44/2 125/5		generalities [1] 64/2
fully [1] 43/21		generally [1] 129/1
fundamental [4] 3/17 27/5 27/22 125/14		generic [1] 58/16
funnel [1] 84/9		gentleman [1] 26/3
		get [33] 14/4 14/11 28/14 38/10 38/11

G	58/15 62/11	115/1 118/20
get... [28]	85/14 85/15	124/25 129/15
38/14 38/16	85/17 85/20	130/3 130/21
41/15 44/4	86/5 87/8	130/25 131/24
44/17 45/16	129/3	131/24 132/5
45/16 45/25	gives [1] 2/6	136/23
57/25 58/2	glance [1]	goes [5] 13/16
66/16 69/12	119/18	41/20 65/24
73/15 81/22	glass [1]	83/13 114/25
82/18 82/18	53/15	going [75] 4/7
83/6 86/25	go [54] 2/25	8/1 8/17 9/8
88/15 102/19	17/11 17/24	13/11 13/18
108/2 109/2	18/2 18/3	13/25 14/11
118/25 123/18	24/15 31/19	18/5 18/13
130/4 130/4	34/17 35/9	18/13 19/20
130/24 131/2	38/9 39/7	19/22 20/13
gets [1] 91/16	40/13 40/14	21/15 26/11
getting [7]	42/8 43/19	26/14 27/8
33/20 46/22	43/24 49/1	27/15 28/6
66/13 86/17	52/20 53/12	28/21 30/10
88/25 98/11	55/11 57/14	38/10 39/22
127/7	64/4 64/14	42/6 42/10
give [14] 3/8	65/4 65/23	47/22 47/23
10/15 22/11	69/22 70/2	47/25 54/13
25/20 35/3	77/3 77/5	63/16 65/11
45/6 61/19	81/15 83/11	65/11 66/16
79/21 82/12	84/23 85/17	67/9 70/22
83/18 84/10	89/21 89/22	72/22 72/24
86/18 88/22	92/5 99/11	73/15 74/12
119/19	100/21 101/19	74/14 81/20
given [11]	102/1 103/21	87/6 88/15
25/14 27/7	103/25 114/23	90/4 92/14

G	58/5 66/21	121/11 136/4
going... [29]	71/14 71/25	grass [7]
95/8 95/10	86/23 86/23	115/7 115/9
96/6 96/10	87/15 88/10	115/11 116/19
97/4 97/7	127/20	119/6 119/9
100/13 101/2	gotten [2]	124/13
101/14 101/19	39/14 46/23	gray [1] 34/8
102/12 102/13	govern [1]	great [2]
102/22 103/11	27/6	83/25 125/10
103/24 109/1	governing [1]	green [3]
110/16 113/19	60/15	119/10 138/6
113/21 114/21	government [15]	138/20
119/20 120/9	11/2 11/7	ground [1]
122/1 122/2	11/25 12/10	111/15
131/7 131/23	12/15 13/3	group [1]
132/5 132/6	13/14 16/1	88/16
135/2	16/18 38/12	grow [3]
gone [4] 16/8	61/13 61/14	116/19 119/6
53/21 54/1	61/17 122/19	119/9
129/13	127/6	growing [1]
good [16] 20/8	government's	119/12
21/6 21/7	[1] 79/7	guaranteed [2]
29/25 35/25	governments [1]	38/21 125/14
50/9 55/6	123/13	guess [11]
74/18 74/21	governs [1]	3/12 13/12
82/12 92/22	60/14	19/1 24/17
105/23 105/24	grandfathering	53/16 54/4
112/13 118/4	[1] 124/22	64/4 66/23
125/11	grant [1]	70/23 90/10
got [14] 15/14	133/17	112/6
43/14 44/10	granted [4]	guidance [4]
47/1 50/21	31/10 56/25	79/14 82/13

G	108/22 115/22	56/3
guidance... [2]	116/5 119/11	happening [3]
83/18 114/19	121/23 122/12	33/18 35/16
gut [2] 46/17	125/8 129/13	102/6
47/5	hadn't [1]	happens [1]
guys [5] 70/19	36/21	7/1
95/23 96/5	half [11]	happy [2]
97/11 111/19	44/10 67/16	77/25 82/12
	69/6 76/14	harm [14] 3/25
H	80/12 80/13	4/3 8/20 8/23
had [52] 4/19	112/6 113/3	8/25 9/17 9/18
15/20 16/25	113/14 114/24	12/16 12/22
21/17 22/23	115/4	14/1 48/3
24/14 24/19	HAMRICK [1]	124/4 125/20
25/13 26/9	1/17	125/22
26/22 32/19	hand [1]	harms [1]
32/23 33/1	114/10	13/10
33/4 33/6	handed [7]	Harper [1]
34/20 36/22	3/13 21/17	62/3
37/3 37/4 37/4	21/23 22/21	has [61] 7/6
37/21 40/2	22/25 33/11	8/21 9/2 13/3
44/13 46/4	111/4	13/6 13/18
46/24 48/17	handling [1]	14/13 15/8
49/6 53/16	82/21	16/3 16/8 19/5
53/21 53/21	hanging [1]	19/5 22/21
54/1 57/18	35/13	23/15 28/2
65/17 65/21	happen [5]	29/12 29/24
68/22 70/19	10/4 82/10	31/3 32/17
72/23 76/25	94/21 103/25	37/21 56/18
79/13 81/3	118/18	61/17 62/16
96/21 97/5	happened [3]	67/15 67/25
100/2 108/18	33/13 34/20	68/6 73/19

H	112/3 115/25	30/11 36/14
has... [34]	116/2 116/3	74/7 130/8
73/21 74/2	116/5 116/13	held [1]
76/17 80/8	he's [1] 2/17	113/13
80/10 81/16	head [1] 70/22	help [7] 79/14
82/13 85/22	hear [6] 6/17	82/12 83/16
86/9 89/23	20/15 29/19	86/16 101/7
91/17 98/9	40/12 66/14	102/2 116/14
100/13 100/25	103/23	helping [2]
101/17 102/24	heard [10]	71/19 98/12
109/23 110/19	40/11 51/23	helps [1]
112/5 112/21	73/20 76/1	88/22
113/18 115/11	99/25 103/23	HENRY [20] 1/7
118/13 119/25	124/23 125/9	1/7 5/16 5/16
121/2 122/15	132/4 136/22	5/25 6/1 6/9
124/14 125/18	hearing [26]	6/10 6/16
126/17 128/9	1/1 1/13 4/17	20/24 20/24
128/14 132/13	4/25 5/6 6/19	49/24 49/24
133/11 135/23	7/9 7/9 9/10	57/12 72/13
hasn't [1]	10/4 10/10	72/14 100/4
27/25	19/15 19/16	105/15 105/15
have [270]	21/5 22/22	122/1
haven't [5]	40/10 40/24	her [26] 2/6
2/23 15/20	40/25 50/7	16/2 22/14
39/14 54/6	96/12 105/21	25/18 26/3
102/25	117/24 122/4	26/4 45/15
having [8]	128/6 132/4	54/21 55/1
16/24 34/10	137/11	64/19 64/20
43/12 43/13	hearsay [1]	69/25 99/6
67/6 77/10	101/17	99/8 100/11
95/9 119/4	heat [1] 61/1	104/6 104/13
he [7] 26/5	height [4]	108/1 119/21

H	116/3 116/13	26/22 30/6
her... [7]	116/14	30/7 32/6
125/20 129/21	his [1] 115/22	35/11 40/2
130/3 130/24	historical [1]	40/15 42/5
131/9 132/9	77/8	42/23 45/10
132/16	hold [2] 63/6	50/19 51/22
here [36] 7/23	97/4	53/1 54/18
9/18 12/6 13/6	home [8] 32/17	55/12 57/16
15/16 16/7	32/20 60/3	61/25 62/20
16/21 20/18	69/9 78/23	66/22 69/20
27/14 29/6	80/4 82/14	72/22 73/13
33/20 36/1	124/16	73/25 94/10
39/2 39/4	homeowner [3]	100/24 101/14
43/10 47/13	8/7 93/13	102/15 103/6
52/3 61/13	96/14	104/2 105/2
62/9 62/17	homeowner's [1]	106/7 106/13
62/24 68/7	123/8	106/21 107/13
74/16 74/24	homeowners [2]	107/20 110/7
78/4 81/10	8/2 102/9	111/22 113/8
83/5 111/21	honestly [1]	114/20 117/17
111/22 114/14	64/24	117/21 118/12
115/20 116/19	Honor [81]	119/24 120/2
119/21 122/6	2/13 2/15 2/19	120/5 120/9
122/15 129/10	2/21 3/12 4/23	121/21 122/10
HEREBY [1]	5/3 6/23 7/3	124/7 125/24
138/7	10/16 11/20	128/19 129/4
herself [1]	14/14 15/19	129/7 130/24
129/19	16/15 18/20	131/5 134/21
hey [5] 81/9	19/2 19/22	136/17 137/7
82/8 82/17	21/14 22/11	hopefully [1]
83/2 96/7	23/23 25/3	90/11
him [4] 115/25	25/6 26/18	horribly [1]

H	115/14 118/1	110/20 116/1
horribly... [1]	128/4 128/5	hurricanes [5]
11/9	129/21	37/21 63/5
host [1] 128/7	however [7]	63/11 115/24
hot [1] 81/1	54/21 54/25	118/18
Hotel [1] 62/2	55/14 59/20	husband [2]
hour [1] 48/17	91/2 108/24	8/8 42/16
hours [2]	109/3	Hut [1] 37/2
83/23 129/10	huh [2] 15/2	I
house [10]	36/7	I'd [7] 3/9
43/12 43/15	hum [22] 2/22	28/24 34/14
47/5 96/7	3/15 41/1 43/4	51/13 77/25
96/19 100/14	54/7 54/10	107/3 110/8
100/21 113/21	59/8 81/5	I'll [13] 5/13
126/19 127/6	81/13 82/3	5/14 19/19
housing [1]	84/7 85/19	43/2 45/18
60/22	86/2 86/7	92/18 99/7
how [36] 4/1	86/13 86/21	107/10 119/19
8/4 8/22 9/18	87/12 87/17	122/3 122/7
10/21 12/23	87/22 90/9	131/24 133/9
18/11 18/14	94/19 102/11	I'm [82] 10/20
27/11 34/16	hundred [15]	14/1 19/22
36/1 38/19	21/5 30/19	20/13 22/23
54/12 58/19	38/20 50/7	23/25 26/2
62/17 69/11	56/7 105/22	34/20 35/1
70/8 71/12	109/15 120/18	35/22 40/1
81/1 82/5 82/7	125/17 133/1	40/5 40/5
82/7 82/10	134/6 135/13	41/19 42/6
83/18 86/19	136/14 136/15	42/12 42/18
86/24 86/24	136/16	42/21 42/24
87/7 94/8	hurricane [4]	46/7 46/10
106/15 106/15	36/22 71/21	49/10 50/17

I	I've [8] 6/24	impacts [2]
I'm... [59]	38/15 39/1	11/6 13/8
51/4 53/9	40/11 73/20	impervious [1]
54/11 57/19	104/24 113/2	74/9
59/8 59/10	113/12	implement [1]
63/3 64/4	idea [2] 48/13	15/6
64/24 65/11	70/23	implemented [1]
65/11 65/18	identified [1]	123/25
65/21 66/4	76/21	implementing
66/13 66/15	identifies [1]	[1] 15/5
67/10 70/22	44/19	implicate [1]
72/5 72/21	identify [1]	128/22
74/22 74/24	12/3	important [1]
76/7 81/10	identifying [1]	42/25
82/12 87/20	12/13	impose [1]
94/12 95/24	ignore [1]	136/16
96/12 97/15	15/7	imposed [8]
99/20 101/2	ignored [2]	11/2 31/1
101/12 101/14	4/8 35/24	56/16 109/22
101/19 102/22	illegal [1]	120/25 133/10
103/11 103/25	128/15	134/16 135/21
106/21 107/2	illegally [4]	imposition [1]
110/22 110/23	3/22 4/10	11/23
111/2 111/20	19/25 24/9	impossibility
111/23 113/23	images [1]	[4] 115/1
114/20 116/8	75/20	115/5 115/15
117/20 119/11	imagine [2]	128/16
120/9 122/2	36/17 85/15	impossible [3]
128/19 131/11	immediate [2]	36/25 45/5
131/18 131/23	33/25 83/24	124/18
132/5 132/6	impact [2]	improvement
134/21	45/2 116/15	[10] 20/9

I	individuals [1]	30/24 120/23
improvement...	73/22	133/7 135/18
[9] 20/21	informal [1]	inspector [2]
31/6 49/21	117/24	110/10 110/13
56/21 105/10	information	inspectors [1]
110/1 121/7	[17] 27/19	109/4
133/15 135/25	32/12 69/3	install [1]
inbox [1]	70/20 77/24	45/25
84/22	83/7 84/11	installation
include [1]	85/16 85/21	[3] 45/3
60/5	86/5 86/17	46/15 60/6
included [1]	87/1 87/8	installed [9]
28/1	87/20 88/1	5/22 6/14 21/3
includes [1]	88/14 130/10	22/17 50/4
60/21	inherent [1]	72/17 105/7
including [3]	62/8	105/19 108/16
43/22 60/3	initial [4]	installing [2]
123/15	29/1 36/21	61/15 119/3
incorrect [4]	57/18 101/5	instance [2]
29/18 29/21	inordinate [2]	84/19 85/1
85/21 86/9	124/6 124/10	instances [2]
indicate [1]	inquirer [1]	38/8 45/5
55/16	88/23	instead [4]
indicated [1]	inquiries [1]	4/8 9/3 9/5
116/5	82/21	119/4
indicates [1]	inquiry [1]	instituted [1]
106/14	85/11	9/5
individual [3]	ins [1] 100/3	instructed [1]
28/19 31/24	inside [3]	66/3
84/20	30/1 71/19	intend [1]
individually	76/14	71/12
[2] 2/4 32/1	inspection [4]	intent [1]

I	is [301]	it [236]
intent... [1]	isn't [3]	it's [109]
71/11	25/23 35/13	2/16 7/11 7/16
interaction [1]	37/11	8/16 9/2 10/19
46/4	issuance [3]	11/9 12/5
interest [5]	23/5 51/14	13/13 14/7
8/16 83/4	107/5	16/23 17/2
124/24 132/21	issue [19]	17/4 17/5 20/6
132/21	3/24 7/8 7/23	28/4 28/4
interested [2]	17/22 21/11	30/11 32/18
39/20 138/15	28/25 29/4	33/18 34/13
interesting [1]	29/5 33/17	34/22 34/24
14/15	40/3 40/3 47/2	35/5 35/5
interests [2]	50/13 63/15	35/10 35/20
122/24 123/1	63/16 68/13	38/8 38/8 42/1
interpret [1]	98/4 106/2	44/15 46/11
87/8	108/3	46/12 51/11
interpretation	issued [21]	52/15 52/16
[3] 87/11	5/20 6/3 6/13	52/24 53/8
87/19 94/15	29/8 31/23	58/21 59/12
interrupted [1]	32/8 32/11	61/15 61/20
116/11	34/11 43/10	62/25 63/5
introduced [1]	43/23 44/2	63/14 64/3
54/6	44/3 44/5 44/7	66/7 66/12
intrusions [1]	44/18 49/17	68/1 69/2
122/19	59/17 72/15	75/25 76/13
invalid [1]	126/17 132/13	77/23 78/11
11/17	132/16	78/21 80/9
irrelevant [1]	issues [6] 7/4	81/10 81/24
101/23	22/22 26/23	82/14 83/23
irrigation [2]	35/22 36/9	88/6 88/14
116/20 119/5	105/5	89/1 89/23

I	50/8 55/24	22/6 22/11
it's... [45]	73/20 82/13	25/7 25/20
90/5 90/6	itself [3]	28/14 28/19
91/11 91/15	25/22 58/20	30/8 32/19
92/4 93/1 93/5	88/21	33/23 33/24
95/2 95/16	J	33/25 34/10
95/17 95/23	Janet [10]	34/20 34/22
96/1 97/10	20/9 20/20	35/3 35/5
98/4 98/5	24/23 28/15	35/18 35/22
98/12 99/4	49/20 58/6	37/11 38/14
100/17 101/12	67/12 72/20	40/16 41/4
104/8 104/16	105/9 110/9	41/19 42/11
104/18 106/8	Joan [1] 98/21	42/15 43/17
106/19 109/8	job [3] 15/4	44/10 45/6
110/16 110/22	35/25 46/17	45/18 50/17
111/17 114/21	John [1] 102/6	50/22 50/25
115/15 115/18	John Anderson	51/25 52/20
118/5 118/7	[1] 102/6	53/9 54/4
121/19 124/17	JR [1] 1/17	54/11 58/9
124/23 125/1	judge [2]	58/19 59/24
127/18 127/18	14/21 39/3	61/7 63/15
128/15 130/16	Judicial [1]	64/2 64/3
130/19 130/20	137/10	65/24 67/21
131/17 137/8	July [1] 46/5	68/16 69/11
item [7] 40/12	jurisdiction	70/1 70/12
75/12 75/13	[1] 11/16	73/5 74/1 74/1
78/13 78/14	just [117]	79/6 81/16
89/15 113/6	2/24 5/12 7/14	81/22 83/5
items [2] 58/1	17/18 17/21	84/5 84/14
58/3	18/12 18/13	87/14 90/17
its [7] 17/4	19/1 21/25	91/2 92/16
17/13 31/23	22/2 22/3 22/5	95/13 97/11

J	71/19 125/25	28/10 33/21
just... [40]	kept [1] 46/18	35/6 35/13
99/7 99/16	kick [1] 18/7	36/1 38/12
100/8 101/10	kicked [1]	39/20 40/1
102/8 104/2	16/21	40/17 41/5
104/4 104/11	kind [17]	41/25 45/24
104/22 106/9	10/25 32/14	46/8 48/17
106/13 107/13	33/7 33/8 35/5	50/18 56/2
111/20 112/2	35/11 62/14	61/8 62/11
113/8 114/20	74/1 80/2	62/19 62/25
117/8 117/19	83/14 87/24	65/3 65/9
119/8 119/10	113/16 115/6	66/13 67/8
119/24 120/3	123/9 123/16	67/22 68/12
120/9 123/9	125/15 128/13	70/25 72/6
124/24 126/3	kinds [2] 17/6	74/5 74/8 78/8
126/18 127/5	117/13	80/18 81/1
127/7 127/22	knew [6] 32/17	81/11 82/7
127/22 128/19	32/20 38/1	83/3 86/16
130/16 130/16	46/2 100/5	87/9 93/14
131/16 134/22	126/12	94/22 96/6
135/2 135/3	knock [1] 96/7	97/21 99/19
136/18 136/18	knocked [1]	101/6 101/6
justice [2]	33/10	101/25 103/10
8/17 124/24	knocking [1]	106/16 110/15
	48/19	111/7 113/9
K	know [74] 5/11	116/16 117/3
KATHERINE [9]	13/24 14/20	119/5 127/19
1/7 5/16 6/1	14/21 17/4	127/19 128/10
6/10 6/16	17/23 17/24	128/11 129/22
20/24 49/24	18/11 20/12	130/9 130/25
72/13 105/15	22/19 26/10	know-how [1]
keep [3] 36/25	27/8 27/15	18/11

K	109/12 112/25	60/14 61/6
knowing [3]	113/23 114/15	61/11 64/11
25/18 27/23	115/7 115/13	65/4 66/18
117/23	120/15 124/21	122/21 126/14
knowledge [1]	127/3 128/21	127/14 128/5
16/8	128/24 132/23	128/7 128/20
knows [2]	134/3 134/12	132/18
30/10 101/9	135/10	lawful [2]
L	landscaped [1]	106/11 106/15
	44/25	laws [3] 9/7
lacks [1] 11/4	language [3]	13/18 123/7
laid [4] 59/2	58/20 58/20	lawsuit [6]
63/23 107/24	129/3	9/20 10/2 13/2
118/20	larger [1]	14/4 16/16
land [51] 5/20	91/11	18/3
6/4 6/13 8/5	last [12] 23/7	lawyer [1]
21/1 21/10	50/16 51/16	47/8
30/16 35/23	67/1 67/3	lay [3] 14/1
43/9 43/14	70/10 70/12	115/1 115/3
43/22 43/25	70/13 93/11	LDC [4] 45/11
47/23 50/1	100/4 107/6	89/5 91/3 94/3
50/12 56/4	122/2	leading [1]
56/13 58/12	later [12]	112/22
59/14 59/20	11/22 26/12	least [13]
60/16 60/17	28/2 28/14	11/19 11/20
68/4 72/16	32/13 32/16	24/7 37/3
75/11 78/12	33/2 33/5	44/16 67/12
88/18 92/24	48/23 49/10	67/16 68/6
94/15 94/23	49/12 100/1	81/2 113/13
95/6 95/24	law [19] 3/1	123/4 126/13
96/1 105/6	3/4 3/8 11/14	127/4
105/17 106/1	24/18 38/22	leave [2]

L	102/23 119/18	82/9 84/5
leave... [2]	122/2 122/3	84/14 85/8
45/18 122/6	122/18 123/1	90/5 94/5 94/7
led [3] 23/5	let's [6] 28/5	96/18 96/19
51/14 107/4	40/13 42/8	104/16 105/20
left [3] 114/8	69/18 70/2	107/3 110/8
114/10 126/25	84/4	110/21 111/10
left-hand [1]	letter [1]	115/10 117/12
114/10	14/13	117/22 118/21
legal [4] 7/4	letters [6]	119/4 122/9
66/8 97/17	28/9 31/24	125/21 131/5
100/10	40/21 41/3	likely [1]
legally [6]	41/9 41/10	109/2
4/4 8/13 9/4	Liberis [1]	limit [1] 4/14
19/11 32/8	62/3	limited [1]
124/20	light [1]	75/15
legislation [1]	100/20	line [17]
15/25	lights [2]	55/20 67/17
legislature [2]	100/20 103/2	69/6 69/7
8/4 9/11	like [50] 2/5	85/24 100/25
legitimate [7]	2/8 3/9 7/8	109/2 111/21
11/5 13/7	7/11 17/21	112/4 112/5
13/24 61/17	21/4 23/4	112/20 112/22
122/24 122/25	28/24 32/25	112/23 113/22
132/20	33/14 35/1	115/2 124/15
less [4] 35/19	35/14 37/12	124/17
37/13 101/17	39/5 40/18	line, [1]
116/18	47/20 49/4	115/5
let [13] 33/13	50/6 51/13	line, and [1]
38/23 50/22	62/24 62/25	115/5
52/9 65/12	63/7 63/8 65/2	lineal [1]
99/7 99/16	65/9 77/11	37/8

L	living [3] 72/5 96/22 96/24	52/21 59/22 60/13 61/11 63/15 63/17
lines [2] 76/15 81/18	load [1] 85/7	63/19 77/4
listed [1] 41/4	loading [1] 44/25	91/3 107/10 114/17 117/16
listen [1] 42/19	local [3] 15/25 123/12	123/12 125/21 125/25 128/4
litany [1] 102/18	123/14	129/21 130/22
literally [6] 9/9 10/11 15/13 16/25 37/1 45/5	located [2] 76/20 77/23	looked [7] 18/25 34/25 36/10 40/18 75/2 79/5 79/11
litigating [1] 47/2	location [8] 1/9 5/17 6/2 6/11 44/23 75/17 80/18 93/24	looking [13] 19/4 41/23 59/8 59/24 60/19 78/16 81/19 83/20 83/21 83/24 122/13 131/11 131/18
litigation [3] 8/11 18/5 25/17	locations [1] 77/6	looks [2] 7/11 40/18
little [11] 21/16 53/24 97/2 111/15 115/21 115/22 116/4 116/12 126/10 126/18 127/8	long [10] 10/20 16/5 16/6 43/14 48/17 70/8 76/3 85/24 90/3 132/3	loss [8] 12/25 14/3 31/18 44/20 57/9 121/19 133/25 136/12
live [4] 36/22 99/2 99/3 118/18	long-term [2] 76/3 90/3	lost [1] 123/18
lived [3] 16/3 62/22 68/7	longer [3] 4/7 61/23 75/23	lot [12] 18/23
lives [1] 122/20	look [24] 14/23 17/17 23/20 34/18 49/2 50/21	

L	41/5 41/20	14/24 50/17
lot... [11]	41/24 41/25	102/3 116/6
38/1 38/25	42/1 48/21	116/12 116/18
44/8 44/21	48/21 48/21	123/15
70/21 71/22	50/10 57/21	manner [1]
124/18 129/11	105/25	65/7
129/16 129/17	main [3] 60/8	manufactured
132/4	60/12 125/8	[1] 60/3
M	maintain [1]	manufacturing
ma'am [5] 25/1	55/2	[1] 94/6
77/21 84/12	maintaining [1]	many [2] 14/8
90/20 91/1	118/6	58/21
made [21]	maintains [1]	March [16]
26/15 33/5	12/15	30/22 31/2
43/6 70/25	maintenance [1]	56/10 56/17
71/2 71/3	118/9	70/14 109/17
99/13 99/18	make [25] 2/17	109/22 120/20
99/20 100/5	32/3 42/7	121/1 133/4
101/4 101/4	45/18 50/22	133/5 133/10
104/24 106/5	59/23 82/10	134/9 134/16
117/9 117/14	82/23 86/25	135/15 135/21
118/13 118/22	87/24 88/4	Marco [1]
120/6 120/11	89/2 96/11	118/1
128/11	99/14 103/22	market [1]
MAGISTRATE [6]	107/14 111/20	81/2
1/1 1/13 1/17	112/15 117/20	material [2]
6/17 23/12	122/7 124/7	4/18 124/13
39/1	130/6 131/3	materials [4]
Magistrate's	132/6 134/22	3/19 3/21
[1] 28/21	makes [3] 18/1	70/25 130/8
mail [12] 21/8	28/10 71/17	matter [10]
	making [7]	3/1 3/4 8/1

M		
matter... [7]	31/19 32/8	10/18 14/10
8/19 28/14	32/12 32/14	16/23 17/6
96/5 113/11	32/19 33/11	17/10 17/17
115/14 123/17	35/13 37/2	26/18 36/15
129/22	38/5 38/9	38/18 58/21
matters [1]	38/23 39/5	72/6 130/5
4/15	39/8 39/10	meaning [1]
may [20] 3/7	41/6 41/8	60/20
11/15 20/7	41/16 42/16	means [2] 60/1
28/23 30/8	47/17 48/15	128/1
51/25 53/1	48/16 48/20	measurements
54/18 64/18	50/22 51/23	[1] 79/20
66/20 73/25	52/9 55/16	measures [1]
74/25 77/9	57/19 59/12	117/14
88/10 88/10	60/18 66/17	mechanism [3]
92/16 97/17	69/12 70/20	87/24 93/13
105/8 107/12	83/16 85/8	93/16
129/21	86/4 86/9	meet [13]
maybe [6] 17/5	87/14 89/1	43/16 61/4
34/12 58/8	94/21 98/12	63/19 76/17
74/7 82/1 97/1	99/16 100/5	80/8 80/10
me [83] 3/8	100/7 100/8	90/24 93/3
3/24 4/5 4/6	101/5 101/7	109/6 109/19
4/19 5/10 6/21	102/2 111/24	115/15 125/6
9/15 9/22 10/1	113/11 116/3	130/7
10/1 10/6	117/7 117/16	meeting [5]
10/13 10/15	117/22 119/16	43/21 55/20
12/20 15/15	119/16 119/18	92/11 94/16
18/7 20/15	120/4 120/10	95/20
22/11 27/20	122/9 122/12	meets [2]
28/10 29/23	128/6	30/12 94/8
	mean [13] 7/24	member [2]

M	meticulously	40/17 40/18
member... [2]	[1] 128/8	minimize [1]
88/10 88/15	Miami [1] 62/2	11/8
members [1]	Miami Beach [1]	Minnesota [1]
88/17	62/2	62/22
mention [8]	MICHAEL [8]	minute [4]
3/21 38/4	1/7 5/16 5/25	38/24 69/21
38/17 42/25	6/9 20/24	72/9 116/9
65/21 128/15	49/24 72/13	minutes [1]
130/2 136/21	105/15	122/8
mentioned [19]	Michigan [1]	misleading [1]
32/10 32/13	62/21	117/20
33/15 53/21	microphone [1]	misread [1]
57/24 58/13	105/13	45/11
76/9 77/18	middle [2] 5/7	Miss [1] 122/1
77/19 81/24	86/12	missed [2]
85/16 90/13	midnight [1]	73/4 137/2
90/25 91/3	100/23	mitigate [1]
93/12 94/12	might [10]	11/8
95/1 128/18	34/19 36/4	mitigation [5]
130/13	65/25 67/19	116/24 116/25
mentioning [1]	67/19 67/20	118/17 119/1
15/21	112/9 117/2	119/2
merit [4]	117/6 130/6	modification
19/17 132/11	mile [6] 34/1	[1] 74/7
132/16 132/21	35/18 69/8	modifications
meritless [1]	126/19 127/5	[1] 130/6
132/20	127/23	moment [2]
met [1] 108/25	mind [3] 52/18	95/14 113/9
metal [1] 50/3	102/8 125/25	money [2]
methods [1]	mine [5] 24/12	93/18 129/16
116/25	34/8 39/15	months [5]

M	60/21	118/23 118/24
months... [5]	move [6] 20/13	must [5] 8/13
15/9 15/10	20/17 33/20	37/16 57/20
17/1 25/17	45/21 82/25	90/23 124/3
26/9	92/14	my [116] 3/12
more [20] 7/5	moved [2] 16/7	3/12 3/21 5/2
16/3 26/23	129/24	7/15 8/8 12/16
28/2 37/7 68/2	moving [7]	12/17 14/3
68/18 69/10	75/16 75/21	14/3 17/25
76/2 76/3	76/1 89/7	17/25 19/25
76/10 86/18	89/11 90/2	20/8 20/20
114/9 114/19	123/3	21/24 23/24
116/16 118/21	Mrs. [1] 100/4	24/8 27/10
122/12 124/24	Mrs. Henry [1]	27/12 32/17
126/25 136/18	100/4	32/17 33/12
morning [7]	Ms. [1] 57/12	34/6 34/23
3/14 17/19	Ms. Henry [1]	35/14 36/21
20/8 48/18	57/12	37/1 39/15
74/19 74/21	much [10] 33/5	40/10 42/7
129/10	39/14 49/12	42/16 49/20
mortgage [1]	52/10 58/22	51/6 52/11
44/12	74/8 77/15	52/12 52/13
most [5] 29/11	95/23 98/12	53/2 53/14
39/20 55/23	137/11	53/20 54/2
80/21 109/2	mulch [1]	54/2 54/9
mostly [1]	115/12	54/12 54/20
22/24	multiply [1]	54/22 55/3
motion [5]	38/17	55/3 57/22
18/18 19/4	municipal [1]	57/22 58/5
19/18 26/14	9/10	58/8 58/17
26/18	municipality	63/7 66/23
movable [1]	[3] 62/5	66/23 68/14

M	8/9 55/2 104/6	99/14
my... [59]	N	needing [2]
69/8 70/22	name [12] 20/8	37/9 94/17
71/19 71/22	20/20 32/18	needs [3]
72/19 74/19	49/20 69/5	75/23 109/4
74/21 86/19	72/19 74/19	109/5
89/2 90/10	74/22 98/20	negative [1]
93/5 94/14	99/14 105/9	116/15
96/2 96/3 97/8	127/14	neighbor [6]
97/13 97/14	nature [4]	37/2 98/18
97/23 99/14	18/18 68/3	99/25 103/17
100/11 102/3	118/19 123/19	115/19 119/11
102/3 102/8	navigate [1]	neighbor's [2]
103/13 104/24	83/19	24/13 26/1
105/9 106/14	necessarily [2]	neighborhood
107/14 111/3	17/3 96/16	[27] 20/9
111/5 112/1	necessary [3]	20/20 31/6
113/14 113/18	82/22 83/1	33/21 33/23
115/14 115/16	83/22	33/25 34/24
116/9 118/11	need [16] 5/4	35/12 49/21
118/11 119/8	46/3 69/18	56/21 63/10
119/14 121/22	75/24 75/25	72/20 74/13
122/6 122/7	82/23 97/6	77/8 79/13
123/2 123/4	102/1 103/23	95/5 100/16
123/4 124/8	108/2 108/4	102/5 102/10
125/22 126/10	109/6 111/24	104/15 105/10
126/18 126/19	113/9 119/20	110/1 121/6
127/5 127/8	120/13	126/4 126/10
128/23 128/25	needed [7]	133/15 135/25
129/2 131/25	45/25 46/9	neighborhoods
132/5 138/10	47/12 57/25	[2] 34/18
myself [4] 8/8	58/2 58/9	77/9

N	6/12 6/22 8/18	119/24 119/25
neighboring [2]	8/25 11/22	123/17 124/21
96/3 116/17	15/3 16/3	125/20 127/1
neighbors [9]	16/11 18/1	137/6
32/23 35/14	18/11 20/19	none [3] 25/7
37/1 37/6	23/25 24/20	33/13 36/16
37/11 71/20	26/17 27/18	north [1]
71/23 72/25	27/22 30/8	62/20
101/25	30/9 32/7	not [191]
neighbors' [1]	32/14 33/10	note [2] 43/6
63/7	37/25 43/10	110/18
never [6]	43/23 44/1	noted [1]
15/10 35/10	44/4 44/6	107/18
46/20 48/15	44/17 45/12	notes [1]
48/16 55/1	46/7 48/3	138/10
new [8] 15/25	48/14 49/9	nothing [9]
37/24 45/12	49/16 55/6	32/11 32/14
45/15 46/14	60/25 65/22	34/19 48/22
75/16 95/1	66/1 68/24	68/24 101/1
95/4	70/23 72/5	101/17 112/6
next [6] 26/3	72/15 76/15	128/3
28/8 42/9 51/5	79/17 79/23	notice [26]
72/11 88/16	80/14 80/15	8/11 11/25
nexus [2] 11/4	81/18 81/19	12/3 12/11
13/7	87/11 87/18	15/15 17/1
nice [2] 25/13	97/22 99/7	18/4 19/7 21/5
129/25	102/4 102/7	21/7 23/6
nine [4] 28/9	102/8 102/13	25/16 26/9
41/9 41/10	102/22 105/5	32/24 33/8
78/13	115/14 116/15	35/4 50/7 50/9
no [76] 3/18	118/22 118/23	51/15 57/22
4/7 5/19 6/3	118/23 118/24	59/12 105/21

N	number [26]	23/25 24/3
notice... [4]	5/15 6/8 20/23	24/6 50/14
105/23 106/10	21/20 22/15	50/16 50/24
106/12 107/5	23/3 44/21	51/2 51/5
noticed [1]	44/23 49/15	51/20 53/2
35/10	49/23 72/12	53/4 101/3
November [7]	73/18 75/12	101/21 106/4
12/2 35/4	75/13 78/3	106/5 107/15
57/23 58/8	89/16 93/21	objections [6]
58/18 59/7	99/14 105/4	23/24 24/4
68/15	105/12 113/7	51/1 51/7 51/8
now [36] 4/24	132/22 134/2	52/24
6/20 15/9 16/2	134/20 135/9	obligated [6]
19/19 20/16	136/20	31/5 56/20
21/25 22/19	numbering [1]	109/25 121/5
24/1 32/2	106/22	133/13 135/24
39/17 40/19	numbers [2]	observed [1]
57/12 59/9	1/3 38/18	27/6
63/4 64/16	numerous [1]	obtain [7]
64/19 66/24	34/2	29/15 46/24
69/15 69/16	O	61/8 74/4
70/6 72/9 86/4	oath [1]	99/12 129/9
90/17 100/19	122/15	131/14
101/6 101/11	object [7]	obtained [3]
102/17 103/25	19/23 22/25	19/25 108/19
108/10 109/1	28/3 100/25	108/19
112/23 119/13	101/15 102/16	obtaining [12]
119/19 125/17	103/7	6/15 22/17
131/11	objecting [1]	30/23 50/5
nowhere [3]	22/23	55/18 72/17
64/9 64/10	objection [18]	105/7 105/20
91/7	21/12 23/21	109/18 120/22

O	60/23 64/22	19/13 20/3
obtaining...	82/1 82/21	20/15 22/7
[2] 133/6	84/6 84/16	22/10 22/13
135/17	84/19 92/23	23/1 23/4
obviously [7]	115/11 127/11	23/20 25/11
11/8 12/11	officer [7]	26/20 26/24
36/20 43/13	20/9 20/21	28/12 30/2
79/4 111/7	38/6 49/21	30/13 32/2
118/17	65/4 65/17	38/23 40/4
occupied [1]	105/10	41/12 42/2
60/7	officers [1]	42/6 42/13
occupying [1]	127/9	42/22 45/8
60/10	officially [1]	45/24 48/6
occurred [1]	5/11	48/25 49/13
3/7	officials [2]	51/2 51/11
October [3]	38/13 127/7	52/7 52/10
46/5 55/22	Oftentimes [1]	52/14 52/17
108/8	83/10	52/17 53/13
off [9] 24/25	oh [12] 9/15	54/15 54/17
33/4 37/4 40/1	12/21 13/23	55/8 57/12
44/24 44/24	42/23 53/3	59/11 63/19
65/24 70/22	54/3 73/10	64/3 64/16
97/24	99/22 107/1	65/16 66/15
off-street [2]	110/14 125/10	66/22 67/5
44/24 44/24	127/18	69/15 69/23
offer [6] 81/3	okay [123] 2/7	70/3 70/3
81/19 81/20	2/10 2/14 2/16	70/16 70/17
81/24 85/17	2/20 4/13 4/22	70/24 71/10
88/3	5/8 6/24 7/2	72/7 72/8
offering [1]	7/19 10/17	72/11 73/7
101/16	10/23 14/15	73/10 73/15
office [10]	15/17 18/17	74/15 79/22

O	16/25 19/6	95/10 95/13
okay... [43]	21/20 22/1	97/5 98/17
88/25 91/25	22/2 22/3	99/20 101/4
92/3 92/7	22/11 22/13	101/12 104/1
92/13 92/15	22/15 22/18	105/3 105/18
95/20 95/22	22/20 25/21	106/6 109/13
98/11 98/19	28/7 30/14	109/14 110/24
99/2 99/5 99/9	31/25 32/25	113/7 113/10
99/22 99/24	35/5 35/19	113/24 115/25
100/9 102/22	37/13 38/23	117/21 117/24
103/20 104/21	39/16 39/21	118/22 120/16
107/10 110/5	41/4 41/11	121/20 122/16
110/14 111/13	41/24 42/9	126/6 127/18
111/16 111/19	42/18 42/21	127/20 129/14
112/1 112/17	43/18 44/4	129/23 130/15
113/25 114/2	44/9 47/3	132/22 134/22
117/10 117/15	50/16 53/24	135/11 136/16
117/19 117/21	54/3 54/5 54/8	136/18
119/20 120/11	57/15 58/16	one-146 [1]
121/25 131/10	59/7 63/15	109/14
131/18 131/19	65/6 67/9	ones [7] 14/11
131/22 135/7	67/15 68/1	35/16 52/2
136/17 137/4	68/2 69/12	52/19 53/7
older [1]	69/19 72/16	71/7 106/8
124/22	72/23 73/24	online [4]
on-site [2]	78/5 78/20	36/6 36/13
75/14 89/17	78/24 79/18	84/22 85/3
once [5] 2/24	80/6 81/25	only [28] 10/3
15/10 43/3	85/21 86/24	15/14 16/23
83/11 122/24	87/9 88/10	19/2 19/8
one [103] 5/2	88/15 92/10	22/18 32/23
8/14 13/20	93/11 93/22	32/25 55/14

O	131/5 131/9	33/21 35/20
only... [19]	132/6 133/5	37/19 38/5
60/21 66/25	133/9 134/15	38/6 38/10
68/4 69/11	134/18 134/24	38/11 38/12
69/12 75/20	135/20	43/10 43/16
75/21 86/10	ordered [8]	49/22 49/25
89/7 89/7	10/5 30/19	56/20 74/23
89/10 89/11	56/7 109/15	75/5 94/17
90/2 91/9	120/18 133/1	105/11 110/1
101/15 113/20	134/5 135/13	117/25 121/6
119/10 119/15	ordering [1]	127/8 127/10
127/20	130/24	127/13 128/1
onset [1] 5/5	orders [2]	129/24 132/13
opacity [1]	130/3 130/3	133/14 135/25
36/14	ordinance [2]	Ormond Beach
opinion [1]	58/12 122/23	[21] 5/17
125/23	ordinances [4]	5/18 6/1 6/3
opportunity [6]	16/5 16/9	6/10 6/11 16/3
9/19 9/22	68/10 123/25	37/19 38/5
10/8 15/20	orientation [2]	38/6 38/10
27/8 64/6	29/17 29/20	38/11 38/12
options [2]	original [1]	43/10 43/16
77/1 78/4	57/20	49/25 94/17
order [26]	originally [2]	127/8 127/10
29/5 29/8 32/7	62/21 111/9	127/13 129/24
32/7 32/11	ORMOND [43]	other [58]
32/15 41/18	1/1 1/9 5/17	4/15 7/4 8/5
44/2 48/8	5/18 6/1 6/3	9/19 11/13
48/13 54/13	6/10 6/11 16/3	12/19 29/14
84/10 108/3	19/16 19/20	30/2 35/21
112/24 119/6	20/10 20/22	38/2 38/3 38/8
125/2 125/7	29/13 31/5	38/14 39/4

O	12/23 13/8	16/21 18/7
other... [44]	13/9 13/9	21/15 32/10
39/7 39/9	13/10 13/24	32/16 32/20
39/22 40/2	14/7 15/4	34/10 35/13
41/7 43/17	24/15 25/19	47/4 47/9
43/21 51/6	25/23 25/25	47/12 48/23
52/19 57/13	26/6 26/7	51/25 53/9
61/22 63/20	27/16 27/17	59/2 61/19
63/21 64/1	32/22 32/23	63/23 64/2
67/19 69/3	33/21 33/24	64/17 67/22
69/7 71/3	33/25 35/12	69/9 69/14
71/22 73/1	37/14 43/12	71/20 71/24
77/8 80/2 80/3	44/11 48/10	81/3 81/8 82/8
82/7 97/24	54/23 60/12	82/16 84/3
98/16 101/7	61/10 62/11	87/7 88/3 88/7
102/18 104/14	62/11 63/11	88/13 97/15
106/7 106/8	72/23 73/25	104/4 104/12
115/17 115/19	82/20 84/15	114/23 115/25
116/6 116/12	84/19 84/19	116/14 118/20
116/18 125/6	84/21 85/9	122/11 123/3
125/12 126/16	85/17 88/17	124/15 126/17
126/20 126/21	89/22 92/23	127/20 127/24
127/4 128/7	94/25 100/2	131/24
129/20	100/21 103/2	outdoor [2]
others [2]	113/5 122/14	75/12 89/15
88/13 124/4	122/19 129/14	outline [1]
otherwise [4]	129/15 137/10	111/22
10/10 18/7	ours [1] 84/2	outlined [4]
24/16 124/5	ourselves [1]	75/10 76/6
our [61] 8/2	104/20	78/6 78/12
8/9 8/21 8/21	out [50] 8/4	outlines [2]
8/22 8/25 9/1	10/7 14/1	76/8 78/15

O	12/13 82/15 87/4 107/25 125/19 owner's [1] 11/3 owners [2] 8/10 124/3 owns [1] 116/2	5/15 5/24 6/9 72/12 parcels [1] 79/17 park [4] 67/25 114/14 115/7 115/9 parked [2] 53/20 54/9 parking [8] 44/24 115/6 115/9 115/12 124/12 126/6 126/7 126/15 parks [3] 37/17 37/20 38/6 part [11] 24/7 25/23 27/2 34/4 34/5 60/8 60/12 63/13 91/13 97/12 130/10 particular [35] 17/3 17/12 24/1 36/3 39/16 39/21 40/12 43/2 46/8 51/8 53/25 57/14 57/17 75/19 76/18 77/7
outside [2] 30/1 80/16 over [22] 20/18 34/1 52/24 63/7 75/18 76/17 76/23 77/3 77/5 80/7 83/11 83/12 85/17 90/22 91/23 95/15 95/18 100/1 100/21 112/4 115/20 128/1 overall [1] 116/23 overlap [1] 28/20 overly [1] 45/4 overregulation [1] 123/9 own [10] 12/25 27/16 31/23 32/1 33/24 67/25 82/13 83/23 84/20 125/23 owner [9] 11/15 11/24 12/4 12/7	P P.D [2] 37/20 38/10 package [1] 65/25 packet [10] 22/24 25/24 31/25 37/19 51/4 51/8 51/9 106/9 121/20 121/22 packets [2] 21/23 22/21 page [9] 16/25 23/10 51/18 53/8 59/3 59/6 61/24 110/17 110/23 palm [1] 110/20 paper [1] 45/7 paragraph [2] 59/11 137/1 parcel [4]	

P	paver [3] 74/3 103/2	
particular...	126/20 136/19	pens [1] 47/12
[19] 77/22	pavers [41]	people [7]
78/5 78/23	6/14 34/13	39/9 62/8
79/11 80/17	53/24 54/3	80/25 82/19
83/4 83/9	57/24 72/17	86/16 87/25
85/11 88/22	74/6 105/7	124/25
93/7 95/5	105/7 105/19	people's [1]
103/24 110/6	107/23 108/4	129/20
117/21 117/24	108/10 108/15	per [7] 17/23
119/22 119/23	108/19 109/1	31/1 56/16
122/22 132/18	109/7 109/19	78/21 109/21
particularly	109/20 110/6	120/25 134/15
[1] 66/7	111/9 113/15	percent [6]
parties [1]	114/14 115/1	35/19 35/20
138/13	115/3 115/17	37/8 37/13
parties' [1]	119/4 120/22	38/18 38/21
138/14	120/24 121/13	perfectly [1]
pass [10]	121/17 123/4	118/13
30/24 38/10	126/6 129/2	performance [1]
38/11 38/14	130/5 134/20	47/3
38/16 93/10	135/18 135/19	pergola [1]
120/23 127/7	135/19 136/7	101/11
133/7 135/18	136/11	perhaps [3]
past [1] 66/13	pay [8] 30/19	64/8 96/4 98/1
patch [1]	56/7 109/15	period [2]
116/13	120/18 131/4	64/15 75/18
patiently [1]	133/1 134/6	permanent [3]
9/24	135/13	60/2 60/5
pause [1] 9/12	peculiar [1]	66/12
paved [1]	58/3	permissible [1]
111/9	peering [1]	80/20

P	105/20 108/2	persons [1]
permission [3]	108/4 108/18	128/24
61/8 61/9	108/23 109/2	pertaining [4]
61/12	109/19 120/22	7/1 14/23
permit [75]	125/3 125/7	64/20 66/14
5/20 5/23 6/3	128/17 129/9	pertains [1]
6/7 6/12 6/15	130/4 130/25	35/24
21/3 22/16	131/2 131/4	pertinent [1]
22/17 29/9	131/15 133/7	10/14
29/13 29/15	135/17	pervasive [1]
30/8 30/23	permits [11]	62/17
36/2 37/9	34/10 38/2	phone [7] 32/9
37/25 43/8	46/3 46/19	32/19 33/14
43/10 43/19	46/22 46/24	48/17 58/10
43/20 44/1	67/7 68/24	67/12 82/19
44/5 44/7	82/25 126/11	phonetic [1]
44/18 45/7	126/16	134/25
45/17 45/25	permitted [8]	photo [11]
46/9 47/12	54/23 55/14	25/21 25/22
49/16 49/18	64/12 75/4	29/1 29/11
50/5 55/15	93/15 101/10	51/3 51/9
55/18 57/25	101/12 131/7	53/23 53/25
58/2 59/17	person [2]	55/2 55/23
63/16 63/16	39/6 75/16	107/6
72/15 72/18	personal [6]	photos [22]
74/5 84/19	75/14 82/20	22/8 23/5 23/6
84/20 84/23	122/19 125/23	24/7 24/9
84/24 93/10	128/9 128/11	24/16 24/20
93/17 93/22	personally [1]	26/10 27/9
96/23 97/25	48/20	27/12 28/25
98/6 98/9	personnel [2]	51/14 51/15
105/5 105/8	64/11 127/14	54/24 75/2

P	100/1	129/14
photos... [7]	piece [2] 45/6	platted [1]
102/25 102/25	119/11	76/15
103/2 103/5	pieces [2]	play [2] 33/8
103/11 107/4	63/9 63/22	83/9
107/21	piled [1]	playhouses [2]
physical [1]	107/23	59/16 76/10
80/1	Pizza [1] 37/2	please [3]
physically [3]	Pizza Hut [1]	98/1 98/20
27/11 80/1	37/2	98/20
124/18	place [4]	plenty [1]
pick [5] 13/17	13/21 40/8	99/10
14/11 38/9	85/13 113/21	plumbing [1]
47/22 68/10	placed [5] 6/6	61/1
picking [7]	49/18 55/13	plus [1] 41/4
9/7 33/18	75/18 80/16	PO [3] 5/16
34/17 38/25	placement [1]	6/1 6/10
39/13 39/19	60/2	POD [1] 75/9
40/6	placing [1]	PODS [2] 68/1
picture [10]	80/2	90/2
52/1 52/9	plan [2] 44/6	point [20]
53/13 53/13	93/23	10/3 13/16
54/19 68/8	planner [1]	43/23 46/25
68/17 110/18	74/14	48/7 49/11
110/22 111/7	planners [3]	51/25 57/19
pictures [13]	72/24 73/25	67/1 67/4
19/23 20/1	129/15	67/21 67/21
24/24 26/8	planning [9]	81/12 89/1
37/23 53/10	60/13 74/22	95/12 101/18
54/14 64/10	77/2 85/4	111/16 115/14
64/13 65/5	92/24 94/2	117/8 122/11
79/5 99/11	108/23 112/14	pointing [1]

P	post [2] 33/3 49/6	presented [3] 7/7 21/25 73/20
pointing... [1] 111/20	posting [7] 21/9 48/19	presenting [1] 22/14
points [1] 125/16	105/25 106/10 106/11 106/12	pretty [5] 16/23 17/2
poisonous [3] 24/17 26/12 51/24	106/15 postings [1] 50/11	17/15 52/10 69/10
Police [1] 127/9	poured [1] 113/16	previous [2] 72/23 93/6
pollution [1] 100/20	power [1] 62/5	previously [1] 51/6
POPE [1] 1/17	precede [1] 3/2	principal [4] 76/18 80/9
porch [1] 33/13	precedent [2] 61/21 118/4	90/24 92/11
porches [1] 71/23	precisely [1] 9/10	print [1] 34/7
portion [4] 12/18 37/3 67/19 111/23	prefabricated [1] 94/7	printed [1] 124/8
portions [1] 14/9	prefer [1] 3/4	printer [1] 34/6
position [2] 82/1 86/19	premature [3] 10/1 10/11 16/22	prior [3] 18/5 59/18 95/6
possess [1] 62/9	prepared [3] 21/17 117/23 126/1	privacy [1] 122/17
possesses [1] 62/5	present [5] 7/8 28/25 30/3	private [4] 24/12 117/14 124/2 125/19
possession [1] 47/1	119/16 132/5	probably [6] 7/6 69/18 101/7 101/19 108/25 129/24
possible [1] 80/1	presentation [1] 3/1	

P	Professional	12/25 13/8
problem [3]	[2] 138/6	14/2
13/19 16/15	138/21	proposal [1]
127/1	prohibit [2]	17/19
procedure [5]	61/14 118/8	proposed [18]
41/13 80/24	prohibited [11]	4/1 8/11 8/12
85/13 86/15	11/1 11/11	8/21 8/22 9/1
87/24	11/17 11/18	9/17 11/3 11/6
procedures [2]	11/23 12/5	12/1 12/17
44/4 95/12	12/8 46/21	13/9 16/18
proceed [11]	58/11 114/15	17/7 17/18
5/9 6/19 7/2	114/22	18/5 25/16
19/19 20/7	projectiles [1]	93/23
28/23 49/15	71/21	proposing [1]
72/18 105/8	proof [8]	12/18
107/12 108/4	13/15 21/6	prospective [1]
proceeding [6]	21/7 50/8 50/9	81/7
4/9 13/20 20/5	105/22 105/24	protect [3]
123/16 123/16	106/12	62/9 123/8
125/12	proper [1]	130/1
proceedings [6]	30/11	protected [5]
8/1 9/5 27/7	properties [12]	116/21 117/1
60/15 137/13	63/1 68/11	123/14 123/21
138/9	94/16 94/17	123/23
process [10]	94/24 96/3	protection [6]
3/17 25/13	100/18 116/17	33/19 38/20
27/5 27/22	124/22 127/5	38/22 40/3
27/23 29/2	132/14 132/14	47/21 69/10
107/24 125/15	property [183]	protections [1]
129/13 130/25	proportionate	8/2
processes [1]	[7] 4/2 8/23	protocol [1]
95/12	11/6 12/16	90/1

P		Q
provide [8] 9/13 11/24 12/9 79/14 83/15 83/16 97/6 114/18 provided [3] 47/16 88/1 96/25 providing [3] 33/8 82/22 88/8 proving [3] 13/4 14/6 17/11 provisions [1] 115/8 public [3] 11/5 13/7 68/25 pulled [4] 38/3 46/18 46/19 127/20 purchase [1] 45/22 purchased [3] 44/11 61/1 84/2 purpose [9] 10/12 11/5 13/7 17/9 17/14 61/18	77/2 81/25 92/21 purposes [11] 2/18 60/23 65/5 75/20 75/22 76/1 77/11 81/25 90/2 91/22 104/3 pursuant [2] 56/12 134/11 pursue [1] 8/17 pursuing [2] 4/7 9/21 put [23] 9/12 26/8 32/10 32/21 32/24 36/21 41/13 48/22 53/17 66/11 71/17 81/3 81/9 83/4 93/19 97/20 97/22 104/3 104/22 108/3 114/13 125/4 126/14 putting [6] 37/7 86/11 88/3 101/11 104/12 116/16	qualifications [1] 60/25 quarter [8] 34/1 35/18 69/8 79/18 79/24 126/19 127/5 127/23 question [22] 10/22 21/24 42/16 64/7 65/8 65/19 66/8 66/16 83/9 87/3 92/23 93/12 94/11 97/8 104/6 110/9 111/5 112/11 113/10 113/15 113/25 114/6 questioning [1] 124/9 questions [18] 42/11 45/20 64/18 64/20 66/25 69/25 74/24 77/4 77/16 82/12 84/9 84/23 85/6 87/7 89/3 93/5 99/6 125/10

Q	30/1 77/12 85/4	114/16 130/15
quick [1] 92/18	RE [1] 1/7	realtor [4] 81/7 84/1
quite [9] 45/4 58/18 61/21 64/24 68/22 69/17 81/10 84/3 128/10	reach [4] 82/16 84/3 88/2 88/13	86/20 87/19
quote [1] 60/4	reaching [4] 81/8 82/8 87/6 88/7	realtor's [1] 87/5
quoting [1] 90/15	read [3] 6/24 16/24 34/25	rear [5] 76/14 76/22 76/24 79/2 80/13
R	reading [2] 58/19 91/25	reason [6] 9/16 13/17 27/19 27/22 33/10 130/23
R4 [4] 76/21 77/23 78/1 78/11	ready [4] 73/16 86/6 103/21 103/25	reasonable [1] 77/6
radius [2] 69/8 127/24	real [2] 11/3 12/17	reasonably [2] 80/20 115/16
raining [1] 53/17	realize [4] 2/23 22/22	reasons [2] 17/6 129/23
rainstorm [1] 33/2	48/7 51/23	recall [1] 106/18
raised [3] 51/6 53/7 106/16	realized [1] 7/14	received [5] 3/18 15/11 15/13 25/17 108/22
random [2] 33/6 49/6	really [18] 10/3 10/19 30/10 33/1 35/10 62/23 65/18 67/9 80/19 82/14 87/23 88/22 98/4 102/2 111/5 114/8	receiving [1] 41/9
rap [1] 134/25		recent [3] 29/11 44/7 55/23
rate [5] 36/20 53/21 57/21 63/13 116/6		recently [3] 33/20 91/3
rather [4] 5/6		

R	red [1] 111/17	48/8 69/25
recently... [1] 126/9	reduced [1] 116/23	Registered [2] 138/6 138/21
Recess [2] 72/10 132/1	refer [4] 10/13 39/10	regular [9] 7/5 21/8 41/5
recommend [8] 30/15 31/1	106/14 112/10	41/24 41/25
56/3 56/16	reference [4] 50/10 71/24	105/25 126/15
109/11 109/21	131/17 131/17	regularly [3]
120/14 120/25	referencing [1] 34/23 37/20	38/6
recommendation [12] 2/9	referred [2] 118/25	regulate [1] 118/25
23/10 27/14	57/21 118/1	regulated [1] 93/8
30/14 32/3	refers [1] 60/17	regulation [6] 4/2 8/22 9/11
51/18 55/25	reflect [1] 23/8	12/23 14/2
107/8 108/7	reflection [1] 53/15	83/17
109/10 130/20	reflects [2] 51/17 107/7	regulations [8] 12/6 13/5
136/20	refused [1] 47/5	45/3 48/1 77/3
recommendations [4] 120/7	refuted [1] 104/19	83/8 92/25
120/12 130/2	regard [1] 32/6	123/25
130/18	regarding [1] 94/16	reinspection [6] 31/7
record [8] 2/17 40/8	regardless [1] 129/20	56/22 110/2
50/12 68/25	regards [2]	121/8 133/16
104/23 106/1		136/1
107/18 138/10		relate [1] 63/22
records [4] 36/5 36/12		related [1]
79/8 79/8		
recover [1] 11/18		

R	30/24 31/12	138/8
related... [1]	31/15 57/2	Reporter [2]
8/6	57/6 57/25	138/7 138/21
relative [2]	58/2 120/23	reporting [1]
138/12 138/13	121/13 121/16	100/11
relevancy [1]	133/8 133/20	representative
65/19	133/23 135/18	[1] 22/16
relevant [9]	136/6 136/10	request [3]
7/5 10/20	removed [5]	31/9 56/24
11/25 66/7	58/9 102/7	121/10
67/9 67/20	109/5 123/3	requesting [1]
101/23 101/25	129/3	6/17
103/15	removing [3]	require [3]
rely [1] 28/3	17/25 56/9	96/2 97/14
remain [1]	134/8	97/20
61/3	renewable [2]	required [17]
remedies [1]	118/7 118/9	3/23 4/4 8/13
11/14	rent [1]	9/4 9/25 19/10
remedy [1]	102/10	19/11 37/10
86/25	rental [1]	44/24 46/11
remember [4]	102/10	46/13 71/14
34/7 66/24	renters [2]	92/10 95/2
84/4 123/17	102/5 102/10	109/20 124/11
remodeling [1]	repairing [1]	124/20
126/2	115/25	requirement [2]
remodels [1]	repairs [1]	12/12 130/11
34/11	126/3	requirements
removal [4]	repeat [1]	[15] 18/9
12/18 31/18	131/15	30/12 56/13
57/9 121/19	reply [1]	63/21 80/9
remove [18]	81/15	85/7 92/5 93/3
27/16 27/18	report [1]	93/22 94/9

R	respond [18]	129/17
requirements...	3/7 6/25 8/14	responding [1]
[5] 126/20	8/15 8/19 9/15	9/3
126/23 127/3	12/12 13/21	response [21]
130/8 134/12	13/23 16/12	3/24 9/13 9/25
requirements,	19/6 24/21	10/6 10/7
[1] 94/5	25/11 28/12	15/11 15/13
requirements,	54/18 55/4	15/14 15/18
and [1] 94/5	102/17 122/3	18/24 19/12
requires [10]	responded [1]	19/15 45/9
3/17 27/21	58/17	57/23 58/5
43/15 44/1	respondent [20]	58/17 68/15
90/21 93/2	2/3 2/6 2/12	83/24 87/15
94/24 97/23	6/16 20/23	119/21 129/6
123/12 123/24	31/14 42/11	responses [1]
research [1]	49/23 73/21	57/13
83/23	74/2 93/12	responsible [5]
residence [2]	105/14 121/15	31/17 57/8
45/14 66/12	133/1 133/13	121/18 133/25
residences [1]	133/22 134/5	136/11
127/13	135/13 135/24	rest [1] 119/8
resident [2]	136/9	restrict [1]
63/5 82/7	respondent's	118/8
residential [5]	[2] 132/8	restrictive [1]
74/13 92/21	132/12	124/3
94/16 127/2	respondents	review [7]
131/8	[12] 30/19	12/10 15/20
residents [2]	31/4 56/6	84/24 93/17
82/2 88/2	56/19 57/5	94/2 94/3 94/4
resolved [3]	74/4 109/14	reviewed [2]
62/7 62/16	109/24 120/18	4/20 58/23
125/18	121/4 129/12	reviewing [1]

R		
reviewing...	121/25 122/17	100/3
[1] 19/14	122/18 125/14	runoff [1]
right [67]	129/18 131/12	115/19
2/20 6/24	131/19 133/19	runs [1]
15/17 16/11	135/5 136/6	134/25
16/21 17/21	rights [13]	S
18/21 19/14	8/10 16/2	safety [3]
21/25 22/19	27/12 62/8	85/7 93/3 94/5
24/1 24/19	123/8 123/14	said [20]
28/17 28/23	123/22 123/23	12/21 31/18
31/12 32/18	124/2 124/6	33/14 37/12
35/1 40/7 40/9	129/17 129/20	47/20 49/3
40/10 40/24	132/9	49/4 54/25
42/14 49/14	ripped [1]	57/9 58/23
50/20 51/10	63/9	66/10 68/15
52/12 52/13	rocks [1]	85/22 91/6
52/23 53/14	119/4	106/11 112/2
57/2 64/12	Rollins [4]	117/22 121/19
66/24 69/5	46/6 46/12	129/19 136/19
69/15 70/5	46/15 47/25	sale [3] 43/20
72/11 79/17	roughly [3]	45/17 125/4
84/8 86/17	11/5 13/8	same [15] 2/3
87/1 102/16	44/15	14/14 28/4
103/14 103/16	RPR [1] 138/20	39/22 41/7
103/20 108/25	ruining [1]	47/17 51/1
109/9 111/1	104/14	52/4 52/6
111/21 111/21	rules [1] 27/4	59/21 68/20
112/23 114/14	run [2] 100/3	88/7 88/14
115/20 115/22	100/4	115/8 131/17
116/2 119/12	run-in [1]	sample [1]
119/18 121/13	100/4	126/3
	run-ins [1]	sampling [1]

S	101/25 104/7	scope [1]
sampling... [1]	104/11 104/12	114/17
127/8	106/22 113/1	screen [3]
sand [2]	114/24 119/25	41/23 53/9
115/21 116/19	127/18 131/11	111/3
Sarah [6]	131/13	script [1]
74/19 74/22	saying [30]	97/1
75/1 112/10	4/6 8/15 8/20	seas [1] 71/9
112/12 112/13	9/15 13/23	seat [1] 49/19
Saturday [1]	41/19 44/14	seats [1]
4/19	48/5 58/6 58/8	20/17
saved [1]	59/13 66/6	second [17]
129/16	69/11 78/21	5/24 10/16
saw [6] 33/3	79/25 81/8	22/11 22/24
48/24 48/25	81/15 82/8	36/22 42/16
49/5 49/6 49/8	95/23 96/1	67/8 69/16
say [43] 7/13	96/4 97/10	73/5 73/6 73/9
18/2 18/8 19/3	97/13 97/16	73/11 121/24
28/5 32/25	111/14 112/4	130/15 131/16
33/25 39/5	114/13 118/7	134/25 136/25
39/9 39/12	124/19 128/24	section [36]
40/2 43/2	says [12] 9/11	5/22 6/5 6/13
47/22 54/12	11/19 27/4	10/25 11/16
64/11 66/10	58/1 59/12	11/22 21/2
68/23 70/23	61/11 63/25	30/17 34/12
78/9 79/17	65/3 65/13	34/13 50/2
79/24 80/23	97/16 97/22	56/5 56/15
82/17 83/2	115/9	59/15 60/18
84/5 89/9	schedule [6]	75/11 76/6
91/19 96/7	31/6 56/21	76/7 78/11
96/12 96/21	110/2 121/7	81/22 89/5
98/15 101/4	133/16 136/1	91/23 105/18

S	65/3 79/5	September [9]
section... [13]	102/25	29/4 29/6 29/7
109/13 113/4	selective [1]	29/10 46/5
113/5 120/17	128/13	55/21 55/21
122/17 130/14	sellers [1]	107/22 107/25
131/13 132/25	46/18	serve [2]
134/4 134/14	send [6] 40/20	48/20 128/5
135/1 135/3	41/25 48/21	served [2]
135/12	77/25 83/7	17/18 19/7
sections [1]	85/3	serves [1]
10/13	sending [3]	118/4
see [30] 7/20	84/13 84/14	service [6]
23/21 25/12	85/2	21/6 21/8 50/8
25/19 33/24	sense [6]	50/10 105/23
34/18 35/9	13/15 18/1	105/24
35/15 35/17	28/11 33/5	serving [1]
35/22 36/15	45/18 71/18	15/15
41/3 49/2 52/9	sensitivity [1]	set [4] 7/9
52/19 62/23	124/1	8/4 76/23
64/13 75/19	sent [12]	77/19
79/19 99/19	28/10 31/25	setback [6]
100/6 103/14	32/1 35/4 41/5	30/12 74/8
109/6 111/20	41/10 42/1	78/21 80/9
111/25 117/17	57/18 57/20	113/14 114/11
119/7 119/10	59/7 59/12	setbacks [19]
123/5 127/23	69/3	55/20 76/18
seeing [1]	separate [5]	78/6 78/14
40/19	26/17 40/21	78/15 80/11
seeks [1] 11/7	51/10 98/4	85/2 88/20
seem [1] 35/1	107/2	90/24 92/12
seems [1] 63/1	separates [1]	93/25 95/21
seen [4] 35/2	34/9	108/25 109/6

S	133/3 133/11	103/9 104/12
setbacks... [5]	133/13 133/24	129/19 129/24
109/20 112/3	134/7 134/17	130/6 131/1
112/20 123/19	134/18 135/15	131/3 131/4
130/7	135/16 135/22	she's [10]
sets [1] 97/24	135/24 136/11	15/21 15/22
seven [10]	Shannon [2]	16/10 22/18
67/16 69/6	138/6 138/20	32/9 52/2
76/13 80/12	shape [3]	55/16 100/12
80/13 112/5	44/19 68/20	101/15 131/1
113/3 113/14	111/10	shed [15]
114/24 115/4	she [49] 16/3	55/17 55/18
Seventh [1]	16/7 16/8	55/19 69/5
137/10	22/14 22/15	76/4 80/11
several [4]	24/8 24/17	83/5 90/5 90/6
38/7 81/21	25/8 25/22	90/22 91/23
123/7 129/10	25/25 26/6	94/5 94/7
shall [41]	27/11 27/25	95/15 95/19
11/24 12/3	28/2 32/8	shed/storage
12/10 12/11	32/10 32/10	[1] 55/19
27/5 27/6 27/6	32/12 32/13	sheds [17]
30/21 30/22	32/17 32/19	50/4 59/15
31/2 31/4	32/20 32/20	60/7 63/7 63/7
31/17 56/8	32/24 45/16	67/24 71/25
56/17 56/19	53/21 54/1	76/5 76/8 76/9
57/8 59/17	54/12 54/12	76/11 77/1
75/15 75/17	55/16 58/10	83/9 90/13
90/23 91/24	58/15 58/16	90/19 126/7
109/16 109/18	87/13 94/11	126/22
109/23 109/25	99/8 100/1	sheet [7]
120/21 121/1	100/4 101/9	22/12 23/9
121/4 121/18	102/17 102/24	28/1 33/4 41/8

S	46/23 57/6	sic [1] 5/25
sheet... [2]	107/18 121/16	side [17]
51/19 107/9	130/15 131/16	29/25 76/25
sheriff's [1]	132/15 133/23	77/20 78/20
127/10	136/9	78/20 78/21
shipping [39]	shouldn't [6]	78/24 79/2
52/23 56/9	8/1 20/4 40/23	80/12 86/10
56/11 58/1	41/22 68/9	92/24 97/13
58/8 58/11	104/17	111/22 112/21
60/10 60/24	show [8] 27/10	113/22 114/10
61/16 62/18	54/5 75/25	115/2
62/23 62/25	79/8 94/8	sidewalk [4]
63/3 63/11	111/5 111/8	25/2 25/10
63/25 67/6	127/21	54/20 55/2
67/13 67/23	showed [1]	sign [6] 45/3
68/13 68/21	126/4	49/5 49/9
68/25 69/2	showing [2]	65/22 66/1
70/5 71/3 75/8	23/14 113/12	66/11
92/20 101/18	shows [17]	signage [1]
103/14 123/2	25/21 25/22	32/21
126/8 126/22	25/25 26/6	significant [1]
126/24 128/25	52/6 52/8	116/20
130/13 131/3	53/23 53/24	signs [1]
131/6 131/6	54/1 54/8	53/18
134/8 134/10	55/23 69/9	similar [1]
Short [1]	69/13 93/23	128/2
118/2	107/22 115/20	simple [2]
shorter [1]	128/9	128/5 129/13
111/15	shrapnel [1]	simply [6] 9/2
should [13]	63/10	15/7 33/10
4/17 17/19	shreds [1]	58/9 119/6
31/15 39/7	72/1	129/9

S	size [5] 68/20	81/15 83/2
since [9] 35/5	70/17 80/6	84/5 85/1 85/5
37/21 65/3	80/18 93/24	86/18 86/19
68/6 68/6	slightly [1]	113/13 119/1
70/10 100/14	52/15	125/21
114/25 116/19	small [4]	somehow [1]
single [5]	88/16 100/16	94/20
37/2 45/14	126/10 127/8	someone [3]
78/1 78/4	so [163]	39/5 73/16
78/23	society [1]	103/17
singled [2]	62/11	someone's [1]
69/9 69/14	soffit [1]	65/23
sir [7] 21/21	116/1	something [23]
23/16 72/19	some [34] 9/17	4/6 13/13 16/1
92/15 108/8	24/10 24/11	34/23 39/12
108/12 120/14	32/12 36/8	40/13 42/24
sit [2] 82/2	39/23 45/4	48/4 61/15
122/6	48/1 48/6 49/6	61/16 62/6
site [4] 44/6	53/16 68/23	63/17 69/13
75/14 89/17	69/25 72/25	74/6 77/12
93/23	73/21 77/5	93/19 96/5
sitting [4]	82/4 85/12	96/14 96/17
69/17 71/24	86/15 88/4	96/19 104/17
110/21 129/14	93/6 95/4	104/18 125/21
situation [4]	102/24 109/5	sometimes [3]
8/7 34/24	114/19 115/25	20/17 96/20
35/11 43/8	122/11 122/12	100/22
situations [7]	123/9 125/12	sorry [16]
62/4 62/6 65/6	126/13 128/10	10/15 11/11
75/15 123/6	130/6 132/6	22/11 25/5
126/8 128/17	somebody [12]	35/16 42/12
six [1] 126/4	47/16 75/23	42/24 51/4

S	59/11 62/5	speeds [1]
sorry... [8]	81/8 82/10	85/7
72/21 76/7	92/1 93/4	spell [1]
106/21 107/2	95/20 126/5	61/18
116/8 116/10	specifically	spend [1]
120/8 134/22	[33] 4/24 8/6	93/18
sort [4] 48/1	34/14 36/1	spent [1]
74/9 85/12	44/8 46/4	129/10
86/15	67/21 75/12	spoke [2] 5/14
sound [1]	75/13 76/10	32/8
79/16	79/10 82/9	spoken [1]
sounds [2]	85/22 85/25	32/19
76/2 83/25	87/20 89/15	spreadsheet [1]
source [1]	90/18 91/21	34/6
118/10	92/8 94/11	spurs [1]
sources [2]	106/13 110/17	116/19
118/7 118/16	110/19 113/6	square [18]
space [1]	117/1 117/13	34/1 35/18
96/24	118/20 118/24	37/13 76/13
spaces [2]	122/20 123/7	76/17 76/24
44/25 96/23	124/1 126/9	80/8 80/10
speak [4]	126/13	90/5 90/22
20/13 99/8	specifications	91/10 91/11
105/13 107/24	[2] 43/17	91/15 91/24
speaks [1]	94/8	95/15 95/18
117/8	specifics [3]	95/19 127/25
special [4]	118/21 123/18	squeezing [1]
1/1 1/13 1/17	125/6	24/14
6/17	specs [1] 94/6	staff [5] 88/7
specific [12]	speeding [3]	88/10 88/15
9/23 14/25	69/12 127/19	88/17 93/7
47/3 51/25	127/21	staggering [2]

S	7/9	3/16 3/23 6/22
staggering...	starts [3]	7/10 7/17 7/24
[2] 36/24	10/24 59/5	8/13 9/6 9/9
38/18	59/6	10/5 10/9
stake [3] 33/6	state [23]	10/12 10/19
49/6 49/8	9/11 23/8	10/20 13/22
stand [2]	51/17 53/2	14/9 14/12
102/13 137/11	60/14 61/4	15/1 15/12
standard [4]	61/6 65/17	15/21 15/23
53/4 80/22	93/2 107/7	16/19 16/24
90/1 106/5	118/12 118/19	17/2 17/3 17/8
standards [10]	122/14 122/24	17/9 17/10
45/2 76/12	122/25 123/7	17/14 17/15
83/11 91/18	123/7 127/14	27/3 27/3
92/10 93/1	128/20 132/10	27/21 60/18
93/9 95/7	132/20 132/21	66/10 66/18
113/6 113/7	138/2	117/12 118/5
standing [6]	stated [6]	118/23 123/11
16/11 16/16	5/20 6/4 83/6	123/23 123/24
25/2 25/9	105/6 108/24	statutes [12]
50/15 51/2	125/17	7/25 8/6 14/7
staple [1]	statement [1]	15/5 18/16
33/1	112/8	47/23 61/5
stapled [1]	statements [1]	116/22 117/2
21/24	124/9	117/4 123/10
start [4]	states [4]	128/23
59/22 59/25	44/1 59/17	statutorily [3]
60/1 110/8	75/14 135/4	9/25 19/11
started [3]	status [4]	123/22
49/7 53/17	23/7 51/16	stay [1] 68/5
64/16	55/24 107/6	stayed [1]
starting [1]	statute [42]	68/6

S	119/3	80/6 80/7
Steel [1] 71/5	stops [1]	80/11 80/15
stenographic	13/20	83/12 88/21
[1] 138/10	storage [20]	90/4 90/22
stenographical	6/5 49/17 50/3	91/12 91/18
y [1] 138/8	55/12 55/19	91/23 92/11
still [13]	57/2 61/2 61/3	93/14 93/24
19/5 23/17	67/25 72/3	93/25 112/19
26/14 33/20	73/12 74/10	126/22 134/11
40/7 43/6 51/9	75/13 75/14	structures [19]
54/19 73/8	75/17 76/3	58/25 59/1
73/18 80/1	77/11 89/17	59/16 60/21
95/16 118/3	90/3 134/2	67/24 75/10
stone [3]	storages [1]	75/15 76/6
115/10 115/12	89/15	76/9 77/19
126/14	store [1]	89/13 89/14
stop [15] 9/21	100/7	89/17 89/22
17/17 29/4	storming [1]	90/14 91/8
29/7 32/7 32/7	49/7	91/9 93/2 93/7
32/11 32/15	street [3]	subdivision [4]
38/23 48/7	24/11 44/24	11/12 11/13
48/13 108/3	44/24	11/20 60/19
114/11 118/25	streets [1]	subject [8]
119/12	68/16	74/10 74/12
stop-work [9]	strike [1]	75/21 76/20
29/4 29/7 32/7	131/16	77/22 78/6
32/7 32/11	structure [28]	95/20 112/19
32/15 48/7	56/12 59/19	submission [1]
48/13 108/3	60/16 60/20	128/8
stopped [2]	69/4 75/19	submit [9] 4/5
64/18 104/8	76/4 76/16	4/6 19/10 21/4
stopping [1]	76/23 80/3	23/5 50/6

S	106/14 120/4	111/21 113/24
submit... [3]	summer [1]	116/18 117/5
51/13 105/20	70/13	117/18 117/20
107/3	supposed [12]	136/19
submittal [1]	4/1 4/2 7/11	survey [7]
93/21	13/9 18/10	44/7 44/17
submitted [11]	46/19 66/25	79/13 79/19
3/19 3/20 6/23	68/5 80/24	80/19 81/19
7/16 22/9	84/9 128/2	85/17
26/21 27/19	129/2	surveyor [1]
37/23 79/6	supposedly [4]	77/5
113/12 126/12	13/11 104/13	survived [1]
submitting [1]	115/3 127/16	63/4
6/21	Supreme [5]	suspect [1]
substantially	14/22 61/20	129/23
[3] 122/23	62/1 62/12	sustain [2]
123/2 132/19	125/16	101/3 101/21
substantiate	sure [35]	sustainable [1]
[1] 39/19	10/15 10/21	118/16
substantiated	12/22 26/3	Sustained [1]
[1] 39/13	42/17 42/22	101/8
subvert [1]	42/22 49/10	sworn [4]
10/11	50/17 50/22	74/17 74/20
such [7] 8/7	52/20 53/5	98/22 122/15
60/6 62/6	57/19 64/5	system [2]
74/11 83/9	65/19 66/4	61/7 61/12
84/1 118/15	67/10 69/20	
sudden [1]	86/25 87/25	T
35/8	88/4 94/12	take [21] 2/3
sue [1] 47/2	99/17 101/12	8/18 23/20
sum [1] 122/1	107/14 108/23	24/15 24/19
summary [2]	110/23 111/2	26/7 42/15
		49/2 49/19

T	36/14 44/9	86/8
take... [12]	47/13 52/22	tells [1]
50/20 54/14	68/12 69/17	109/4
54/24 58/22	87/20 90/3	temporarily [2]
64/13 68/17	95/13 95/14	46/25 83/21
69/18 69/21	102/17 110/19	temporary [6]
72/9 107/10	110/22 111/23	75/9 75/20
128/3 131/23	116/8 118/5	89/6 89/10
taken [9] 24/8	119/7	89/22 91/5
24/10 24/11	talks [5] 61/6	term [4] 60/16
24/24 25/8	62/4 89/16	62/15 76/3
29/3 29/11	90/13 91/8	90/3
54/19 55/3	taped [1]	terms [3] 19/3
takes [2]	33/11	64/9 118/6
16/25 81/21	tear [1] 47/4	testified [3]
taking [5]	tearing [1]	74/2 79/4 89/4
13/21 27/12	123/4	testify [5]
65/5 100/1	technician [1]	19/21 72/24
122/22	84/20	73/4 73/16
talk [8] 7/5	technicians [1]	73/22
7/25 69/1 77/1	84/24	testimony [10]
91/4 95/11	techniques [2]	3/6 19/19
100/8 129/17	119/2 119/2	64/19 92/14
talked [7]	tell [12]	98/13 100/25
18/24 27/25	29/23 39/1	101/20 104/5
58/10 67/22	39/14 40/12	104/9 104/20
90/18 115/24	52/12 53/19	than [25] 5/6
122/25	62/22 66/17	11/22 16/4
talking [23]	80/20 111/3	29/14 30/1
11/10 12/6	114/21 122/9	35/19 37/7
21/19 34/15	telling [3]	37/13 51/6
35/19 35/21	13/13 86/4	64/1 69/11

T	15/7 17/8	111/23 112/11
than... [14]	17/13 18/1	113/17 114/1
75/23 77/13	18/14 22/13	115/12 115/21
79/18 79/23	22/18 23/14	116/21 117/12
80/3 82/8 85/4	26/17 26/18	125/22 125/22
91/11 111/7	29/10 32/2	129/4 129/22
115/19 116/6	33/18 33/24	130/12 131/14
116/12 116/18	36/10 37/12	131/20 135/5
126/25	37/18 40/16	the Amazon [1]
Thank [28]	42/4 42/13	65/24
4/22 15/17	42/14 42/24	their [31] 3/6
19/13 49/13	45/11 51/4	4/1 8/22 9/25
49/14 55/7	51/9 52/12	14/2 15/6
72/8 77/13	53/14 55/6	17/19 17/20
77/14 92/13	58/10 61/12	32/1 37/4 37/5
92/15 98/12	61/24 63/23	37/21 71/23
98/14 102/20	66/17 69/13	71/25 82/24
102/21 105/1	72/7 74/13	83/6 84/20
107/20 113/7	76/7 82/5	93/6 93/10
114/19 121/25	82/20 82/23	93/19 96/15
131/21 131/22	84/15 85/24	99/4 99/11
132/2 135/7	86/10 86/11	100/19 108/5
135/8 137/4	87/8 89/25	115/12 124/5
137/6 137/11	89/25 91/14	125/22 129/17
Thanks [1]	92/22 93/20	129/18 132/3
103/16	94/1 95/15	them [48] 3/18
that [657]	97/1 97/14	3/23 9/21 14/5
that's [89]	98/6 101/1	15/6 15/7
3/3 3/9 4/10	101/5 101/11	17/24 18/4
5/2 10/17	103/13 103/24	19/7 23/21
13/12 13/13	104/14 106/24	24/10 24/11
14/15 15/4	106/24 110/21	26/8 27/1

T	63/18 67/15	37/18 37/18
them... [34]	69/22 76/17	37/23 38/2
27/17 35/3	79/5 80/8	38/4 39/6
35/4 36/11	83/16 84/16	40/23 40/25
37/7 39/10	84/23 85/13	41/9 41/10
45/6 47/2	88/1 88/11	42/24 43/1
50/14 55/17	89/11 90/3	43/14 45/19
57/22 58/4	92/5 94/1 94/3	46/14 46/16
58/17 63/24	96/19 97/6	48/4 48/7
64/23 68/15	98/6 103/7	48/13 49/8
71/11 72/5	104/25 110/14	49/9 52/13
72/6 82/22	113/18 114/25	52/13 58/14
82/24 83/7	115/2 115/23	58/18 58/19
83/18 84/25	119/19 122/3	61/6 63/2
87/9 99/23	122/4 122/7	63/25 64/2
100/3 100/11	122/8 131/24	67/7 67/7 68/6
103/8 109/4	there [115]	68/8 68/22
113/2 113/10	2/18 4/14 7/1	69/17 75/24
113/24 126/13	7/24 8/25 9/23	76/15 78/3
then [60] 3/7	15/18 16/17	80/14 81/18
3/8 6/25 7/1	16/18 17/6	81/19 84/23
8/10 9/18 10/8	19/24 23/14	85/12 86/15
13/1 13/1	23/18 24/20	86/25 87/11
13/25 14/3	26/23 28/9	87/23 89/8
17/11 18/3	32/7 32/10	89/24 91/6
19/3 23/14	32/25 33/3	91/7 91/7
28/8 33/5	33/15 34/1	91/20 93/13
34/12 35/5	34/3 34/8	98/15 98/17
35/8 46/12	34/12 34/19	100/12 100/14
46/21 46/25	34/20 35/17	103/14 104/4
58/4 59/22	36/2 36/2 36/4	104/13 106/6
61/16 62/15	36/18 37/17	111/6 112/5

T	132/15 132/22	124/11 125/6
there... [17]	thereof [10]	125/10 125/10
114/24 115/7	31/8 31/13	125/16 127/15
115/20 115/23	56/23 57/4	127/22 128/17
116/2 118/11	110/4 121/9	129/8 129/15
118/23 119/10	121/14 133/21	they [132]
124/21 126/17	136/3 136/8	3/19 3/25 4/3
126/25 127/21	THEREUPON [1]	4/4 4/6 4/11
132/23 134/3	137/13	7/7 8/4 8/12
134/14 135/10	these [58] 2/4	8/13 8/15 8/19
137/8	3/25 9/5 16/5	9/4 9/5 9/14
there's [36]	16/6 16/9 19/9	9/18 9/21 10/4
7/15 16/11	23/21 24/7	12/21 13/21
21/22 27/18	26/2 27/9	13/23 13/25
27/22 30/9	27/12 35/16	14/2 14/5
33/10 33/17	37/12 37/14	15/11 15/15
37/25 40/24	38/7 39/9	16/19 18/10
41/3 41/7	44/15 52/2	19/10 20/4
43/23 45/12	54/14 59/24	24/24 25/17
52/11 58/21	60/10 60/15	26/11 26/24
60/9 60/25	60/20 62/4	27/8 27/24
68/8 68/23	62/6 65/6 71/4	28/7 28/19
68/24 87/18	71/12 75/4	29/2 29/8
92/9 93/21	75/7 77/3	29/15 31/24
102/7 102/8	79/17 80/16	31/25 37/24
106/12 111/21	82/21 87/7	38/16 39/18
112/6 115/21	90/1 93/7	40/20 41/8
116/15 126/19	97/24 101/6	41/12 41/12
126/23 126/24	101/9 104/14	41/13 46/20
127/15 128/1	106/22 107/21	46/21 46/22
therefore [4]	108/19 115/15	46/23 46/25
93/9 131/8	116/24 122/14	47/3 48/18

T	116/15 118/13	10/3 10/25
they... [74]	122/25 123/5	13/15 15/7
48/20 52/19	124/25 126/10	17/16 19/2
53/17 54/5	128/4 128/11	33/1 43/2 52/4
57/20 58/3	129/1 129/13	57/20 68/14
59/12 59/24	129/18 129/21	87/9 88/7
60/24 61/1	130/7	101/12 101/15
61/3 61/3	they'd [2]	106/7 116/21
61/18 63/6	18/7 18/7	127/18
63/6 63/17	they're [34]	things [43]
63/18 63/24	4/7 9/7 9/8	8/14 9/20
64/13 64/13	13/10 16/20	18/23 35/6
65/13 66/4	17/16 17/17	36/15 38/3
66/4 68/20	17/20 17/22	39/8 39/9 40/2
68/22 70/9	18/12 18/13	64/4 67/11
71/2 71/7	27/14 27/15	71/19 71/22
73/22 74/10	28/5 58/12	74/9 82/5
75/8 75/24	58/13 59/13	85/22 88/5
82/23 82/24	60/11 61/2	91/6 96/20
83/15 84/8	61/5 63/14	97/12 97/25
84/16 85/8	63/16 63/18	101/7 101/9
85/9 85/22	68/19 70/25	102/18 104/11
86/25 87/8	86/17 87/6	104/12 104/14
88/4 91/6 91/9	101/10 102/9	110/20 115/14
93/18 99/14	102/13 107/1	118/14 118/19
100/14 100/16	108/11 108/13	119/3 122/11
100/20 101/10	124/19	123/19 124/11
102/1 102/13	they've [6]	124/19 125/11
106/15 108/16	4/8 13/6 16/25	126/16 127/15
108/17 108/20	26/9 118/22	128/5 128/7
108/22 109/2	128/11	128/18 129/15
109/3 109/6	thing [18]	things, [1]

T	those [45]	100/11
things, ... [1]	14/6 19/24	threatening [1]
67/8	21/24 24/19	104/13
things, and [1]	24/24 25/7	threats [2]
67/8	28/15 32/10	100/7 100/10
think [30]	35/6 36/5	three [46] 2/2
4/17 5/14 8/9	36/15 36/16	2/6 5/21 6/5
9/15 10/14	37/6 38/1 44/4	9/16 11/20
13/24 14/2	60/25 68/4	12/5 15/9 19/9
15/4 16/10	68/18 68/25	21/2 24/2 28/4
22/12 28/13	71/18 74/3	29/5 30/17
34/11 40/11	74/5 74/9	40/22 40/23
47/8 48/3	75/10 82/4	40/25 41/2
52/12 53/24	82/11 84/9	41/3 41/23
58/6 60/9	84/24 88/5	42/7 43/3 50/2
64/17 65/16	88/19 89/9	56/5 56/14
69/7 87/14	89/24 89/25	63/1 72/17
87/15 96/25	93/4 94/7	75/13 89/16
98/9 103/19	95/11 102/6	112/21 112/24
118/1 129/19	112/18 113/21	113/2 114/11
129/21	117/1 117/13	122/14 126/23
thinks [1]	123/5 126/9	129/8 130/14
58/15	130/7 131/2	131/13 132/24
third [7] 6/8	though [5] 9/6	134/4 134/13
57/14 69/22	19/24 76/2	134/20 135/1
103/21 104/1	96/9 114/13	135/9 136/16
105/3 120/12	thought [4]	137/3
this [203]	15/12 34/19	three-foot [1]
thorough [1]	36/4 53/3	114/11
86/19	thousand [1]	through [15]
thoroughly [1]	128/2	18/2 18/25
18/25	threatened [1]	21/2 33/23

T	86/4 100/13	18/13
through... [11]	122/5 124/9	toward [1]
34/17 50/3	125/9 128/6	113/22
54/23 78/14	129/5	towards [4]
86/20 105/18	together [4]	113/19 114/9
120/17 129/13	31/25 36/21	114/22 115/2
129/15 130/25	37/7 114/18	townhouse [1]
134/25	told [3] 46/20	78/2
throughout [1]	100/4 113/2	Toyota [2]
63/10	ton [1] 63/2	35/7 35/9
throw [1] 64/2	tons [1] 7/24	trailer [1]
time [23] 3/9	too [4] 14/8	77/13
3/20 4/14	36/24 58/22	trailers [1]
16/24 25/14	74/8	90/2
39/4 49/7	took [3] 20/1	trainings [1]
53/17 58/22	24/9 29/1	54/23
62/14 68/23	tools [2]	transcript [1]
70/20 82/18	82/22 83/22	138/9
82/19 82/20	top [2] 54/8	transient [1]
93/18 95/13	70/22	68/3
98/4 102/20	torn [2] 37/22	treated [1]
120/13 128/10	71/25	28/18
129/12 129/16	total [4] 37/5	treating [2]
tiny [2]	78/19 78/25	39/5 39/6
116/13 126/18	79/25	tree [3] 24/17
title [3]	totaled [1]	26/12 51/24
110/11 110/12	37/7	trees [1]
110/15	totality [1]	110/20
today [13]	122/13	trespassing [4]
12/6 19/9	totally [2]	65/22 66/1
40/24 47/14	4/8 37/22	66/10 66/18
58/16 59/13	touch [1]	tried [2]

T	twice [1] 130/13	7/15 130/12
tried... [2] 114/13 124/7	two [40] 5/21 6/5 8/8 8/14	U
trigger [2] 96/20 97/24	11/13 16/4	Uh [2] 15/2 36/7
triggers [1] 37/9	21/2 21/22	Uh-huh [2] 15/2 36/7
tripling [1] 28/5	21/23 22/21	Um [22] 2/22 3/15 41/1 43/4
true [1] 138/10	26/22 28/8	54/7 54/10
truth [1] 39/15	30/17 39/22	59/8 81/5
try [5] 26/11 27/9 47/25 124/11 131/2	50/2 50/2 53/8	81/13 82/3
tryer [1] 103/21	56/5 56/14	84/7 85/19
trying [18] 13/10 17/16 17/17 47/2 48/20 54/11 57/17 59/10 61/14 89/2 95/9 96/9 96/18 96/22 97/5 97/15 123/2 130/1	57/2 63/4 67/8 67/11 68/17 70/4 73/19 108/16 109/13 110/17 110/23 130/3 130/14 131/13 132/24 134/2 134/4 134/13 135/1 135/11 136/15	86/2 86/7 86/13 86/21 87/12 87/17 87/22 90/9 94/19 102/11
turf [1] 119/11	type [5] 9/10 77/5 80/17 88/20 126/8	Um-hum [22] 2/22 3/15 41/1 43/4 54/7 54/10 59/8 81/5 81/13 82/3 84/7 85/19 86/2 86/7 86/13 86/21 87/12 87/17 87/22 90/9 94/19 102/11
turn [3] 110/5 111/18 119/5	types [7] 37/14 68/3 75/7 78/3 84/9 89/14 127/22	unclarity [1] 125/16
	typically [3] 83/18 89/25 94/5	unconstitutiona
	typo [3] 7/11	l [4] 17/4

U	unintelligible	58/22 62/20
unconstitutiona	[5] 71/6	63/6 64/12
1... [3] 17/5	88/12 90/7	65/23 66/11
17/12 128/14	94/13 112/16	67/1 67/3
under [19]	unit [1] 75/17	67/11 67/12
11/16 11/21	units [2] 60/8	69/5 71/8 80/2
11/22 16/19	60/11	82/15 82/16
17/8 38/22	unless [3] 4/5	89/3 94/11
49/17 76/13	96/14 97/12	99/16 101/11
78/13 80/10	unpermitted [4]	102/13 104/18
89/18 89/21	31/12 121/13	107/23 119/20
89/22 90/5	133/20 136/7	122/1 123/4
91/12 93/8	until [19]	125/4
114/15 124/20	25/4 31/3	uphold [2]
132/10	32/16 33/5	18/15 122/16
underlying [2]	42/7 49/10	upon [1]
123/20 125/13	49/12 56/18	115/17
underneath [1]	79/19 80/17	upstairs [1]
109/7	96/25 100/6	84/15
understand [9]	100/22 109/23	us [17] 8/8
3/11 40/4 42/2	119/13 121/2	17/21 32/24
77/7 87/2	133/11 134/18	33/8 44/16
95/25 99/13	135/22	44/19 45/5
102/4 104/10	up [44] 2/8	46/22 47/24
understanding	3/2 4/11 5/6	48/3 48/3
[4] 88/19	13/6 15/8	48/21 61/14
93/5 112/2	16/25 19/23	71/16 104/13
113/18	28/5 32/12	116/13 132/11
unduly [1]	32/24 36/25	use [18] 8/21
124/2	39/11 46/18	9/1 11/3 11/7
unequivocally	47/3 53/18	12/17 12/25
[1] 38/21	54/24 58/5	13/9 14/3 27/9

U	V	
use... [9]	value [2]	123/15 127/15
44/20 55/15	100/19 104/15	128/21 137/11
62/17 71/12	van [4] 37/16	via [1] 32/15
71/18 92/20	37/18 52/13	video [8]
115/16 118/16	53/14	25/15 25/18
119/3	variance [7]	25/24 25/25
used [12] 20/5	36/3 36/16	26/5 27/10
50/4 54/20	36/18 43/11	48/24 53/23
55/17 60/22	43/23 45/16	view [2] 79/6
61/2 63/3	125/5	79/9
71/21 75/21	various [1]	viewed [1]
89/7 89/11	38/3	89/10
116/25	vehicles [3]	Village [1]
uses [3] 9/17	24/14 26/7	100/15
45/1 59/1	54/13	violated [1]
using [7]	verbally [1]	132/10
45/15 55/3	118/21	violating [2]
55/17 71/11	versions [1]	8/9 27/12
90/1 95/16	124/8	violation [36]
119/12	versus [3]	1/9 3/6 5/18
usually [2]	117/25 127/21	5/19 6/2 6/12
83/17 101/6	128/4	7/10 20/25
utility [9]	very [20]	21/1 21/7 23/6
45/2 58/25	10/19 16/19	30/16 33/19
59/16 76/9	17/16 32/9	36/4 38/20
80/14 90/13	35/25 37/14	49/16 49/24
91/8 91/12	39/14 61/19	50/1 50/9
91/23	68/14 77/14	51/15 56/4
utmost [1] 8/3	82/12 88/16	59/13 69/10
	98/12 118/20	72/14 105/5
	118/22 123/9	105/16 105/17
		105/23 107/5

V	5/12 9/24 64/6	4/10 22/3
violation...	waive [1]	64/17 67/21
[7] 109/12	136/15	73/16 104/22
115/13 120/15	walk [6] 34/23	116/3 116/13
128/2 132/23	54/21 54/24	117/7 119/16
134/3 135/10	64/12 68/17	120/3 120/10
violations [15]	96/6	wanting [2]
4/1 34/2	walked [2]	83/4 117/3
34/19 35/16	35/12 55/1	wants [3] 99/8
36/23 37/15	walking [2]	103/18 131/2
38/1 38/15	26/7 33/22	warrant [5]
39/7 54/25	want [39] 3/8	20/1 24/9
69/4 126/1	5/10 16/12	24/13 24/20
126/20 127/16	23/20 24/21	64/14
127/22	25/7 28/12	was [134] 3/13
visibly [2]	31/19 32/3	3/22 4/9 4/19
35/15 35/17	32/25 40/11	5/12 11/11
visited [1]	41/8 41/17	12/9 15/3
62/20	41/18 42/9	15/12 15/15
Volusia [4]	50/20 55/4	16/1 17/18
39/3 127/9	64/19 64/22	18/9 21/15
127/12 138/3	66/14 71/20	21/23 22/12
Volusia County	73/22 99/5	24/20 25/1
[3] 39/3	102/19 103/4	25/8 25/9
127/9 127/12	104/4 104/6	25/14 25/23
W	104/11 107/14	25/25 26/3
wait [6] 25/4	111/20 112/9	26/4 26/5 26/6
42/6 100/6	117/16 117/19	26/23 27/11
100/6 100/6	117/23 118/13	27/23 29/3
120/10	122/11 129/18	29/8 30/8 32/7
waiting [3]	130/2 131/9	32/17 32/20
	wanted [12]	32/25 33/3

W	93/13 95/5	32/24 36/10
was... [96]	96/8 98/25	43/24 58/22
33/15 34/8	100/1 100/4	64/19 78/14
34/8 36/2	100/5 100/11	83/7 83/20
36/24 37/22	100/12 102/6	100/10 101/2
39/2 40/16	104/3 104/12	101/8 106/10
40/23 41/11	106/8 106/11	113/19 118/25
42/10 42/16	106/11 106/15	129/25 130/22
43/12 43/13	110/12 111/4	ways [1] 58/21
44/11 44/16	111/8 111/14	we [131] 2/2
46/14 46/16	113/3 115/23	2/25 5/8 8/10
47/16 48/7	115/25 116/2	8/16 8/18 9/15
48/10 48/13	116/8 118/2	9/16 12/24
48/15 48/16	120/9 124/10	13/17 13/24
48/22 49/8	125/9 126/6	14/10 15/5
49/9 53/3	127/19 127/20	15/6 18/2
53/20 54/2	127/21 132/3	18/15 24/14
54/12 54/12	135/2 138/7	27/16 28/13
54/16 55/3	wasn't [12]	28/14 33/1
57/17 57/24	16/17 16/18	33/4 33/6
58/4 58/7	27/7 27/19	33/19 35/12
58/15 58/16	32/16 36/2	36/21 36/22
62/2 64/5	49/5 51/4	38/9 40/22
68/17 70/14	65/18 69/12	40/24 42/7
71/15 72/24	117/22 136/19	43/14 44/10
74/20 78/22	water [1]	44/11 44/14
79/6 79/23	53/16	46/2 46/4
81/2 85/15	way [26] 3/5	46/19 46/24
85/16 85/20	3/9 4/17 9/14	47/1 47/10
85/21 85/22	9/17 13/22	47/25 48/17
87/11 87/14	14/8 16/23	48/23 48/23
90/8 90/15	19/6 30/9	49/5 49/6 49/9

W		
we... [83]		
49/11 54/23	122/16 122/17	107/14 116/17
57/14 61/6	123/17 123/21	119/7 119/20
61/7 61/8 61/9	124/23 125/8	122/1 124/20
61/10 61/11	125/13 130/8	130/1 130/24
61/13 62/8	130/9 130/9	we've [4]
64/16 64/18	130/9 130/11	33/22 35/2
65/16 67/14	130/13 130/21	68/7 129/9
67/22 68/15	131/4 131/8	website [2]
68/21 69/24	131/12 131/15	77/25 83/19
71/14 71/16	131/16 132/4	weeds [2]
72/23 72/25	137/11	119/9 119/12
73/3 73/16	we'll [6] 7/1	welcome [1]
73/17 73/24	49/15 69/21	131/1
74/2 74/4	69/22 72/8	well [39] 3/3
75/19 76/1	72/18	12/21 18/8
77/7 81/3 82/9	we're [41]	23/9 26/13
82/10 82/18	4/14 8/17 8/24	30/20 38/9
82/18 82/19	11/10 12/6	40/4 41/7
84/2 84/21	13/18 13/24	41/12 41/15
88/16 90/4	13/25 14/11	47/7 51/11
95/11 96/23	21/19 35/19	51/18 55/20
100/19 104/18	35/21 36/13	56/8 62/12
114/17 115/19	41/23 44/9	63/6 63/19
116/5 116/13	44/14 47/13	63/22 69/11
116/14 116/18	47/22 47/22	71/13 83/19
116/19 116/23	52/22 60/9	94/22 96/16
116/23 116/24	62/21 71/13	99/16 103/10
118/17 119/13	72/4 73/8	104/8 104/24
119/13 121/23	73/15 73/18	107/8 107/23
121/23 122/4	74/13 92/14	109/16 113/4
	95/8 96/10	120/19 124/9
	97/1 97/4	127/19 133/2

W	71/16	82/9 82/20
well... [2]	what [95] 2/17	83/5 84/13
134/6 135/14	5/1 6/20 7/1	86/24 87/5
went [8] 19/25	8/20 9/12 10/7	89/6 89/8 91/7
24/8 39/10	11/10 12/1	93/1 94/1
46/21 68/16	14/1 14/20	95/24 96/4
84/5 86/20	16/20 17/8	96/12 97/15
100/10	17/18 17/20	97/15 101/25
were [46]	18/9 20/12	103/15 104/3
15/15 16/20	21/15 22/24	104/6 108/23
19/24 21/23	24/4 26/10	110/12 111/7
24/8 24/10	26/23 26/24	111/14 112/2
24/11 24/23	27/23 29/23	112/7 119/13
24/24 25/7	30/13 34/4	122/9 122/10
27/8 27/24	34/7 35/15	127/23 129/18
28/9 29/2 38/2	40/16 41/17	what's [10]
38/2 40/22	42/20 44/16	29/15 50/18
41/10 46/18	49/3 53/2 53/7	55/25 71/11
46/20 47/1	53/15 53/21	97/9 100/6
55/13 58/3	56/2 59/13	103/24 107/17
61/1 63/8	60/19 61/5	109/7 113/25
67/11 67/13	63/20 63/21	whatever [7]
83/2 84/2 86/5	63/23 64/22	35/8 38/12
94/13 95/9	64/22 66/6	46/22 81/17
98/22 100/17	66/14 66/21	99/8 108/16
101/4 112/4	67/10 67/18	110/11
114/17 116/15	70/17 70/25	whatsoever [2]
123/5 126/3	70/25 71/2	47/6 87/19
126/5 126/7	71/10 72/6	when [61] 15/4
126/9 126/11	77/5 80/20	15/8 15/15
129/1 137/14	80/21 80/23	17/15 17/16
weren't [1]	81/10 81/22	19/25 20/17

W	34/18 35/23	11/1 12/1 12/5
when... [54]	36/3 37/16	12/8 12/9
24/8 27/13	54/2 54/9	13/18 13/18
28/14 32/8	58/15 60/1	14/11 18/23
35/6 36/13	60/4 61/7	18/24 21/16
36/20 38/17	61/11 63/25	23/5 23/7
38/20 40/11	65/10 66/9	25/15 26/15
40/16 41/16	66/17 69/4	34/11 35/18
41/25 44/10	75/16 78/8	37/7 37/9
45/21 45/21	78/13 79/24	37/21 37/22
46/25 47/16	89/1 89/8 89/8	41/5 41/13
47/24 48/2	91/19 91/25	48/23 51/14
48/10 48/17	97/2 97/21	51/16 52/19
48/23 49/5	98/1 98/11	53/19 54/3
49/11 58/14	99/2 111/20	58/3 59/3
63/2 63/13	112/6 113/1	59/15 60/14
64/5 64/6	115/20 116/13	60/21 60/23
64/16 66/11	118/18 123/17	68/2 68/10
67/5 68/16	124/11 126/14	68/11 69/2
69/1 69/24	126/19 126/24	73/19 80/11
83/15 84/2	131/10 131/12	89/17 89/23
85/13 85/14	whether [16]	90/24 92/11
88/2 93/22	41/17 61/15	93/23 100/2
98/25 99/13	62/4 62/14	100/16 107/4
101/25 106/9	64/7 69/1 75/8	107/7 113/24
112/2 113/15	84/15 93/12	116/5 116/20
115/24 115/25	93/14 95/2	118/19 119/6
117/4 117/11	108/20 109/5	122/15 129/11
118/12 118/17	109/6 113/17	133/3
where [48] 8/7	136/21	while [5] 25/8
8/12 14/5	which [61]	37/5 61/21
16/19 32/25	4/18 9/7 10/6	87/6 124/7

W	will [24] 3/5	21/3 22/17
white [3] 35/7	4/13 4/15 5/8	24/9 24/13
35/9 111/4	6/20 6/20 8/18	29/9 29/12
who [15] 19/20	33/9 39/5	30/10 43/11
64/25 65/6	39/25 62/7	43/13 43/21
72/24 73/16	65/20 84/24	44/2 44/5 44/7
73/22 81/11	94/7 96/20	44/18 49/18
84/4 86/20	101/20 122/4	50/5 64/14
86/22 98/19	122/5 122/6	72/17 105/7
101/4 103/18	128/14 134/15	105/19 116/20
124/25 125/19	135/20 136/3	126/11 132/11
whoever [2]	136/15	132/16 132/21
26/4 44/12	win [1] 39/17	witness [3]
whole [7]	wind [6] 85/7	74/20 89/3
10/19 10/20	89/2 116/24	98/18
13/15 26/9	118/17 119/2	word [1] 122/2
37/24 77/2	119/20	words [1]
89/13	windshield [1]	12/19
why [24] 3/6	53/19	work [15] 29/4
3/24 4/10 7/25	wish [1]	29/7 32/7 32/7
8/2 12/7 12/14	111/14	32/11 32/15
14/1 17/7	within [13]	37/16 37/17
22/15 25/12	35/18 69/6	38/25 48/7
27/19 27/23	69/8 76/20	48/13 108/1
33/6 40/17	80/15 80/16	108/3 114/17
41/6 41/25	88/21 115/3	131/25
74/13 75/3	124/16 127/5	worked [1]
75/4 128/10	127/8 127/23	115/19
128/11 129/24	127/25	working [2]
130/23	without [30]	100/13 100/22
wide [1] 86/11	5/23 6/6 6/14	works [3]
wild [1] 70/22	19/17 20/1	18/15 37/17

W	67/10 67/15	123/10 124/4
works... [1]	68/2 72/22	124/5 125/11
88/17	74/16 75/4	125/11 125/24
worries [1]	75/24 75/24	129/5 129/16
20/19	76/3 76/24	wouldn't [12]
would [130]	77/12 77/20	16/15 24/19
2/5 3/2 3/4	78/9 78/16	47/21 48/3
5/3 5/4 7/4	78/25 79/25	78/18 79/20
7/8 10/1 10/10	80/5 80/20	80/19 85/8
10/11 11/1	80/21 80/23	93/9 93/15
14/13 14/21	81/11 81/23	93/16 96/23
15/24 16/21	82/7 82/9 83/5	writing [10]
16/22 18/3	83/6 84/4	4/5 4/6 8/14
19/2 19/3 19/8	84/16 85/3	8/15 8/20 9/4
21/4 21/16	85/9 86/16	9/15 12/12
23/4 24/16	86/19 86/24	13/22 19/6
25/13 28/2	87/3 89/17	written [13]
28/3 28/7 33/7	90/4 93/14	3/24 8/11 9/13
33/25 36/1	94/2 94/4	10/6 11/25
36/18 36/23	94/22 95/11	12/3 13/17
39/20 41/2	97/6 100/24	13/23 18/4
41/6 41/24	102/6 103/15	19/11 19/14
41/25 43/1	105/20 106/13	83/15 125/1
43/24 44/14	108/1 108/20	wrong [4]
45/13 45/16	108/24 109/3	15/22 29/15
45/19 47/15	111/8 111/11	36/14 86/24
47/24 48/2	112/24 113/10	wrote [2] 11/9
48/4 50/6	113/13 113/24	12/21
50/25 58/22	114/9 114/18	Y
64/6 64/8	117/23 118/1	yard [9] 33/3
64/21 65/2	118/12 119/14	33/6 49/9
65/9 66/7	119/24 122/9	68/19 68/19

Y	21/21 22/10	82/6 115/6
yard... [4]	23/16 23/19	you [383]
76/23 95/19	23/23 24/2	you'd [2]
108/17 119/8	25/1 25/6	117/3 118/21
yards [2]	31/21 32/6	you'll [3]
62/24 94/1	34/5 36/13	74/15 89/2
yeah [28] 2/16	40/15 42/23	131/24
2/20 5/8 5/13	45/10 48/11	you're [35]
7/18 7/20	51/22 52/6	9/12 14/16
15/10 22/20	53/11 54/19	14/19 14/24
24/23 25/21	61/25 70/7	20/12 28/6
34/22 39/24	72/5 72/19	39/5 39/6 39/8
41/21 50/24	73/2 73/13	42/20 47/7
52/10 52/14	73/17 73/24	62/19 78/20
53/5 59/8 65/1	75/6 77/21	81/1 83/20
72/21 73/14	84/12 90/20	83/21 83/24
93/20 94/25	91/1 92/17	84/13 84/14
103/16 114/5	98/24 99/1	86/4 86/8
120/7 130/20	103/1 105/1	88/15 90/3
131/18	106/6 108/8	95/13 95/14
year [6] 44/10	108/11 108/14	95/16 95/22
47/17 70/10	109/11 110/7	95/25 96/4
70/12 70/13	110/14 110/25	96/9 96/13
70/17	111/12 112/11	96/18 96/22
years [6] 16/4	116/5 120/2	97/5 111/14
39/2 39/3 71/9	120/5 120/14	you've [11]
71/9 125/17	121/23 122/10	2/25 12/22
Yep [1] 89/4	129/7 134/23	22/24 38/25
yes [65] 2/13	136/24	58/23 62/20
2/19 5/3 7/3	yet [8] 2/24	66/3 69/17
15/19 16/14	5/11 22/9 28/1	75/2 111/6
18/20 21/14	36/22 54/6	120/6

Y		
your [145]	114/20 117/17	
Your Honor [81]	117/21 118/12	
2/13 2/15	119/24 120/2	
2/19 2/21 3/12	120/5 120/9	
4/23 5/3 6/23	121/21 122/10	
7/3 10/16	124/7 125/24	
11/20 14/14	128/19 129/4	
15/19 16/15	129/7 130/24	
18/20 19/2	131/5 134/21	
19/22 21/14	136/17 137/7	
22/11 23/23		
25/3 25/6	Z	
26/18 26/22	zero [1] 15/13	
30/6 30/7 32/6	zone [1] 131/8	
35/11 40/2	zoning [19]	
40/15 42/5	76/18 76/21	
42/23 45/10	76/22 77/22	
50/19 51/22	77/23 78/1	
53/1 54/18	78/2 78/10	
55/12 57/16	78/11 78/15	
61/25 62/20	78/23 82/13	
66/22 69/20	83/17 86/3	
72/22 73/13	88/18 88/21	
73/25 94/10	108/24 122/21	
100/24 101/14	132/18	
102/15 103/6	zoom [2] 54/20	
104/2 105/2	55/3	
106/7 106/13		
106/21 107/13		
107/20 110/7		
111/22 113/8		